

**S. 39, REAUTHORIZATION OF THE MAGNUSON
FISHERY CONSERVATION AND MANAGEMENT ACT**

Y 4. C 73/7: S. HRG. 104-184

S. 39, Reauthorization of the Magnus...

HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

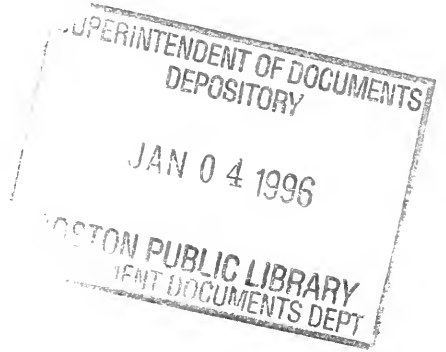
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

March 18, 1995
Seattle, Washington

Printed for the use of the Committee on Commerce, Science, and Transportation



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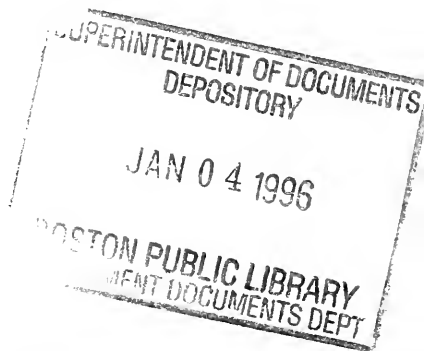
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S. 39, HEARING ON THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVA- TION AND MANAGEMENT ACT

SATURDAY, MARCH 18, 1995

U.S. SENATE,
SUBCOMMITTEE ON OCEANS AND FISHERIES
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Seattle, Washington

The subcommittee met, pursuant to notice, at 8 a.m., in the Seattle-Tacoma International Airport, Main Terminal, room 6011, Seattle, WA, Hon. Ted Stevens (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Thomas O. Melius, professional staff member, and John Trevor McCabe, professional staff member; and Penelope D. Dalton, minority senior professional staff member, and Lila H. Helms, minority professional staff member.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Slade and I are really pleased that you have joined us this morning. This is the third in a series of five or six field hearings that the Oceans and Fisheries Subcommittee of the Commerce Committee will hold nationwide. We've already been to Rockport, Maine and Boston, Massachusetts. Next weekend we will be in Anchorage and we have scheduled hearings in New Orleans, Gulf Port, Mississippi, and Charleston.

It was our feeling that we would be better off to take this bill and the changes proposed to you in the fishing industry and those who are interested beyond the fishing industry for your comments and your suggestions rather than make you all come to Washington.

This is not a new process. We started over 2 years ago, and with the help of Senator Gorton, we changed our framework of the Commerce Committee so that we now have this Oceans and Fisheries Subcommittee, which will help us concentrate on issues such as the Magnuson Reauthorization.

My goal is that we will have this bill ready sometime about the first of June to take to full committee, and that we will be able to convince the House to join us and send it to the President before we recess for the summer vacation. I think we can do that.

As Senator Magnuson and I did during the time when we were considering the original Magnuson Act, Senator Gorton and I have always been able to work out differences between our two States and the fishermen of our States to find a common ground to pre-

serve the species for all of us. These fishery resources are so valuable to all of us in the Pacific Northwest and Alaska.

There are over 18 witnesses today and this is going to be a short statement for me. We intend to run through and take a short recess around 11, and then go until 1:30, and call it a day. Some people have told me they want to go to a ball game, and I would like to catch an airplane.

You have seen the statements that Senator Kerry and I made when we introduced S. 39 and the summary of the bill. I know that some of you do not like the idea, but we do like to have you keep your testimony to 5 minutes long. We will print your statements in the record in full, but we would like to have time to ask questions of witnesses at the end of each panel. We are going to keep the record open for anyone who wants to send us additional written testimony.

Senator Packwood has asked that we put a statement for him into the record here today. He cannot be here.

[The prepared statement of Senator Packwood follows:]

PREPARED STATEMENT OF SENATOR PACKWOOD

Thank you very much Chairman Stevens, for holding a hearing in the Pacific Northwest on the reauthorization of the Magnuson Fishery Conservation and Management Act. I heartily support bringing the hearing to a location where we can hear from those people most intimately involved and those most directly impacted by any Magnuson reauthorization decisions we in Congress may make. I am pleased that you are hearing today from those Oregonians who have truly been the historical fishermen as defined in the Magnuson Act, such as Captain Barry Fisher and Joe Easley, and those directly involved in the Regional Council process, such as Council Chairman Frank Warrens of Portland, and Council member Pete Leipzig of California, and also former Congressional staff aide, Rod Moore.

I was very proud to be involved in the creation and passage of the Magnuson Act of 1976, and, along with my colleagues on the Commerce Committee, Senators Stevens and Gorton, I have actively worked to make the Act stronger through the past 16 years. I am also pleased that some of these changes occurred when I was serving as Chairman of the Committee.

As you well understand, Mr. Chairman, up until the Magnuson Act was passed in 1976, foreign vessels were sweeping through our fisheries, denying our fishermen the economic benefits of our natural resources. Because the Magnuson Act set up an exclusive economic zone, or EEZ, between 3 and 200 miles off the coast of the United States, we now have exclusive authority in conserving and managing almost all of the wealth of our fishery resources. I believe all those here today know that we have to work together to better manage and better conserve these resources, so that we indeed will not be fighting over the last fish.

The Magnuson Act set up eight Regional Councils made up of responsible and innovative people. They are appointed to the Councils for the very reason that they know and understand their own region's fisheries. At a Magnuson hearing I held in Newport, Oregon two summers ago, the fishermen, the processors, and the town and state officials—everyone at the roundtable—endorsed the Magnuson council process.

I can speak to the successes of our Pacific Fishery Management Council, one being its oversight in incrementally "Americanizing" the Pacific whiting fishery off the Oregon coast. Incidentally, the whiting fishery has been a truly economic bright spot in an area where we have seen the coastal ocean salmon season crash this past year and where continued closures may most likely occur.

The Pacific Council, realizing that the whiting off the Oregon Coast were being caught by foreign vessels, helped the industry move through joint ventures to share some of the whiting harvest. Now, a good portion of the whiting is being delivered shoreside to our now active processing plants. Long overlooked by the U. S. as a trash fish, the whiting industry expects to bring in \$100 million over the next few years to those coastal communities who have also been hard hit by the region's ongoing timber crisis.

In recent years, the Pacific Council and I, have been struggling to win Commerce Department approval in Washington, D.C. for the Council's recommendations on al-

locating the whiting harvest each year. Unfortunately, political decisions at the Commerce Department have greatly impacted the Council's recommendations to have more whiting delivered shoreside, where processing would employ hundreds of people and would keep the hard earned dollars at home.

Because of the bureaucratic uncertainty and the resultant economic losses, I am pleased that my amendment to the Magnuson reauthorization has been included in Senator Stevens' recently introduced S. 39. The amendment will expedite the approval of Regional Council recommendations at the federal level. This should alleviate the horror of a few years ago, when a decision reversing the Pacific Council's recommendations was made on the very day the fishing season was due to open. It took hundreds of thousands of dollars out of the coastal communities. We must not let this happen again. We must allow the Council process under the Magnuson Act to work, and recognize that there are Regional Councils who take their charge very seriously, and work very hard to make the best economical and social decisions possible while conserving our nation's fisheries. More Council control seems appropriate, not less.

I would like to add a concern I have that may affect the Pacific Council's already approved allocations for this year's whiting fishing season. I would like to suggest to the Chair that the regulatory moratorium now before Congress be considered very carefully so as not to adversely impact allocations decisions already in place for the 1995 whiting fishing season. These allocations were made through consensus with all the industry groups involved in the fishery, and the allocations were recommended by the Council and approved by the Department of Commerce. While we all realize that some regulatory relief is needed in many areas of the federal government, I caution any scheme that would lead to an open or "derby" whiting fishing season this year, as this would lead to great economic harm to our coastal communities in Oregon. I look forward to working with the Chair to make sure we exempt fishery management regulations already in place.

Congress is very much aware of the dynamics affecting our natural resources and of the politics that should be addressed to make Magnuson work even better. Thanks to Senator Steven's subcommittee leadership, we are well down the road towards doing just this through a regional hearings process throughout the fishing regions of the country.

Any reauthorization must reflect the entire spirit and success of the Magnuson Fishery Conservation and Management Act and recognize that the law is still doing much of what we in Congress intended many years ago. At the same time, we must be aware of the impacts to fisheries management and conservation that have come about because our technologies have gotten so much better for harvesting our fisheries, while the fish stocks themselves have not increased. In some fisheries we are facing a serious decline. Some fisheries have been negatively impacted by overfishing, or underutilization of harvests, or high rates of bycatch, along with environmental insults, some out of our control, like the past and present El Ninos off the Pacific Coast.

With a reauthorized Magnuson Act, we can win one for the fish—and the fishermen. I thank the Chair.

Senator STEVENS. Senator Murray similarly has submitted a statement for the record.

[The prepared statement of Senator Murray follows:]

STATEMENT OF SENATOR PATTY MURRAY ON THE REAUTHORIZATION OF THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT
COMMERCE, SCIENCE, AND TECHNOLOGY COMMITTEE
SEATTLE-TACOMA INTERNATIONAL AIRPORT, WASHINGTON
MARCH 18, 1995

Chairman Pressler, Chairman Stevens, and Members of the Committee, I would like to thank you for holding this field hearing in Seattle on the reauthorization of the Magnuson Fishery Conservation and Management Act. Fishing is an extremely important industry for the state of Washington and we appreciate the opportunity you have provided for affected Washington citizens to comment on the proposed legislation. I also want to thank you for the opportunity to personally comment on the Senate bill, S.39. I am honored to now occupy the seat once held by the distinguished Senator Magnuson. I am proud of his legacy and the leadership role he took almost 20 years ago to save our fishery resources from foreign fleets and to conserve them for future generations. The drafters of the original legislation demonstrated great insight and foresight into the dynamics of ocean fisheries management. The framework they developed has enabled us to entirely reclaim the fishery resources off our coasts from foreign fleets and in many cases to develop healthy harvest regimes that benefit fishers, their communities, and the nation. However, not all fisheries have been so effectively handled. Since enactment, we have learned that modifications and improvements to the structures established by Sen. Magnuson and his colleagues are necessary to ensure that his vision of effectively managed and conserved fishing stocks is a reality.

In Washington State we have watched with fearful eyes the demise of fisheries around the world and have vowed to keep our Northwest stocks from suffering the same consequences. We have begun to see some of the signs of ineffective management and need to head it off before the drastic measures necessary in places like New England become our only option. However, I am convinced that if it were not for the management and conservation system established by the Magnuson Act, our fisheries would be in far worse shape.

Several areas of concern have become evident over the past years of fishery management and, although there are differences of opinion over how to appropriately address those areas, there is a great deal of consensus on what the problems are. The four main areas of concern are; overfishing, bycatch and discards, ecosystem management, and fisheries management council reform.

National Marine Fisheries Service reports that of 231 fish species reviewed, 65 are being overutilized (Our Living Oceans, 1993). The prevention of overfishing is one of the primary goals of effective conservation and management practices and in many cases is simply not happening. There are two major reasons presented as the cause of overfishing; open access to the fisheries with the resultant overcapitalization of the fishing fleets, and the somewhat ambiguous definition of 'optimum yield' in the current statute. Almost everyone agrees that the current method of unlimited entry into many fisheries simply cannot be maintained. In fact, fisheries resources are the only publicly owned natural resource which anyone can harvest without

as much as a user fee. This has resulted in too many boats fishing for too few fish. In fact, here in the Pacific Northwest we have fisheries so heavily overcapitalized that they are only open for a few days or even hours in order to prevent overfishing. These 'derby' fisheries compel fishers to head out to sea in all types of weather and ocean conditions, often at the expense of vessel and crew safety in order to get a piece of the pie. In addition, the short and intense supply of fresh fish to the market creates a glut, lowering the price, and reducing the profitability of the fishery. Clearly a means of limiting access to the fishery is needed and in fact, the Pacific Fisheries Management Council has taken steps to do just that in the halibut/sablefish fishery with the introduction of a quota system.

The Fisheries Management Councils need to be further encouraged to develop means of limiting access that are appropriate for the fisheries they manage. The methods of limiting access to fishery resources should not and, in fact, cannot be the same for every fishery. There are difficult questions to answer when considering how to limit access that will vary among the fisheries. Answers to questions like who deserves access and how will access be limited need to take into consideration the nature of the fishery, the historical and current participants, the diversity of participants in terms of gear type, ownership, and size, and the way in which new participants can gain access to the fishery, as well as the conservation of a healthy fish stock. Decisions about who gets to fish need to be made in a fair and equitable manner without discriminating against particular fishing groups or individual fishers. All fishing interests, from large corporate factory trawlers to small family-owned catcher boats and long-liners need to be included.

In deciding how to limit access to a fishery, all available options need to be considered. These include license limitations, time and place limitations, user fees, and individual transferable quotas, or ITQs to name a few. There is a fair degree of controversy over ITQs and whether or not they will work. I think it is clear that they are not necessarily correct for every fishery but they probably are for some and must be considered as a possible means of limiting access. Many of the concerns over ITQs can be addressed by establishing appropriate criteria for their implementation. Guidelines that ensure representation of the diverse fishing interests in the allocations, prevent a monopoly of the fishery, and provide for new entrants should be evaluated when developing plans for an ITQ program.

The other facet of fishery management related to overfishing is the current definition of optimum yield. Although theoretically based on the biologically defined maximum sustainable yield (MSY), current law allows the optimum yield to be modified by any relevant economic, social, or ecological factor. Although this kind of flexibility in defining optimum yield sounds good, it has too often resulted in the establishment of a harvest in excess of the MSY. Although occasionally exceeding the MSY for a fishery can occur without long-term detriment to the fish stock, continually exceeding of the MSY can only lead, by definition, to the collapse of the fishery. It is important that the concept of optimum yield be strengthened and

clarified to ensure that the MSY of a stock is not habitually exceeded so that the long-term health of the stock can be ensured.

The overfishing and depletion of fishery resources I have just discussed are complicated by another important fishery management issue: bycatch and discards. To put it simply, bycatch and discards need to be reduced. There are two major reasons for this; bycatch and discards can negatively affect not only the target stock but also other important fish stocks, and they can negatively affect the dynamics of the marine ecosystem. Their negative affect on fish stocks results from the fact that much of the bycatch and discards are not viably returned to the sea. Therefore, these catches are essentially an additional harvest and should be included in estimates of the total harvest. There is a great deal of uncertainty about the magnitude and composition of bycatch and discards due to a virtual lack of monitoring. Methods of estimating the magnitude and composition of bycatch and discards must be implemented in order to understand their impact on fishery resources. In many cases measuring and analyzing bycatch and discards can occur without further impacting fishery resources because much of the bycatch and discards are already dead. However, common sense implementation of bycatch monitoring must occur so that the opportunity to return bycatch with a high probability of long-term survival will not be lost. In addition, the logic of returning non-viable bycatch to the ocean needs to be reconsidered. Clearly, allowing fishers to keep and profit from their bycatch should not be allowed since it fails to create the disincentives necessary to reduce bycatch. However, alternatives to dumping them over the side need to be explored.

In addition, the impact of bycatch and discards on the marine ecosystem needs to be evaluated. An understanding of the impact of bycatch on non-commercial fish stocks is just as important as evaluating its' impact on important commercial stocks because of the complexity and interconnectedness of the marine food web which we are just beginning to understand. Depletion of non-commercial stocks has unknown and potentially disastrous consequences for the populations we exploit either by reducing the food supply or increasing the predation pressure for a commercially important stock. Similarly, the spatially and temporally concentrated introduction of large quantities of organic matter (dead fish and fish waste) into the ocean changes the bottom communities as well as the distribution of bird populations. These changes could potentially cause ripple effects throughout the marine ecosystem with far-reaching consequences of which we are unaware.

Therefore, attempts to reduce bycatch and discards need to be encouraged and potentially rewarded. It's important to remember, however, that different fishing methods have different inherent bycatch difficulties. There is also a great deal of variation in the efficiencies of these different methods, in the percentage of the harvest that they catch, in the number of people they employ, and in their contribution to the local and national economy. Therefore, careful consideration needs to be given to any proposals to reward any given group over another for its' inherently lower levels of bycatch and discards. All gear groups need to be encouraged to reduce bycatch and discards. Efforts to reduce bycatch and discards within all gear

groups may need to be rewarded to create appropriate incentives to achieve this end.

This brings me to the third area of concern for fisheries management, the appropriateness of an ecosystem approach to management. Traditionally, we have managed our natural resources on a species by species basis, failing to take into account the complex interactions of those species with other species and with the non-living components of the environment. In recent years, we have begun to realize that this approach is too simplistic and can lead to ineffective and even adverse management practices. There are some that would argue that the concept of ecosystem management is just a fad, a politically correct way of looking at natural resources. I disagree, I think it is a direct outgrowth of our expanding scientific understanding of our natural world, the ecosystems and habitats that comprise it, and the effects that our actions have upon it. In order to effectively manage a fish stock to ensure sustainable harvests, we must have an understanding of all the factors affecting the viability of that stock. That means knowing and having input into decisions that will affect essential fish habitat. Some people claim that habitat is an elusive concept and therefore too difficult to try and manage. I think it is more expansive than elusive. Essential habitat is all those factors which either affect or are effected by an organism, both living and non-living, throughout its' lifecycle. Although this definition may sound overwhelming, I think it is within the grasp of experts like fisheries scientists, ecologists, and natural resource managers to work together towards effective long-term management of fishery resources with a much greater degree of certainty and confidence.

Lastly, I would like to talk about one of the more controversial concerns affecting fishery management, council reform. The original drafters of the Magnuson Act predicted that the best individuals to make decisions about fishery resources would be those with a direct interest in the fish, that is, fishers. Although I think that idea is correct in general, recent events have suggested that some modifications are necessary. There have been instances where fishery management decisions have been made to the benefit of short-term economic interests at the expense of long-term fishery sustainability. In order to encourage the councils to make better long-term decisions, it may be necessary to modify the council process to include more perspectives including those of fisheries scientists and conservationists, to bring representatives of all affected parties to the council, and to reduce the appearance, real or perceived, of conflicts of interest on the council by requiring financial disclosures and recusal from decisions which would directly and exclusively affect the financial interests of a given council member. It should be remembered that these conflict of interest provisions are not excessive, they are standard for all other federal decision-makers. These revisions to the council process need to be thoroughly evaluated to determine whether they will effectively empower the councils to consistently make fishery management decisions that achieve long-term sustainability of the fish stocks. During the 103rd Congress, fishers came together to make an industry-wide proposal on council reform. Their efforts to reach a consensus on meaningful reform need to be commended. Last year, their proposal was used as the basis for S. 2360, Sen. Breaux's Magnuson Act Reauthorization bill. I cosponsored this bill because I thought it contained meaningful council reform proposals. It is clear that aspects of that bill have

been incorporated into S.39. I encourage the committee to continue to evaluate the provisions of the Breaux bill as you proceed with the refinement of this legislation.

In conclusion, I would like to once again thank the committee for holding this hearing in Seattle. I am committed to working with the affected parties and with the committee during mark-up and floor consideration to ensure that the Magnuson Act is revised to meet the complex needs of effective fisheries conservation and management. I am confident that the committee will carefully consider the comments made here today and at other field hearings and will put together a final version of the Magnuson Act reauthorization that will help us achieve the vision of Sen. Magnuson and his colleagues.

Thank-you,

Senator Patty Murray

Senator STEVENS. At the end of the testimony from the witnesses on the list, we will have a period of time, I hope, if we all stick to our time limits, when anyone in the audience who wants to make a statement will be able to do so. We will ask you to fill out a little form that the staff has here so we will know who you are and who you represent for the record, as we will ask all others who appear and testify.

Now, the staff has put together the panels. They are really an attempt to accommodate the people who asked to appear, or who were requested by members of the committee be invited to testify. So if there are any additional people who want to formally testify and submit a statement or make a statement here today, please contact our staff here at this table. Let me turn to my good friend, the Senator from Washington.

STATEMENT OF SENATOR GORTON

Senator GORTON. As Senator Stevens has already said, this Magnuson Act revision here in Seattle is one of the series. The Magnuson Act has a tremendous impact on the fishery here in the Pacific Northwest and in Alaska, but it also governs the way in which fisheries are managed in the Gulf and in the Atlantic. It is truly a national issue.

I believe that it is probably a tribute to the people of the Northwest and of Alaska that, with all of our controversies, we do not have a situation that is as desperate as it is in New England in the northeastern part of the United States, where the system obviously has not worked at all.

The news in the last week of the Canadian arrest of a Spanish ship in international waters and a true international controversy arising from that arrest indicates just how bad the situation is in other parts of the country.

The Magnuson Act and the various Councils that are formed pursuant to it are designed first to see to it that the resource is preserved; that we do not overfish; that we do not create a situation in which there is nothing for anyone. It also, of course, deals with the way we divide up the harvest of those fish that are subject to harvest.

Each of these fields is replete with controversy among the various groups and various attitudes in places around the region and around the country as a whole.

As a consequence, in renewing the Magnuson Act, we who set policies must consider both overriding national and international issues and local issues as well. We have got to represent our own constituents, but we have to represent what is best for the people in the United States as a whole, as well.

So, it is a real tribute, in my opinion, to Senator Stevens that he is willing to go all over the United States, not just here in areas that affect him and his constituents, but to go all over the United States gathering information and advice from people on what we ought to do; how we can improve the present situation; how we can preserve what is right about it. I trust that this will lead to a sufficient degree of wisdom on the part of members of the Commerce Committee in the Senate, the Senate as a whole, and the House as a whole, so we can do the job right, preserve the resource, and

see to it that those who live by that resource continue to be able to do so.

Senator STEVENS. Thank you very much, Slade. The first panel includes Frank Warrens, chairman of Pacific Fishery Management Council from Portland; Ms. Judy Freeman, Director of the Department of Fisheries from the State of Washington; and Billy Frank, chairman of the Northwest Indian Fisheries Commission from Olympia.

As you can see, we have roughly an hour per panel, so we are going to be a little—come on up if you would, first panel—we are going to be lenient with the time we take with you all, because you represent the Government framework of what we are dealing with.

If it is agreeable with everyone, Mr. Frank has a colleague with him. Would you give us your name please, sir.

Mr. HARP. My name is Jim Harp. I am the treasurer for the Northwest Indian Fisheries.

Senator STEVENS. It is nice to have you here. I talked with the Chief about you.

We would appreciate if you would keep your statements as short as possible since we have questions for each of you. I would like to lead off with you, Mr. Warrens, if that is agreeable.

STATEMENT OF FRANK WARRENS, CHAIRMAN, PACIFIC FISHERY MANAGEMENT FROM PORTLAND

Mr. WARRENS. Good morning, Senator Stevens and Senator Gorton. I am Frank Warrens, chairman of the Pacific Fishery Management Council. Thank you for inviting the Council to testify on S. 39.

Our written statement addresses 15 issues covered by the Senate bill of concern to the Council. My oral remarks will concentrate on some of these issues.

With respect to bycatch, the Council supports the definitions and requirements concerning bycatch in S. 39 with a caveat that the Council have the authority and flexibility to determine appropriate methods of estimating bycatch. Also we recommend adding a new national standard requiring measures to minimize bycatch to the extent practicable.

On conflict of interest, this has been one of the more difficult amendment issues for the Council to address. While we do not feel that this has been a problem with the Pacific Council, we support amendments to the Act so that the credibility of the Councils is restored and maintained. We prefer the Senate version. The more restrictive provisions of the House bill could discourage participation by well qualified members of the fishing industry contrary to the intent of the Act.

On habitat issues, the Council appreciates the language in S. 39 concerning habitat. Habitat protection and restoration are critical to rebuilding depressed salmon stocks in this region. The Council and its habitat committee have been very active in recommending actions by other entities which would mitigate adverse impacts on freshwater habitat of anadromous fish. It is unfortunate, however, that fisheries agencies have little or no authority to affect activities by other agencies.

On the subject of fees, the Council continues to support amendments that would provide discretionary authority for Councils to recommend fees to cover the costs of special programs including at-sea data collection programs and limited access systems. Fees must be capped, deposited in a dedicated account, and the funds made available to the region and the program for which fees were assessed.

Overfishing. We support provisions of S. 39 dealing with overfishing and rebuilding, although we recommend that the 10-year maximum for rebuilding schedule be deleted. This is too short a timeframe for some stocks. The Council should be given flexibility to develop rebuilding schedules on a case-by-case basis with the advice of scientists, fisher, and the public. The Secretary has the authority to approve or disapprove the Council's recommendations.

On review of regulations, we appreciate this much needed statutory time limit and process for secretarial review of regulations adopted by the Council. It contains the necessary interaction between Councils and the Secretary in the event of disapproval. We would suggest, however, a 90-day time limit on the process.

On the subject of individual quotas, if Congress feels that national guidelines are necessary for individual quota programs, we would ask that there be a deadline in the Act for development of guidelines so that Councils considering IQ programs can proceed in a timely way.

On the issue of a tribal member on the Pacific Council, we would prefer that the Council membership be increased by one to accommodate the tribal member. This would return the position currently occupied by the tribal representative to the State of Washington.

On Council procedures, we recommend that any request to modify agendas be made at least 30 days prior to the meetings so that we can provide appropriate notice to the public. Also, we are concerned about the requirement that any oral or written statement include a description of qualifications and interest of the testifier. We can obtain this information when needed without this requirement.

Finally, we are concerned that new sections dealing with negotiated measures and gear evaluations are not necessary and may be counterproductive. We believe the current act is sufficient to deal with these issues.

Thank you again for this opportunity, and we would be glad to provide any additional information for the record, if you desire.

[The prepared statement of Mr. Warren follows:]

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CHAIRMAN
Frank R. Warrens

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**TESTIMONY OF FRANK R. WARRENS, CHAIR
PACIFIC FISHERY MANAGEMENT COUNCIL**

**BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
U.S. SENATE**

**ON S.39
TO AMEND THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT**

MARCH 18, 1995

SEATTLE, WASHINGTON

The Pacific Fishery Management Council (hereinafter the "Council") appreciates this opportunity to present its comments on S. 39, a bill to amend the Magnuson Fishery Conservation and Management Act. Our comments are organized by issue.

Bycatch

The Council supports the definitions and requirements concerning bycatch in S. 39 with the caveat that the councils retain the authority and flexibility to devise the appropriate methods to estimate bycatch. In addition, we recommend the Committee consider adding a new national standard requiring conservation and management measures to minimize bycatch, to the extent practicable.

Conflict of Interest

We are aware that there is a perception by some that councils cannot be trusted to develop management policy because certain members have financial interests in the fisheries. Our experience does not match this perception. Nevertheless, in order to restore and maintain the credibility of the council system, some changes to the Act are needed. We prefer the Senate language addressing conflict of interest and recusal. The definition of a significant and predictable effect on a financial interest appropriately limits the circumstances requiring recusal. However, the definition may be very difficult to interpret and implement in practice, and may be very divisive in some councils. There will be a lot of pressure on the "designated official" at council meetings, and meetings may be delayed considerably. The language of the Secretarial guidelines may be critical to the implementation of the new process. We support the use of guidelines as opposed to rules, prohibitions and removal which are contained in the House bill. The more onerous provisions of the House bill could discourage participation by well qualified members of the fishing industry, contrary to the intent of the Act. We also support the provision that prevents a council decision from being invalidated by a Secretarial reversal of a designated official determination.

Council Member Compensation

The Act should be amended to remove the reference to pay grade GS-16, which no longer exists, and to insert appropriate language that maintains the current rate of compensation.

Council Procedures

We recommend that any requests to modify agendas be made at least 30 days prior to meetings, so that appropriate public notice and publication in the Federal Register can be accommodated.

We do not support the amendment to Section 302(j) which would require any oral or written statement to include a brief description of the qualifications and interests of the testifier. Council members can obtain this information as needed without this requirement.

Habitat

The Council appreciates the language in S. 39 to strengthen habitat provisions, because habitat protection and restoration are critical to rebuilding salmon stocks and fisheries in this region. The Council and its Habitat Committee have been very active to the extent that limited resources allow. We note, however, that the amendments do not provide the councils or the Secretary with additional authority over activities which adversely affect habitat. The new requirements of Section 303(a) will create additional work for councils which will be difficult to accomplish with current resources. The Senate version appears to have the least impact on council work load.

Fishery Dependent Communities

We believe that the needs of fishing communities are important, and the Council considers these needs when making management recommendations. The Council does not support the addition of a new national standard which requires that management measures take into account the importance of harvest to fishery dependent communities. We believe this will encourage additional allocation disputes on the West Coast which would likely be unnecessary or inappropriate.

Fees

We appreciate and support the provision requiring fees to be assessed to support individual quota programs. In addition, we continue to support broad discretionary authority for councils to recommend fee programs through plan amendments to cover the cost of special programs, including but not limited to at-sea data collection programs and limited access systems. Fees must be capped, deposited in a dedicated account, and the funds made available to the region and program for which fees were assessed.

Councils may determine that observer programs are the best way to collect bycatch and other data necessary for management. These programs can be expensive. Federal funding may be neither available nor appropriate for such programs.

Overfishing

The Council generally endorses the proposed revisions in S. 39 dealing with overfishing and rebuilding. These include the definitions of optimum yield and overfishing, the change to national standard one, the annual report of the Secretary, and requirements for councils to prevent overfishing. We recommend that the bill **not** include an arbitrary time limit for rebuilding schedules, such as ten years. Ten years may be too much time or not enough time, depending on the stock.

For salmon, environmental factors could keep some stocks at low levels for a long time regardless of the fishing regime adopted by the Council. For long-lived groundfish stocks which are part of a multispecies fishery, rebuilding depressed stocks can take longer than ten years if mother nature does not provide good recruitment.

Councils should be given the lead in developing rebuilding schedules with the advice of scientists, fishers and the public. The Secretary can then review the councils' recommendations.

Review of Regulations

We wholeheartedly support and appreciate the new process for Secretarial review of council-proposed regulations. The Council proposed a similar process in 1993. Rather than providing a range of 60 to 105 days for Secretarial review, we suggest the bill specify a 90-day time limit.

Emergency Regulations

We support the amendment to increase the duration of emergency actions. This will reduce the need for extensions, and if extensions are needed, the period will be adequate to cover an entire year.

Individual Quotas (IQ)

The Council tabled consideration of an individual transferable quota for sablefish largely in deference to a request from some members of the West Coast Congressional delegation who were concerned that we would adopt a program before national guidelines were established. We are not convinced that the Act needs to be amended to address IQs, but if Congress believes that guidelines are necessary, we request that a deadline for development of the guidelines be included in the Act so that councils considering IQs are not unduly restrained.

Tribal Member on the Pacific Fishery Management Council

The Council recommends that an additional seat be added specifically for a representative of a tribe with federally recognized fishing rights. This would return the position currently occupied by the tribal representative to the State of Washington.

Negotiated Measures

Councils have the ability to create special advisory groups under the current law. We have used this method very successfully, for instance, in resolving the whiting allocation issue. The language in S. 39 puts time limits and other restrictions on the process, including a mandate that the recommendations of the panels be adopted to the maximum extent possible. This appears to be inconsistent with current language in Section 302(g)(4) that such recommendations are only advisory in nature. We would prefer not to have a rigid time frame and process.

Gear Evaluation and Notification of Entry

Our fishery management plans define legal gear. Anything other than legal gear is not authorized, except under an experimental fishing permit. This approach has worked well. The language in S. 39 could allow a new gear into a fishery which was not authorized by a plan, if the Secretary did not meet the 90-day review limit. This language may also hinder innovation and testing of new gear which may help reduce bycatch. We recommend that this section be deleted.

Sustainable Fisheries

The Council generally supports the concept of vessel/permit buyback presented in S. 39, but we recommend that the councils have the discretionary authority through plans or plan amendments, rather than the Secretary. Also, we believe that councils should not be limited to reducing fleet size through programs such as buyouts only when overfishing exists. Councils should be free to initiate such actions to help prevent overfishing, to address national standards, or for other reasons appropriately justified by councils.

PFMC
3/14/95

Senator STEVENS. Thank you, Mr. Warrens. That is very provocative, as a matter of fact. Ms. Freeman?

STATEMENT OF JUDITH FREEMAN, DEPUTY DIRECTOR FOR DEPARTMENT OF FISH AND WILDLIFE, STATE OF WASHINGTON

Ms. FREEMAN. I am Judith Freeman, Deputy Director for the Department of Fish and Wildlife. I appreciate the opportunity to provide you some comments on S. 39—provide you some lengthy written comments and shorter oral comments.

The Department serves on both the North Pacific and the Pacific Fishery Management Council, and we are strongly supportive of the Regional Council process and concept, but it is important to know that the issues that these Councils face are increasingly complex; bycatch issues, habitat issues; all of these not easily resolvable issues. But that the commitment to the process is unwavering by those who are a part of it, but in order for it to continue to be successful, it must be fully funded, so I urge Congress to provide full funding to those Councils so they are able to fulfill the statutory obligations and ensure conservation and appropriate management of the resources.

Habitat is another area which is extremely important to us in Washington. It has become the largest priority within our department, and we are supportive of the provisions in this bill that improve fish habitat protection.

Unfortunately, while habitat protection is probably our best tool in order to ensure and maintain our resources, it is also the tool that is most removed from our authorities. Given that, we must be creative about how we use our authorities and we must build cooperative partnerships with other habitat-controlling entities where our authorities do not reach.

State and local actions, as well as Federal ones, should be considered in their effects, beneficial or adverse, in the long-term protection of essential fish habitats.

Also, the definition in the bill of essential fish habitat is broad, and I caution that while it may be broad because it needed to encompass a lot of different species, that broadness may cause it to be inadvertently demanding. I would suggest that the Councils would be best able to define and describe essential fish habitat within their respective jurisdictions and within specific FMPs.

Conflict of interest is another issue that has been an important one to the State of Washington. Regional fishery management Councils should be free of conflicts, and management decision should be made in fair and equitable manners. A rigorous recusal mechanism could accomplish this, and we do not think that Senate Bill S. 39 goes far enough in that regard.

There have been a number of recusal mechanisms suggested. They are extremely complex, and I am not here to offer up one or another. A simpler way to address this may be to require two-thirds vote on issues of allocation or delegation of management; this coupled with the Secretary using his or her discretion in appointments to ensure that the Councils are well-balanced and well-qualified, I think should go a long way in addressing the conflict of interest issue.

I would also believe that S. 39 inappropriately exempts the Council's executive directors from disclosure of financial interests. Those executive directors are in a position to influence the Council process, and as such, I do think that they should be required to continue to provide that financial interest, if any.

On Council composition, I also agree with the Pacific Council that you add, not redesignate, seats to represent Indians with treaties which reserve fishing rights. The treaty tribes have reserved management responsibility, and in accordance with their Governmental status, it is appropriate that tribal representation be assured and not be dependent upon the discretion of a State—Governor.

When the Councils were established, it was determined that 13 seats were necessary to appropriately represent the four States that are represented on the Pacific Council. Some years ago, one of those seats was informally assigned to a tribal representative, and that has continued to be the case for a number of years. I think adding a seat, rather than redesignating, recognizes the larger tribal role that exists in government today and also remains true to the original intent of the Magnuson Act relative to that Council.

The Pacific Council adopted a position, which I support, to delete all references in every section of the bill to fishery dependent communities. Implementation of this ambiguous concept lead to difficult allocation dispute and will divert the attention of the Councils from crucial issues, such as overfishing, bycatch, and habitat protection.

Consideration of economic and social needs of all communities is addressed in National Standard No. 1. With regard to those national standards, I do not support weakening National Standard 5 from "promote" to "shall consider." I think that change destroys the intent of that standard.

I would also suggest that you add a standard for consideration of safety of life and property at sea. I recognize that that has been proposed as a provision of the fishery management plans, but I do think it is of significant importance and should be best addressed as a national standard.

I do not support the formal establishment of negotiations panels. I think it is an unnecessary bureaucratic burden, and I think the Councils, particularly the Pacific Council, have shown their ability to use this process in an informal way and to use it successfully. I suggest that they be allowed to continue to do so.

We support initiatives to reduce waste in the nation's fisheries. It is clearly in the interest of national resources that we manage to avoid catch of unutilized resources. This problem is currently one of great social concern. The language in the Magnuson Act should direct the Councils to take all reasonable steps to effect a reduction of waste to the extent practicable. I do not believe it is necessary for the act to be prescriptive with respect to the methods, just direct them and let the Councils do that. I also fail to understand the need to stipulate particular provisions to the North Pacific Council relative to bycatch.

On the issue of individual transferable quotas, I want to state that the Magnuson Act is clearly directed at the regulation of fish-

ing and fisheries and not at the regulation of ancillary economic sectors such as processing; we object to the inclusion of the phrase "authorization to process" in the definition of ITQs.

We also think that requiring open access opportunity within an ITQ-managed fishery is an unnecessary stipulation. There are opportunities for entry-level fisheries to purchase their way into fisheries. This is what is currently done in any limited access system throughout the nation, and I think that it will work for ITQs. I want to make it clear that we are supportive of the concept of ITQs and will judge the merit of any proposed ITQ system that comes before the Councils that we sit on independently, species by species. There exists a widely referenced letter from WDFW which will be used or has been used to indicate that we do not support the development of an ITQ system for crab fisheries in Alaska.

I want to make clear that our position is that we support ITQs where they can work. If crab abundance were to be assessed prior to a fishing season, and a catch quota set, then an ITQ regime could be fashioned for that fishery.

As you know, the former Department of Fisheries was involved in a buyback program from 1978 to 1986. It began with vessel and gear purchases and evolved to the purchase of licenses only.

To minimize program administration costs, enforcement issues, and a host of problems that we saw associated with vessel and gear purchases, we would strongly urge that any future proposal be limited to license purchase only.

We also suggest that task force membership include individuals familiar with local fisheries and local economies, but without vested interest, and that assistance programs be designed and developed, partially at least, at the State level to address local needs.

I hope these comments are helpful in ensuring that the reauthorization of the Magnuson Act will result in Councils which are equipped both fiscally and statutorily to meet the growing challenges of conserving and managing this nation's fishery resources. Thank you for providing me the opportunity to testify.

[The prepared statement of Ms. Freeman follows:]

UNITED STATES SENATE
Committee on Commerce, Science, and Transportation
Subcommittee on Oceans and Fisheries

TESTIMONY ON S. 39

Judith Freeman

Deputy Director

Washington Department of Fish and Wildlife

Good Morning. I am Judith Freeman, Deputy Director of the Washington Department of Fish and Wildlife (WDFW). I appreciate the opportunity to provide you with comments on S. 39, the Sustainable Fisheries Act, which authorizes appropriations and provides for amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act).

WDFW serves on both the Pacific and the North Pacific Fisheries Management Councils, and is fully supportive of the regional fisheries management system. The issues presented to these two councils are increasingly complex, the workload grows with each meeting, but the commitment to the process and to the sustainability of the resources entrusted to these councils is unwavering. Their continued success is, however, dependent upon adequate funding; I strongly urge Congress to provide full funding to the councils so they are able to fulfill their statutory obligations, and thereby ensure conservation and appropriate management of the fishery resources.

I would now like to comment on a few specific amendments to the Magnuson Act, as proposed in S. 39.

1. HABITAT: I am extremely supportive of provisions to improve fish habitat protection. Habitat protection is our most important tool in achieving and maintaining sustainable fisheries, yet this tool is the one most removed from the control of fish management agencies or the councils. We must be creative about how we use our authorities, and build cooperative partnerships with other habitat-controlling entities where our authorities do not reach. State and local actions, as well as federal ones, should be considered in their effects--beneficial or adverse--on the long-term protection of essential fish habitats.

We believe Congress should acknowledge that habitat protection must be maintained for healthy stocks of fish as well as weak and threatened stocks. This acknowledgement should also include protection of hatchery water supplies as essential to maintaining healthy stocks of fish.

The definition of essential fish habitat is broad--perhaps driven by the need to encompass the many fish species, their life stages, and specific habitat requirements--and may be ineffectual or inadvertently demanding in that broadness. The councils are best able to define and describe essential fish habitats within their respective jurisdictions and within specific federal management plans.

Section 305(c)(4) of the bill can be strengthened by amending the second sentence as follows: "The response shall include a description of measures which will be used by the agency for

avoiding, mitigating, or off-setting the impact of the activity on such habitat and a time line for implementing these measures."

2. CONFLICT OF INTEREST: Regional fishery management councils should be free of conflicts of interest and management decisions should be made in a fair and equitable manner. A rigorous recusal mechanism could accomplish this; that proposed in S. 39 is inadequate. A simpler way to address perceived or real conflicts of interest may be to require a two-thirds majority vote on issues of allocation and delegation of management. A two-thirds vote, together with the Secretary selecting council members which result in well-balanced councils, can relieve the conflict of interest issue within the regional council system.

S. 39 inappropriately exempts the councils' executive directors from disclosure of financial interest. An executive director is in a position to influence the council process to be advantageous to his or her financial interest, and thus should be compelled to disclose that financial interest.

3. COUNCIL COMPOSITION: I ask that you add--not redesignate--a seat to the Pacific Fishery Management Council to represent Indians with treaty-reserved fishing rights; this position is supported by the Pacific Council. Treaty tribes have reserved management responsibility and should be guaranteed council representation. In accordance with their governmental status, it is appropriate that tribal representation be assured and not dependent upon the discretion of a state governor.

When this council was established, it was determined that 13 seats were necessary to appropriately represent the four states of Idaho, California, Oregon, and Washington. Some years ago, the Secretary filled the emerging tribal need by taking a seat previously filled by a Washington state representative. Adding a fourteenth seat recognizes the larger role tribal governments today assume in the council process while remaining true to the original intent of the Magnuson Act relative to the Pacific Council.

4. REVIEW OF REGULATIONS AND EMERGENCY ACTIONS: I concur with the Pacific Council in its approval of the language of S. 39, including the modification to specify a 90-day time limit for Secretarial review. I also endorse extension of emergency regulations from 90 to 180 days plus an extension of up to 180 days. The extension should be granted based on public comment and evidence that the council is preparing a plan amendment to resolve the issue.

5. FISHERY DEPENDENT COMMUNITY: The Pacific Council adopted the position, which I support, to delete all references in every section of the bill to fishery dependent communities. Implementation of this ambiguous concept will lead to difficult allocation disputes, diverting the attention of the councils from crucial issues such as overfishing, bycatch, and habitat protection. Consideration of the economic and social needs of all communities is addressed in National Standard 1, which requires managers to achieve optimum yield since optimum yield includes consideration of relevant social and economic factors.

A community can be historically, culturally, socially, and economically tied to fishing, whether or not it is "substantially dependent on fishery resources to meet social and economic needs." Seattle is a major economic center with a multitude of opportunities for employment, yet no one would

argue that the Ballard community, a neighborhood in Seattle, with its long history of social and cultural links to fishing is not dependent on continued access to fishery resources. We believe current National Standards provide ample protection for continued community access to fishery resources provided those standards are uniformly applied.

6. NATIONAL STANDARDS: I do not support weakening National Standard 5 from "shall promote" to "shall consider efficiency in the utilization of fishery resources;...." The change destroys the intent of the standard.

While consideration of safety of life and property at sea has been proposed by S. 39 as a required provision of a fishery management plan, I believe the issue to be of paramount importance and would be best addressed as a new national standard.

7. NEGOTIATED CONSERVATION AND MANAGEMENT MEASURES: Formal establishment of negotiation panels, as proposed in S. 39 is an unnecessary and costly bureaucratic burden, and should not be adopted into law. Councils can create informal negotiating teams in a timely and cost-effective manner, and have done so successfully. Such was the case of the Pacific Council, which established an informal team to resolve the whiting allocation issue.

8. FEES: I support the Pacific Council's position that councils should have broad discretionary authority to recommend fees through a plan amendment to cover the costs of special programs, not just ITQ programs. Fees should be capped, deposited in a dedicated account, and the funds made available to the specific region and program for which the fees were assessed.

9. PROVISIONS OF BYCATCH, ECONOMIC AND REGULATORY DISCARDS: WDFW supports initiatives to reduce waste in the nation's fisheries. It is clearly in the interest of natural resources we manage to avoid the catch of unutilized resources. This problem has become an issue of great social concern. I believe that language in the Magnuson Act should direct the Councils to take all reasonable steps to effect a reduction of waste to the extent practicable. I do not believe that it is necessary for the Act to be prescriptive with respect to the methods Councils may employ in their attempts to reduce fisheries waste.

S.39 contains a host of waste reduction provisions aimed exclusively at the North Pacific Fishery Management Council. We fail to understand the need to stipulate these provision in the Magnuson Act. If Congress thinks these concepts are necessary for one Council, why are they not appropriate for all Councils? Proposed amendments directed exclusively at the North Pacific Council usurp the authority of the Council, under provisions of this Act, to choose and promote necessary conservation and management measures for FMP regulated fisheries.

Finally, within the amendments aimed at the North Pacific Council are requirements to develop the harvest of arrowtooth flounder. The harvest of this species is currently constrained by the halibut and crab bycatch reduction measures in place in the North Pacific. Promoting increased harvest of this species will do nothing but exacerbate halibut and crab bycatch.

10. PROVISIONS OF INDIVIDUAL TRANSFERABLE QUOTAS (ITQs): The Magnuson Act is clearly directed at the regulation of "fishing" and "fisheries," not at the regulation of ancillary economic sectors such as processing. Fishing is defined in the Act, in SEC.3(10)(A)-(D), as the catching, taking or harvesting of fish, attempted catching, taking or harvesting, any activity which can reasonably result in the catching, taking or harvesting of fish, or operations at sea in support of catching, taking or harvesting. We object to the phrase "*authorization to process*" in the definition of ITQs. The allocation of total allowable catch is an allocation among fishers, as defined in SEC. 3(10), and as constrained in National Standard 4.

Proposed amendments to Section 303(b) authorize Councils to develop FMPs with limited access systems, including ITQs, only if they take into account, among other things, "*... the cultural and social framework relevant to the fishery and fishery dependent communities.*" In SEC. 111(f)(2)(iv) of S.39, the Secretary is required to ensure that individual transferable quota systems "*...minimize negative social and economic impact on fishery dependent communities*". As we have stated elsewhere in these remarks, we do not support the concept of fishery dependent communities as proposed in S.39. Subsequently, we do not support language constraining limited access systems or ITQ systems to be considerate of "fishery dependent communities."

In SEC.303(f)(2)(B) of the Act as amended, the bill requires the Secretary to develop guidelines for ITQ systems which shall address "*... mechanisms to provide a portion of the annual harvest for entry-level fisherman or small vessel owners who do not hold an individual transferrable quotas;...*". We think this is an unnecessary stipulation. Entry level fishers can purchase their way into the fishery like any other fisher. This is current practice in limited access systems throughout the nation. Should Congress wish to aid entry level fishers they can do so by providing tax breaks, small business loans, or fishery development loans to these individuals.

WDFW is supportive of the concept of ITQs, and will judge the merits of proposed ITQ systems independently, species by species. A widely referenced letter, written by WDFW, stated that the perceived inability to predict crab production would complicate development of an ITQ system for crab fisheries in Alaska. Some have taken this reference as an agency position on crab ITQs. It is not. The reference to crab production modeling is based on our experience with Dungeness crab and it would be inappropriate to conclude that such difficulties would automatically apply to other crab species. Any quota-managed fishery can be allocated through an ITQ program. If crab abundance were to be assessed prior to the fishing season, and a catch quota set, an ITQ program could be fashioned for that fishery.

11. PROVISIONS ON OVERFISHING: We support amendments to define overfishing and promote the rebuilding of overfished stocks. However, S.39 requires overfished stocks to be rebuilt within 10 years. Any plan which reserves a portion of the estimated surplus production from a stock will affect its rebuilding. The length of time allotted for a stock to reach maximum sustainable production, or its reasonable proxy, is therefore an economic decision rather than a conservation decision. The growth rate of some stocks, e.g., Pacific ocean perch, is so low that the current value of the foregone catch exceeds the future value of the stock at recovery. It may be in the economic interest of the fishery to adopt a slow recovery rate under such circumstances. Ten year recovery rates are unachievable for slow growing stocks even if all fishing were prohibited. The proposed amendments need to provide greater flexibility on the length of the

rebuild period.

12. TRANSITION TO SUSTAINABLE FISHERIES: This proposed section creates a Buy-out Program for fishing vessels or permits and a Task Force to assist in its development; caps the federal share of program costs at 50%; and authorizes a fee system to collect the non-federal share of costs.

WDFW (as the former Washington Department of Fisheries) administered a federally funded fleet adjustment program from 1978 through 1986. The program began with vessel/gear purchases and evolved with experience and the need for cost containment into license only purchases. To minimize program administration costs, we would strongly urge any future proposal be limited to license purchase only, and obviously only in limited entry fisheries. Compelling reasons include the staff time and dollar cost of determining a vessel's fair market value, providing temporary storage and security arrangements for vessels; coordinating auction processes to get rid of surplus vessels and to recoup partial costs; data management and on-going tracking of purchased vessels to ensure they do not participate again in affected fisheries or add to overcapitalization of other fisheries; litigation costs for appeals. Increased program complexity increases costs geometrically.

Task Force membership should also include individuals familiar with local fisheries/local economies, but without vested interests in the compensation being offered. Assistance programs must be designed and developed at the state level to address local needs.

I hope that these comments will be helpful in ensuring that the reauthorization of the Magnuson Act will result in councils which are equipped, both fiscally and statutorily, to meet the growing challenges of conserving and managing this nation's fishery resources

Thank you for providing me an opportunity to testify today.

Senator STEVENS. Mr. Frank?

Mr. FRANK. Good morning. Thank you, Senator Stevens, for—
Senator STEVENS. Pull the mike up a little bit.

STATEMENT OF BILLY FRANK, CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION; ACCOMPANIED BY JIM HARP, REPRESENTATIVE OF THE PACIFIC FISHERIES MANAGEMENT COUNCIL

Mr. FRANK. Good morning. Thank you, Senator Stevens for coming to the great Northwest and thank you, Mr. Gorton, for getting Senator Stevens out here.

My name is Billy Frank. I am chairman of the Northwest Indian Fisheries Commission. Today I have with me Jim Harp who is on the fish commission, and is a representative for the Pacific Fisheries Management Council, and he will be here to answer questions a little later. I have several points that I would like to make.

We would like to see amendments consistent with the treaty rights, mandate adequate tribal voting representation. The tribes have participated since 1976. We bring to the table very positive things for fishery management and that protection of our natural resource throughout our range. We are the only management entity without mandated governmental representation on the Regional Council. The tribe should have equal statute with the ability to appoint designees to address regional or stock-specific issues; consistency with Federal trust responsibility needed; U.S. review of Council recommendations; fishery regulation should not rest with industry body; amend act to require habitat protection; comprehensive plans by State and tribes for years; implementation requires broad regional coordination; Council should review State and Federal actions that may negatively impact essential fisheries habitat; streamline procedures for implementing and enforcing comprehensive management plans; secretarial review and action and timely fashion require that the secretarial deviation from Council proposals to be justified; amend act to require fishery management plans include bycatch and measures to minimize such bycatch.

We appreciate your consideration for the five points, which are critical to effective reauthorization of the important act. The fisheries resource is vitally important to everyone in the Pacific Northwest, from the economic as well as the spiritual perspective. Your leadership is needed to help assure the Magnuson Fishery Management Conservation Act is reauthorized with full consideration for both Indian and non-Indian interest and concerns.

Thank you. I think, Senator Stevens, this is just another step for all of us to protect our national resource in our Pacific range. Thank you.

[The prepared statement of Mr. Frank follows:]



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Testimony To The Subcommittee on Ocean and Fisheries of the Commerce, Science and Transportation Committee United States Senate

By **Bill Frank, Jr., Chairman**
Northwest Indian Fisheries Commission

March 18, 1995, Seattle, Washington

Mr. Chairman, honorable members of the Committee, the treaty tribes represented by the Northwest Indian Fisheries Commission appreciate the opportunity to testify on re-authorization of the Magnuson Fishery Management and Conservation Act (MFCMA). My name is Bill Frank, Jr. I am chairman of the Commission.

We support the regional council system established under the MFCMA. The Pacific and North Pacific Councils are responsible for developing plans and recommendations for fisheries affecting the salmon and other resources that are vital to our cultures and economies. However, we believe the form and function of the councils can be substantially improved. We request the Committee's consideration of the following proposals for amendment of the MFCMA:

- First and foremost, as a matter of law, the regional councils must act in a manner consistent with our established treaty rights. The MFCMA should mandate voting representation on relevant regional councils for tribal governments with recognized federally-reserved fishing rights. Our responsibilities as resource managers are broadly recognized by the United States government, the Congress, the courts, state agencies, private industry, and even foreign nations. Representatives from the Northwest tribes have actively participated in the regional council process since its inception in 1976 and provide important data for development of fishery management plans. Yet, we are the only managers without mandated governmental representation on the regional councils. The tribes should have designated representation on the Pacific Council of equal stature to that of the other managers. Included with this designation should be the ability to appoint designees to address regional or stock-specific issues.
- Second, the Secretary of Commerce should be required to confer with the Secretary of the Interior to determine if proposed actions are consistent with federal trust responsibilities toward Indian tribes. Regional councils should continue to monitor and develop management recommendations for consideration and review by representatives of the United States. We do not believe that final authority for approval of fishery regulations should rest wholly with an industry-oriented and dominated body.

- Third, the MFCMA should be amended so as to require regional councils to adopt management measures that are consistent with comprehensive plans to protect and restore salmon resources and their habitats. Such plans have been under development by state and tribal governments for the past several years, but their effective implementation requires broad regional coordination. Regional councils should be required to identify physical and biological habitat standards which are based on the best available scientific information. Provision should be included in the act to require regional councils to review and comment on proposed state and federal actions which may negatively impact essential fisheries habitat.
- Fourth, we also suggest that preemption procedures be streamlined to provide an effective mechanism for implementing and enforcing comprehensive management plans. Secretarial review and action on implementing proposed regulations needs to occur in a timely fashion. Secretarial action which deviates from regional council proposals should be required to include supporting justification and rationale for the action.
- Fifth, the MFCMA should be amended to require fishery management plans, including provisions for the collection of by-catch data from fisheries, and measures to minimize by-catch and mortalities caused by economic and regulatory discards. Regional councils must begin to develop work plans to address by-catch and discard mortalities. Targeted goals for reduction and time tables for achieving these goals need to be established by the regional councils for fisheries under their jurisdiction.

We appreciate your consideration of these five points, which are critical to the effective reauthorization of this important act. The fisheries resource is vitally important to everyone in the Pacific Northwest from an economic as well as spiritual perspective. Your leadership is needed to help assure that the Magnuson Fishery Management and Conservation Act is reauthorized, with full consideration of both Indian and non-Indian interests and concerns.

Thank you.

Senator STEVENS. Thank you very much. Senator Gorton?

Senator GORTON. Billy, can you outline for me as of today how constructive, what kind of relationships you have with the various State departments on the Pacific Council. Particularly with the States, how are you working together with, and is it working?

Mr. FRANK. Well, yeah, it is working very well, sir, and it is working very well as far as looking into the future for a vision for the future of our national resource.

We put together the For the Sake of Salmon, an initiative we are trying to move. We do not have a name on it, but we are trying to move it through the Federal system as well as the regional. We have put together a lot of initiatives to get ahead of the endangered species, kind of an all-species initiatives. We are working on those as we speak and different other initiatives throughout our range with the industry, with the cities and local governments, and with our international treaty, working with Alaska fishery and the North Pacific Council. I think we have done and will continue to bring initiatives to the table to bring us all together in a cooperative management.

Senator GORTON. Do you agree with the recommendations that were made earlier that the member of the—tribal member of the Pacific Council be an additional designated member?

Mr. FRANK. Yes.

Senator GORTON. Ms. Freeman, do you want to comment?

How are the relationships with the various tribal authorities working out?

Ms. FREEMAN. I think they are working very well. I think that we have had a number of years now where we have learned what cooperative management means and how to implement it and that communication is a big part of that.

We are in constant communication with the tribes over the resources that we share and manage and an issues, such as habitat degradation, that are threatening those resources, and so I think we work very closely together.

Senator GORTON. You mentioned in passing the authority of the Secretary of Commerce. Would you expand on that? Do you believe that the supervisory or review authority of the Secretary should be enhanced or increased over what it is under the present Magnuson Act?

Ms. FREEMAN. In my statement about the conflict of interest issue no, I do not. I just think that as long as the Secretary takes seriously and considers the names before him or her—him at this point—and looks at the makeup of the Council, that that is all that needs to be done relative to the authority of the Secretary.

In terms of conflict of interest, though, solutions would be coupled with the Secretary making appropriate appointments. I do think some changes need to occur, and maybe they are recusal mechanisms, or two-thirds vote on some issues.

Senator GORTON. But you are not recommending that the actual review authority of the Secretary be increased; that he be able to substitute his judgment in some cases for that of the Councils?

Ms. FREEMAN. No, I am not.

Senator STEVENS. Thank you very much. Let me go through these one at a time, if I may. By the way, can you all hear back

there? I hope that, as Slade indicated in the beginning, we all keep in mind the national scope of this legislation even while we consider the issues important to the Pacific Northwest and Alaska.

Mr. WARRENS, you indicated your support for several provisions. I see that you support our provision that prevents a Council's decision from being invalidated by secretarial reversal of a designated official determination. Could you comment further?

Mr. WARRENS. Senator Stevens, I believe that portion that you are reading in our testimony, written testimony, relates to a designated person on the Council to, for the lack of a better word, referee decisions or implement some sort of recusal mechanism, if that is the section that you are reading—

Senator STEVENS. The recusal and conflict of interest section, yes.

Mr. WARRENS. I mean the official determination of—

Senator STEVENS. To the conflict?

Mr. WARRENS. Right. There were two scenarios. One of them would be a secretarial review of a vote of the Council where there was perceived a real conflict of interest. I believe that our testimony requests if there is a person who is designated, that that be someone who is on the Council, assuming in our case it would be the regional directors or their counterpart.

Senator STEVENS. In your comment on overfishing, you indicated that the proposed 10-year plan is too short and that rebuilding the fish stocks can take longer.

I have to tell you that in New England we were criticized for the length of time, and they want it to be done sooner. Would it be possible, in your opinion, to provide for regional variation in that? You are in direct conflict with some of the New England suggestions 2 weeks ago.

Mr. WARRENS. We firmly believe that there are species—and I am not familiar with all of those species in the New England area—but there are species, for example, Pacific ocean perch, off our coast which have been in a rebuilding mode now for many years with no targeted fishery on those species, and that a 10-year limitation that would then default to a more stringent method is simply not practical.

There are some long-lived species of groundfish off the coast here that—and as I say an example would be Pacific ocean perch—that respond much slower than a 10-year timeframe.

Senator STEVENS. Is it sufficient for us just to say that if a Council finds a necessity for rebuilding, it shall set the timeframe for each species, rather than have us mandate the maximum timeframe?

Would that be acceptable for you?

Mr. WARRENS. It should be, first of all, subject to review by all the Council, scientific entities and input from the fishing community, as well as managers, to determine on a species-by-species basis what is an appropriate timeframe of rebuilding that stock, given the conditions that which caused it to become depressed.

Senator STEVENS. You also mentioned the ITQ guidelines in S. 39 and suggested that a short deadline for the development guidelines be included in the Act so that Councils considering ITQ's are not unduly restrained. What type of deadline would you envision?

Mr. WARRENS. I believe that on the issue of deadline for guidelines for ITQ programs, for example, we have experienced in the past some delay in decisions on the part of the Secretary or National Fishery Service that tend to inhibit the normal flow of progress on these kinds of issues, and again, I believe the intent of the statement that we made to you on this issue requests that in the reauthorization of the Magnuson Act that specific guidelines with respect to that issue be implemented obviously as early as possible so that ongoing programs for IQ—ongoing IQ programs could then progress at a reasonable rate. If we were held hostage to guidelines that were not definitive in the foreseeable future, it makes the job of progress on IQ programs that much more difficult.

Senator GORTON. You want the Act itself to tell you how long you have got?

Mr. WARRENS. I believe that that was the intent of our statement.

Senator STEVENS. What kind of timeframe would you want us to put in if it is going to affect you? What timeframe do you envision?

Mr. WARRENS. I am going to have to, without advice of counsel from the rest of the Council members, give you a timeframe of probably not more than a year.

Senator STEVENS. All right. Thank you. You have all commented about the tribal seat in the Pacific Council. As I mentioned, this is a national bill. As you may know, we have 270 tribes in Alaska. Several of them are treaty tribes. I do not know how many there are in California and Oregon. Billy, do you know?

Mr. FRANK. Several hundred, I think.

Senator STEVENS. My problem is, if we do what you ask and return the position to the State of Washington and add a position for a tribal representative, I assume we are going to find a similar request from each Council area.

How do we figure out which tribe will get that seat? Is it going to be a secretarial appointment? Normally the Council members come from a Governor's nomination, and in this instance, it has been from Washington; but I do not know, I assume there are some of the California tribes that have treaty rights. Does anyone know? I know that there are at least two in Alaska that have treaty and fishing rights. What kind of Pandora's Box lid are we opening with this? Has anyone scoped it out nationally to see if we granted Washington's request what might happen? Sir?

Mr. WARRENS. Senator Stevens, I have had—I have sat on the Klamath Fishery Management Council, and we are side by side with members of those two tribes in that system. They appear to—not appear to, they obviously are under the Department of Interior, and I—and obviously the answer to your question would ultimately reside from a tribal opinion or collection of tribal opinions on this issue, but it would appear logical to me, having dealt in that forum, that the Interior Department seems to be a logical entity to help Commerce Department to make that decision. I am not sure that is appropriate.

Senator STEVENS. I was Solicitor of the Interior Department for awhile back in the Eisenhower administration.

I appreciate that comment. I think that there is no question about it. They have the ability to determine normal tribal represen-

tation, but what it would amount to, in my judgment, would be taking away from the Governors the right to name the Council members if we give additional authority to the Secretary of Interior to name a representative of tribes to the Pacific Council.

Maybe we should ask Mr. Frank or his advisor. It does seem to me that it is entirely possible that the tribal representative, if we create a seat on the Pacific Fishery Management Council as requested, would not be a representative of the Washington tribes. It could well be a California or Oregon member. What do you think about that?

Mr. FRANK. Could I refer to Mr. Harp for—he sits on the Council and works with all the tribes along the Pacific coast.

Senator STEVENS. Yes, sir.

Mr. HARP. Yes, Senator Stevens. What the intent there was we were trying to pattern after the Pacific Salmon Treaty itself that came about after Magnuson.

The Pacific Salmon Treaty has been in effect since 1985, and within the treaty itself it has specific language about the composition of the Pacific Salmon Commission, its commissioners, as well as its panels. The Pacific Salmon Commission panels—the tribal representative are nominated and appointed by the Secretary of interior. The commissioners themselves are Presidential appointments. To back up a step—

Senator STEVENS. There is an Indian representative on the Pacific Salmon Commission, correct?

Mr. HARP. Pardon?

Senator STEVENS. There is a mandated Tribal commissioner on the U.S. section of the Pacific Salmon Commission, isn't there?

Mr. HARP. Yes, there is. There is a commissioner and an alternate at the commission level, and the panels themselves have panel representatives. That is what we are patterning this after.

The rationale behind our recommendation was that, over the years, the Governors have recognized tribes as comanagers. That the agencies have been working with tribes on a comanagement basis, and one of the things that we were hoping for is to get a designated tribal seat similar to what State agencies have where specific issues, the tribal voting position could have the discretion of having a person from that particular region sit in on that particular issue and vote on it.

For example, I currently am the incumbent on the Pacific Fishery Management Council, and issues involving the Klamath River, if this were incorporated into the reauthorization, I could get up from the table and allow a designated representative from that area sit at the table during that particular issue that is very knowledgeable about the issue at hand.

Senator STEVENS. I do not have a specific problem with the Indian seat on the Pacific Council. We have got that in the bill, but the question that has always come to me when I look at that is what is going to happen in other States. Is Alaska going to have a Council seat for Metlakatla or Tyonek. Are tribes in the North Atlantic area going to ask for people? We do have some treaty fishing rights up there now. I do not know where we are going with this.

Ms. FREEMAN. I do not think you have the extent of cooperative management in those other areas that you do in the Pacific Fishery Management Council.

Senator STEVENS. What species, other than salmon, are tribes involved in managing?

Ms. FREEMAN. They are halibut, herring, and a recent ruling indicates that all shellfish also will be cooperatively managed, although we do not know how that is going to be implemented. Essentially the treaty tribes have 50 percent of the salmon, the herring, the halibut, and the shellfish. Also the Justice Department determined that insofar as the groundfish species off the coast that are managed by the Council, that it is their understanding that there exists a treaty right of 50 percent in their usual and accustomed area.

Senator STEVENS. I was not familiar with that ruling. Thank you very much. I learned something.

Do you suggest, Ms. Freeman, that we not direct the Councils to define the fish habitats within their jurisdictions and within specific Federal management plans? Do you think our definition is too broad?

Ms. FREEMAN. The concern about the definition is that it basically says that wherever fish live is critical habitat and therefore, the implication is Councils must take some action, based on that broad definition.

I think it leaves us vulnerable to protest that we are not doing enough when, in fact, we defined the whole world as the critical habitat, and we are not going to be successful in terms of the whole world, and it would be better to define that relative to particular species and then say this is what we are going to go off and do. So, that is my concern about it being overly broad.

Senator STEVENS. We will take a look at that. Mr. Warrens, what do you think about Ms. Freeman's idea about having a two-thirds vote required for allocation issues and in order to eliminate some of the problems with conflicts of interest on the Councils?

Mr. WARRENS. Well, I fully respect Ms. Freeman's opinion on that issue. The Council chairs in the past three annual meetings now have discussed this issue at length. In fact, it has dominated at the last two meetings.

I can tell you that speaking for at least a perception of the Pacific Council and the other Regional Council chairs, that it is their opinion it is more of a perceived problem. We have had some rather bitter allocation disputes on the Pacific Council with respect to competing interests, and I understand fully that her suggestion of a two-thirds majority may be an answer to that problem.

I feel strongly, however, that rigorous recusal mechanisms that would inhibit input from knowledgeable people within the fishery is not in the best interest of the fishery that we are managing, the industry that would be affected.

So, in lieu of strict recusal mechanisms, the two-thirds majority may be a fallback position on hard allocation issues. I cannot state that as a policy for the Pacific Council, because we feel that the secretarial—when our decisions get to the Secretary, that he or she ultimately has the authority to overturn a Council decision on allo-

cation, and we have had this experience, as you well know, some years past.

Senator STEVENS. There is no question that there are a lot of comments coming to us. I am sure Senator Gorton is getting them, too, about conflicts of interest on the Councils. I think we should urge people who are interested here to give us their ideas about that.

Should the executive director be required to have a financial interest disclosure, too? We have addressed this in S. 39 at Senator Kerry's suggestion. Penny Dalton is here on behalf of Senator Kerry. Ms. Dalton would you mind describing the provision?

Ms. DALTON. As currently written, section 302(k) of the Magnuson Act treats the Council executive director the same as a Council member, requiring filing of a financial disclosure and providing an exemption from the conflict-of-interest provisions of the Federal criminal code (18 U.S.C. 208). However, unlike Council members, the executive director fills a fulltime, administrative position at the Council and does not represent active participants in the fishery. S. 39 proposes to drop reference to the executive director under section 302(k), thus placing him or her under the same Federal conflict-of-interest and financial disclosure requirements as all other full-time Council staff and Government employees.

Senator STEVENS. So the financial disclosure requirement for the executive directors would still be covered, right?

Ms. DALTON. It falls under the Federal employees requirements.

Senator STEVENS. We do have some disclosure, not the same disclosure, however.

Last, Ms. Freeman, you have a comment about the provision with regard to the elimination of gear. You want us to provide, as I understand it, that if there is a mandatory reduction, it would apply only to the permit or license; right?

Ms. FREEMAN. Correct.

Senator STEVENS. What happens, the gear just goes into another fishery, does it not?

Ms. FREEMAN. Well, our experience has been that if you do buy back the vessels, you either have to store them or find a place to get rid of them. They somehow may work their way back into the fishery anyway. You can have a vessel, but if you do not have a license, you cannot fish. So, it is really the license that is the limiting factor. If the vessels are still out there, they are not capable of continuing to participate when you have removed a piece of paper that is what allows you on the water.

Senator STEVENS. New England has got a real plan that can reduce vessels, and if they did it your way, they would all be here the next month. I think you are inclined to look at only your own Council area. That is going to be a substantial problem all over the country if we really decide not to give the Council the authority to reduce the number of vessels in any area. The Canadians, you know, finally burned some of their vessels.

Ms. FREEMAN. Maybe I am not quite understanding what you are saying, but my point is that you can have all these vessels, but if they do not have a permit, they cannot fish, so all the vessels on the East Coast cannot come out here and fish. They have to buy a permit to do that, and there are only a limited number available.

Senator STEVENS. Can they not come and fish for other species? You have a total——

Ms. FREEMAN. But we have limited entry in most if not all fisheries. More and more of our species that have limited entry, but yes, the vessels can come into fisheries that are not limited, but that is unlikely.

Senator GORTON. It is tough. If you have any unlimited entry, what Senator Stevens says is going to happen, is it not?

Ms. FREEMAN. I am trying to think of what limited or unlimited entry we have left anymore. We have limited entry in pretty much all of our major fisheries, and I am not coming up with one in which we do not, so we do not see the risk.

We are currently involved in a buy-back program, as you may know, right now, a license buy-back program for salmon. I am just telling you from our experience that these boats out there being available are not a concern to us, because the access to the fishery is limited by law. So, without a permit, they will not be able to fish and if you want to cut down on a particular fishery, the most effective way to do it, the most cost-effective way, the least administratively costly without putting a burden on enforcement, is just to remove those permits alone.

Senator STEVENS. I appreciate the comments. I have always wondered who is going to check your list in our State which has half the coastline in the United States. I sort of think any vessel that wants to come up there and fish, can fish there for a year or two before they find out what they are fishing for. It is a very difficult thing.

I would also urge you to talk to the people in the New England Council to see what they are going to do. Their problem is acute. They are going into a vessel retirement program, and they have got to, I think. That was in their testimony to us.

Mr. Frank, I have a little bit better understanding from this hearing of what you are involved with, but want to ask if there are any other provisions of this bill that you think impact the Indian interest in this Council area?

You can submit a statement for the record, if you will in addition to the specific comments you have already made. What about conflict of interest? How do we determine where there is a conflict of interest with regard to the Indian or native representatives? How do we deal with some of these other issues here? Will you be affected by the ITQs in any way? I would like to have the comments of your people with regard to these specific suggestions for modification of the Magnuson Act within this bill, if you would not mind.

Mr. HARP. I would not mind, Senator Stevens. Thank you.

With regard to conflict of interest, we feel it is a perception. We feel it is not a real issue in the Pacific Council, whether it be the tribal rep or any other member of the Pacific Council, so we do not see that that is a problem.

With regard to ITQs, the tribal fisheries themselves are designed where they have a less formal mechanism, but they are limited by their own capacity, so ITQs are not really appropriate at this time for the tribal fleets, so we are not as concerned about that.

We suggested that measures of streamlining the process for the Council's recommendation to Secretary of Commerce to follow along with the Pacific Council's recommendation of the 90-day timeline. We support that.

We are concerned about the issue of bycatch in the fisheries. We have been trying to address that for a few years, in particular with the example of species like halibut and other fisheries like that, so we are concerned about bycatch. We have been trying to address that through the Pacific Council as well as the International Pacific Halibut Commission Process and will continue to work toward trying to resolve bycatch issues on a regional basis.

As Mr. Frank said, we are involved with other initiatives, like he mentioned, For the Sake of the Salmon, and will continue to do that. That is not a Magnuson issue, but just to share with you how we are involved regionally. Part of that For the Sake of Salmon issue does address some of the habitat concerns that the tribes have, though, so that is why we are mentioning that. I guess that pretty much concludes the concerns and comments from the tribes, Senator Stevens.

Senator STEVENS. Let me ask you all one more question. I am going to try to ask each panel. Has the amount of litigation that has arisen under the Magnuson Act as it stands now been a problem for you? Have you been involved in excessive litigation in terms of the administration of the Act, Mr. Warrens?

Mr. WARRENS. My answer to that question would be to a fair degree.

Senator STEVENS. Have you ever had any ideas how we might limit some of that?

Mr. WARRENS. I believe that some of the proposed amendments to the Act may go a way, a long way, to help limit it. I do not think it will ever eliminate it.

Senator STEVENS. I think there are constitutional rights somewhere, but I think some of it has become picky and holds up the industry at times. I would like to find a way to limit unnecessary and sort of vindictive litigation, but we are involved with that across the board, as a matter of fact, nationally.

Ms. Freeman, what you do you think?

Ms. FREEMAN. Our department is certainly involved in a lot of litigation and historically has been. I think the litigation that is relative to the Magnuson Act usually comes about when we have very big issues we are dealing with, whether it's ITQ programs or important allocation issues. Avoiding either the perception of conflict of interest or a real conflict of interest—and I am not saying it is one or the other; I will not—I cannot cite specific examples of problems, but giving people an assurance that the issues are going to be heard and that the decisions are going to be made based on preponderance of evidence is probably your best vehicle to head off these lawsuits.

There was language to that effect in bills that were discussed last year. I do not think there is language about preponderance of the evidence this year, but I think to be able to follow a train of thought and reason that gets you to your decision, particularly those controversial ones, is going to be your avenue to minimizing litigation in my view.

Senator STEVENS. The provision you mentioned just increases the probability of prolonged litigation.

Senator GORTON. It sure does.

Senator STEVENS. What we are trying to do is reduce it. I think what we want to see some concept whereby a court can get involved to require the Council to do its job, but cannot substitute its decision for that of the Council, which has included the Federal, State and local governments in carrying out its function. I am worried about the expansion of litigation under the Magnuson Act. In my opinion, it has been excessive.

Do you have any suggestion on limiting it, Ms. Freeman?

Ms. FREEMAN. I guess I would like to say that just by judging the litigation that we see in our State and directed at our department, that as these resources become more and more fully utilized, then we see more and more of the litigation.

So, part of it is a function of there not being any place for people to go, and so everyone has to kind of stand there and fight over the resource.

Senator STEVENS. So, it is a result of overutilization. Any more questions? Thank you very much, first panel. We have greatly appreciated your testimony.

Senator STEVENS. Our next panel will be Joe Blum, executive director of the American Factory Trawler Association; Vincent Curry, president of the Pacific Seafood Processors Association; Robert Alverson, manager of Fishing Vessel Owner's Association; John Bundy, president of the Glacier Fish Company of Seattle; Dale Alberda, vice-president of Key Bank of Seattle.

We will take about a 5-minute stretch while they are changing. Is that all right with you?

Senator GORTON. Just before this panel starts, I would like to make an introduction. As all of you from the State of Washington and many of the others of you know, you have dealt for a long time with my Legislative Assistant, Terrie Claffey, who last week moved on and is now working for MCI. I think she deliberately chose it because MCI has no interest in fisheries, whatsoever.

Her successor, as of the middle of next month, will be Jeanne Bumpus. Jeanne, would you stand up in the audience.

Jeanne, at the present time, is an associate of my former law firm Davis, Wright, Tremaine. She is here to begin to learn this business and will be on the job in mid-April. So, some of you may want to take this opportunity to begin to get to know her, because this issue will be a major part of her responsibilities.

Senator STEVENS. Thank you, very much. I would be happy to have your new staff member join us, if you would like, Slade. Now, we are going to go through the second panel. Mr. Blum, please?

STATEMENT OF JOE BLUM, EXECUTIVE DIRECTOR, AMERICAN FACTORY TRAWLER ASSOCIATION

Mr. BLUM. Thank you, Senator Stevens, Senator Gorton.

We very much appreciate the subcommittee coming to Seattle.

Also the list of other places you are going to visit is quite impressive. I share, obviously, Senator Gorton's thoughts, Senator Stevens, that you are doing a great job in going around and finding out what is really happening with the people most effected by this

legislation. We appreciate that you have come here, and we appreciate the leadership that both of you have shown over the years in this issue. There are, as you know, probably as well as most, there are not a lot of winners in the politics of the fish business. For the two of you to continue to carry the ball the way you have is much appreciated.

As a quick aside, Senator Gorton, we are very much going to miss Ms. Claffey. She was an excellent staff person, knew the issues, and was available to talk about them. We are sure that Ms. Bumpus will be the same, but we are going to miss Terry, and I would like for you to pass that on for us.

Senator Stevens, we have submitted lengthy testimony, and I am not going to bore you with reading it. I am going to focus on a couple of topics that we know that you, all of the fishing community, and the Nation are concerned about. We are going to focus our testimony on those items. They are individual transferable quotas, bycatch, and discards.

We think they are a single topic, but we are going to talk about them or I am going to talk about them, separately, but that is where my testimony is going to focus.

We think S. 39 has done an excellent job in outlining the guidelines for the Nation to follow with respect to ITQs. I am going to go over very briefly what those are. Number 1: Quotas need to be set in a quota system using the best scientific evidence available. That is an absolute prerequisite and must be a guideline that you and this bill address.

It cannot be left to the quota shareholders to set a quota. It has got to be done scientifically. You have talked a lot today already about the problems of New England. Those are not the problems of the Pacific and North Pacific. They need to be kept from being the problems. The way you do that is the continuing effort to use science. Those two Council areas have done that, and the quality of the available resource shows that.

Quota shares are a harvest privilege and not a property right. You gentleman both know the distinction between that, and it is very important to the people of the Nation that they understand that we are not talking about a property right. We are talking about another animal entirely. We also firmly believe, and you have made way for it in the bill, that there be a user fee associated with quota shares.

Again, quite ironic in the New England situation last year they were asking you folks for somewhere between \$30- and \$100-million, maybe even larger now, to bail out the problem fisheries up there. At the same time, a large part of the North Pacific harvesting sector was back saying we are prepared to pay a 4 percent fee to get a management system that allows us to continue what we have been doing, and that came out to about 30-million.

So, on the one coast, they are asking for 30-million, and on the other coast, we are willing to provide it to get a management system that is going to keep us around and keep the resource healthy for a long time.

Quota shares must be revokable without compensation.

There must be very strong penalties associated with people that play games in the quota share business. Those are two provisions that you call for and ones that we very strongly support.

Quota shares need to be a percentage of the total allowable catch and not make the mistake that New Zealand did early on and give them as a fixed poundage or tonnage. They have got to be a percentage to make it float with the strength of the stocks. That is the only way the system will work.

Finally, there has to be a lien registry associated, so that the financial community and that the market and quota shares can be business-like, if you will.

Your bill, the somewhat companion-like bill of Mr. Young, many of the bills last year that were in the arena of Magnuson Act Reauthorization were targeting on discards and processing wastes and obviously bycatch. Before we get into the specific comments on that, we need to once again put in context what it is we are talking about in the North Pacific.

In the context of the North Pacific, and I would call your attention to a document that the Council has put out in the last 10 days or so that sort of reviews the history of the North Pacific Council, what it has done science-wise, and the issues it is working on. Everything that your bill talks about, that Council is currently working on.

The health of the North Pacific stocks is without parallel. The management—conservative management within the North Pacific is without parallel. There are some numbers in here that I think will positively amaze you.

Senator Stevens, bycatch and discards are solvable with ITQs. The provisions of the bill with harvest priority and with full retention and full utilization do not solve the root problem. The root problem, Senator Stevens, Senator Gorton, is very nicely found on the very first add of National Fisherman from February 1995: Whoever gets to the fish first wins. That is the root problem with bycatch and discards.

ITQs are the only tool available that will slow that race down and allow all of the other things that you and the people of the Nation are seeking in accomplishing more efficient, cleaner, in some people's mind, fisheries. If we continue to reward the race for fish, we are going to continue to have bycatch, discards, and we are going to have problems in the North Pacific. You could solve that with individual quotas.

The other items that I have identified, the harvest preference, full retention, and full utilization do not stop the race for fish. They may change the character of the race for fish, but they do not stop it. As long as you have the race for fish, you are going to have unacceptable levels of bycatch and discard. You are going to have people die and you are going to be wasting fish and you are going to have an economically unhealthy fishery.

It is our very firm belief, and we have said this many times to you, that ITQs, under the guidelines that you propose of letting the Councils work out the details, not having a national advisory committee telling Councils what they ought to be doing—we do not want New England telling us what we ought to be doing in Alaska—we think our bill, with some modifications, shows the way to

the future. Thank you very much, and I apologize for going over the time.

[The prepared statement of Mr. Blum follows:]

TESTIMONY OF
JOSEPH R. BLUM
EXECUTIVE DIRECTOR OF THE
AMERICAN FACTORY TRAWLER ASSOCIATION

BEFORE THE U.S. SENATE COMMERCE COMMITTEE'S
SUBCOMMITTEE ON OCEANS AND FISHERIES

Seattle, Washington
March 18, 1995

Thank you, Mr. Chairman. I am Joe Blum, Executive Director of the American Factory Trawler Association (AFTA). I appreciate the subcommittee's invitation to testify at this reauthorization hearing on the Magnuson Fishery Conservation and Management Act. I appreciate also the subcommittee's considerable efforts to conduct Magnuson Act hearings in the regions, to hear the concerns of the fishing community. On behalf of the association's membership, welcome, to the Pacific Northwest.

Congress recognized Senator Warren Magnuson's contributions to passing the Fishery Conservation and Management Act of 1976 and honored him by renaming the Act. Today, we are given an opportunity to recognize and appreciate the significant contributions and continuing efforts of Chairman Stevens and Senator Gorton in developing and maintaining a comprehensive national fisheries policy.

In the North Pacific, Congress' original commitment to "Americanizing" the vast groundfish resources created opportunities for the U.S.-flag at-sea processing fleet and for other harvesters and processors who now participate in that fishery. To bring economic stability of this still young industry, AFTA asks Congress to give the regional fishery management councils additional policy guidance to better manage the North Pacific groundfish fishery. Although North Pacific fish stocks remain healthy, economic and social instability and dislocation continue to plague Washington State fishermen. Also, all sectors of the fishing industry continue to grapple with the issues of discards and processing waste in the fisheries. AFTA's testimony comments on the elements of S. 39 that address these concerns, and we suggest some changes to the bill.

1. Individual Transferable Quotas (ITQs).

a. North Pacific Fisheries. In discussing North Pacific fisheries, most fishing industry participants, federal managers, academicians and others, recognize that an ITQ system is the most effective measure for resolving extant problems in the North Pacific groundfish fisheries. The North Pacific Fishery Management Council (the Council) has published analyses confirming that ITQs address problems regarding crewmember and vessel safety, overcapitalization, discards, and other evident management problems.

AFTA concurs with the Council staff's findings and the views of those identified above, and we urge Congress to encourage the

Council to move forward with a rational, market-based management system. Harvesting and processing overcapacity must be reduced and the race for fish must end. Otherwise, the fishery management problems listed above will continue.

It may surprise you to hear fishermen say to Congress that we are volunteering to pay additional taxes in exchange for an allocation of an undetermined amount of fish that is subject to revocation by the federal government, but that is what we are saying. To us, that is rational management. Perhaps, that just illustrates how irrational the existing open access management regime is. We hope, it demonstrates also how earnest we are about attaining increased certainty in our business and greater utilization of fishery resources.

b. National ITQ Policy Guidelines. S. 39 recognizes that an individual transferable quota (ITQ) system can be an effective fishery management measure, and that certain national policy guidelines must be established to ensure that the public's interest is protected when an ITQ system is adopted. AFTA strongly endorses provisions of the Senate bill that 1) make clear that quota shares issued under an ITQ regime do not constitute a property right, 2) that quota shares can be revoked for cause by the Secretary of Commerce, 3) that participants in an ITQ-managed fishery should pay a user fee, 4) that a quota share represents a percentage of the annual total allowable catch of a stock of fish, and 5) that establishing a national lien registry system is necessary to facilitate administration of ITQ programs.

The national policy guidelines outlined above are necessary prerequisites for development of a North Pacific groundfish ITQ program. However, other provisions of S. 39 could retard much needed progress. For example, the bill creates a national advisory panel charged with providing to the Secretary of Commerce (the Secretary) recommendations for ITQ implementing regulations. No deadline is set for final action by the panel, nor for promulgation of ITQ implementing regulations by the Secretary. It is unlikely that the Council will move ahead on a North Pacific groundfish ITQ plan until the recommendations of the national panel are known and acted upon by the Secretary. This could easily delay consideration of a groundfish ITQ plan for three years or more and would serve no clear purpose.

The bill also requires additional, but unnecessary, national guidelines pertaining to opportunities for new entrants into ITQ-managed fisheries, limits on aggregation of quota share by a particular person or entity, ownership eligibility for quota share holders, etc. AFTA recommends that S. 39 include the five national ITQ policy guidelines identified at the beginning of this subheading, but forego national micromanagement of individual ITQ programs by eliminating the proposed advisory panel and additional management requirements. Virtually all participants in the fishery management process agree that ITQs are appropriate for some but not all fisheries, and that each ITQ plan must be tailored for the specific fishery in question.

For instance, many management provisions contained in the present halibut/sablefish IFQ program are not relevant or appropriate for the groundfish fishery which, unlike the halibut/sablefish fishery, has relatively few participants engaged in a high volume fishery in which the unprocessed per pound value of the product is usually quite low. The decision to include in ITQ plans such provisions as limits on aggregation of quota shares, and other elements proposed in the legislation, is best left to the regional fishery management councils. The authority for councils to make those decisions is already contained in the Magnuson Act.

2. Addressing Discards and Processing Waste in the Fisheries.

S. 39 contains certain provisions regarding discards and processing waste in the Nation's fisheries, but the legislation focuses on the North Pacific fisheries. As a result of this focus, many might misinterpret the bill's intent and fail to recognize that North Pacific fish stocks are healthy. In our fisheries, managers set annual harvest limits for each species at levels below the scientifically allowable catch. Most vessels carry onboard federal fishery observers and all harvested fish, whether retained or discarded, are counted against the overall harvest level. Most of our fisheries are subject to bycatch caps. This means a fishery must limit its bycatch, or it is shut down. If this hearing were being conducted on the east coast, these concepts would require amplification, for such management measures have never been applied there.

While it is important to note that sound conservation of North Pacific fish stocks is observed, it is undeniable that discards and processing waste, though not a conservation concern, must be reduced, nonetheless. In the North Pacific groundfish fisheries (including, trawl and longline fisheries), about fifteen (15) percent of the annual harvest is discarded. It does not matter that that number might be relatively low compared with discard rates in other parts of the U.S., or that S. 39 focuses on the North Pacific and not other regions, the fact remains that we must reduce discards and processing waste in the North Pacific. Federal fisheries in the North Pacific account for more than half the fish caught in U.S. waters, and though discard rates might be relatively low, the total amount of fish discarded is considerable due to the sheer size of the fisheries.

But to address the problem, we must understand the causes. It appears incongruous that fishermen, who are in business to catch and sell fish, throw away fish. And given the severe economic problems in the fishing industry (the Commerce Department estimates that the factory trawler fleet alone lost approximately \$300 million in 1993), it is clear that fishermen are not simply maximizing profits by keeping higher valued species and discarding fish of lower value. The issue of reducing discards and minimizing processing waste is complex; this legislation and these hearings can help examine the issue and facilitate a resolution of the problem.

The legislation's definition of "bycatch" is an excellent beginning in helping to address the discard issue. The bill defines "bycatch" as fish harvested, but not retained. In short, the bill recognizes that mixed species harvests occur, and that there is nothing inherently wrong with harvesting more than one species at a time as long as the fish are retained for use. Too often, discussion is focused on whether a species of fish is a targeted or non-targeted species, not whether the fishermen and processors retain and use the catch.

AFTA maintains that adoption of an ITQ plan is the single most effective management measure to reduce discards and minimize processing waste in the groundfish fisheries. When fishermen are allowed to conduct fishing operations at a deliberate pace, they can more effectively avoid incidental harvests of species which they are required by regulation to discard. An ITQ system also creates economic disincentives for harvesting non-target species since a fisherman will be required to pay a user fee on all fish harvested and will need to purchase quota share on the open market to cover any harvests for which he or she does not have an ITQ. These economic disincentives for avoiding incidental harvests also create economic incentives to use as much of the catch (incidental or otherwise) as possible, in order to recover costs incurred from purchasing quota shares and paying user fees on incidental catches.

(John Bundy of Glacier Fish Company has submitted excellent testimony to the subcommittee on how factory trawler fishing activities under the Community Development Quota (CDQ) program

provide a model for documenting how discards and processing waste will be reduced under an ITQ program).

The balance of my comments concern provisions of S. 39 in which Congress imposes very specific management measures on the North Pacific fisheries. These measures, which include harvest preference and full retention and full utilization, are currently being analyzed by the Council. AFTA agrees with many other members of the fishing industry that management measures such as harvest preference and full retention and full utilization are unworkable, and that the Council's analysis will support that view. It would be precipitous, and unfortunate, for Congress to impose regulatory measures on fishermen that have not been studied, and are unlikely to improve management of the fisheries.

a. Harvest Preference. S. 39 advocates providing a harvest preference to fishermen who achieve certain goals, including attaining a lower rate of discards or reduced processing waste. While the objective may be laudable on its face, the harvest preference proposal is seriously flawed because it ignores the product forms produced and economic contributions made by competing industry members. In practice, harvest preference threatens substantial market disruptions without achieving any meaningful increase in the utilization of fishery resources.

One example, and there are others, is harvest preference assigned to a person based on achieving lower amounts of processing waste than one's competitors. Consider how this would be applied. By and large, pollock processors who make surimi (a protein-rich

fish paste used in the production of imitation crab products) achieve a slightly lower processing yield than processors making fillets. That is to say, a greater portion of a whole pollock is used in the manufacture of fillets than in the production of surimi.

Will harvest preference favor fillet processors over surimi producers? What about the fillet processors who service a niche market for "deep skin" pollock fillets? Deep skin pollock production entails removing an extra layer of pollock membrane during filleting operations, reducing yields below those realized by processors of regular fillets and surimi, but significantly increasing the product's value. The deep skin fillet product form is much in demand by major domestic seafood buyers. Processors responding to market demands and shifting production to value-added products risk being penalized under the harvest preference management regime. To carry this example further, a processor that reduces the whole fish to meal, a product worth about 25 cents a pound gains a preference over one producing fillets that sell at the retail level for four dollars a pound or more.

In sum, harvest preference might well reward those who provide significantly less national economic benefit and do not achieve meaningful increased utilization of national resources. Such a result would be ludicrous. We urge the subcommittee to reconsider the harvest preference provision.

b. Full Retention and Full Utilization. AFTA agrees with comments on S. 39 submitted by the Alaska Groundfish Data Bank and Aleutians East Borough that a requirement of full retention and full utilization will result in retention of undersized fish (fish only suitable for reduction to fish meal) that might otherwise be returned to the sea. AFTA also agrees with these two organizations that requiring that the heads, skin, viscera, etc. be reduced to meal, rather than being ground-up and returned to the sea, serves no useful purpose and unnecessarily removes valuable nutrients from the ocean. (Ironically, much of the fish meal produced in the North Pacific is sold to aquaculture projects in Southeast Asia. For what purpose? To feed fish). Scientists are continuing to consider the effect of removing permanently from the ecosystem hundreds of thousands of tons of fish waste. It would be a critical mistake indeed for Congress to mandate such a dramatic change given the possible negative conservation impact.

Again, AFTA recognizes that the status quo is unacceptable; across all industry sectors there is a need to utilize more of the harvested catch and to better avoid species that are not used either because regulations or economics dictate that course of action. The best management measure is one that ends the race for fish; there are other short term measures that might work, but the Council, not Congress, is better suited to choose those options.

3. Fishery Dependent Community.

The bill creates a new term, "fishery dependent community", within the Act, then imposes a national standard that requires

management measures to provide preferential treatment to fishermen residing in so-called fishery dependent communities. If the intent of these proposed changes is to authorize the existing Community Development Quota (CDQ) program, then the legislative language should be drafted to specifically authorize CDQs and set the necessary parameters for that program.

On the other hand, the term fishery dependent community is broad and vague, and introduces into the Act a concept much different than the CDQ concept. As drafted, S. 39 will encourage fishermen residing in fishery dependent communities to petition a council for preferential access to fishery resources at the expense of fishermen who reside in economically diverse areas. Nothing in the existing national standards of the Magnuson Act encourages government involvement in determining winners and losers in the marketplace. That long-standing approach should not be altered now.

Even if Congress determined that allocations to fishermen be made on the basis of the community in which they live, S. 39 does not ensure that a new emphasis on "social engineering" by the councils will result in sound public policy. Northwest fishermen, pioneers in the "Americanization" of the Bering Sea groundfish fishery, may reside in communities more dependent on the timber industry or aircraft manufacturing than on the fishing industry. It would be unfair to promote fishery allocation actions that deprive fishermen of their livelihood because they reside in economically diverse communities. A fishing industry job in an

economically diverse community is just as important to an individual fisherman (and to his or her family) as is a fishing industry job to a fisherman living in a fishery dependent community.

Moreover, the preferential access to fishery resources proposed in S. 39 is not based upon a finding of economic need, only a simple finding that a community is dependent on a single industry. Allocation preferences would accrue to fishery dependent communities, even if they are economically healthy. These preferences would come at the expense of fishermen, or those seeking an opportunity in the fishing industry, who come from economically diverse, but economically distressed areas, including many Northwest timber communities.

Again, if Congress determines that there is a need to authorize and set parameters for the CDQ program, then the provisions relating to fishery dependent community should be redrafted to reflect that intent, replacing the overly broad term fishery dependent community.

4. Administration of the Regional Fishery Management Councils.

The regional fishery management council process is a unique regulatory regime in which those affected by federal rules play a significant role in making those rules. In the New England region, participants in the fisheries have been heavily represented on the New England council. This council has an abysmal record in conserving federal fisheries. The North Pacific Council has avoided the pitfalls of its New England counterpart with regard to

maintaining healthy fish stocks. However, major allocation actions taken by the North Pacific Council in the 1990's, including approval of the halibut/sablefish IFQ program and adoption of the Bering Sea pollock onshore/offshore allocation, have focused considerable attention on a management regime in which competitors regulate one another.

S. 39 recognizes that confidence in regional fishery management councils is sagging and the bill seeks to remedy this situation. The bill deals with regional council failures, such as the New England experience, with tough and important new language to prevent overfishing. With regard to addressing concerns about allocation issues, however, many of the provisions of S. 39 intended to tighten up council procedures fall short of the mark, at least as they apply to the North Pacific Council. For example, the Council's advisory panel meets before every Council meeting, official minutes of the Council meetings are prepared, and roll call votes are held and records of the votes are kept on file. Though the Senate bill would make these procedures mandatory, they are currently in place, but contribute little to increasing public confidence in the council process.

The negotiated rulemaking provision contained in S. 39 does suggest a promising approach. As currently drafted, a negotiation panel can be formed at the discretion of the relevant council. The panel, to be comprised of all identified interests, is formed for the purpose of achieving a consensus on proposed management actions and recommending a course of action to the relevant council.

Emphasizing a conflict resolution process that includes industry participants and other affected parties is a key element to restoring public confidence in the management process. AFTA suggests further strengthening this provision by requiring councils to seek consensus before undertaking major controversial regulatory actions.

5. Additional Comments and Concerns.

a. Amendment to National Standard #5. The bill suggests a curious change in existing law. S. 39 proposes amending National Standard #5 which requires that management measures "promote" efficiency. The bill amends this provision, requiring only that management measures "consider" efficiency. This change contradicts ongoing Congressional regulatory reform efforts, which recognize the need to consider benefits and costs and the impact of onerous regulation on business competitiveness. Particularly with respect to groundfish products, which are commodities sold in the international marketplace, U.S. industry must be efficient in order to effectively compete.

We urge no change in current law that will raise prices for consumers, reduce the ability of seafood companies to export U.S. fishery products, and increase costs for fishermen.

b. Restrictions on Innovations in Fishing Gear Technology. The legislation prohibits the introduction of new fishing technology into a fishery unless notice is first provided to the relevant fishery management council; the council may choose to ban the use of the proposed technology. AFTA is concerned that this

provision could stifle innovation in the fisheries; fishermen are constantly experimenting with their fishing gear in order to gain a competitive advantage. This innovative spirit should not be discouraged.

c. Extending Duration of Emergency Rules. Currently, justification for issuing emergency fishery management rules is not limited to responding to resource, or conservation, emergencies. The rulemaking process is clogged with so-called emergency rules that do not relate to conservation and, some would argue, strain even the most liberal interpretation of what constitutes an emergency. This situation is particularly disconcerting since emergency rules are developed on a fast track with little analysis and limited opportunity for public comment.

Under current law, emergency rules can be issued for 90 days with provision for extending the rule for an additional 90 day period. S. 39 proposes to double the duration of emergency rules. Greater justification for what qualifies as a legitimate emergency should accompany any efforts to expand emergency rulemaking authority.

d. Observer Wage Claims as Maritime Liens. The legislation provides that wage claims filed by federal fishery observers monitoring vessel harvests shall be considered maritime liens against the vessel. Under the newly implemented North Pacific Fisheries Research Plan, which determines levels of observer coverage for fishing vessels, vessel owners subject to the plan pay a fee into a general fund. Observers are then compensated from

fees collected under the research plan. The Senate bill should exempt vessels subject to the North Pacific Fisheries Research Plan from this provision. Otherwise, a wage claim submitted by an observer will be considered a maritime lien even though the owner of the vessel on which the observer served paid his or her assessment in accordance with provisions of the research plan.

That concludes my testimony, Mr. Chairman. Once again, the association appreciates the subcommittee conducting this field hearing. Thank you, for considering our views.

Senator STEVENS. Mr. Curry?

**STATEMENT OF VINCENT CURRY, PRESIDENT, PACIFIC
SEAFOOD PROCESSORS ASSOCIATION**

Mr. CURRY. Good morning Senator Stevens. Good morning, Senator GORTON. Thank you very much for the opportunity to appear before you this morning.

The fundamental message that I would like to convey to you today on behalf of PSPA is that the Act continues to work well in the North Pacific, and the fisheries under the management of North Pacific Fishery Management Council are, with few exceptions, in good shape.

We note that the Alaska Salmon Resource has been producing record runs for most of the decade. We see no reason that this pattern will change, barring some kind of ecological shift. Basically, we are pleased with the way the Act has worked in the North Pacific, but to summarize my comments with regard to S. 39, I note that we are very pleased to see that the section on individual transferable quotas includes on-shore processors as a group eligible to receive initial allocations of harvesting or processing quota shares.

We have argued for some time that a move to ITQ system in any fishery will result in complete and radical restructuring of how that fishery operates. We have also argued that if such radical change is to take place, fairness dictates that onshore processor not be excluded from the initial awarding of the ITQ shares.

The initial allocation of shares will largely decide who the eventual winners and losers will be in any ITQ fishery. The awarding of shares will completely revamp the economic landscape of the fishery. If you are excluded, your chances of continuing to be a successful participant in that fishery are virtually nonexistent.

We have attached to our testimony a summary of some of the economic analysis which has brought us to the conclusion that we must be treated equally with other fishermen and other processors in order to survive in an ITQ system. Once again, we would like to thank the committee for addressing this equal treatment issue by clarifying an issue that on-shore processors are eligible for the initial awarding of processing and harvesting of shares.

The issue of fees which would support an ITQ system, not surprisingly, has also been very controversial. We do not see how taxation to finance operation of the ITQ system can be avoided.

The public will not accept privatization of a resource which represents a windfall to the firms involved, and yet be willing to continue to pay the taxes necessary to support the management of what will effectively become a privately owned asset. Whether 4 percent is the right number or 3 percent, whether a tax on ITQ transfers is appropriate, or whether there is some other viable system we think probably needs more debate. It seems inevitable that fees will be a part of the system.

With regard to the fees though, we would like to make an additional comment regarding the structure of fees. In the event that ITQs or groundfish or crab do become a reality, it is imperative that the processors be included, as I have mentioned, in the additional awarding of the quota shares. Although we are still at an

early stage in that process, it appears that a system of symmetrical processor and harvester shares is gaining general acceptance.

In any event, if the current debate leads to both the imposition of ITQs and the imposition of a fee system, we strongly urge that the total fee collected be comprised of equal portions from both the harvesting and processing sectors. Whatever percentage is chosen, the tax payment should be split between the two sectors holding the share quotas.

Neither we, nor, I imagine, the fishermen want to see the situation where 3 or 4 percent is collected from harvesters and an additional 3 or 4 percent from the processors is collected on the same poundage of fish. The total fee should be determined and then divided equally between the two sectors.

S. 39 also contains extensive provisions for dealing with fishery waste and bycatch. We are in agreement with the direction of these proposals are headed.

As far as the onshore processing sector is considered, we are pleased to say that our operations are already close to meeting each of these new performance standards specified in the bill. Those standards which remain to be set, we are confident that we will be able to bring ourself within compliance within any allotted time.

Let me emphasize that our sector of the industry is proud of its record of low discards, high utilization, and efficiency in processing. However, when the public reads stories in the press about the high rates of waste and discard, the entire industry is painted with a black brush.

It is hard to distinguish between the various good operators and those who may have a problem. We think that the direction of the Act will rectify that situation, and it is an appropriate step for you to take.

This concludes the summary of my testimony, and thank you for inviting the PSPA to testify for you today.

[The prepared statement of Mr. Curry follows:]

Statement of Mr. Vincent A. Curry

**President
Pacific Seafood Processors Association**

***Before the U.S. Senate Committee on Commerce,
Science and Transportation
Subcommittee on Oceans and Fisheries***

**Reauthorization of The Magnuson Fishery Conservation
and Management Act**

**March 18, 1995
Seattle, Washington**

Mr. Name is Vincent A. Curry. I am the President of the Pacific Seafood Processors Association (PSPA).

PSPA is a Seattle based trade group which represents companies involved in the commercial processing of various seafood products throughout the Northwest and Alaska. The member firms which comprise the Association handle a wide variety of species and product forms, including salmon (fresh, frozen, canned and smoked), crab, halibut and numerous species of groundfish such as pollock and cod. The Association is now in its 81st year, and some of the member companies have been in existence even longer than that.

The main function of the Association is to provide a forum for communication and action by the members on issues of common concern. These issues, which are both regulatory and legislative, appear on the local, state and federal levels. The Association provides the membership with an opportunity to debate these issues, to form opinions, to craft action plans, and to deliver the Association's message to the relevant decision makers.

We are pleased to once again have the opportunity to participate in a reauthorization of the Magnuson Act. PSPA was actively involved at the time of the Act's inception and we have continued to offer our thoughts each time it has been amended.

The fundamental message which I bring to you today on behalf of the member companies of the Association is that the Act continues to work well in the North Pacific. The fisheries under the management of the North Pacific Fishery Management Council (NPFMC) are, with a few exceptions, in good shape. The Alaska salmon resource has

been producing record runs for most of this decade and there is no reason to think that this pattern will change, barring some type of major ecological shift.

It is our view that the success of the management practices in the North Pacific stem from two factors. First, the Council and the industry inherited stocks which were basically healthy at the time the 200 mile zone was implemented. This gave us a good start and a real advantage over other parts of the country. The second factor is the conservative management philosophy of the North Pacific Council. Even as its membership has changed since 1976 the Council as a whole has remained committed to preserving the long-term health of the resources under its jurisdiction. For instance, the Council has frequently set catch limits which are actually below the amount which fishery biologists have said could be harvested. In our view, such actions are an example of one of the primary benefits of having fishermen on the council. Fishermen tend to use their own experiences in their decision making. They also tend to have a healthy dose of skepticism when it comes to estimates of "how many fish are in the sea". Since their livelihood depends on maintaining healthy stocks into the future, they will often err on the side of caution as opposed to fishing right up to the maximum biological limits which may be recommended in any given year. We applaud them for this approach, and we applaud Congress for having rejected the call by those who argue that the Councils should be weakened or even eliminated. Perhaps the worst mistake Congress could make would be to centralize fishery management decisions in Washington, D.C. This is not meant as a criticism of the National Marine Fisheries Service or its leadership. In fact, I think Rollie Schmitten would probably agree that even the recent increase in NMFS funding still leaves the agency far short of what it would need to take on major new responsibilities. In addition, the 104th Congress certainly seems to be a believer in regional decision making as opposed to consolidating power in Washington, D.C.

Turning to our comments on S.39, we can generally say that we approve of the direction the amendments are heading. They retain flexibility within the Council process while attempting to improve accountability. The amendments also take important steps toward addressing the waste and bycatch issue. We agree strongly with the position of Senator Stevens that if the commercial fishing industry doesn't improve its performance in this area there will be a public backlash. This has been a view which Senator Stevens has consistently held for many years, and we hope that 1995 will see his concerns translated into legislative action.

I would now like to make some specific comments on S.39:

The bill authorizes the Councils to use negotiating panels in a more formal way than has been done in the past. Although this technique of resolving disputes has been used successfully by some Councils in the past (Pacific whiting allocations, for instance), it is probably a good idea to set up a more formal structure. However, we are concerned about the bill's requirement that the Councils "will use the consensus of the negotiation panel ...as the basis for the development of the conservation and management measures to be adopted by the Council ...".

Our concerns with the "will use" language are several. First, given the nature of the fishing industry, any negotiation panel which is discussing management of a major fishery will not be able to include every group which feels it is being affected. To begin with, you have fishermen, processors, suppliers, local communities, re-processors, wholesalers, transportation companies and other groups who will want to participate. You are also likely to have environmental interests seeking a seat at the table. However, within each of these groups you have divergent viewpoints, right down to the individual boat or company level. From a logistical point of view we do not see how everyone with an interest can be guaranteed a seat at the table. Plus, if the bill requires the Council to

use the consensus of the group as the basis for Council action, we are concerned that those left out of the process may have a basis for legal action should the outcome not be to their liking.

We suggest that even if the "will use" language is dropped from the bill that the Councils will still give great weight to the outcome of any negotiating process. The Councils, like Congress, do not seek out difficult decisions to make. If there is indeed a consensus within broad industry sectors then that fact will certainly influence the Council and may well form the basis for eventual Council action.

Also, if the "will use" language is dropped from the bill then it becomes less important to have a definition of "consensus". The current definition of consensus in the bill may result in negotiating panels spending a great deal of time trying to decide how to define the term prior to the start of any substantive talks. There is less pressure on the panel members and the stakes are lowered if the outcome of the discussion will not necessarily form the basis for Council actions.

Our next concern is with the section on recusal. In general, we think the process outlined in the bill is well thought out and will help deal with the perception being fostered by some in the press that Council members are feathering their own nests. Our one caution is that allowing appeals of rulings by the "designated official" could hamper the ability of Councils to conduct business in an orderly fashion. We understand that an appeal to the Secretary will not change the outcome of an earlier vote, and we support this idea. However, we suggest that it might be better to simply make the decision of the "designated official" the final word on recusals. Having a final decision on the spot would eliminate confusion and second-guessing regarding the validity of Council votes.

There may be legal reasons for an appeal that we are not aware of, but we suggest that recusal decisions be made as simple and clear as possible.

We are very pleased to see that the section on Individual Transferable Quotas (ITQs) includes onshore processors as a group eligible to receive an initial award of either harvesting or processing quota shares. We have argued for quite some time that a move to an ITQ system in any fishery will result in a complete and radical restructuring of how that fishery operates. We have also argued that if such a radical change is to take place, fairness dictates that we not be excluded from the initial awarding of ITQ shares. The initial allocation of shares will largely decide who the eventual winners and losers will be in any ITQ fishery. The awarding of shares so completely redraws the economic landscape of a fishery that if you are excluded your chances of continuing to be a successful participant in that fishery are virtually nonexistent. We have attached to our testimony a summary of some of the economic analysis which has brought us to the conclusion that we must be treated equally with other fishermen and processors in order to survive under an ITQ regime. (The full reports are available if the Committee would like them.)

Once again, we thank the Committee for addressing this equal treatment issue by clarifying in statute that onshore processors are eligible for the initial awarding of processing and harvesting shares.

One of the more controversial aspects of S.39's ITQ provision is the requirement that mandatory guidelines be developed by the Commerce Department. The Councils must then use these guidelines in crafting future ITQ systems, as well as in amending current ITQ plans. As we have already mentioned in our testimony, the move to an ITQ system results in drastic changes in how a fishery operates. Given the significance of a shift to

ITQ's, we feel Congress is making a wise decision by requiring that some standards be set. The first domestic ITQ system for a major fishery, sablefish/halibut, is just now being implemented. No one knows how it will work. Although we are not close to implementation of any other large ITQ systems, it seems logical to us that we take advantage of what we can learn from implementation of the sablefish/halibut ITQ plan. This knowledge can then be used in crafting a set of guidelines which will be available to the Councils as they move toward ITQ's in other fisheries.

The issue of fees, not surprisingly, has also been one of the most controversial aspects of the ITQ debate. Let me say that no member of PSPA likes paying fees, even when those fees are voluntary such as the ones we assess on ourselves to support the Fisheries Research Institute at the University of Washington, the North Pacific Universities Marine Mammal Research Consortium (Steller sea lion research being conducted by 4 universities) and various other projects. However, our members like paying fees even less when they are mandatory, such as the \$60 million in taxes which we pay to various levels of government in the state of Alaska each year. However, having said that, we do not see how taxation to finance operation of an ITQ system can be avoided. When a company has been given the exclusive right to use a public resource (whether you call it ownership or not) it would seem inescapable that this company must pay for the cost of research and management which support that fishery. The public will not accept the privatization of a resource which represents a windfall to the firms involved and yet be willing to continue to pay the taxes necessary to support the management of what has effectively become a privately owned asset. Whether four percent is the right number for a fee, whether a tax on ITQ transfers is appropriate, or whether there is some other system, needs a great deal more debate. It seems inevitable to us, however, that some type of ITQ taxation is inevitable for all ITQ fisheries.

I would like to make one additional comment regarding possible fee structures for ITQ fisheries. In the event that ITQ's for groundfish or crab do become a reality, it is imperative, as I have already mentioned, that the processing sector be included in the initial awarding of quota shares. Although we are still at an early stage of the process, it appears that a system of symmetrical processor and harvester shares is gaining general acceptance (or perhaps acquiescence is a better term). In any event, if the current debate leads to both the imposition of ITQ's and the imposition of a fee system, we strongly urge that the total fee collected be comprised of equal portions from the harvesting and processing sectors. Whatever percentage is chosen, the tax payments should be split between the two sectors holding the share quotas. Neither we, nor, I imagine, the fishermen, want to see a situation where three or four percent is collected from the harvester and then an additional three or four percent from the processor. The total fee should be determined and then divided equally between the two sectors.

S.39 contains extensive provisions for dealing with fishery waste and bycatch. Although these provision are applicable only to the North Pacific, we strongly support efforts to improve the conduct of these fisheries. Once again, the North Pacific industry is setting the standard for proper conservation and wise use of these public resources.

The bill calls for action by a date certain in the following areas:

- ◆ reduction of bycatch
- ◆ total catch measurement
- ◆ a system of rewards and penalties to encourage reductions in bycatch & discards
- ◆ allocation of ITQ bycatch species
- ◆ full retention of catch by fishermen
- ◆ full utilization of deliveries by processors

- ◆ standards for percentages of species which must be processed for human consumption
- ◆ minimization of regulatory discards (prohibited species)
- ◆ 100% observer coverage on all vessels capable of carrying an observer

We are in complete agreement with the direction these proposals are headed. Although there is a long way to go from enactment of these measures to their implementation, we feel that unless Congress gives this direction the progress toward these goals will be slow and uneven. Someone needs to set the standard. In this case it will be Congress. It will then be up to each industry sector to bring itself into compliance with the new standards.

As far as the onshore processing sector is concerned, we are pleased to say that our operations are already close to meeting each of the new performance standards specified in the bill. For those standards which remain to be set we are confident that we will be able to bring ourselves into compliance within the allotted time. Let me emphasize that our sector of the industry is proud of its record of low discards, high utilization and efficiency in processing. However, when the public reads stories about in the press about the high rates of waste and discard by other sectors of the industry they do not distinguish between the good operators and those who are wasteful. The entire industry gets painted as being unconcerned about the needless discard of millions of pounds of a publicly owned resource which should be providing nutritious meals.

As an example of this problem we have attached to our testimony some press clippings which focus on the waste issue. We have also attached some statistics from the most recent fishing year which detail the enormous variance between industry sectors in terms of discards, level of utilization and processing efficiency. We provide this data not as a means of bashing other operators, but as a way of showing that it is possible, under current fishery management rules, to achieve the performance standards outlined in the

bill. Those who criticize these standards are doing so, we believe, not because they cannot comply, but instead because it is easier and more profitable to continue operating in a manner which shows little concern for waste. This is a dangerous and short-sighted approach because until the entire industry is able to meet higher standards we will all be blamed equally. As Senator Stevens has been telling us for many years now; if we aren't proactive in dealing with these problems we will eventually have a solution forced upon us that might be so stringent that we could not live with it. It is far preferable, in our opinion, to use the Council process to craft solutions which accomplish the goal without putting us all out of business.

This concludes my testimony. Thank you for inviting PSPA to appear today.

Senator STEVENS. Thank you, very much. Mr. Alverson?

STATEMENT OF ROBERT ALVERSON, MANAGER, FISHING VESSEL OWNER'S ASSOCIATION

Mr. ALVERSON. Senator Stevens, Senator Gorton, I appreciate the opportunity to testify this morning. I am Bob Alverson, representing the Fishery Vessel Owners' Association out of Seattle.

I would like to begin by referencing the recent Alaska Fishermen's Journal publication. Front page title is: Price Versus Ice. It shows a crab boat laden with ice after fishing in the winter storms in the Bering Sea.

As you know, Halibut/Sablefish ITQ program has began on March 15th. It was blowing 70 yesterday in Sitka. It was blowing 50 this morning, I was told. One of the duties of our IFQ program is we do not have to go fish in storms like this. We do not have to make the choice to chip ice. We can stay in port, and if you look at the waterfront, the majority of the Seattle online fleet is still in town, and they do not want to fish during the spring equinox. That is the beauty of an IFQ program.

The rest of my testimony, Senator Stevens, focuses on Page 41 through 44 of the Guidelines On Individual Transferable Quotas. We are concerned with four of those new guidelines.

The first one is in the middle of Page 41. It deals with fees. We have testified in favor of fees. We have promoted fees in terms of an IFQ program. However, we do note on Page 53 that our East Coast brethren have a 5-year reprieve on not paying any fees on IFQs. We feel if it is good enough for the West Coast, it is good enough for the East Coast.

The next guideline—

Senator STEVENS. Cannot take blood out of a turnip.

Mr. ALVERSON. I represent a bunch of turnips. The second guideline says: Minimizes negative social and economic impacts on fishery dependent communities. I refer to in our packets to a letter to Earl Comstock from our legal council, George Mannina. In regards to this guideline, he says: This guideline will create litigation options. Local communities are specifically mentioned and given special status. Congress has singled them out for special consideration.

We are not sure that that is exactly the case. We are concerned that there may be a conflict with national standards for this, and that you are not supposed to discriminate between residents of different States. In the past, fishery dependent communities seem to have not included Bellingham and Poulsbo, but have been interpreted as those communities adjacent to the fish—where the fisheries are caught.

Our third concern is on Page 42. We are very concerned—right in the middle of that page: This would require an open entry fishery to be overlaid on top of our current IFQ program for halibut and black cod which was just implemented on March 15th. There is a requirement that in 3 years this would have to be done on Page 43.

Allegedly this open fishery is designed for entry level fishermen. The North Pacific Council, which is dominated fairly by Alaskans on the Council, designed our program with ownership caps, vessel size categories, block program, a bona fide crewmen definition. In

addition to that, the State of Alaska provides for Alaska soft loans through the Alaska Fishermen's Loan Program. The fees that are mentioned in here, Senator Stevens, could be used to augment those soft loans in Alaska, and the Capital Construction Fund could be expanded to include crewmen so they can enjoy upward mobility and purchase IFQs or Alaska licenses and salmon.

With regards to this particular guideline, I would quote from a letter in our packet from the Kodiak Longline Vessel Association. They state: This would cause—meaning this guideline—would cause great economic and emotion turmoil. The programs are already in place, and investments in and decisions based on these programs have taken place. These programs—meaning the guidelines—would result in mass confusion and economic hardship. They proposed a savings clause for the halibut/sablefish program which we endorse also.

Governor Tony Knowles, in a letter on the business side of not entering IFQ litigation, states: Alaskans have borrowed and lent money to buy and sell quota shares. A last minute disruption of the program would cause hardship and uncertainty for many Alaskan families and businesses. The 3-year requirement to roll over and take these guidelines to existing IFQ programs would provide 3 years of uncertainty and probably an additional 2 years of litigation. As you know, we are already in litigation on the current IFQ program.

On Page 44 is talked about the addition of survey processors and processors being able to own IFQs. We support that. We suggest the word "may" be added in Line 15. Thank you.

[The prepared statement of Mr. Alverson follows:]

**Statement of Robert Alverson
Manager, Fishing Vessel Owners' Association
Before the
Subcommittee on Oceans and Fisheries
Senate Committee on Commerce, Science, and
Transportation
March 18, 1995**

Mr. Chairman:

I appreciate the opportunity to provide a statement to the Subcommittee on the subject of reauthorization of the Magnuson Fishery Conservation and Management Act. I am manager of the Fishing Vessel Owners' Association, which is a trade association representing owners of 85 hook-and-line fishing vessels. FVOA is based in Seattle. Our vessels operate from California to Alaska. I recently completed two terms of service as a Member of the North Pacific Fishery Management Council.

The current reauthorization process for the Magnuson Fishery Conservation and Management Act provides the Congress the opportunity to ensure that our system of federal fisheries management serves fundamental conservation goals and improves the safety of our fisheries. I would especially ask the Subcommittee to consider the usefulness of individual fishing quotas as a device for achieving conservation and management goals that are beyond the effective reach of traditional regulatory measures. I am not proposing that the Act be amended to mandate the establishment of IFQs, because I do not regard IFQs (or ITQs--individual transferable quotas) to be a universal panacea. There may be

many cases in which other management measures are more appropriate, or where IFQs cannot be rationally applied. However, because IFQs can be very helpful in addressing the problems of various fisheries, the Act should not create disincentives or unwarranted hurdles in the way that management option.

As the term suggests, IFQs provide specific quotas of fish to particular individuals. At the outset, quotas are based on historical participation in the fisheries and the prevailing condition of the resources. IFQs can be transferred, subject to conditions and restrictions calculated to achieve various management goals. Within broad parameters, IFQ holders may harvest their quotas when the weather is safe and the markets are good. The holders of IFQs thus enjoy fishing privileges that are aimed at effectively conserving the stocks, promoting safety of life and property at sea, and maximizing the value of the product. If a problem arises in the system, the responsible fishery management council and the Commerce Department may adopt changes--or abandon IFQs altogether. If the Congress finds that one or more IFQ programs give rise to major policy problems, remedial legislation may be enacted. IFQs do not convey property rights for which there is a Constitutional right of compensation to holders, in the event that the quotas are changed or revoked. The public remains in full and effective control of the resource.

I add that, with proper management, the harvest of renewable fisheries resources provides economic benefits to productive members of our society, while depriving the public of nothing. This, of course, distinguishes fisheries from non-renewable resources, such as oil and gas, and hard rock minerals.

I have put a great deal of effort into the establishment of an IFQ system for the halibut and sablefish fisheries in federal waters off the coast of Alaska. I supported that system, because those fisheries simply could not be sustained with the continued use of

traditional time and area closures and trip limits. There were too many vessels applying too much effort to the harvest of very limited resources. In fact, over the years, the fleet grew from hundreds to thousands of vessels, and the halibut season was reduced to a few days of hysterical fishing per year. The sablefish fishery also suffered from increasing pressure, and was destined to become as dangerous and wasteful as the halibut fishery. In both the halibut and sablefish fisheries, people lost their lives and their vessels, product quality declined, prices fell from episodic gluts in the market, and much of the catch was wasted by hasty and otherwise bad handling practices.

For me, the loss of life in these fisheries was the major consideration in my move toward a system of IFQs. I saw no alternative method of addressing compressed seasons and overcrowded fishing grounds, in which the fishermen's fatigue and nature's violence took an ever-increasing toll of human lives. From that standpoint, the prevailing management system could not be maintained, because its human cost was simply intolerable. In the years, 1991-1993, there were 216 search and rescue efforts in the halibut openings, alone. And that occurred over a total of 12 days of fishing in the three-year period.

From the perspective of conservation, as well, the traditional management tools could not produce sustainable halibut and sablefish fisheries. With thousands of vessels operating in relatively small areas on discrete fish populations, time and area closures could not be tightly enough configured to avoid excessive harvests and massive waste. Shorter openings led fishermen to increase their gear and to fish 'round the clock. Unlimited entry resulted in such great numbers of vessels that fisheries would spill over onto less productive grounds, where bycatch impacts were greatly aggravated. Trip limits led to "high-grading", that is, to the discard of large quantities of fish, in order to ensure that only the most valuable were retained. The sudden flood of product at the end of each

opening led to oversupply and to depressed market prices. By way of example in relation to the last point, the prices for U.S. halibut have typically been \$1.50 lower per pound than for Canadian halibut that are harvested under an IFQ system. I will not go into detail concerning the additional benefits of the IFQ system, but I will call your attention to Congressional correspondence which called on the Secretary of Commerce to approve the new program. That correspondence is also attached to my prepared statement.

I feel that I must also focus on a particular aspect of S.39, the Sustainable Fisheries Act", that is extremely troubling. S.39 would apply new statutory standards retroactively to the existing Halibut/Sablefish I Fishing Qs. This proposal, if enacted, would unfairly place this IFQ program, and its many benefits, in jeopardy.

The Halibut/Sablefish IFQ program emerged after a long history of careful consideration by the North Pacific Fishery Management Council, the Commerce Department, and the Congress. The first consideration of the program began in 1984, and it was addressed by the Council in scores of meetings in the ten years following. Testimony was received by the Council from hundreds of members of the public. The program was subjected to the requisite scrutiny of the Department of Commerce, during the course of which, interested Members of Congress urged approval and prompt implementation. Most recently, the program withstood a challenge in federal District Court in Alaska.

As in the case of any IFQ program, the one for halibut and sablefish conveys only harvest privileges, not property rights for which a taking by the government would require compensation under the United States Constitution. Therefore, the administering agency and the Congress may readily choose to modify or even terminate this program.

However, the legal right to change the program does not equate with sound policy reasons for doing so at this time.

The program enters into effect on March 18, 1995. By the time the Act is reauthorized, the program will have been operating for a matter of months. Therefore, any action by Congress in the present reauthorization cycle to change the basic statutory rules and to require consequent modification of the program would be entirely premature.

I urge that this program be given a reasonable opportunity to work. Then, if Congress finds that there is a need to apply new statutory rules, because there are significant problems that the Council and the Commerce Department cannot or will not address, legislation can be enacted. For the many people, in government and in the private sector, who labored for years to bring the program into being, a change of the rules just as the program is being implemented would be entirely unfair.

It is also important to recognize that new statutory rules could lead to renewed litigation. An error in the administrative process of applying the new rules to the existing program could lead to a return to open access, derby fishing--precisely the result sought by the plaintiffs in the litigation which has already occurred, and which is noticed for appeal to the federal Circuit Court. The imposition by Congress of a further risk to the lives of fishermen, who now look forward to a system that will end the deadly race for fish and reduce the threats to their lives, is entirely unjustifiable. The adverse conservation and economic effects would also be very serious, were the program to be overturned. Consequently, as this new and promising program gets underway, the opposition to legislation carrying the risk of a retreat to the evils of the old system will be very intense.

There are certain, discrete and relatively non-controversial issues--requirements for fees and a system of lien registry for IFQs--that Congress may properly choose to address in a manner that applies to all IFQ programs. These issues do not threaten the basic fabric and benefits of the Halibut/Sablefish IFQ program. As for other matters, such as the fundamental standards applying to that program, a more conservative, wait-and-see approach to legislation is in order at this time.

An "anti-retroactivity provision" is proposed for inclusion in any legislation that would otherwise apply new standards to the existing Halibut/Sablefish IFQ program. This provision of course leaves open the option to change the statutory rules for the program in future, should developments warrant, and to modify the program through the administrative process under the prevailing provisions of the Act, in the meantime. I note that the pending legislation might properly require the Secretary of Commerce to provide annual reports on the Halibut/Sablefish IFQ program and similar such programs to the Congress. That would facilitate the identification of any problems that might require legislative solutions.

In closing, I would like to make it clear that I am not here as a missionary for IFQs in all fisheries, nationwide. It will be up to responsible government officials and fishermen to decide how the various fisheries should be managed. However, after years of experience in fisheries management and based upon close analysis, I have every reason to believe IFQs will ensure that the halibut and sablefish fisheries--and perhaps others--will be sustainable for the indefinite future.

Thank you.

Proposed Amendment to H.R. 39 and S.39

"Anti-retroactivity Provision.--(a) Nothing in this Act shall be applied retroactively to (1) the Regulatory Amendment Affecting the Fishery for Pacific Halibut in and off the State of Alaska, Amendment 15 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands, and Amendment 20 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, approved by the Secretary on January 29, 1993, and the regulations promulgated in implementation of each such Amendment on November 9, 1993; and (2) any amendment to any such Amendment and any regulations promulgated pursuant to any amendment.

"(b) Exception.--Subsection (a) shall not apply to fees or a lien registry system that may be established pursuant to the provisions of this Act."

Explanation of Anti-retroactivity Provision

S.39 would apply new statutory standards retroactively to the existing Halibut/Sablefish Individual Fishing Quotas in Alaskan waters. It is possible that H.R.39 may be amended to include a similar requirement. Such a proposal, if enacted, would unfairly place this IFQ program, and its many benefits, in jeopardy.

The Halibut/Sablefish IFQ program emerged after a long history of careful consideration by the North Pacific Fishery Management Council, the Commerce Department, and the Congress. The first consideration of the program began in 1984, and it was addressed by the Council in scores of meetings in the ten years following. Testimony was received by the Council from hundreds of members of the public. The program was subjected to the requisite scrutiny of the Department of Commerce, during the course of which, interested Members of Congress urged approval and prompt implementation. Most recently, the program withstood a challenge in federal District Court in Alaska.

The program conveys only harvest privileges, not property rights for which a taking by the government would require compensation under the United States Constitution. Therefore, the administering agency and the Congress may readily choose to modify or even terminate the program. However, the legal right to change the program does not equate with sound policy reasons for doing so at this time.

The program enters into effect on March 15, 1995. Any action this year by Congress to change the basic statutory rules and to require consequent modification of the program would be entirely premature. The program should be given a reasonable opportunity to work, and then, if Congress finds that there is a need to apply new rules because there are significant problems that the Council and the Commerce Department cannot or will not address, legislation can be enacted. For the many people, in government and in the private sector, who labored for years to bring the program into being, a change of the rules just as the program is being implemented would be entirely unfair.

It is also important to recognize that new statutory rules could lead to renewed litigation. An error in the administrative process of applying the new rules to the existing program could lead to a return to open access, derby fishing--precisely the result sought by the plaintiffs in the litigation which has already occurred, and which is noticed for appeal to the federal Circuit Court. The imposition by Congress of a further risk to the lives of fishermen, who now look forward to a system that will end the deadly race for fish and reduce the threats to their lives, is entirely unjustifiable. The adverse conservation and economic effects would also be very serious, were the program to be overturned. Consequently, the opposition to legislation carrying that risk will be very intense.

There are certain, discrete and relatively non-controversial issues--requirements for fees and a system of lien registry for IFQs--that Congress may properly choose to address in a manner that applies to all IFQ programs. These issues do not threaten the basic fabric and benefits of the Halibut/Sablefish IFQ program. As for other matters, such as the fundamental standards applying to that program, a more conservative, wait-and-see approach to legislation is in order.

An "Anti-retroactivity provision" is proposed for inclusion in any legislation that would otherwise apply new standards to the existing Halibut/Sablefish IFQ program. This provision leaves open the option to change the statutory rules for the program in future, should developments warrant. Accordingly, the pending legislation might properly require the Secretary of Commerce to provide annual reports to the Congress on that program.

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March 14, 1995

Via Telefax

Mr. Earl Comstock
Legislative Director
Office of Senator Ted Stevens
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Earl:

Per our conversation, I have reviewed the ITQ provisions in S.39. There were several technical issues I spotted which I thought I would call to your attention for you to decide whether they are consistent with the intended policy of S.39. For example, on page 44, lines 8-9, S.39 states an ITQ does not constitute a property right. Do you mean ITQs do not constitute property for any purpose or do you mean ITQs do not constitute a property right for which compensation must be paid pursuant to the U.S. Constitution if there is an amendment to the FMP which modifies or revokes the ITQ? Applicable judicial precedents provide that federal or state permits may be property for certain purposes such as collateral for loans, inheritance, etc., but are not property with respect to the takings provision of the U.S. Constitution. Although language at page 44, lines 9-14 suggests this provision is intended to address the takings issue, the language at lines 8-9 appears much broader.

At page 41, lines 10-12, S.39 imposes a requirement that all ITQ plans be "consistent with the requirements for limited access established under Section 303(b)(6)." Since an ITQ plan is considered a limited access system under existing precedent and is already governed by Section 303(b)(c), a court could reasonably assume Congress acted with some new purpose in approving this part of S.39. One possible interpretation is that use of the word "consistent" on page 41, line 10 requires something more than is now required under Section 303(b)(6).

Existing Section 303(b)(6) requires the Secretary to "take into account" certain factors in establishing a limited access system. The words "take into account" have been interpreted as meaning the Secretary must consider these factors but need not structure a limited access system such that each factor is a required component of the limited access system. Does use of the word

Mr. Earl Comstock
 March 14, 1995
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"consistent" mean that each factor is a required element which must be included in an ITQ plan? If it is your intent to change the existing Section 303(b)(6) requirements, you may wish to spell it out to avoid future litigation involving the interpretation of the language. If, however, your intent is to simply restate the applicability of Section 303(b)(6) without change, you may wish to delete the language at page 41, lines 10-12 and rely on existing precedent. Alternatively, you could insert language in S.39 stating an ITQ system is considered a limited access system, thus providing by statute that the Section 303(b)(6) factors are considered in developing an ITQ program.

Similarly, at page 41, line 13, S.39 provides an ITQ system must promote conservation. Since an ITQ system is considered an allocation, the promotion of conservation requirement would already apply because of National Standard 4. I am not certain why promoting conservation is set out separately in S.39 unless your purpose is to provide by law that an ITQ system is considered an allocation. If so, you could also accomplish your purpose by stating an ITQ system is an allocation within the meaning of National Standard 4.

The issue of the relationship between S.39 and the existing provisions of National Standard 4 raises other questions with respect to the language on page 41, lines 17-20. As you know, National Standard 4 requires that any allocation be "fair and equitable." Since that would already apply to any ITQ system, the question becomes what is intended by the additional language in S.39 that the allocation be fair and equitable "and" minimize negative social and economic impacts on fishery dependent communities. Using "and" as the word linking these clauses establishes them as co-equal requirements which must be satisfied. Thus, if the Council is considering several ITQ systems, all of which are fair and equitable, the Council would be required to adopt the one which "minimizes" adverse impacts on local communities. This will create litigation options in which plaintiffs' attorneys will argue that local communities are in the most favored position since the ITQ plan must "minimize" any adverse impact on such communities. Thus, a court might rule that when a conflict occurs between the fair and equitable clause and the "minimize" clause, the local communities prevail since they are specifically mentioned and given special status. Alternatively, it is possible a court could reconcile any conflict between the two clauses by asserting they are sequential in that first you minimize impacts on local communities since Congress has singled them out for special consideration and whatever is left is allocated fairly and equitably among other interests. Is the policy of S.39 that local communities be given a preeminent and special position or is the policy that their needs be given consideration consistent with the fair and equitable standard? The language of S.39 may well lead to litigation by people suggesting it is the former. It would be helpful to clarify your intent.

The language on page 42, lines 3-16 raises questions regarding how these provisions relate to existing Section 303(b)(6). For example, on page 42, at lines 8-10, S.39 requires the Council to address "factors" in making initial allocations and in determining ITQ ownership eligibility. Are those factors different from the considerations included in Section 303(b)(6)(A)

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and (B)? Similarly, does the language regarding limitations on consolidating ITQs at page 42, lines 10-11 imply something different from the restriction on the acquisition of excessive shares of fishing privileges in National Standard 4? Regardless of how these issues are resolved, you may wish to consider what is intended by the word "address" on page 42, line 3. Do you mean the Council is to take the five issues listed in subparagraph (B) into account and consider them, or do you mean that the Council must specifically establish a system which contains provisions focused on each of these issues?

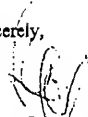
The language at page 42, lines 17-23 may raise constitutional issues. As you know, a similar proposal was considered in the context of the halibut and sablefish ITQ plan. NMFS attorneys raised questions whether this provision would violate the port preference clause of the Constitution.

Having raised these technical/policy issues, I would like to turn to the principal issue of concern to the Fishing Vessel Owners Association. The Association would like to avoid having to re-litigate the halibut and sablefish ITQ plan based on the retroactive application of new standards of law. Depending on how some of the issues discussed above are resolved, the requirement of S.39 that all the plans be brought into compliance with S.39 within three years could result in the Council reconsidering and redoing the plan, thereby leading to new litigation. Even if the Council determines the existing halibut and sablefish ITQ plan meets the relevant requirements, it is reasonable to assume that opponents of the plan will initiate litigation arguing the Council has misinterpreted these standards and that the halibut and sablefish ITQ plan does not comply with the standards.

After you have had an opportunity to review this, I would be pleased to talk further with you.

With warm personal regards.

Sincerely,



George J. Mannina, Jr.

Congress of the United States
 Washington, DC 20515

August 11, 1992

The Honorable Barbara Franklin
 Secretary of Commerce
 U.S. Department of Commerce
 Constitution Ave. & "G" St. N.W.
 Washington, D.C. 20230

Dear Secretary Franklin:

As Members of the Washington state Congressional delegation, we represent hundreds of fishermen who harvest halibut and sablefish off the coast of Alaska. We have reviewed the potential of the present proposal by the North Pacific Fishery Management Council for Individual Fishing Quotas (IFQ's), and therefore recommend approval and adoption of the IFQ system for those fisheries.

We strongly believe that the implementation of IFQ's would bring vital improvements to the conservation and management of the valuable halibut and sablefish fisheries by:

- improving safety, increasing harvest value and quality of product for consumers, and reducing gear losses through elimination of the "open access fishing darbies" that have been characterized by tragic injuries and losses of life, wasteful discards of less marketable fish, poor product quality, and costly gear conflicts;
- distributing "Quota Shares" equitably through a formula based on historical participation in the fisheries;
- allowing a market-based transfer of fishing privileges, while protecting the broad employment base, maintaining the diversity of ownership of the fleets, and preserving the relative participation of the larger and smaller vessels through reasonable limits on the concentration and transfer of quota shares;
- providing sustainable economic development opportunities for small coastal communities in Alaska through a guarantee of the availability of a significant portion of the resources for their use.

As you are aware, the North Pacific Fishery Management Council carefully developed the proposed IFQ system over a period of five years, taking a vast array of management alternatives into account. The public participated fully and the National

and policy guidance throughout the process. We believe that the IFQ system offers urgently needed relief from the severe safety, conservation, and economic problems which have increasingly plagued these overcapitalized fisheries.

We request that the Individual Fishing Quotas (IFQ) system be implemented without delay.

Sincerely,

Bob Adams

Mark Tindler

Norman S. Dickie

Jim McDevitt
Quiff

John Masoald

Bill Morrison

John Miller

Paul Phasche

State of Alaska
Office of the Governor

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NEWS RELEASE



Bob King
Press Secretary
907-465-3500
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FOR IMMEDIATE RELEASE: March 9, 1995

95-61

**KNOWLES ANNOUNCES RESOLUTION OF IFQ
JURISDICTIONAL QUESTION**

**Federal Commitment is Factor in State Decision
to not Join IFQ Appeal**

Governor Tony Knowles announced today that he has obtained commitments from the federal government reaffirming the state's authority to manage fisheries within state territorial waters. The National Marine Fisheries Service (NMFS) has also committed to coordinate with the state to resolve future jurisdictional issues. Those statements, contained in a recent letter to Knowles, were a key factor in the state's decision not to file a brief in support of a lawsuit challenging the federal government's recent decision to implement a quota share system in the sablefish and halibut fisheries off Alaska.

Many Alaska fishermen have objected to the quota share system, known as Individual Fishing Quotas or IFQs, fearing it may exclude many resident, small-boat fishermen. The state raised its own concerns regarding jurisdiction. The state objected to the process used by the federal government to extend sablefish IFQs into a small portion of state waters. But the federal government has now agreed to follow a process in the future which recognizes and protects the state's jurisdictional rights.

According to NMFS regional director Steve Pennoyer, "NMFS concedes that all existing state laws governing fishing in state waters would remain in effect and the state would retain jurisdiction and authority to promulgate additional fishery laws that could nullify these federal measures in state waters."

"It is not NMFS' intent to challenge the state's authority to manage fisheries in state waters," Pennoyer added.

Resolving the jurisdictional issue was a main factor in the state's decision not to file a brief in support of the Alliance Against IFQ's in their ongoing lawsuit against the quota share program. The Alliance is planning to appeal an unfavorable ruling to the 9th Circuit Court and had requested that the state join in the case as a friend of the court.

-more-

"A portion of the IFQ suit which has direct implications for the state, and one which I feel compelled to address as Governor, is that of jurisdiction," Knowles said in a letter to Alliance members. "It is important that the federal government understand that the state objects to the specific way that the preemption was handled in this instance, and that we will not tolerate preemption actions without the strict adherence to Magnuson Act procedures in the future. I am confident that the process to which NMFS has agreed offers the state at least as much assurance and protection as we could have gained in the courtroom."

The state has other concerns with the Alliance lawsuit. The suit initially challenged the Community Development Quota (CDQ) program as a part of the IFQ regime. Knowles is a strong advocate of the CDQ program, which has brought fishing jobs and income to many residents of western Alaska. While the Alliance does not intend to pursue the CDQ portion of their suit in their appeal, Knowles said that the issues may not be severable and may, in fact, put a portion of the CDQ program at risk.

While saying that he is still uncomfortable with aspects of the IFQ plan, Knowles pointed to the fact that the halibut season, under the IFQ system, is scheduled to open less than one week from now. The Alliance's appeal is likely to be filed as fishermen bait their hooks.

"Thousands of Alaskans, even many who have objected to the IFQ program, have resigned themselves to the fact that this program is becoming a reality and are endeavoring to move ahead and participate in these fisheries," Knowles said. "Fishermen and processors have essentially begun their season assuming an IFQ management regime will be in place. Boats and gear are being purchased, upgraded and worked on. Alaskans have borrowed and lent money to buy and sell quota shares. While I agree that the IFQ program presents some potential negative impacts, I must also acknowledge that a last minute disruption of the program would also cause hardship and uncertainty for many Alaska families and businesses.

"At this point, the most constructive thing for those of us with concerns about the halibut and sablefish IFQ program to do, is to put our heads together and look for ways to improve this program and address the problems it presents to Alaskans," Knowles said.

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 1997

P.O. Box 11000
Juneau, Alaska 99811-8001
(907) 464-2800
Fax (907) 464-5814

The Alliance Against IFQs
P.O. Box 237
Seldovia, AK 99663

Dear Members of the Alliance Against IFQs:

I am writing to inform you that the state will not file an Amicus Brief with the 9th Circuit Court in the upcoming appeal of the Alliance lawsuit challenging the halibut and sablefish Individual Fishery Quota (IFQ) program, and to explain my reasons for this decision.

My personal philosophy is to favor open access management of fisheries, and to oppose privatization of public resources. There are many aspects, both general and specific, about the halibut and sablefish IFQ program which greatly concern me. As you know, I testified against IFQs at the North Pacific Fishery Management Council. It is truly unfortunate that this program was pushed through the process before its many flaws, loopholes, and potentially negative impacts could be corrected.

I have given careful consideration to the lawsuit appeal, and to the legal and practical options and aspects of state involvement. A decision had to be reached within the context of how far along we were in the implementation of the IFQ program. While the prospect of disrupting progress of the IFQ program may have been an appealing option years, or even several months ago, we cannot ignore the fact that the halibut fishing season is now scheduled to begin under this system in less than a week. Thousands of Alaskans, even many who have objected to the IFQ program, have concluded that this program is becoming a reality. Fishermen and processors have essentially begun their season assuming an IFQ management regime. Boats and gear are being purchased, upgraded, and worked on. Alaskans have borrowed and lent money to buy and sell quota shares. While I concur that the IFQ program presents some potential negative impacts, I must also acknowledge that a last-minute disruption of the program would also cause hardship and uncertainty for many Alaska families and businesses.

A portion of the IFQ suit which has direct implications for the state, and one which I feel compelled to address as Governor, is that of jurisdiction. That issue, which was the subject of the Amicus Brief filed by the state in the lower court, is the question of whether the National Marine Fisheries Service (NMFS) followed the proper preemptive procedures, as spelled out in the Magnuson Act, when assuming management jurisdiction over state waters for the sablefish IFQ program. It is important that the federal government understand that the state objects to the specific way the preemption was handled in this instance, and that we will not tolerate preemption actions without strict adherence to Magnuson Act procedures in the future.

Alliance Against IFQs
 March 9, 1995
 Page Two

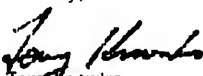
My Administration initiated discussions with the NMFS on this matter. I am pleased to report that this effort has been successful. NMFS has acknowledged the state's authority to manage fisheries in state waters. I am confident that the process to which the NMFS has agreed offers the state at least as much assurance and protection as we could have gained in the courtroom. Enclosed for your information, is a copy of a letter signed by Steve Pennoyer, Alaska Region director of NMFS. In this letter Mr. Pennoyer acknowledges the state's concern and lays out a framework for a process within which the state and federal government will handle preemptive actions in the future.

As a final point, while I understand that the Alliance does not plan to appeal the specific challenge to the Community Development Quota (CDQ) program contained in your lawsuit in the lower court, there is a question about whether CDQs would be severable from the rest of the IFQ program. Furthermore, I understand that the Alliance will argue against severability of the two issues if the question arises in the appeal. As I am sure you are aware, I am a strong advocate of the current CDO program. I believe it is one of the most successful efforts ever undertaken in rural economic development, and its benefits reach statewide. I find the potential risk to the CDQ program to be a main deterrent to state involvement in the IFQ lawsuit appeal.

I know that the Alliance and many others will be deeply disappointed that the state has decided not to file a brief in your appeal. While I share many of your concerns about the IFQ program, my responsibility is to weigh the many aspects of the issue and take state action which I believe to be the best and most appropriate at this time.

At this point, the most constructive thing for us to do is to put our heads together and look for ways to improve this program. We must find ways to make this program work for the Alaskan jobs, families, and coastal communities which are so dependent upon these fisheries. We need to ensure adequate enforcement and safety, and access to financing of quota share purchases for Alaskan fishermen. I look forward to working with you on our many common goals, and hope that you will continue to share your ideas and concerns with my office.

Sincerely,



Tony Knowles
 Governor

Enclosure

HR-09-1995 17147

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| To | 78 | |
| From | Ted Kasmirski | |
| Co. | Dot-Alexson | |
| Dept. | Phone # | |
| Fax # 05 | Fax # 283-3344 | |

P. 01

326 CENTER AVENUE, P.O. BOX 1
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KODIAK LONGLINE ASSOCIATION

HALIBUT • SABLEFISH • PACIFIC COD • CRAB

March 10, 1995

Honorable Don Young, Chairman
House Committee on Resources
U.S. House of Representatives
Washington, D.C.

Fax: (202) 225-1542

RE: Magnuson Act Amendments

Congressman Young:

The Kodiak Longline Vessel Owners' Association represents fixed-gear fishermen involved in crab and groundfish fisheries in the Gulf of Alaska and the North Pacific. We are writing to share with you our concerns about proposed amendments to the Magnuson Act and the possible adverse repercussions they will have.

It is our understanding that certain language in the current draft of S 39 will be included in a draft of H.R. 39 updated by the Fisheries Subcommittee. Of particular concern to us is the language proposed to amend Section 303, subsections: (f)(2)(B); and (f)(3).

The language in subsection (f)(3) will serve to eviscerate the current North Pacific halibut and sablefish ITQ programs. Requiring that the management plan including these ITQ programs "be amended...to be consistent with this subsection and any other applicable provisions of this Act" would only cause the entire issue of halibut and sablefish ITQ programs to be revisited. This would cause great economic and emotional turmoil. Considering that: the programs are already in place; investments in and decisions based on these programs have already taken place; and the season is poised to open on March 15, any such belated efforts to "amend" these programs would result in mass confusion and economic hardship. We propose the following addition:

"(a) Nothing in this Act shall be applied retroactively to the Regulatory Amendment Affecting the Fishery for Pacific Halibut in and off the State of Alaska, Amendment 15 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands, and Amendment 20 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, approved by

the Secretary on January 29, 1993, and the regulations promulgated in implementation of each such Amendment on November 9, 1993 and on any date subsequent thereto.

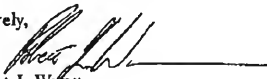
(b) Exception. -- Subsection (a) shall not apply to fees or a lien registry system that may be established pursuant to the provisions of this Act."

The reference in subsections (f)(2)(B) to "provide a portion of the annual harvest for entry-level fishermen or small vessel owners who do not hold individual transferable quotas" would not only be redundant, in light of current regulations in the halibut and sablefish programs, but would further dilute the harvest available to current ITQ participants. A limited entry program is, as its name implies, available to only a limited number of participants.

There are already regulatory provisions in the halibut and sablefish programs to provide small amounts, or "blocks" of quota share for entry-level fishermen or small vessel owners. These blocks are protected from consolidation so that they will endure in attainable amounts. Protected to such an extent that in some cases it will not be economically feasible to harvest such small amounts, even for the entry-level fisherman or small vessel owner. Any portions withheld from the annual harvest, purportedly to assist the entry-level fisherman, would only further the devaluation of these blocks; thereby decreasing real economic opportunities for entry-level fishing. In order to keep these fisheries truly accessible on an entry-level, we would like this language to be deleted from any proposed draft of H.R. 39.

We hope that you will carefully consider the proposals we have presented and the possible implications if these concerns are not addressed.

Sincerely,



Robert J. Warm
President

cc: Bill Wolfe
Trevor McCabe

**KODIAK LONGLINE
VESSEL OWNERS' ASSOCIATION**



326 CENTER AVENUE, P.O. BOX
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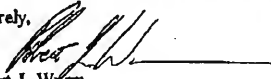
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We hope that you will carefully consider the proposals we have presented and the possible implications if these concerns are not addressed.

Sincerely,



Robert J. Wirm
President

cc: Bill Wolfe
Trevor McCabe

Drew Scalzi
 41685 Redoubt Circle
 Homer, Alaska 99603
 ph 907-235-6359
 fax 907-235-4278

Senator Ted Stevens
 United States Senate
 522 Hart Bldg.
 Washington, D.C. 20510-0201

March 1, 1995

Dear Senator Stevens,

About a week ago I spoke with Earl Comstock regarding the reauthorization of Magnuson and Senate Bill 39 introduced by you and Senator Murkowski. Earl to his credit has laid to rest several concerns many of us have had regarding the bill.

Earl assures me that the IFQ plan for halibut and sablefish would not be resubmitted for review by the Secretary of Commerce unless it was inconsistent with the Magnuson rewrite. This is comforting only if we know it will remain consistent after the rewrite. To be consistent we will be at the whims of future councils which is subject to appointment by a democratic governor who does not like IFQs.

This concerns us !

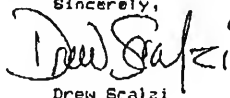
Much heart and soul was put into the IFQ plan by the "small boat fleet". Now, comments from other groups designing the comprehensive rationalization plan, are wanting to revisit the halibut/sablefish plan in a few years. This is certainly inappropriate. Those who opposed the longline plan, chose to fight each other in the allocation battles, and now are still at great odds at addressing the by-catch issue, are those who wish to revisit our plan in a few years, and for what purpose? I'm sure we will find a few bugs in the system but, we will address them through the council process with regulatory amendment. We do not need the direction from the trawl fleet or special interest groups dictating change to the halibut/sablefish IFQ plan.

One last thing we feel needs clarification is the entry level access for fishermen. If this is up to the area councils, then again we can live with this. If by our reading of this we are correct in assuming the Sitka Block amendment does not qualify for entry level fishermen, then our plan is already inconsistent.

Please clarify and establish that the entry level is determined by the councils. To the secretary entry level may mean purchase of shares not required versus initial investment purchasing a small amount.

Senator thank-you for all your work on Magnuson and many of us here on the Kenai Peninsula wish you all the success on this very important piece of legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Drew Scalzi". The signature is written in a cursive, somewhat stylized font. The first name "Drew" is written in a larger, more prominent script, and "Scalzi" follows in a similar but slightly smaller script. There is a small mark to the right of the signature, possibly a stray mark or the end of a line.

Drew Scalzi

Senator STEVENS. I am trying to keep up with where you were. You ran through that very fast. Next is John Bundy.

STATEMENT OF JOHN BUNDY, PRESIDENT, GLACIER FISH COMPANY, SEATTLE, WASHINGTON

Mr. BUNDY. Senator Stevens, I am John Bundy, manager of the Glacier Fish Company, and I appreciate you and Senator Gorton's interest in fisheries issues in the North Pacific.

Our company is owned and operated by fishermen. We own and operate two factory trawlers. In addition to that, we own and operate a factory longliner jointly with our CDQ partner. Our CDQ partner is Norton Sound, which represents the 15 northernmost CDQ communities. We employ 250 employees annually, mostly from the States of Washington and Alaska. Our Alaska employees are mostly from the CDQ communities. Our work force is very diverse. We pay wages that have allowed even our lowest paid processors to purchase homes and attend colleges and start businesses. I am very proud to be associated with the factory trawler fleet and in particular, Glacier Fish Company.

I am also very proud of our CDQ partnership with the Norton Sound people. Our fleet, the factory trawler fleet, created the American cod fishery in the Bering Sea in the early 1980's and created the American pollock fishery in the Bering Sea in the mid-80's. More recently we have pioneered development of several value-added product lines. Since 1992, the factory trawler fleet has provided the economic engine that drives the CDQ programs.

In my testimony this morning, I would like to touch on three general areas involved in the Act. One is the State of the fisheries in the North Pacific; one is CDQ and one is ITQs.

I have been quite surprised by the attacks that we have experienced on those who have risked their lives and fortunes to Americanize the fisheries, and we would appeal to you,

Senator Stevens, and you, Senator Gorton, to be aware of certain basic facts, and I know you already are aware about the North Pacific fisheries.

Those are; one, the fisheries—the groundfish stocks—are in fact healthy. Two Bering Sea is not overfished. I want to repeat the simple fact that we have heard already this morning that the Bering Sea groundfish stocks are very conservatively managed. I have attached in my testimony the 8-year history of groundfish stocks, which illustrates the scientific evidence showing that actual harvests over the past 8 years have been 25 percent less than the allowable biological catch.

In contrast to charges from alarmists, discards in the Bering Sea do not constitute a biological problem. So, let us put this in context. The overall rate of discards from the Eastern Bering Sea groundfish fisheries by all gear groups is less than most major U.S. fisheries. Also, our primary fishery in the Eastern Bering Sea, midwater pollock, has the highest retention rate of any fishery in the world and one of the lowest bycatch rates in the world.

Let me turn to the CDQs. The CDQ experience teaches how we can improve our healthy resource even further and enhance its values. The pollock CDQ program has an amazing success story in the short amount of time that it has existed. By the end of this year,

it will have accomplished \$80-million in revenues to CDQ communities from pollock quota; \$4-million paid in direct wages by factory trawler companies to residents from CDQ communities; 700 people trained and employed in pollock harvesting and processing, almost all on factory trawlers.

The CDQ-related employment now accounts for 18 percent of all private sector employment in the CDQ communities. A percentage that is equivalent to Boeing's employment in our region here. The genius of this program is its simplicity. It blends expertise and economic incentive of private business with the resourcefulness and local concerns of the Western Alaska residents.

It is based on just a few pages in the Federal regulations. It has worked because the management and the economic details were left to private business and local interests to work out, rather than to government. We support extension and expansion to other species of CDQ programs in the Bering Sea.

With regard to ITQs, it is now clear that an ITQ system properly designed is the superior management system for the North Pacific groundfish fisheries. It has also been proven by the CDQ experience that an ITQ would work well in the Bering Sea cod and pollock fisheries.

Our CDQ experience shows deliberate fishing adds value. The marketplace responds to the added value. Bycatch is better controlled. A study done for the Alaska Fish & Game concludes that the CDQ fishery allows harvesting to be conducted in a more efficient manner with less waste and discards. Economic efficiency is enhanced.

In summary, I would like to propose the following principles that should guide any legislation applicable to the North Pacific and indeed to all the Councils.

We should proceed in a cooperative fashion as is exemplified by the CDQ program. We should foster a management system that both protects and enhances the value of the resource. We should adopt a system that is market driven, will pay for itself, and reduce inefficient bureaucracies.

We should commit to a fair and objective evaluation to ensure that management is based on fact, not rhetoric, emotion, or personal gain.

I thank you Senator Stevens and Senator Gorton.

[The prepared statement of Mr. Bundy follows:]

Testimony of
JOHN BUNDY

on Behalf of
Glacier Fish Company

Regarding

Reauthorization of the Magnuson Fishery
Conservation and Management Act

Presented to the
Subcommittee on Oceans and Fisheries

of the
Senate Committee on Commerce,
Science and Transportation

Seattle, Washington
March 18, 1995

Thank you, Mr. Chairman. I appreciate the opportunity to appear before the Subcommittee on Oceans and Fisheries to discuss issues related to re-authorization of the Magnuson Fishery Conservation and Management Act. My name is John Bundy. I am Business Manager of Glacier Fish Company.

My remarks today will be confined to just a few of the important issues involved in re-authorization, including the state of the fisheries in the Bering Sea, Community Development Quotas (CDQs), and Individual Transferable Quotas (ITQs).

Glacier Fish Company is owned and operated by fishermen. We own and operate two factory trawlers: the NORTHERN GLACIER, 200 feet in length, and the PACIFIC GLACIER, 276 feet. The NORTHERN GLACIER was built new in Tacoma, Washington and was one of the first U.S. factory trawlers to fish off Alaska. In addition, we operate a factory longliner, the NORTON SOUND, which we own jointly with our CDQ partner. Our CDQ partner is Norton Sound Economic Development Corporation (NSEDC) which represents the northernmost CDQ communities: Nome, Savoonga, Gambell, Elim, Wales, Diomedea, Unalakleet, Shaktoolik, Koyuk, Stebbins, Saint Michael, Golovin, Teller, Brevig Mission and White Mountain. Our factory trawlers are used primarily to catch and process pollock in the Bering Sea, including 20,000 metric tons of CDQ pollock quota annually. In addition, our factory trawlers catch and process Pacific cod in the Bering Sea, and are used as processors of pink salmon in Norton Sound and Prince William Sound. One of our factory trawlers also catches and processes hake off the coasts of Oregon and Washington. Our jointly-owned factory longliner is involved in the Pacific cod longline fishery in the Bering Sea, and also has a sablefish CDQ quota in the Bering

Sea and Aleutian Islands. Finally, our factory longliner will process salmon in Norton Sound from June through August, caught and sold by fishermen from the CDQ communities.

Our administrative offices are in Seattle. As you see, we conduct operations from Oregon to the Bering Sea. We employ 250 people annually, mostly from the states of Washington and Alaska. Most of our Alaska employees are from the CDQ communities of Norton Sound. We manufacture wholesome fish products made from very fresh fish processed and frozen at sea. Most of our production is exported to Asia and Europe, but millions of pounds of our production annually are sold in the United States and Canada. Our workforce is very diverse, and we pay wages that have allowed many of even our lowest paid processors to purchase homes, attend college, and start businesses.

I am very proud to be associated with the factory trawler fleet and, in particular, with Glacier Fish Company. And, for reasons that will become apparent, I am also very proud of our CDQ partnership with the people of Norton Sound. Our company, along with others like it, created the American cod fishery in the Bering Sea in the early 1980s. The factory trawler fleet created the American pollock fishery in the mid-1980s. We took over both the harvesting and processing of the vast North

Pacific groundfish resources and displaced the foreign fleets. We pioneered the development of several value-added product lines: shatterpack cod fillets in 1982, pollock fillets in 1986, and surimi in 1987. Currently, we are working on new value-added products made from pink salmon. In short, the factory trawler fleet Americanized the groundfish fisheries in the North Pacific as envisioned by the Magnuson Act and its principal authors, Senators Magnuson and Stevens. In more recent times, starting in 1992 and up to the present, we have provided the economic engine that drives the CDQ programs from the Aleutians to Diomedede Island.

State of the Fisheries. The politics of fisheries is fierce. Frankly, I am amazed at the lengths to which some will go to attack those who have risked their lives and fortunes to Americanize the fisheries in the North Pacific, thus creating an American industry that employs thousands of American workers and generates hundreds of millions of dollars in exports, which did not exist just fifteen years ago.

These attacks come in all sorts of forms, including outright lies published in full page ads in the national press. The sources of attacks include some sincere but misguided local environmental groups, but also powerful international groups that seek to raise money by making dramatic claims without much regard to truth. Unfortunately, these attacks are too often the result of in-fighting within our own

fishing industry, pitting one fishing constituency against another in a battle to wrest away resource from those who Americanized the fisheries. The most frustrating of these attacks come from commercial interests parading as environmental groups that hire lawyers to spout politically correct environmental rhetoric.

The scary thing is this: these attacks, carried out through the print media, television, and so-called grass roots environmental organizations, have caused erroneous public perceptions which result in misguided political pressure on our elected representatives as well as the North Pacific Council.

Let me be frank. The public perception being fostered is this: that factory trawlers are death ships destroying the Bering Sea, resulting in an imminent collapse of the fisheries. In short, these prophets of doom preach that the sky is falling and all ills, real or imagined, are caused by factory trawlers which must be stopped. The facts reveal an entirely different picture.

Mr. Chairman, we appeal to you, Senator Gorton, and other members of Congress to be aware of certain basic facts when confronted with these narrow interest groups and constituents that repeat these phony charges. Here are the basic facts

about the state of the fisheries where our factory trawler fleet operates: the Bering Sea.

1. The groundfish stocks in the Bering Sea are healthy. In fact, the primary fisheries of factory trawlers -- pollock, cod and flatfish -- are flourishing. There is growing scientific evidence that some stocks, primarily flatfish, are in fact too healthy and, by preying on crab larvae and juvenile stocks, are primary contributors to the decline in crab stocks.

2. The Bering Sea is not overfished, nor is it in imminent danger of collapse. Only an irresponsible pseudo-environmental group, desperate to protect its cash flow by raising money from a gullible public, would make such charges. The fact is that the Bering Sea is conservatively managed, and many of the groundfish species are underfished. I want to repeat this simple fact: the Bering Sea groundfish stocks are very conservatively managed. I have attached as Exhibits A and B the eight year history (1988 - 1995) of groundfish stocks in the Bering Sea/Aleutian Islands. These are provided by Dr. Loh Lee Low, a fisheries scientist for the National Marine Fisheries Service and chair of the Bering Sea/Aleutian Islands Plan Team for the North Pacific Council. These graphically show the following: the annual harvestable surplus of groundfish (the acceptable biological catch, or "ABC") has varied from

about 2.5 million metric tons to over 2.9 million metric tons; in fact, the harvestable surplus in 1995 is near the top of the eight year history; the allowable catch level has been capped each year by the Council at no more than 2 million metric tons; therefore, in every year, we harvest substantially less groundfish than the scientists would allow for a healthy biomass. To put it another way, from 1988 through 1995, the scientists found that a healthy harvest of groundfish would have been over 22 million metric tons, but actual harvest will be less than 16 million metric tons.

3. Contrary to charges from alarmists, discards of fish in the Bering Sea are not a biological problem. All discards count against the harvest quotas that are set for each groundfish species on an annual basis. As explained above, these quotas have been conservatively set as a result of the 2 million metric ton cap. This discard controversy is not an issue of overfishing or biological degradation. Before rushing to draconian measures that would hobble fishermen, let's put this in context:

(a) According to a comprehensive United Nations study, the overall rate of by-catch and discard in the Eastern Bering Sea groundfish fisheries by all gear groups is less than most other major U.S. fisheries, and is less than 50% of the average global rate.

(b) According to the same study, the main fishery in the Eastern Bering Sea -- midwater pollock -- has the highest retention rate of any fishery in the world, and one of the lowest by-catch rates in the world.

Of course, there is by-catch in the Bering Sea. No one denies that it is an issue that needs additional work. However, we need properly to define the problem before we settle on a solution. It is primarily an issue of economic waste caused by the open access race for fish. And, since it is an economic problem, it affects the fisherman first and foremost. We have the greatest interest and motivation to reduce waste and increase economic value from the resource. We are not stupid. It would seem in this environment of the Republican Revolution it would be readily understood, without complicated explanations, that proper alignment of economic incentives with the needs of resource protection and management would be the best way to solve the discard problem. I will touch on this further in my discussion about CDQs and ITQs.

It should also be noted that our trade association has a strong record of addressing by-catch issues in a cooperative fashion. A case in point is the issue of chum salmon by-catch which was on the front burner in 1993. In fact, Mr. Chairman, I think you conducted some hearings in Western Alaska on the issue. In response, the American Factory Trawler Association (AFTA) conceived of and co-

sponsored the establishment of the Salmon Foundation which was approved by the North Pacific Council. The Foundation has on its Board four representatives from Western Alaska, as well as representatives from industry and the scientific community. The purpose of the Foundation was to use computer and satellite technology and industry cooperation to reduce chum by-catch. Costs of the Foundation were covered by self assessments on industry. In 1994, chum by-catch by all factory trawlers in the Bering Sea was 31,676 fish. To alarmists, this might sound like a big number, until put into context. It represents a 48% reduction in chum by-catch by factory trawlers as compared to 1993. It represents a mere .00016 of the commercial harvest of salmon in Alaska in 1994. It compares very favorably to the 700,000 chum cap that the State of Alaska management regime allows to be intercepted by local Alaska fishermen in the False Pass management area.

CDQs and Their Future. Whether by genius or luck or something in between, the pollock CDQ program has been an amazing success story in the very short time it has existed. It is surprising to reflect that CDQ fishing started in December 1992 -- barely two years and three months ago. By the end of the first phase on December 31, 1995, the pollock CDQ program will have accomplished the following:

- Up to \$80 million in revenues to CDQ communities for pollock quota.

- \$4 million paid in direct wages by factory trawler companies to residents from CDQ communities hired by factory trawler companies.
- Over \$4 million paid out in other employment wages to residents of CDQ communities.
- 700 people trained and employed in pollock harvesting and processing, almost all on factory trawlers.
- Hundreds of local fishermen with new markets for herring and salmon created with the help of factory trawler companies.
- Millions of dollars invested in education endowment funds.

Another remarkable statistic is that CDQ-related employment now accounts for 18% of all private sector employment in the CDQ communities. By comparison, that's at least the equivalent to the importance of Boeing employment to the Puget Sound region.

Other results, more difficult to measure, include a general boost to the economy of the Western Alaska region, resulting in greater purchasing in local stores, purchase of homes, equipment, and development of small business. Finally, we have heard from many individuals in the region that there is a realization of greater opportunity and a renewed sense of hope among the people. And, as we have heard in testimony from community elders, there has been a reduction in the incidence of alcoholism and suicide among the young.

The genius of the program, intended or not, is in its simplicity and the blending of the expertise and economic incentive of private business with the resourcefulness and local concerns of the Western Alaska leaders and residents. It is based upon just a few pages of federal regulations, and the rest was left up to regional interests and private business to work out. It is a prime example of a quota-based system of resource management that properly aligns economic interest with, in this case, regional and community-based economic and social concerns. It has worked, in large part, because the management and economic details have been left to private business to work out, rather than to government. I submit, Mr. Chairman, that no government program could achieve as much for the Western Alaska region as the partnership between private business and CDQ communities.

Mr. Chairman, it is fitting that we acknowledge some of the people who have actually made the CDQ program a success. Many of them are Alaskans, like Henry Mitchell, Harold Sparck and Clem Tillion, who conceived of the idea and guided it through the Council process. There are Western Alaskans, like John Jemewouk, Joe Paniak, Robin Samuelson and Henry Ivanoff, who saw the vision and provided the leadership to organize their regions and win CDQ allocations. There are other Alaskans from state government -- like Donna Parker, Dave Benton and John Walsh -- who have provided invaluable instruction, guidance, discipline and supervision to the CDQ programs. Finally, there are the factory trawler companies that provide the economic engine that drives the CDQ programs and provide much of the creativity that distinguishes this partnership between private business and the Western Alaska communities.

Let me mention just a small development that occurred in Norton Sound and is an example of the creativity that I have mentioned. When we started the program, the Norton Sound fishermen told us that they had never had a decent market for their pink salmon which are so plentiful that they clog up their rivers and rot in the valleys. They asked for our help and, together, we developed a plan that would apply factory trawler technology to this underutilized species in the Sound -- the pink salmon. Since extreme freshness is a requirement for a decent frozen product from pink salmon, the

Norton Sound fishermen had to learn new techniques to preserve salmon quality. Working together, Glacier Fish Company purchased one million pink salmon from Norton Sound fishermen last summer, paying about \$450,000 to local fishermen from the CDQ communities. This represented a commercial harvest of pink salmon in Norton Sound at least three times greater than any previous harvest in the history in the State of Alaska. In fact, the Norton Sound salmon fishery, which our company and the people of Norton Sound have developed together, literally smashes all previous records of Norton Sound commercial harvests. This is perhaps a small accomplishment in the overall Alaska salmon fishery, but rest assured it is extremely important to us who are concerned about economic development in Norton Sound.

Are there problems with CDQ programs? Of course there are, not the least of which is that CDQs are a reallocation of resource away from others who have developed a fishery. Controversy is inevitable. And, as with any multi-million dollar business that has grown up in barely two years, there is need for more financial and business planning and controls on spending. On balance, however, the CDQ programs are a clear success, to the credit of the CDQ groups themselves, the factory trawler companies that are their partners, and the State of Alaska officials who administer the program.

We support extension and expansion to other species of CDQ programs in the Bering Sea, but before discussing the future of CDQs, I would like to direct my remarks to another, closely related quota based system of resource management -- Individual Transferable Quotas (ITQs).

ITQs. The CDQ program was seen by many as a precursor to an ITQ program. It was adopted in 1992 as part of the same FMP amendment in which the Secretary of Commerce reluctantly approved the controversial on-shore allocation scheme. In doing so, the Secretary urged the North Pacific Council to get on with developing a comprehensive, rational, market-driven system of management.

At this point, the intellectual debate about ITQs is over. The overwhelming majority of academicians, economists, fisheries managers and government regulators who have studied this subject and observed similar programs in numerous countries around the world agree that a quota-based system, if properly designed, is the superior management system for fisheries such as North Pacific groundfish. It is also now proven by the CDQ experience that an ITQ system would work well in the Bering Sea cod and pollock fisheries. Now, the only real opposition is political from those who are relative latecomers to the fisheries and a few environmental groups which have a peculiar social agenda that is inherently opposed to a free market system.

In the real world, of course, political debate may trump objective analysis and it is important that we who work for ITQs state the case in the political arena as best we can. And, in the political arena, sometimes principle is persuasive. I start from this thesis: an ITQ system of management for North Pacific groundfish, if properly designed, is clearly superior to the race for fish system because it will enhance the value of the resource and, at the same time, protect the resource. Since the CDQ program is itself a quota-based management system, we should be able to gain some insight about this thesis by examination of the CDQ experience. I will use our own experience at Glacier Fish Company to comment.

(a) Deliberate Fishing Adds Value. When free access fishing ends and CDQ fishing begins, our entire mode of operation slows and the vessel skipper shifts gears from focusing on the number of fish to the value of fish he catches each day. Our quota is in the water and will stay there until we are ready to take it out. In the meantime, the fish remain fresh, and we incur no cold storage costs. Some will say that an ITQ system won't change anything in the short roe season because we will race to catch as many fish as possible in the shortest amount of time. Not true. We are fishing CDQ roe fish right now, and we take extra time to locate better roe fish and to sort them more carefully in order to earn higher prices in the Japanese market. Also, during CDQ fishing we have the time to experiment with new product forms for

new markets; we have the time to enhance the appearance and quality of our pack; and we have the time to process damaged fish that might otherwise be discarded in the frantic pace of open access fishing. It is abundantly clear from our daily production reports that when the pace slows, our crew is able to rest more and work more safely, and quality takes precedence over sheer production.

(b) The Marketplace. Proof is in the pudding. We are told by the marketplace -- both here and in Japan -- that our CDQ pollock quota gives extra value. We are better able to schedule a steady flow of fresh product to our customers over a longer period of time. When the Japanese harvested the pollock in the U.S. 200 mile zone, they had a quota system. Still today, members of the association of kamaboko makers in Japan -- Zenkama -- constantly ask us when we will be able to go to an ITQ system because they know the quality of surimi will increase. Domestically, Long John Silver, one of the largest buyers of white fish in the United States, seeks out companies with CDQs to be their suppliers.

(c) By-catch. The Alaska Department of Fish & Game commissioned a study which concludes that "the CDQ fishery allows harvesting of the Bering Sea pollock resource to be conducted in a much more efficient manner with less waste and discards." Slower, more deliberate fishing results in fewer regulatory and economic

discards. For example, we work with our CDQ partner specifically on the issue of salmon by-catch. If it is a problem during CDQ pollock fishing, we simply take the time to move to grounds where we are not encountering salmon.

Our by-catch during CDQ pollock fishing is carefully monitored at all times by two federal observers on each factory trawler and is also reported by our CDQ partner to the State of Alaska. In 1994, our by-catch rate of all non-target species during CDQ pollock fishing was 1.76%. This means that all by-catch from 20,792 metric tons of pollock equalled just 366 metric tons. Alarmists will say: "That's terrible, that's more than 800,000 pounds of dead or dying fish, which is 900,000 meals, which could feed the entire City of Seattle, or maybe the entire State of Alaska, and is more fish than the New England fleet takes in a year." In short, the alarmists would again claim the sky is falling and factory trawlers are to blame. At this point, I'm reminded of the old saying: there are lies, damn lies, and statistics. The meaningful conclusion, of course, is that a by-catch rate of 1.76% during CDQ fishing is lower than any significant commercial fishery in the State of Alaska, including the salmon fisheries administered by the State of Alaska. It is by far lower than the by-catch rate for recreational fishing (150%) and is lower than virtually any major commercial fishery in the world.

(d) Economic Efficiency. The proposition that an ITQ system will solve the over-capitalization problem is self-evident, proven by common sense, and is borne out by the CDQ experience. What is lacking in the fishing business, more than any other, is the ability to plan and to match capital investment to economic return. Even farmers at least have finite acreage, known historical yield and time to adjust to emergencies. By contrast, a factory trawler that experiences an engine problem in the middle of a 26-day roe season, as happened last month to the ALASKA OCEAN, faces possible economic disaster. With a quota, such a situation could be salvaged by leasing out the quota for use by others; or by delaying fishing operations until a mechanical problem could be fixed.

With CDQ, because it is a quota, we are able to schedule fishing activity in a manner that will reduce costs and maximize value by timing production to the market. For example, if we have a gap of two weeks between cod fishing and hake fishing, we are able to fill it with CDQ pollock; we don't have to rather fly entire crews to and from home or have them sit idle between the seasons. And, with a known quantity of fish, we are able to make decisions about capital investment much more efficiently.

The Future. It is important to say here that the opinions I state are solely my own and those of my company, and I do not speak for AFTA or anyone else. My

opinion is that the interests of CDQ and ITQ should be allowed to converge naturally for the benefit of the Western Alaska communities and the entire fishing industry, as well as the resource.

The CDQ experience clearly shows the way for the future if we will only be bold enough to overcome the politics of self interest. The vision is simple and, if we have the will, we can enhance the value of our resource for everyone while protecting the resource. We can create enough value enhancement that the industry will be willing and able to pay the cost of enforcement, thus avoiding any burden on taxpayers. We can dramatically reduce the bureaucracy of fish management, as has occurred in New Zealand. And, we can achieve permanent quotas for the Western Alaska communities that will serve Alaska well into the next century.

Let's look for a minute at the central problem with CDQ. It is controversial, both inside and outside the State of Alaska, because it reallocates resource away from those who have invested their lives and financial resources to create American fisheries and does so at a time when the fisheries are already overcapitalized. No matter the good reasons for doing so, whether based on social equity or other high principles, those who experience a reduction in their fishery, that they have helped

create and that they need to survive, will perceive an injustice greater than any other.

This central fact is the greatest obstacle for the Western Alaska communities to achieve what they need and want -- a permanent quota system in pollock and further expansion of the system to other species as we have already seen with halibut and sablefish. The solution, if we choose to pursue it, is a principled one in which we recognize what the CDQ experience has shown: that a quota-based system is superior for management because it enhances the value of the fisheries and protects the resource. If we choose principle over self interest, we will institute a permanent CDQ system in the context of a comprehensive ITQ system, giving a superior management system to all. By correcting the evils of the race for fish management style, we will greatly improve the business climate for those who have invested themselves in the American fisheries and we will make it easier to see the wisdom of sharing the resource with coastal residents who have traditionally not participated.

Summary. I don't have specific recommendations about Senate Bill 39, the Sustainable Fisheries Act. Instead, I would like to propose general principles that should guide any legislation which is applicable to the North Pacific.

1. We should seek to proceed in a cooperative fashion, as exemplified by the CDQ program which joins the principles of good business with social and economic concerns of Western Alaska.

2. We should foster a management system that enhances the value of the fishery while protecting the resource by following the CDQ experience that allows a more proper alignment of economic incentives with conservation concerns.

3. We should foster a management system that is market driven, will pay for itself, and reduce inefficient bureaucracies, both at the state and federal levels.

4. We should commit ourselves to tell the truth, and to challenge those who would attempt to mislead the American public for their own personal gain and narrow agendas. In this regard, I would like to acknowledge the leadership and example of Suzanne Iudicello, Vice-President and General Counsel of the Center for Marine Conservation, an environmental organization. Ms. Iudicello, at a recent seminar on by-catch in Seattle, proposed that representatives of environmental and industry interests pledge to tell the truth, to work together in a cooperative fashion to find what works and makes sense and, once we figure it out, to bring it into practice.

In short, we should state in a straightforward fashion in the Magnuson Act that the Western Alaska CDQ programs are permissible. We should encourage solutions by cooperation, as exemplified by the partnership between private business and the Western Alaska communities. And, consistent with the times, we should provide that the Councils are encouraged and directed to develop market driven management systems which properly align economic incentives with conservation concerns.

EXHIBIT A

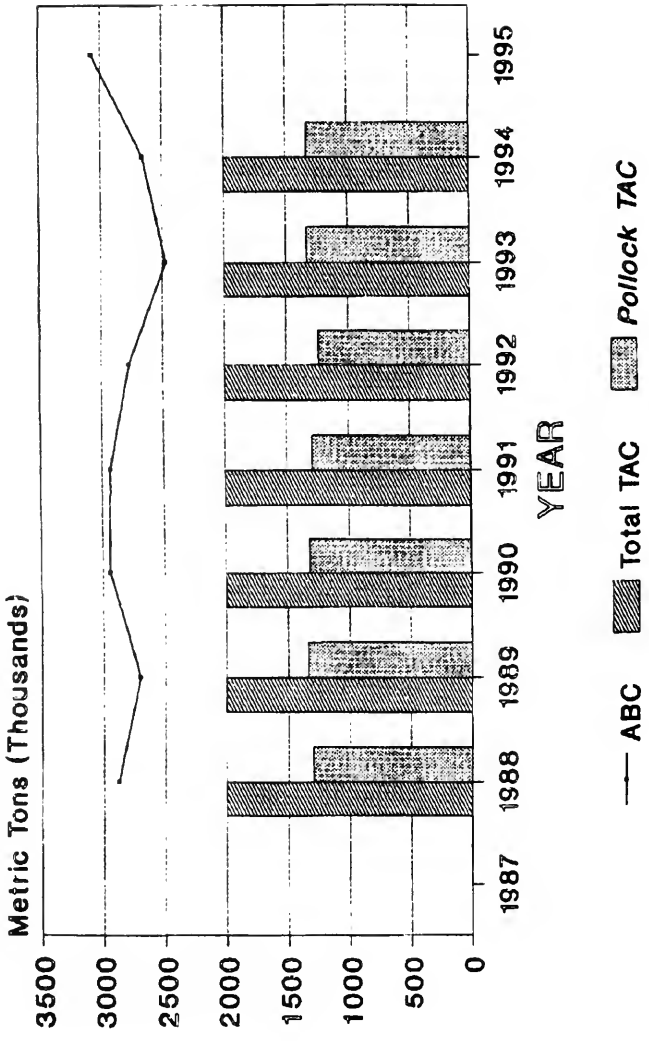
BSAI 8-YEAR HISTORY OF ABCs and TACs

(In metric tons)

| <u>YEAR</u> | <u>ABCs</u> | <u>TACs</u> |
|-------------|-------------|-------------|
| 1988 | 2,876,100 | 2,000,000 |
| 1989 | 2,700,700 | 2,000,000 |
| 1990 | 2,938,500 | 2,000,000 |
| 1991 | 2,932,485 | 2,000,000 |
| 1992 | 2,773,355 | 1,999,855 |
| 1993 | 2,476,245 | 1,998,620 |
| 1994 | 2,656,435 | 2,000,000 |
| 1995 | 2,836,985 | 2,000,000 |

EXHIBIT B

BSAI 8-Year History of ABCs and TACs 1988-1995



Senator STEVENS. Mr. Alberda?

STATEMENT OF DALE ALBERDA, VICE-PRESIDENT, KEY BANK OF SEATTLE

Mr. ALBERDA. Good morning. I am Dale Alberda. I am currently employed by Key Bank with responsibility for supporting the existing fishing and seafood portfolio and for providing recommendations related to the bank's future objectives and policies within this industry. I appreciate this opportunity to specifically address certain aspects of the proposed amendments to the Magnuson Act.

As you know, the banking industry is facing many of the same risks as the equity participants, including market risk, natural resource risk, ecological risk, collateral risk, ownership and management risk, cash-flow risk, and political and regulatory risk. My comments are based on the hope that improvements can be accomplished without serious financial consequences to one sector with benefit to another.

Section 110 of the proposed bill provides for a New Negotiation Panel which would be established by the Council. This may provide a more expeditious vehicle for developing management methods, but it may diminish the influence of the Advisory Panel.

I would prefer to see language in the bill that creates assurance that the existing AP comprises a reasonable representation of all segments of the industry. This way the Council should be assured of negotiated advice reaching the Council. I am curious how the Council will determine the finite number of unidentifiable interest in order to establish a balanced Negotiations Panel, but I am not opposed to anything that may expedite a negotiated change.

I would like to strongly endorse the enforcement of Section 111 of the proposed bill which provides an outline for implementing an ITQ system. I believe the crab industry has been hurt the most with the existing system, particularly as the crab *Opilia* quotas have been declining and the vessel owners and crews are forced to maximize production within decreasing numbers of operating days.

I do not believe the safety of my friends and my associates should be viewed as a statistic. There is little reason to delay implementation of the ITQ system which will improve the quality of the pollock and cod fishery as well. In addition to my primary concern of safety within the industry, the existing Olympic system results in higher operating cost including maintenance, crew shares, and insurance.

The proposed guidelines for establishing an ITQ system addresses some of the concerns of the banking industry. Paragraph (f)(2)(A)(iv), in particular, would seem to ensure that there will not be a significant reallocation of the resources.

Although the industry is in some degree of economic stress, there are still profitable operators within each of the segments of the industry, and future reallocations should be avoided. We also appreciate Subparagraph 5 which calls for a national lien registry system which will eliminate the confusion and potential fraud related to the sale or transfer of ITQ shares and will give the lenders a better method of protecting their security interest in the event ITQ shares are pledged and assigned to the bank as collateral. This lien

registry provision also suggests a market driven system which I strongly endorse.

However, this type of registry is of little value to a lender, if as contained in paragraph (f)(2)(D), a penalty could include revocation of the ITQ shares. It is my recommendation in event of the revocation of a penalty to include either a provision for buyback of the quota by the Federal Government or an auction to third parties with first priority of proceeds to satisfy debt obligations secured with these ITQ shares.

Likewise as described in Paragraph (f)(5), the Secretary can terminate an ITQ at any time without compensation to the holder. Then the ability to borrow money to acquire additional ITQs is lost, because the lender has no assurance of the continuation of the benefit. This will have a detrimental impact on anyone needing financial assistance to participate in the fishery.

Incidentally, I concur with the provision of the bill contained in Title 3 providing Title 11 refinancing capabilities in distressed fisheries as well as a possible vessel buy-back program. I also agree with the added flexibility provided to NMFS with an option to utilize the Federal financing bank, rather than traditional third-party lenders, requiring full-faith and credit guarantees.

Finally I would like to briefly comment on Section 118 of the proposed bill. Although the objectives found in this section are stated as waste reduction, the impact of implementation is an economic cost primarily to the relatively small bottom trawlers that process and freeze their catch. However, understanding the national concern for improved utilization of all fish caught, then a gradual implementation is recommended. We will have to depend on the Council to create incentives which will offset some of the costs to this segment of the industry.

For example, if longer fishing seasons or larger quotas are made available for those participants who meet objectives, we could probably bet on improvements by the fishermen. Positive reinforcement for desirable fishing behavior will probably be met with little opposition.

It is interesting to note that the estimated biomass for many of the flatfish, including sole and especially arrowtooth flounder are considered underutilized, but with increase in pressure against use of bottom trawlers due to bycatch, these species will remain underutilized.

I would like to thank the committee and Chairman Stevens and Senator Gorton for listening to my comments.

[The prepared statement of Mr. Alberda follows:]

Mr. Dale Alberda
Vice President
Key Bank of Washington
1536 NW Market Street
Seattle, Washington 98107
March 15, 1995

Senator Ted Stevens, Chairman
Subcommittee on Oceans and Fisheries of the
Senate Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510-6125

Re: Testimony Related to S.39, Sustainable Fisheries Act, a bill to amend the Magnuson Fishery Conservation and Management Act.

The following testimony is submitted for your consideration and reference.

My name is Dale Alberda and I currently am employed by Key Bank of Washington with responsibility for support of the Bank's existing fishing and seafood portfolio as well as providing recommendations related to the Bank's future policy and objectives within the industry.

I have spent more than twenty years employed in financial management and banking positions within the marine, seafood and fishing industries.

During the late 1970's I observed the financial rewards earned by the king crab fishermen, only to later experience the financial stress experienced by everyone as a result of the demise of the king crab resource during the early 1980's. A similar cycle occurred when the opportunities resulting from "Americanization" of the groundfish industry in the mid 1980's recently became a period of financial stress, not from diminishing resources but from over capitalization.

As a general comment, I would like to say that the economic difficulties created by over capitalization are more tolerable than a disappearing resource. Many of us within the industry become frustrated with the regulatory process but allocative issues will never be accomplished without compromise. In the long run, those providing financing to this industry will be thankful for some "law and order", particularly if the resources can be maintained.

I appreciate this opportunity to specifically address certain aspects of the proposed amendments to the Magnuson Act. However, I thought it may be useful for the Committee to be provided with a quick summary of how a commercial lender views the risks associated with the North Pacific fishery as part of any credit approval.

The risks which we include in our analysis include:

- 1) Market risk
- 2) Natural resource risk
- 3) Political and regulatory risk
- 4) Environmental and ecological risk
- 5) Collateral risk
- 6) Ownership and management risk
- 7) Financial (operating cash flows) risk

Market risk: We view the market both from a destination and price basis and study the historical prices, trends, and impact of foreign exchange rate when the product is exported. We need to understand the impact on market prices resulting from changes in the North Pacific quotas as well as changes in quotas or resources in other parts of the world such as Russia or Japan.

Natural resource risk: We rely almost totally on the scientific information provided by the National Marine Fisheries Service relating to the status of groundfish resources in the Bering Sea and Gulf of Alaska. The Alaska Department Fish and Game provides equally valuable information relating to the history and status of salmon, crab and other shellfish resources. We also depend on the Halibut Commission for history, quotas and trends in the halibut fishery. Direct information is obtained from the fishermen which may provide an early indicator of trends within certain segments of the industry.

Regulatory risk: In this regard, we must not only understand the current promulgations of the Council and the Secretary, but must also anticipate and understand the direction of future regulatory changes. Both lenders and direct participants in the industry are better equipped to deal with regulatory change on a gradual implementation schedule.

Environmental risk: We must be prepared to consider the impact of ecological issues which face the entire industry, including increased areas of restricted fishing due to declining bird and marine mammal populations. But we also must be aware of ecological consequences of utilizing various gear types and the opposition from within segments of the industry where a specific gear type is considered ecologically damaging to other non-targeted species. We must understand the economic consequences to certain segments of the industry resulting from "ecological improvements" such as the goals of full utilization and full retention.

Collateral risk: In the past we primarily looked at fishing vessels, inventories, receivables and personal guarantees as collateral. The most difficult issue was valuation of the vessels. This remains a problem because the real value of the vessel is based on the cash flow it produces from operations over the useful life of the vessel, not its original or replacement cost. If we are to finance a vessel over 10

years, we must have some certainty that the cash flows will be sufficient to repay the debt. We now must consider the value of an Individual Fishing Quota as collateral, and estimate the resulting decline in collateral value of the vessel at the time an IFQ is granted to the owner of the vessel. But the cash flow needed to repay loans, secured either with vessel mortgages or IFQ, is still based on the operation of a fishing vessel which may already have significant debt service requirements. I will comment further on this issue later as it relates to the halibut and sablefish program.

Ownership and Management risk: This remains one of the most important, but subjective, assessments that a lender makes. It is a combination of credit history, experience, competence and integrity that comprise our analysis of this risk.

Financial and cash flow risk: I would like reiterate that the primary source of repayment for seafood and fishing credits is cash flow from operations. A bank's worst fear is attempting to satisfy defaulted obligations through foreclosure of collateral. Unfortunately, in the past few years many vessel operators saw their operating cash flows decrease due to reduced fishing days which in some cases resulted in the inability to make debt payments. Most lenders facing this dilemma must either restructure the debt payments or foreclose on the collateral (with market values of the vessels significantly lower because of the reduced cash flow potential).

With the above framework for viewing risk from a banking perspective, I would like to comment in a general way about the regulatory changes proposed in your bill.

SEC. 110. REGIONAL FISHERY MANAGEMENT COUNCILS. A very large concern of lenders is the possibility of regulatory changes which are weighted heavily in favor of one segment of the industry at the expense of another. This may be a result of dominance in representation at the Advisory Panel level or at the Council level by a particular segment of the industry. This may include allocative issues between "at sea" and "shore based" processors or quota sharing among gear type groups. In this regard, a "negotiation panel" may offer a more expeditious alternative to the existing structure. However, I am confident that irrespective of the clashes within our industry, the Council and Advisory Panel have better served the industry (perhaps with more moderated results) than any alternative I can imagine. I would like to see language in the bill which would create assurances that the AP comprises a reasonable representation of all segments of the industry.

It is difficult to visualize a Council operating in the best interests of the country, or in the best interests of the industry, if financial conflicts of interest distort normally predictable voting positions. However, at the AP level, where we expect representatives to support either their ownership interests or their employer's interests, it is important to have representation relative to the actual segments of the industry. This will insure that "negotiated" advice is reaching the Council.

SEC. 111. FISHERY MANAGEMENT PLANS.

(f) Individual Transferable Quotas. I would like to simply endorse a move to an ITQ system as soon as possible. I believe the crab industry has been hurt the most with the existing system, particularly as the opilio quotas have been coming down and the owners and crews are forced to maximize production within decreasing operating days. The safety of my friends and associates should not be a statistic. In addition to safety considerations, the cost of operating a vessel is much higher where one or two days of lost operations may create a loss for the season. The costs include higher levels of maintenance including spare parts which must be carried on board, higher crew costs and processing wages, and much higher insurance costs due to the increased accident rates.

The proposed guidelines for establishing an individual transferable quota system addresses some of the concerns raised by the banking industry. Paragraph (f)(2)(A)(iv) in particular would seem to insure that no significant allocative changes from where we are today would be considered. Although the industry is in some degree of economic stress, there are still successful operators within most of the segments of the industry and future allocative changes should be avoided. We also appreciate subparagraph (v) which calls for a national lien registry system which will eliminate the confusion and potential fraud related to the sale or transfer of ITQ and will give the lenders a better method of perfecting their security interests in the event ITQ shares are pledged and assigned to banks as collateral.

However, this type of registry is of little value to a lender if as contained in paragraph (f)(2)(D) a penalty could include revocation of the ITQ shares. It is my recommendation, in the event of a revocation penalty, to include either a provision for buyback of the quota by the Federal government or auction to third parties with first priority of proceeds to satisfy debt obligations secured with the ITQ shares.

Further, if as described in paragraph (f)(5), the Secretary can terminate an ITQ at any time without compensation to the holder, then the ability to borrow money to acquire additional ITQ is lost because a lender has no assurance of the continuation of the benefit. This will have a detrimental impact on anyone needing financial assistance to participate in the fishery.

Because financing of ITQ shares has become a reality in the halibut and sablefish industry, I would like to comment on the experience the banks have gained in their analysis of risk related to this endeavor. There have been some complaints from within this fishery that the banks have not been responsive to the requests for financing IFQ shares which have now been provided to the participants. It should be understood, that even with a national lien registry (which we strongly recommend and support) a credit secured with IFQ shares may still be limited to 20% to 30% of the estimated value of the shares.

The reasons are as follows:

- 1) The shares relate to a percentage of the quota, with a potential risk of reduced poundage in the future if quotas are reduced (as projected for halibut). This is a natural resource risk. The value of a cod quota percentage in Eastern Canada has little value today.
- 2) The market price which is based on today's values may drop drastically due to changes in the market (e.g. large increases in halibut coming from Russia).
- 3) There is a current risk related to our ability to perfect the security through a lien registry device.
- 4) Finally, and perhaps most importantly, the cost of financing the quota purchased must be added to the operating costs of the borrower. Most operators will have to reduce the crew share percentage related to the additional fish caught with "purchased" quota in order to have sufficient cash flow to repay a debt over 10 years supporting a 25% increase in quota.

Hopefully, the banking industry can provide continuing comment to the Council and the Secretary as the process for reviewing various Fishery Management Plans is developed.

SEC. 118. NORTH PACIFIC FISHERIES CONSERVATION Although the objectives found in this section are stated as waste reduction, the impact of implementation is an economic cost primarily to the relatively small bottom trawlers that process and freeze their catch. However, understanding the national concern for improved utilization of all fish caught, the stepped approach to improving the percentage of retained catch is preferable. We will have to depend on the Council to create incentives which will offset some of the cost to this segment of the industry. For example, if longer fishing seasons or larger quotas are made available to those participants who meet the objectives, we can probably bet on improvements by the fishermen. Positive reinforcement for desirable fishing behavior will probably be met with little opposition. However, the plan to ultimately reach full retention and full utilization is a serious blow to the smaller vessels using bottom trawl gear. It is interesting to note that the estimated biomass for many of the flatfish including sole and especially arrowtooth flounder are considered underutilized but with increasing pressure against use of bottom trawls due to bycatch, these species may remain underutilized.

The portion of Section 118 dealing with full observer coverage and assistance from industry in improving the weight measurement capabilities are economic costs but should not create material negative economic results to viable operators.

I would like to thank the Committee for this opportunity to provide my comments.

Senator STEVENS. Thank you very much. Senator Gorton?

Senator GORTON. Bob, your long list of comments on the bill lead me immediately to my question. I think I will just start with Joe and have each of you across the table answer this one.

With respect to S. 39 in the form in which it has been introduced, give me your one or, at most, two changes that you think are most urgently necessary in the bill as it exists right now. I know you have more, and that is all in your testimony, but I want you to grade them. As we go forward in this bill, what one or two changes are most urgently needed from the perspective of each of you? Joe, why don't you start?

Mr. BLUM. Thank you, Senator Gorton. No. 1, the issue of community—or fishery dependent communities need to be dropped. If what the committee is seeking is fully identifying CDQs as acceptable, I think the bill ought to be very specific about that, but to broadcast it as fishery dependent communities flies in face of what the Magnuson Act is all about, which is national piece of legislation that does not discrimination against people from different States. That is No. 1.

No. 2, we would like to see the measures that you have put in with firm timelines for the North Pacific Council to meet to be dropped in recognition of the fact that the North Pacific Council is already doing all of those things with its own timeline, and that ITQs ought to be in there, too. That is two and a half.

Mr. CURRY. Senator, I guess Joe is just two and a half, so I will point to one that I think deserves modification. On the section that deals with negotiation panels, I think that we should not—the “will use” language probably should be dropped. I think its appropriate for that system to be used, but I do not know that mandating it is going to help the process in the long run.

Senator GORTON. It ought to be permissive then?

Mr. CURRY. Permissive, yes. That would be the one that I would focus on. Joe is two and a half. I will give you one. Mr. Blum: We are working together.

Senator GORTON. Bob.

Mr. ALVERSON. Senator Stevens, Senator Gorton, I would refer to your Page 42 in regards to the requirement of an IFQ program having been mandated to provide for an open entry fishery and then having it retrofitted based on the comments on Page 43 within 3 years. I am talking about the Halibut/Sablefish Program. The savings clause that the Kodiak Longline Vessel Owners' Association has put forward involves both of these guideline problems for us.

Senator GORTON. You get one more.

Mr. ALVERSON. I get one more?

Senator GORTON. Yes.

Mr. ALVERSON. OK. On Page 44 in regards to adding processors and other citizens to being holders of IFQs, our program was designed such that when the second generation of sales, those would be basically dominated by what they call bona fide crewmen. That would evolve into an owner-operated type of fleet.

We are concerned with this wording here if “may” is not put in amongst this list of potential holders, someone could argue that the program requiring an owner-operated system such as the Alaska

License Program might infringe upon a corporation of rights or that cannot go out under common property rights. So, that is why we would ask for rewriting.

Senator STEVENS. What page is that?

Mr. ALVERSON. Page 44, Lines 14, 15, and 16, "may include."

Senator GORTON. John.

Mr. BUNDY. From my perspective, I would love to see a provision that says the Councils are encouraged and directed to develop market driven management systems that properly align economic incentives with conservation concerns to accomplish an enhancement of the value of the resource and reduction of discards.

Senator GORTON. Mr. Alberda.

Mr. ALBERDA. I think I would simply ask for an increased provision for procedures upon revocation of ITQs that would give the lending industry comfort that there would be a market available and that their lien rights would be tied to an economic return for the amount of loans that they have given.

The second thing I would like to comment on which was not in my testimony but was at an earlier testimony relating to a two thirds vote of the Council in terms of conflicts of interest; in watching the Council over the past number of years, I believe that requesting a two thirds majority vote on just about anything would create real loggerheads. I do not think anything would ever get approval. So, I think the system we have got is about as good as we can get if we are going to have industry people involved.

Senator GORTON. You bring up one other issue that I want to ask about. That is, how do we deal with the constant criticism of conflicts of interest. Some have set very strong rules with relation to who could be appointed. Others have said disqualification or recusal of members in certain cases. Others have talked about two-thirds votes, to which you have commented. I suppose a final way would be to increase the authority of the Secretary to overrule Councils.

A quick comment from each of you. Is there no problem at all, as it seems Mr. Alberda would seem to say, with the present system, or is one of these other proposals favorable with you?

Joe?

Mr. BLUM. Senator Stevens, Senator Gorton, there is a problem. I think the first thing we need to do is make the Council members subject to the same provisions of financial disclosure that other boards, commissions and top level employees in the Government are subject to.

Right now they are exempt from that. That makes no sense. That history needs to track itself when decisions are being made, and then if that does not work—I would think that would be the first step—if that does not work, then look at something like two thirds majority or an efficient recusal process.

But first, let us identify where the conflicts really are, have that follow the decision, and have the Secretary weigh that when he or she is accepting or rejecting a plan.

Mr. CURRY. Senator Stevens, I think there is not really a realistic problem in terms of the way the system actually works. Earlier at the first panel someone said there is a public perception. I think

the perception flows out of the fact we have some significant allocation battles. Things are said that cause this perception to occur.

You have outlined your recusal mechanism that is pretty well defined. There needs to be a quick decision made at the time that the Council is involved during discussions of things like allocations. People are either out of that decision or they are in, whichever way the mechanism is effective. Then the Council needs to go forward with their job of managing the fisheries. I would say there is not a major problem.

Mr. ALVERSON. Senator Gorton, Senator Stevens. After sitting on the Council for 6 years on the North Pacific Council, I have a somewhat different philosophical opinion. I believe that the governed have a right and an obligation to participate in advisory panels such as the Council. I get distressed when I see professional managers in the academic community, who largely receive their income from the Government, come up with artificial restrictions on, in this case the fishing industry, in terms of participating on a Council.

I think the primary problem here—and I would agree with Joe Blum in terms of the need to have your financial disclosure out there—but the biggest problem, I think, of Council coming under fire is what happened in the New England Council, a complete resource failure.

In this case, the chairman of that Council or all the Councils had been required to sign a letter on the quotas that they were recommending and that went to, in this case, Rollie Schmitt, and then he signed it, and signed the head of NOAA signed that letter, all authorizing the harvest levels. That is what accountability is about.

There is no accountability at the top levels of our Government at NOAA or at National Fishing Service. These two positions have been held by academic and professional managers. Yet, there is no accountability of what happens when a resource fails. Everybody looks at the Council, but they are advising these people. These people—these two people have the responsibility to stop the Council when the Council proposes to put harvesting-rights registry regimes.

Mr. BUNDY. I pretty much agree with the comments that have been made. I believe that the decisions that are made that govern the fishery and the important forum is the Council and I would like to see judicial review of the Council.

This leads to your other, which is—and Senator Stevens' issue—which is, can we reduce litigation? I would support that, too. I would be really supportive of anything that keeps us out of courts. If there is a way that we can have principled quick resolution of these disputes perhaps by arbitration or something apart from the court system, I would certainly be supportive of that, too.

Senator GORTON. You triggered that question.

Mr. ALBERDA. I will give you one more. The banking industry relies heavily on the scientific advice that is coming out of national fisheries and the same information that is provided to the Council in terms of the status of the resource and how far ahead we can look.

In general, the Council itself, I have not observed anything that would not be expected as a result of having industry personnel on the Council. And the biggest conflicts have arisen from the weighting of the Council as it relates to a certain sector of the industry more than I see a personal conflict of interest within a sector.

When the issues become allocative between shore plants and factory trawlers, for example, we understand that there are factory trawler representatives on the Council and there are shore-based processors on the Council. Those issues I do not believe are addressed in the conflict of interest wording of the bill.

I think that as a banker, I understand that those positions are there and I—in my testimony, I have asked for continued awareness to have full representation of all of the sectors on the advisory panel. I think that is the way we get to a negotiated agreement going forward, but in general, I think the banking industry has been very appreciative of the conservative nature of the Council as it relates to the resource management, and we have fairly high level confidence in that part of the system.

Senator GORTON. That is all.

Senator STEVENS. Thank you, Slade. You know, the first purpose set out in the Magnuson Act was that we “take immediate action to conserve and manage the fishery resources found off the coasts of the United States.”

We set out a concept of trying to enlarge the jurisdiction primarily for the conservation and management of the fisheries, but if you read through the basic Act, the original Act, I think you would agree what our intent was to try and preserve the species.

Now, I have two questions for the panel as a whole. I think Slade has a good way to get to these things, so let us just have each of you respond to this.

I still have not made up my mind on ITQs totally. The reason is that we have already got a fishery now that is transitioned out to the 200-mile limit. We have Americanized it, and we have so increased the size and cost of the gear and vessels that it is almost impossible to participate without either bank participation or investor participation in your operation.

Now we are going to create an ITQ that has—whether it is a property right or not—a value and that is transferable, and going to be sold, and a new entrant into a fishery who has to have the ability to get the boat and the gear, now has to also buy the right to the shares.

I am calling particular attention, Bob, to what you asked about Page 42 about the mechanisms to provide a portion of the annual harvest for entry level fishermen and small vessel owners who do not hold transferable quotas.

Have we come to the position that all of the allowable catch in each region is to be allocated to the point where there is no entry level without going to a bank or without getting investor participation?

Is it the desire of all of you that the total quota be allocated and that there be none for the new entrants and the small fishermen, those people that do not have the over 100-foot boats? Mr. Alberda, what do you think?

Mr. ALBERDA. Well, I think that there were some comments in the proposed bill that said that there would be some protection. I think it is important to be a little more specific in discussing the economic viability of certain communities. I think you could probably discuss with certain species as was done with CDQ reservation for certain participants in vessel size for new entrants. I think that that is a reasonable idea.

Senator STEVENS. Mr. Bundy, what do you think?

Mr. BUNDY. Senator, in the good old days when the industry that you know so much about was Americanized and there was a lot more resource out there than there was fishermen and boats—

Senator STEVENS. I do not think they can hear you back there.

Mr. BUNDY. When we were Americanizing the resource there was plenty for everybody. We could—the Olympic System frankly worked pretty well, and it Americanized the fishery in a short amount of time. We are now to a point where we have way too much capital invested in these fisheries.

From a business standpoint it seems to me—this is my personal opinion—that if I were a young person who wanted to get into fisheries and wanted to save my money to invest and go to the bank, if I needed to, I would much prefer a system where basically a person could do some business planning. That means you know what your costs are and you can go out and buy a boat and get the quota and you know what you have.

We are long past, I am afraid, the time when anybody can buy a boat and go out and fish for a lot of these fishermen.

We have moratoriums, already, we have licensed limitation programs in the works, so on and so forth. So, we are at that point, yes. We are trying to decide how to manage these fisheries the best we can.

Senator STEVENS. Mr. Alverson.

Mr. ALVERSON. Senator Stevens, I believe that this is best left to each Regional Council to deal with; the different social and economic characteristics of each Council. The Pacific Council handled it somewhat differently. They came up with a limited entry program. The North Pacific Council, I would hope, and probably would not do the same thing we did on halibut sable fish for some of these other more industrialized species.

I do think there needs to be an opportunity, though, for entry level opportunities. I think the IFQ program that the North Pacific Council came up with for halibut and black cod through the Block Program, which essentially—I do not know what the numbers are, but it is well over several thousand—small quotas under 20,000 pounds are locked in blocks.

They cannot be aggregated. It does not allow someone to come up and sweep all the small blocks up. We also have an under 35-foot category for halibut. Big boats cannot come in and buy a quota out of that category.

I think that those structures are best left up to the Council. The Council has the authority to do those, and the North Pacific Council did do those things to accommodate the small boat fleet, particularly in Southeast and Homer area of Alaska.

Senator STEVENS. We did say “including, in fisheries where appropriate, mechanisms to provide a portion of the annual harvest

for entry-level fishermen or small vessel owners who do not hold individual transferrable quotes.”

You do not think that in addition to the provisions you have mentioned, it is appropriate?

Mr. ALVERSON. You mean different species?

Senator STEVENS. We said in S. 39 that in providing new entrants' opportunities, appropriate fisheries should include mechanisms to provide a portion of the annual harvest for entry level fishermen and small vessel owners who do not have ITQ. You objected to that.

Mr. ALVERSON. I object. We objected, yes. We object because we have already got a plan, a plan that just started 3 days ago. I think it is a bit premature to second guess how that program is going to run. I think the Congress, North Pacific Council are best suited to let that program run here and see how it works and the Council has already addressed entry level opportunities in both the sable fish and the black cod fishery.

On other IFQs or other licensed entry programs such as salmon, there is no program there, and Alaska seems to do quite well getting the young to the deck to the wheelhouse in the salmon industry. Bristol Bay permits cost \$250,000. Under an IFQ program, all the guy has to do is just buy the quota. We are finding crewmen just buying the quota and then finding a vessel to ship on. We do not have to buy the gear because we only use one set of gear, one set of boats now, so there is an opportunity there from a crewmen standpoint.

On the skiff side, there is a whole number of under thousand-pound quotas and thousand-pound quotas that might cost 6 bucks a pound to get in at that level anywhere from \$3- to \$6,000 for a skiff fisherman to start a halibut fishery. I do not think that is unreasonable.

That is why we support the Kodiak Longliner's proposal that acknowledges that our program already does that, and we would not have to do redo our program in the next 3 years to accommodate this. We do see opportunity in rockfish and other species for these types of programs.

Senator STEVENS. Mr. Curry.

Mr. CURRY. Senator Stevens, the members of the PSPA and have always acquired their fish from both large and small fishermen. We think there has to be a place for people to enter into the fisheries for new entrants to come in. So, I think it is appropriate for this sort of language to be in the bill.

One of your first comments was you have not made up your mind about ITQs. I think you are right. I think in many aspects or many ways to automate. I know the language on Page 42 talks about the design suitable systems and it talks about ITQs being applied to corporate fisheries. That is an important thing for us to keep in mind, because there really is no ITQ system yet to design and craft fishery where it is appropriate, maybe fisheries where it is not. I think that we should be mindful of the fact that on ITQs, we are now finding that there are problems with high grading and wastes. Those are also problems that need to be addressed as we fashion our ITQ systems.

To answer your question, we need a place for the startup fishermen. We also need to take a look at the system and see how it works, because we are now talking about putting it on very large fisheries. This is a new thing for the U.S. to learn over the next few years of how well the system is doing.

Senator STEVENS. Mr. Blum.

Mr. BLUM. Thank you, Senator Stevens. I share with Vince the pleasure that you are still open minded on ITQs. We like that opportunity to be able to talk to you, Senator, and the committee about them.

I believe, as Bob Alverson said, one size does not fit all. I do not believe you can legislate each little piece of an ITQ or any other fishery management plan. You need to leave it to the Councils to take a look at on a fishery by fishery basis what works and what does not work. Some things that simply work for sablefish and halibut simply will not work for pollock and cod and vice versa.

CDQs are one approach for dealing with entry fisheries by communities that have been deprived from that. There are other opportunities that need to be looked at, and I think you need to make that a piece of Council's analysis, and we subscribe to that.

Our fisheries, as you know, are not generally the small-scale entry level fishery. We are talking about high level, efficient, high speed fisheries. We would like to slow down the speed, as you would, so there are going to be particular characteristics that will not fit, but the Council has the opportunity and the place to work those out and the Councils have shown that they can do that, at least the North Pacific and Pacific have.

Senator STEVENS. One last question. I remember so well the flight I took from Kodiak up to the Pribilof Islands once in a Navy Albatross. We counted some 90 Japanese trawlers between Kodiak and the Pribilofs.

I went back and found that we estimated that take of bottom fish for those trawlers was over 2-million metric tons—four-billion pounds of fish. That led me to draft and introduce the first bill to extend the U.S. zone out to 200 miles and to work with Senator Magnuson on the bill that finally bore his name.

I find these efforts incongruous with the waste right now in bottomfish fisheries in the North Pacific. We hear complaints about the rationale of the 2-million metric ton cap we have, but what about the waste that is currently going on? Are you all satisfied, that we, as a nation, can live with this? Do you really think 2-million metric ton cap should be changed at this point? That it should be raised?

Mr. BLUM. Mr. Chairman, I again refer you to a document from the Council. I would suggest that this would be a good question to pose to the agency, the scientists. The reality is if we were to harvest in 1995 what the scientists tell us would be an acceptable, biological level of harvest in the Bering Sea, it would exceed 7-billion pounds. It would be almost—

Senator STEVENS. I am not talking about the harvest, I am talking about the waste.

Mr. BLUM. The 2-million metric tons is the harvest cap against which all fish that we catch, whether we process them for whatever

purpose or we discard them, all of those fish count against that 2-million metric ton cap.

The reality is, the ecosystem, the fisheries in the Bering Sea, have thrived and grown under the 2-million metric ton cap. It is extremely conservative. The issue is, what are we going to do to reduce discards within that 2-million metric cap.

Senator STEVENS. And waste.

Mr. BLUM. And waste. And we believe, and we have said it many times to you, that ITQs are the place to start with that. Between now and ITQ implementation, we believe giving the regional directors some flexibility to move the fishers off of hot spot bycatch areas would be worthy of the Congress and the agency and the Councils to look at. But the 2-million metric ton cap is a very conservative cap, and everything counts against that, and we have had observers on all of our vessels and on a large number of other vessels, so there is good accounting.

If the New England Council had had caps and had observers that had scientific management, you would be talking a different subject with those folks than you are now, but the North Pacific has managed and has met the challenge that you, Senator Magnuson, Senator Gorton, have given us to conserve the nation's fishery resources.

Senator STEVENS. Anyone else want to comment about that?

Mr. CURRY. Senator Stevens, I think that the cap has done well for us. It is sort of like a banker making sure there are reserves available to us. With regard to the use of the 2-million metric tons that are available, though, mindful there are two types of discards of waste.

One is something like PSC, which is mandated, and there are good reasons for it. The other type that we have is economic waste, throwing the fish overboard and not using it. That is the type of waste that we need to put a stop to, and I think the proposals in S. 39 work a long ways in accomplishing that.

Senator STEVENS. Bob?

Mr. ALVERSON. Senator, the 2,000 metric ton limit cap was a first attempt by, actually by Dr. Lowly Lowell to the National Fishery Service to have an ecosystem management regime in the Bering Sea, and the Council adopted that. Out of that comes the harvest and is also deducted any waste. I think the waste has amounted to 25- to 40-percent in the past.

I think the North Pacific Council is addressing many of the issues which you bring up in the bill S. 39.

Senator STEVENS. Mr. Bundy, a lot of your comments raised that question.

Mr. BUNDY. Again the 2-million ton cap, as I understand it, was a cap put on by the Council back during the days—and Bob can correct me if I am wrong—back during the days when we were frankly pushing the foreign fleet out because it made it easier to push them out as we got to the cap.

The cap has been there ever since. It has had a beneficial effect of providing a very conservative management tool in the North Pacific. Now, I will be frank to say, too, that there is growing evidence that the cap is actually an ecological harm, because if you talk to Dr. Low Lee Loh and he shows you his bar chart of flatfish of the

Bering Sea, you see a steady upward trend year after year after year, and there is growing evidence that those flatfish are doing things like taking care of the crab, and many of the crabbers agree on that, too. So maybe additional fishing needs to be done.

But the point I wanted to make, because I think your question was directed to waste, is that, as you know, the Bering Sea is a huge place. Alaska is a huge place. This resource is a huge resource. So, even though our bycatch or discard rate in absolute volume is a huge number, it is really a relatively low rate. If you compare it to the national fisheries that we have, if you compare it to the sports fishing we have, we have a low rate. We can do better and we are going to do better. We are doing a number of things. I could tick off a lot. It is an economic problem. The fishermen—we are not stupid. We do things for specific reasons out there, and discards in the Bering Sea is an economic problem. It needs to be addressed by economic incentives.

Mr. ALBERDA. Out of 2-million metric ton cap, 1.2 million is pollock, which is clean fishery as it relates to waste and discards, so we are talking really about the majority of the waste coming from the north of the fisheries. It is because these fish are on the bottom. When you are using midwater trawl, it is fairly clean, but the bottom trawl brings up more of non-targeted species.

I think that everyone understands the impact of economic discards versus the regulatory discards. And I think that there were suggestions in the December Council meeting to implement a program to reduce the economic discards gradually over a three or 4 year period. I do not know anyone who was against that. I think it has to be done.

Senator STEVENS. I do not want you to misunderstand. I think we need to continue to put conservation first and preservation of species first, and that while we need to consider the bottom line for the industry, we should not have to have a bottom line management of the fishery. That is where I think we are getting off base.

I hope our bill will straighten that out. You may not agree with me, but I think there is a difference between the management of the fishery on a bottom line basis and the operation of any fishing company on a bottom line basis. I accept the latter; I do not accept the former. Thank you very much, gentlemen.

We are going to go right now into Panel 3, if that is all right. Our next panel is David Fraser, board member of the United Catcher Boats, Fishermen's Terminal; David Benson, Director of Government Affairs, Tyson Seafood Group, Seattle; Tom Casey, Alaska Fisheries Conservation Group; and Thorn Smith, North Pacific Longline Association, Seattle.

Gentleman, it is nice to see you. Mr. Fraser.

STATEMENT OF DAVID FRASER, BOARD MEMBER, UNITED CATCHER BOATS, FISHERMEN'S TERMINAL (PRESENTED BY BRENT PAINE)

Mr. FRASER. Good morning, Mr. Chairman. I thank you for the opportunity to testify today. I am actually testifying in place of Brent Paine, our executive director. He was called away on a family emergency situation.

I am a member of the Board of United Catcher Boats. I am also a skipper of the 86-foot Fishing Vessel Muir Milach.

United Catcher Boats is a group of about 50 vessels, primarily trawlers, that fish in the Bering Sea in the Gulf of Alaska and also on the Washington/Oregon coast.

I would like to—we have submitted written comments and I would like to sort of diverge from them a little bit and personalize my testimony. I would like to first focus on ITQs, because I think that ITQs provide the key tools that are necessary to meet the objectives that the rest of Senate bill 39 addresses.

Those objectives relate to accountability for bycatch, accountability for waste utilization, objectives of safety. All of those depend on or can be realized most efficiently through an ITQ system. Tomorrow morning, I am going to be flying up to meet my vessel and go out and be skipper on a trip. I talked to the vessel the night before last. They are fishing yellowfin sole up against the ice edge of Bristol Bay. It was blowing hard from the north, but fortunately they are in the lee of the ice, so they can keep fishing. The temperature was 5 degrees; the windchill factor was minus 40.

When they delivered, the fish froze in the bunker of the mother ship before they made it to the filleting line. They had to end up h-and-g'ing instead of filleting because of those conditions. I think that presents a sort of a microcosm of what we have here.

In that situation, "Why do we keep fishing?" is the question that comes up. The answer is quite simple. We are in a race for the fish. We may be an 86-footer, but there are 300-footers out there. If we stop, they are not stopping. We are replaceable. The market we fish for would be glad to replace us, or there is other vessels that would be glad to replace us on that market, so we have got to meet the competition.

Three years ago we were fishing yellowfin sole up in Togiak area in T-shirts and cutoffs in May and June. This year, our fishery will be closed before we get there. It does not have to be that way. The one thing that we do need—that we do not need in the North Pacific—is further study of ITQs. In New Bedford, they may not be sold on that idea, but the majority of the fleet in the Bering Sea is very much sold on the area.

ITQs have been studied to death in our area. They also have been studied through the deaths of my colleagues and my friends. I view those deaths as unnecessary. Somebody else might say those operators made their own choices; they were a little too greedy. Perhaps they were a little too greedy, but they pushed the edge of the envelope. They pushed a little too far, and they made the judgments that came out of the incentives for a race for fish. When the clock is ticking, neither your banker nor your market gives you much sympathy if you want to shut down.

What the bill can do, and we are encouraged about it, is to set some standards for ITQs; to facilitate Council for adopting ITQs where they are appropriate. We need to have authorization for fees. We need to have ITQs defined as an access privilege. ITQs also must be based on accountable—they must—operators must be accountable for all removals under an ITQ system to avoid high grading. Everything you catch, you must count against your quota.

Apart from ITQs, I want to touch briefly on some other areas of the Act. One is CDQs. We realize that CDQs have been very effective and created a lot of benefits for coastal communities in Alaska. That is because they are quota system.

We do not object to the expansion of CDQs. In fact, we think the burden of CDQs should be shared by all fisheries, salmon, herring, crab, and groundfish fisheries, but it is appropriate to do so on a level playing field. CDQs and ITQs should move together hand in hand.

In other areas of the conflict of interest provisions, again we need a level playing field. I think that the standard proposed may be too narrow. The president of a fishing company, when he or she sits on the Council, is accountable to their shareholders. A lobbyist who sits on the Council is accountable to the members of their association.

Both types of interests need to be—both types of interest need to be treated equally, those of lobbyists and those with direct financial interest. Thank you.

[The prepared statement of Mr. Brent C. Paine follows:]

Brent C. Paine
Executive Director



Steve Hughes
Technical Direc

Statement of UNITED CATCHER BOATS
on
S 39
MAGNUSON REAUTHORIZATION

Submitted to
The Senate Commerce Committee
Seattle, Washington

March 18, 1995

My name is David Fraser, skipper of the F/V Muir Milach, and I am pleased to present to you United Catcher Boats' views on S. 39. I, like a majority of my fellow members, have worked in the West Coast and Alaska fishing industry for several decades and over the years made investments into vessels that now comprise the greater portion of the trawl catcher boat fleet fishing in the Bering Sea and Gulf of Alaska. I currently am a partner in two trawl vessels, a Board Member of United Catcher Boats Association and also a multi-term member of the North Pacific Fisheries Management Council's Advisory Panel. Our Executive Director, Brent Paine, apologizes for not being able to present our views, as a situation at home requires his attention.

I would like to begin by presenting to you a little understanding of my organization, United Catcher Boats, then present our views on the current crisis we are experiencing under the present management regime in my fisheries, and lastly finish my talk to you by highlighting some of the areas of concern we have in the present draft version on S. 39.

I. Background

United Catcher Boats is a fishermen's organization representing over 50 trawler catcher vessels active in North Pacific fisheries. Our members' vessels range in length from 75 to 190 feet, and while they are primarily involved in groundfish in the North Pacific, many also participate in the Alaska King and tanner crab fisheries and some are involved in the Pacific Whiting fishery as well. We are American owned, operated, built and financed through local lending institutions. Most of our members, who are based in Alaska, Washington, Oregon, and California, began operating in the groundfish fisheries in the late 1970's and early 1980's. Collectively, we have harvested roughly half of all the groundfish caught by Americans in the North Pacific EEZ since the passage of the MFCMA in 1976.

The members of our organization represent many of the pioneers of the North Pacific ground fisheries and crab fisheries. We were the actors of the original passage of the Magnuson Act: we struggled to learn the fisheries, build the vessels and equipment necessary, develop new markets, risk our lives. In less than twenty years we successfully gained control of our fisheries from foreign fleets, with an annual worth of over \$2 billion. After all the work, risk and struggles it took to develop the Alaskan groundfish fisheries, we stand before you, roughly twenty years later, to once again ask for your help. Our fishery has gone from boom to bust overnight. We now find ourselves in a panic mode, not because the resource has been depleted; in fact, the groundfish stocks in the North Pacific are as robust and healthy as they ever have been. Rather we face a dire economic crisis that was created by ourselves and the management structure established by the Magnuson Act: open access fishery management.

II. Industry In Crisis

Many of the industry have been advocating to, and working with, the North Pacific Fishery Management Council since 1987 to address the problem of overcapitalization in our industry in order to achieve a more productive fishery and a more comprehensive and rational management regime. As an aside, these groundfish fisheries are the largest fishery in the U.S. both in value and in total tonnage.

Over the past five years, the Council has not addressed the problem of overcapitalization and the ensuing "race for fish." In 1992 the Council established an Inshore/Offshore allocation scheme as a four-year interim bandage measure, hoping that four years would allow them to develop a rational system of fishery management. Yet here we are today, with the Council poised to recommend extension of the Inshore/Offshore allocation

because it was unable to do its work in a timely manner. The Council has also attempted, for the past five years, to establish a Moratorium to new entrants into the North Pacific fisheries, a tool we strongly recommended many years ago. Has a Moratorium been implemented? No. We are told "soon".

Meanwhile, the overcapitalization spiral continues unabated in all sectors. Rational management has retreated further than ever over the horizon, while the Council has attempted to bail out a sinking ship with a leaky bucket. The industry is taking the hit: the race for fish causes us to waste fish and minimize the value of each fish. This is approximately an annual \$300 million loss to the fleet. Nine bankruptcies have occurred within the past two years involving \$300-\$400 million in capital. Lives are being lost due to being forced to fish in unsafe weather conditions because fishermen are faced with choosing financial ruin or risking one's life.

Our organization is committed to working with the NPFMC to develop and implement a quota based system as rapidly as possible. We realize this work is properly addressed at the Council level, but due to years of gridlock and extensions of existing management measures within the Council, we see that the Council's solution, that of a License Limitation program, is not addressing the root of the problem.

The crisis in the North Pacific will not be resolved until there is a reduction in the overcapitalization that results from the "race for fish". Freezing the number of licenses will not reduce or even freeze capitalization, because it does not end the race for fish. In fact, the capacity of the fleet will inevitably increase as harvesters find ways to circumvent attempts to regulate inefficiency. This response, known as "the catch-22 of license limitation" or "capital stuffing", has been experienced in every fishery throughout the world where license limitation has been adopted.

Under either open access or license limitation, the incentive is to maximize the production per unit of time, not to maximize the potential value per unit of fish. The impacts of the race are that it undermines the ability of the industry to produce value added products, seasons continue to grow shorter and shorter, quality suffers as does our ability to have control of the marketplace because all the product arrives in a pulse fashion.

Bycatch is another causality of the race for fish. We firmly believe that reduction of bycatch can and should occur in our fisheries. Though we support Senator Steven's concept of reducing bycatch in our fisheries, we feel that the methods outlined in S 39 are not optimal, are costly to the industry, perhaps impossible to implement and enforce, and furthermore will not result in the desired results. We propose a more direct, simpler solution to the problem: a system of individual incentives. Currently, the bycatch of any given vessel is a cost which is born by the fleet as a whole. No individual has any reason to clean up their performance, especially if doing so will slow down the harvest rate of their catch. Under an Individual Transferable Quota (ITQ) system, each vessel will be assigned quota for any species it harvests, including bycatch. If it exhausts its quota of incidental species it either (1) buys or leases more of that species' quota; or (2) returns to port with unused directed species quota, foreclosing its opportunity to harvest the balance of its primary target quota. This is the simplest and most powerful of all possible incentives for an individual harvester to fish as responsibly as possible, and it is intrinsic in an ITQ system. It also allows for the Council to determine the level of acceptable bycatch, and allows for the Council to easily "ratchet" the bycatch levels down over time as the fleet learns to fish more cleanly

ITQs also provide the opportunity for the industry to consolidate itself at optimum levels, a sort of 'industry buy-back' program with no federal assistance or allocation of buy-out

funds. Under an ITQ system, those who choose to remain in the fishery bear the cost of buying out those who leave. While we are concerned that there should be some limits on consolidation of quota to prevent monopoly control of the resource, some degree of reduction of effort is absolutely essential. We prefer this form of 'industry funded buyback' over Senator Stevens' proposal for several reasons. The first is that it will not cost the taxpayers any money. Secondly, fishermen should be responsible for the demise of a fishery, not be "rewarded" by receiving a federal subsidy. Lastly, and perhaps most importantly, we have yet to witness a single buyback program that has resulted in a reduction of effort.

An additional concern that has been raised relates to the privatization of a public resource. We want to stress that what we seek from an ITQ management system is a long term access privilege to harvest fish, not the privatization of the underlying public resource.

Therefore, we are before Congress requesting language in the Act that will encourage the Council to consider an ITQ system for North Pacific groundfish and crab. Granted this is a contentious issue. You will no doubt hear from others who do not share our point of view. However, I can say that over 85 percent of the harvesting capacity in our fisheries are overwhelmingly in support of an ITQ program.

UCB has been working hard over the past year with other industry members and with the NPFMC on development of a fair and equitable ITQ system in our groundfish and crab fisheries. In so doing, many of the finer details of such a program have been debated and we would be happy to present to you or your staff this information at a later time rather than use up the Committee's time today.

I have some suggested draft language you can consider that would advise the Council to consider more seriously the magnitude of the present day problems the industry is facing and encourages the Council to work aggressively in solving the problems I've presented earlier.

III. Specific Comments on S. 39

A. Individual Fishermen's Quotas

We are concerned with the proposed guidelines and review requirements beginning on page 41 of S. 39. Other than the ideas of a lien registry program and fees, we do not see the benefits for the proposed guidelines. They will serve to just delay consideration of any reasonable ITQ proposal in any U.S. fishery. The Magnuson Act already had detailed criteria for limited entry in Section 303, in addition to the National Standards in Section 301 that apply to all conservation and management measures.

B. Community Development Quotas.

With respect to the issue of CDQ's (community development quotas) our members recognize the important role they can play in helping rural communities break into the fisheries. As you are aware the North Pacific Council has included as part of the Inshore/Offshore allocation CDQ's in the BSAI pollock fishery and also CDQs in the sablefish and halibut IFQ program. It is our view that if we are going to pursue CDQ's for societal reasons, the cost of this program should be spread among all the fisheries, not just the pollock fishery. All fisheries, like salmon, crab and halibut, ought to contribute their fair share to helping fishery dependent communities.

We also have concerns about the lack of federal standards or guidelines for this program. As you know, the North Pacific Council gave the Governor of Alaska the authority to

distribute CDQ's as he sees fit. There are no guidelines, no standards, no checks and balances. Last year CDQ's were valued in excess of \$20 million. We believe that the Councils or the Secretary should have a bigger role in assuring that CDQ's are distributed to the neediest and most deserving communities. We also think that Congress ought to incorporate into the law some guidance as to the purpose of this program.

Finally, we think that CDQ's should be incorporated into a broader market based quota share system for the rationalization of the fisheries. As I mentioned earlier, UCB has steadfastly supported the adoption of an ITQ management program for groundfish. We support linking a CDQ program with an ITQ program. Implementing a stand-alone CDQ program gives preference to certain groups at a cost to others and also allows for increase in capacity of the fleet in a time when we are struggling to reduce effort.

C. Bycatch, Discards and Waste

UCB is proud of the efforts our members have taken to address the issue of bycatch over the past few years at the council level, including 1) the shift in accounting for halibut PSC from handled fish to mortality of fish and reducing the total allowable halibut PSC cap, 2) better accounting methods for counting and/or estimating bycatch; 3) voluntary programs like the Salmon Research Foundation where our fleet has contributed hundreds of thousands of dollars annually to fund research to assist us in reducing the incidental catch of salmon PSC and in determining the effects of bycaught salmon to streams of origin; and 4) gear modifications to reduce unwanted portions of the harvest, such as mesh size regulations and grid sorting devices. I would estimate that the NPFMC has spent more time and energy on issues concerning bycatch than any other issue. These programs I mention are just but a few programs implemented over the years by the Council. This is a good start.

UCB agrees with Senator Stevens about the need for reduction in the current levels of bycatch. We believe that this would be an appropriate indication by Congress about the importance of reducing bycatch nationwide. However, as mentioned earlier, we would like to work with you on some improvements to the current language in S. 39 and have provided some suggestions in our legislative proposals. Some form of 'Individual Bycatch Quotas' should be considered along with the bill's language of incentive fees or harvest preference. In addition, the timeline required in the draft bill for the NPFMC may not be doable, given the recent cuts in NMFS staff and budget and a potential moratorium on any new federal regulations.

With regards to waste, we believe that any program to reduce waste should be applied nationwide. UCB members participate in some of the "cleanest" fisheries in U.S. waters. We believe that if you compared our performance to other fisheries around the country, you will see what we mean. Because our volumes of harvest are so large, very small percentages of bycatch tend to be big numbers. But they represent fractions of the biomass. While other fisheries may appear to have low levels of bycatch, when compared to the overall size of the stocks, it is significant. This is why we believe any effort to reduce waste should be nationwide. And as I stated earlier in my testimony, UCB believes the most effective way to reduce waste is through an ITQ program, where each captain is responsible for his vessel's performance.

D. Essential Fishery Habitat

New language in the bill amending Section 305. Ecosystem Management imposes a new requirement on the Councils to describe essential fishery habitat and prescribe management measures to minimize adverse impact on the habitat caused by fishing. We support efforts to protect valuable fishery habitat because our future literally depends on

it. However, we think the proposed definition of essential fishery habitat is overly broad and could encompass the entire ocean. Further, we believe the Councils currently have adequate authority to protect important fish habitat. We are already doing this in the North Pacific, therefore, do not support the requirement that they must include measures in every plan to minimize impact on the habitat. UCB recently worked hand in hand with the North Pacific Council in designating a no-trawl zone around the Pribilof Islands in order to protect key juvenile blue king crab habitat. We've already talked with your staff about this and want to continue to work with you.

E. Confidentiality of Data

The confidentiality of data section as drafted seems overly broad, particularly as it applies to bycatch. UCB has worked for a number of years to get the council to adopt regulations which provide for the publication of bycatch data on a vessel by vessel basis. Those regulations were finally adopted last year and provide the basis for the only real functional programs for individual accountability for bycatch, programs designed and managed by industry based on peer pressure, but dependent upon access to individual bycatch data. This is a public resource and those who abuse it should not be allowed to hide behind a veil of "data confidentiality". Public access to data on removals of a public resource is the corner stone of accountability.

We are also concerned that this section could present vessel owners from having access to catch data from their own vessels when they are operated by a hired skipper. Confidentiality should apply to commercial data, such as products, markets and customers, not to public resource removals. When Weyerhaeuser harvests trees on public land, whether they make paper or 2x4's and to whom they sell those products is their business. The when, where and how they harvest the trees, by clear cutting or selective harvest, is information the public has a right to know - so too with fish.

Senator STEVENS. Thank you, very much. Mr. Benson?

STATEMENT OF DAVID BENSON, DIRECTOR OF GOVERNMENT AFFAIRS, TYSON SEAFOOD GROUP, SEATTLE WASHINGTON

Mr. BENSON. Thank you, Mr. Chairman, Senator Gorton. My name is David Benson. I am director of government affairs for Tyson's Seafood Group. I am here this morning because Mr. Brown was unable to make it, so I am presenting his testimony for him.

Tyson's Seafood is an American company widely diversified in the North Pacific fisheries. We operate America's largest fleet of fishing and processing vessels skippered by Americans. We operate several processing plants in the coastal communities of Oregon, Washington, and Alaska.

Our primary business objective is rather simple; to use American fish to supply wholesome, user-friendly products to the American consumer at the best possible price. We are a company forever committed to the sustainability of our fishery and resources. Our investment in the seafood industry is large and growing and with it grows our investment of the health of the resources.

While we are a company of real people, your constituents, as a matter of fact, we are often reduced in the press to a faceless multinational giant anxious to vacuum up the very last fish. To the contrary, put in very simple business terms, our company's presence and future viability demands a strong resource conservation ethic.

Frankly, Tyson's Seafood and all the people who work in our boats and in our processing plants have far more at stake in the sustainability of our fisheries than anyone, including the environmental community. We did not commit to this industry our people's futures, or the investments of our shareholders in order that we might destroy the resource and with it ourselves.

I ask you to listen carefully. What we are about and what fishery conservation is about in the North Pacific has nothing to do with what happened in New England. What happened in New England had nothing to do with big boats or big companies or even ITQs, as some would like you to believe.

There is a strong conservation ethic within the North Pacific industry Council and States. Our region has led the Nation in successful fishery conservation and in our many efforts to reduce bycatch. Attached to my testimony, you will find a summary prepared by the North Pacific Council outlining the truly extraordinary conservation and bycatch achievements we have made.

Let us keep the record straight and not allow anyone to confuse those facts in order to thwart our efforts to further rationalize our management program and make further progress on bycatch. We have some general points to make on bycatch which relate to legislation of S. 39.

First, we believe that bycatch management is a national priority. It is a priority of Tyson Seafood and it must be a priority of our industry. We support the establishment of a new national standard on bycatch which makes it a simple straightforward policy to, No. 1, minimize the harvest of fish that we cannot utilize; No. 2, minimize the mortality of those fish that are caught that cannot be utilized such as prohibited species that are required by regulation to

be returned to the sea; and No. 3, maximize the utilization of those fish that are caught other than prohibited species.

We believe this approach is preferable to asking Congress to anticipate every complex contingency and every dynamic fishery by developing micromanagement or regional specific provisions within the Act. Instead, a national standard declares a policy for all Councils to implement while preserving their prerogatives to tailor fisher-specific bycatch solutions which are practical and which will work. We ask that you will consider this approach as an alternative to a very detailed approach taken in S. 39.

This is not just rhetoric. Tyson's Seafood has adopted our own proactive approach to the bycatch problems. For example, in order to minimize the harvest of fish we cannot utilize in rocksole fishery, Tyson's has voluntarily increased the mesh size in our nets to allow smaller, unutilized fish to escape. Already we have realized a 42 percent increase in rocksole retention compared to 1993 by this method alone.

Further, in order to increase the utilization of cod bycatch in the Bering Sea Rocksole fishery, we now transport the cod to our new plant in Kodiak for further processing into fillets. These are fish that were not previously utilized because the open access system forces us to commit our entire shipboard process capacity to process rocksole. None of this was required by law, but it shows what a company serious about bycatch can do.

Which brings me to the final issue of ITQs, an issue that has a great deal to do with bycatch management. In fact, I would venture that a properly designed ITQ program for the North Pacific groundfisheries and the individual accountability such a program would establish—could have more of an impact on bycatch and discard production than traditional methods. I would be very pleased to explain that statement in some detail if requested.

It is popular to equate in some circles—it is popular in some circles to equate ITQs with Tyson's, but it would not be fair to take credit for the idea as much as we might like to. No, Tyson's did not invent ITQs and we certainly are not alone in embracing the many benefits a properly designed program would bring to fishermen and processors, to resource and bycatch conservation, to the safety of life at sea, and to the American consumer.

In fact, as the understanding of ITQs increases and fear subsides, ITQs are supported by a rapidly growing community that includes big boats, small boats, Seattlites and Alaskans, offshore processors, onshore processors, scientists and managers, and some of the more enlightened within the environmental community, including the well respected Environmental Defense Fund.

Yet still there remains concern that companies like Tyson will gobble up all of the quotas and force small-boat fishermen out of the fisheries. I would simply say that no consideration of North Pacific ITQs has failed to include quota share ownership caps and limits to transferability to address this very issue.

Perhaps proof lies in the Halibut/Sablefish ITQ program which Alverson spoke of, which contains extensive provisions to prevent excessive consolidation and to preserve the basic character of the fishery. Given this, we simply ask you to reconsider using the legis-

lation not just to guide, but to facilitate the Council's ability to put ITQs into place where appropriate.

The provisions of S. 39 are very extensive, and we are concerned there may be more to deny or slow down our ability to rationalize the fisheries than to enhance it. Thank you very much for your consideration of these views.

[The prepared statement of Mr. Roy Brown, presented by Mr. Benson follows:]

STATEMENT OF ROY BROWN

**PRESIDENT
TYSON SEAFOOD
SEATTLE, WASHINGTON**

BEFORE THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

SUBCOMMITTEE ON OCEANS AND FISHERIES

REGARDING

REAUTHORIZATION OF THE

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

MARCH 18, 1995

SEATTLE, WASHINGTON

Mr. Chairman, Senator Gorton, I am Roy Brown, President of Tyson Seafood. We are an American company widely diversified in the North Pacific fisheries. We operate America's largest fleet of fishing and processing vessels skippered by Americans. We operate several processing plants in the coastal communities of Oregon, Washington and Alaska. Our primary business objective is rather simple-- to use American fish to supply wholesome, user-friendly products to the American consumer at the best possible price.

We are a company forever committed to the sustainability of our fishery resources. Our investment in the seafood industry is large and growing, and with it grows our investment in the health of the resource. While we are a company of real people— your constituents as a matter of fact— we are often reduced in the press to a faceless, multinational giant anxious to vacuum up the very last fish. To the contrary— put in very simple business terms— our company, its present and future viability, demands a strong resource conservation ethic.

Frankly, Tyson Seafood, and all of the people who work on our boats and in our processing plants, have far more at stake in the sustainability of our fisheries than anyone— including the environmental community. We did not commit to this industry our people's futures or the investments of our shareholders in order that we might destroy the resource and with it ourselves. Please hear what I am saying. What we are about, and what fishery conservation is about in the North Pacific has nothing to do with what happened in New England. And, what happened in New England had nothing to do with big boats or big companies or even ITQs.

There is a strong conservation ethic within the North Pacific industry, Council and States. Our region has led the nation in successful fishery conservation and in our many efforts to address bycatch. Attached to my testimony you will find a summary prepared by the North Pacific Council outlining the truly extraordinary conservation and bycatch achievements we have made. Let's keep the record straight and not allow anyone to confuse those facts in order to thwart our efforts to further rationalize our management program and make further progress on bycatch.

We have some general points to make on bycatch which relate to the legislation, S. 39. First, we believe that bycatch management is a national priority. It is a priority of Tyson Seafood and it must be a priority of our industry. We support the establishment of a new National Standard on bycatch that makes it a simple, straightforward National policy to—

1. minimize the harvest of fish we cannot utilize;
2. minimize the mortality of those fish that are caught but cannot be utilized, such as prohibited species that are required by regulation to be returned to the sea; and
3. maximize the utilization of those fish that are caught other than prohibited species.

We believe this approach is preferable to asking Congress to anticipate every complex contingency in every dynamic fishery by developing micro-management or region-specific provisions within the Act. Instead, a National Standard declares a policy for all Councils to implement while preserving their prerogatives to tailor fishery-specific bycatch solutions which are practical, and which will work. We ask that you consider this approach as an alternative to the very detailed approach taken in S. 39.

Lest our words ring hollow, Tyson Seafood has adopted a proactive approach to our bycatch problems. For example, in order to minimize the harvest of fish we cannot utilize in the Rocksole fishery—Tyson has voluntarily increased the mesh size in our nets to allow smaller, unutilized fish to escape. Already we have realized a 42% increase in rocksole retention by this method alone. Further, in order to increase the utilization of

Cod bycatch in the Bering Sea Rocksole fishery, we now transport this Cod to our new plant in Kodiak for further processing into fillets. These are fish that were not previously utilized because the open access system forces us to commit our entire ship-board processing capacity to processing Rocksole. None of this was required by law, but it shows what a company serious about bycatch can do.

Which brings me to the final issue of ITQs -- an issue that has a great deal to do with bycatch management. In fact, I would venture that a properly designed ITQ program for the North Pacific groundfisheries-- and the individual accountability such a program would establish-- could have more of an impact on bycatch and discard reduction than traditional methods. I would be very pleased to explain that statement in some detail if requested.

It is popular in some circles to equate ITQs with Tyson, but it wouldn't be fair to take credit for the idea-- as much as we might like to. No, Tysons didn't invent ITQs and we are certainly not alone in embracing the many benefits a properly designed program would bring to fishermen & processors, to resource and bycatch conservation, to the safety of life at sea, and to the American consumer. In fact, as the understanding of ITQs increases and the fear subsides, ITQs are supported by a rapidly growing community that includes big boats and small boats, Seatlites and Alaskans, offshore processors and onshore processors, scientists and managers, and even some of the more enlightened within the environmental community including the well respected Environmental Defense Fund.

Yet still there remains concern that companies like Tysons will gobble-up all of the quotas and force small-boat fishermen out of the fisheries. I would simply say that no serious discussion of North Pacific ITQs has failed to include quota share ownership caps and limits to transferability to address this very issue. Perhaps proof lies in the Halibut/Sablefish ITQ plan which contains extensive provisions to prevent excessive consolidation and to preserve the basic character of the fishery.

Given this, we simply ask you to reconsider using the legislation not just to guide but to facilitate the Council's ability to put ITQs into place where appropriate. The provisions of S. 39 regarding ITQs are very extensive and we are concerned that they may do more to deny our ability to rationalize the fisheries than to enhance it.

Thank you for your consideration of our views. I would be pleased to respond to any questions.

Senator STEVENS. Thank you very much. Mr. Casey?

**STATEMENT OF TOM CASEY, ALASKA FISHERIES
CONSERVATION GROUP**

Mr. CASEY. Good morning. My name is Tom Casey. I represent the people you see on the second page of our handout, 34 Bering Sea Crab Fishermen and Vessel Owners.

We are growing at the rate of about 7 percent a week mostly because of the revulsion many people feel in Seattle against ITQs. People that join our group join because the other crab association is devoted to ITQs. They feel that those privileges will end up in the hands of a minority of people.

More than anything else, the people who joined our group and have been roughly 15 to 18 since we testified to Don Young, telling us overwhelmingly that they want us to stop ITQs. They think it is a mistake and they want to go back.

Are you folks aware when you hear all the doom and gloom about the crab fisheries in Alaska that in 1980, the greatest year of king crab abundance and harvest, we earned about \$240- million during that king crab season? Yet in the last 60 days or less, a fleet of comparable size has earned more than this, harvesting Opilios.

I ask you to trust your eyes. Look around this room and tell me how many peasants you see. I knew most of these people when they lived in duplexes and trailers. Now, you know, they live in brick mansions on Brown Point; they live in Magnolia; they live in Edmonds in houses rarely under 3,000 to 4,000 square feet.

Wherever Senator Magnuson is right now, I hope that the creator of everyone of us is taking good care of him, because him and you, Ted and Don and Jerry—talk about economic development. You know, I hoped when I came out to Alaska in 1970 that I would be able to earn several times the minimum wage. Beyond my fondest dreams, when I got into the Alaska fisheries and then into deep sea in the Pacific, I do not dare tell the people I grew up back East, because they are making several multiples of the minimum wage.

Look around the room. What is the average price of a suit in this room? Here is a lawyer that earns several hundred dollars an hour, does a hell of a good job for his clients, and is an expert, but he will not work for free. He will only work for the income from these fisheries.

So, I ask you to trust not the text, but trust your eyes. There is great prosperity here. Where did it come from, sir?

It came from open access sea fisheries. Senator, I cannot help to say that this week my wife is going to Oregon, and I ate the fish sticks from her father's company.

I know a lot of them are made from Alaska pollock caught under open access. I think your family flourished under open access in the fish business. I hope when people come to you and say that, "Slade, things are terrible and we need you to jump ship on open access," that you will just think about how your family succeeded.

Senator GORTON. General Mills owns that company now.

Mr. CASEY. Yes, sir, but who made it desirable to General Mills; your father and grandfather under open access. I would like to point out to you, our membership is growing very fast because they

are against ITQs. When it comes to overcapitalization, whatever the value of the boats was before March 15th in the halibut and black cod fleet, did we not just add several \$100-million worth of capital to these permits? Did we not increase the overcapitalization problem by going through this artificial creation of new wealth to these folks?

To my knowledge, 42 vessels control half the black cod fishery now. I would like the same deal in crab. We have almost 42 members. We would like half the crab in the Bering Sea; equal treatment under the law.

You know that Caterpillar Tractor recently ended up with ITQs in a financial transaction. That really worries us. Just for a short time the lawyers had control over it. What makes us worry is all these "doo dahs" in the regulations can be overcome.

If I could turn your attention to Page 5 of our handout and very quickly tell you these are the reasons we are against ITQs. You know that Northwest Mariner and Entrance Point had problems in the Bering Sea Opilio fishery this year. No one questions that the people—the seamanship or the people on the Northwest Mariner, they were there sometimes decades and they were very careful men, but you would not believe how quickly vessels ice up and how quickly you get behind the 8-ball in 30-foot seas. Everyone in this room mourns for those men, but we are against using that as a political football to convince you to go for ITQs.

My time is up. I will just tell you, Senator, here are 1,000 signatures from Kodiak, Alaska which we have delivered to your office, Frank's, and Don's 2 weeks ago. ITQs are highly controversial. A lot of people still do not want them. Do not believe the guys in the \$400 suits who say it is over. Thank you, sir. I21[The prepared statement of Mr. Casey follows:]

Alaska Fisheries Conservation Group

Thirty-Four Bering Sea Crab Vessel Owners
from Washington, Oregon & Alaska

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Testimony of

Thomas A. Casey, General Manager

Alaska Fisheries Conservation Group

before the

U. S. Senate Commerce Committee's

Sub-committee on Oceans and Fisheries

March 18, 1995

Seattle, Washington

Alaska Fisheries Conservation Group MEMBERSHIP ROSTER FOR MARCH 18, 1995

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|------------------------|-------------------------|
| 1. ALASKA TROJAN (OR) | 2. ALEUTIAN BALLAD (OR) |
| 3. ALICIA JEAN (AK) | 4. AMATULI (WA) |
| 5. ARCTIC LADY (AK) | 6. BRITTANY (WA) |
| 7. CONTROLLER BAY (WA) | 8. CORNELIA MARIE (WA) |
| 9. EXITO (WA) | 10. HANDLER (AK) |
| 11. ICELANDER (AK) | 12. ICY BAY (WA) |
| 13. KDS (AK) | 14. KISKA SEA (OR) |
| 15. KODIAK QUEEN (WA) | 16. LADY ALASKA (AK) |
| 17. LADY ALEUTIAN (AK) | 18. LADY KODIAK (AK) |
| 19. MYSTERY BAY (WA) | 20. NEW VENTURE (OR) |
| 21. NOWITNA (WA) | 22. OCEAN BALLAD (OR) |
| 23. PATRICIA LEE (AK) | 24. PINNACLE (WA) |
| 25. POLAR LADY (WA) | 26. PROSURVEYOR (AK) |
| 27. REBEL (AL) | 28. SHAMAN (WA) |
| 29. SIBERIAN SEA (OR) | 30. SULTAN (WA) |
| 31. TIME BANDIT (AK) | 32. TRAILBLAZER (OR) |
| 33. TRIDENT SFDS (WA) | 34. YARD ARM KNOT (WA) |

Good morning, Senator Stevens and Senator Gorton, my name is Tom Casey and I represent the owners of thirty-four Bering Sea and Aleutian Islands crab vessels from Washington, Oregon, Alaska, California and Alabama.

Most of us have known Ted Stevens since the initial passage of the Magnuson Act in 1976, when he, Warren Magnuson, Don Young, Gerry Studds and President Gerald Ford generated the greatest domestic prosperity ever experienced in Alaskan fisheries' history.

By creating an opportunity in law and in fact for us to reverse the foreign domination of Alaska's offshore fisheries, you made our lives and our families' lives better than we could have ever imagined back then.

You never let us thank you, Ted. But we want to do exactly that now because so many of us that benefited from your work are here today. So whether you can stand it or not: We thank you sincerely for all that you have done for fishing families in the Northwest and Alaska. We were very lucky to have you, Maggie, Don and Gerry on watch twenty-years ago when our fate was being decided.

You folks created an "opportunity-society" in the Alaskan 200-mile zone that today should inspire the leaders of the U.S. House of Representatives who want to establish that same principle nationwide.

Our primary concern today is ITQ's. We oppose them unanimously in the BSAI crab and groundfish fisheries. We are wary of them in the halibut and blackcod fisheries and we think years should go by before there is any new Secretarial approval of ITQ's in any other Alaskan fisheries.

What's wrong with a 3-5 year moratorium on new ITQ's? Both the Pacific Council and the North Pacific Council voted last year to delay further implementation of ITQ's in their areas because of social and political reactions to them.

We find little if any enthusiasm for ITQ's on the East Coast and the Gulf Coast.

Ted, neither you nor Maggie ever intended to unleash a fishery management process (ITQ's) upon us that divides the fleet and the industry into "Have's and Have-Not's."

Your gift to us back then was Opportunity, not a Bureaucratic Guarantee (ITQ's).

You and Maggie united us in prosperity. ITQ's will divide Alaskan and Northwest families for generations to come and the billion-dollar-per-year legacy that you and Maggie bequeathed to all of us will soon be cornered by the wealthiest few and their clever lawyers.

We ask you not to let well-meaning (?), self-certain social-engineers take us down that road. History's greatest societies have been fueled by innovation, energy, opportunity and enterprise; not by monopolies that excluded competition and cornered the market.

People will come before you today and ask you to protect them from competition, to guarantee them fabulous wind-fall profits, to insure them from financial operating losses and to calm the seas so that every day is flat calm.

Please remind them, Ted, that was never your intention.

Make us work for our pay. Use simple incentives to reduce bycatch and waste. Promote innovation and let the NMFS bureaucrats know that you are closely monitoring their spending on these dubious social experiments (ITQ's).

And ten years from now, when The Magnuson Act is re-authorized again, we'll still have a vibrant fishing economy in Alaska that profits many households not an oligopoly that profits just a few.

The tide has turned throughout America. People want

1. less government, not more;
2. less central planning of their lives and businesses, not more;
3. more competition, not less;

4. lower food prices, not higher ones;
5. more opportunity to prosper as individuals and families, not less;
6. wiser use of our natural resources, not waste.

As a nation, this is the direction we have chosen to travel.

But listening to the ITQ-salesmen you'd never know it.

Please include in the Sustainable Fisheries Act at least a 5-year moratorium on ITQ's.

In 1976, you gave us new prosperity in Alaska's 200-mile zone. In 1995, please don't let federal bureaucrats and wind-fall profiteers steal it away from us.

Thank you.

Our Technical Recommendations are listed below and our critique of ITQ's is included in the Appendix.

Technical Recommendations

1. SEC 111

Section 303 (f) (2) (E) Page 43

We oppose federal auctions of fishing privileges in Alaska because wealthy corporations and individuals will end up cornering the supply through paper-partners and frontmen.

2. SEC 118

Section 313 (2) Page 71

This seems to require total catch measurement by January 1, 1997. *"Such conservation and management measures shall ensure the accurate enumeration of target species, economic discards and regulatory discards."*

One of the keys to minimizing the bycatch mortality of juvenile and female King Crab and Tanner Crab in the Bering Sea crab fisheries is to handle them intelligently and to minimize their time out-of-water on deck.

It does not make sense to weigh these juvenile and female crab before returning them to the sea. We predict that handling mortality will rise dramatically if this sentence is not changed for the Alaska crab fisheries.

3. SEC 118

Section 303 (f) (3) Page 71

By simply inserting the words "and between" after the word "within" on Line 23, maximum bycatch reduction can be accomplished fastest. These two words will create powerful incentives for groundfish fishermen to clean-up their acts, as the American public expects them to.

Appendix:

I T Q Critique

ITQ Recommendations

We recommend that S 39 discourage ITQ's for at least the following reasons.

1. **ITQ's do not assure vessel safety on the high seas. But seamanship, continuous vessel safety training/drilling and extreme caution by the skipper and the crew can reduce the odds of fishing vessel accidents.**
-

Indicator

- A. The past Bering Sea Opilio Tanner Crab fishery (January 15-February 17) was marked by record high ex-vessel prices, \ very cold weather and a rampaging ice-pack that constantly threatened to destroy gear on the best "hot spots".

Ironically, the same fate almost befell two different vessels, one that fished the treacherous open ocean and one that was sheltered at anchor.

On opening-day of the very stormy and cold Opilio Tanner Crab season last January in the Bering Sea, the FV NORTHWEST MARINER, operated by an experienced and safety-trained skipper and crew, capsized and sank with all hands lost.

On February 7th, the crabber ENTRANCE POINT, was sheltered in the lee of St. Paul Island in the Pribilofs. It was nearly lost when advancing ice trapped it against the shore. The USCG evacuated the crew because the risk of grounding became unacceptably high. Luckily, a nearby tug boat was able to free the crab vessel from the ice and tow it to harbor.

Conclusion: ITQ's are unlikely to reduce the high risks of winter fishing in the Bering Sea.

Crew abandons ice-bound ship

An H-65 from the cutter Sherman lifted six crewmen off a fishing boat trapped in the ice near St. Paul Island Monday.

Coast Guard spokesman Jeff Crump in Juneau said the 109-foot crabber Entrance Point was at anchor in English Bay near St. Paul when it reported it was trapped in floe ice. The six crewmen aboard elected to leave the boat.

The cutter Sherman was nearby and sent the helicopter to pick up the crew and transport them to St. Paul.

KODIAK MIRROR

2.8.95



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

EXHIBIT 2

Surf Clam/Ocean Quahog ITQ Evaluation

Based on Interviews with Captains, Owners and Crews

By

Kenneth L. Beal

Interviews with NMFS Port Agents and surf clam and ocean quahog fishermen, skippers and vessel owners were conducted in fishing ports in Maryland and New Jersey on February 10-13, 1992. The primary points which we focused on were the acceptability of the cage tags currently in use and the perception of whether enforcement has changed as a result of Amendment 8 to the Surf Clam & Ocean Quahog Fishery Management Plan. Most of the people interviewed offered additional comments on other aspects of Amendment 8, although these comments were not solicited. For purposes of reporting all observations, I will first address the key issues, followed by general comments.



Under the previous provisions of the FMP, with severely restricted fishing hours and days (6 hours every 2 weeks), boats had to go fishing in bad weather or lose their day. It was hoped that Amendment 8 would eliminate this danger, but unfortunately this has not happened. Processing plants now tell captains when they want a load of clams. Their demands are based on markets, and weather is not a consideration. So boats are often forced to go fishing in bad weather, or lose the connection with that processor. Two vessels which sank in late 1991 (the John Marvin and the Valerie E) were caught in a rapidly-building storm. The crew from the Valerie E were lost, but the crew from the John Marvin were rescued by the Coast Guard. Many people mentioned these sinkings as an indication of no change in the safety factor.

2. **ITQ's destroy coastal community jobs.**

Indicator

A. Comparative Kodiak Halibut Fishing Strategies

| | Vessels | Skippers | Crewmen | Total Jobs |
|--------------------------|---------|----------|---------|-------------|
| 1994 Open-Access | 5 | 5 | 20 | 25 |
| 1995 ITQ Regs | 1 | 1 | 4* | 5 |
| 1995 Net Job Loss | | | | (20) |

* These "crewmen" are all former skippers and quota share owners.

Source: Proposal by several Halibut Quota Share-Holders to
 Bill Alwert
 P.O. Box 1711 Kodiak, Alaska 99615
 Phone (907) 486-5511

B. Kodiak Island Borough ITQ Resolution



OPINION
By Dana Carros

MARCH 17, 1995

IFQ plan shows callous disregard of citizen's rights

With the Japanese retreat from Alaska's fishing grounds in the late seventies, Americans began to dominate a new set of lucrative fisheries. By 1990, one short decade, black cod fishermen were claiming a historical right to these fish...Eater individual fishing quotas.

The end of an era, March 15 will mark the first day that able-bodied Alaskan fishermen will find themselves out of work because the government (dooms) think they should be allowed to fish. Successfully fished off for years by the common sense of people such as Kodiak's coalition, IFQs are nevertheless about to be forced upon us. Why is this happening?

For more than a hundred years bright eyed U.S.-Alaska fishermen have been able to make a future based on their own determination and business ability. As they got older these fishermen sold their boats and retired. The cycle continued anew. Now through the "foresight" of the North Pacific Fishery Management Council, our newest generation of fishermen are left out. Black cod and halibut are "reserved" for the previous generation's retirement benefit. To add insult to injury, the Alaska Department of Fish and Game is considering a set aside of 45 percent of Pacific gray cod for the IFQ holders as a bycatch against their black cod and halibut quotas!

Proponents say this system will be safer, provide for higher prices and alleviate congested fishing grounds. They say the system is fair to those who entered the fishery first. There is a more important question however; is it right? Even the act of considering this system points to a callous disregard for the basic rights of citizens. The council's handling of the decision process has been criticized for cutting off debate on alternative proposals. California, Oregon and Washington chose a different system, a variation on limited entry in which the fishing seasons were split up into quarters, providing for less congestion, etc.

Allotting "futures" in fish stocks that God has't created yet is a travesty. Any system which allows for the accumulation of fishing rights or neglects new recruitment shouldn't even have been considered. Think about it! We are busy creating fish lords! If this system is found to be constitutional we need a new constitution. The department of commerce and the North Pacific Fishery Management Council should be held accountable for selling out Alaska's youth.

Crews are out of work. Though some who have not fished in years received windfall allotments, most owners received fewer actual pounds than they had calculated was due to them...government in action. The IFQ owners are pooling their shares together to make the most of the situation and are therefore firing their crews. By combining with other boat owners who have shares of their own, they can cut their expenses and increase their efficiency using the gear from the various boats. Many owners are actively looking to have their catch delivered directly to the fresh market, circumventing the local processors altogether. Is this system fair to the process workers? For those of us who have actively competed in the fisheries, it is hard to believe that this is actually happening.

Despite the setbacks the battle against IFQs continues by such various groups as Greenpeace, commercial fishermen from around the country and sportfish organizations and virtually every coastal community in Alaska. Left unchecked IFQs will lock up crab and bottomfish as well as the black cod and halibut. Factory boats are pushing for just that, already seeking a way to buy up stock rights so they won't have to compete anymore.

Gov. Hickel was one of the main supporters of IFQs. He said, "Let's try it and if it doesn't work we can throw it out." Well it's not working so let's throw it out! Wishful thinking aside it is time to face the realities that are facing all the coastal communities in Alaska...unemployment.

Ironically the Alaska delegation to Washington controls the committees that are rewriting the Magnuson Act. A simple amendment disallowing individual quota shares is all that is needed to solve this mistake. Don Young, Ted Stevens, Frank Murkowski, and Gov. Tony Knowles have spoken out against IFQs. They certainly know how to talk the talk! Alan Austerman has also spoken out but he is busy trying to overturn this mess even now. At least Alan can walk the walk!

Alaskans need to think once more about what is happening. Maybe it's time to have a chat with a congressional representative or two.

JOB LOSSES >
FROM
CREW FIRINGS



Introduced by: Assembly
 Requested by: Assembly
 Drafted by: Clerk & Community
 Development Director
 Introduced: 11/03/94
 Adopted: 11/03/94

**KODIAK ISLAND BOROUGH
 RESOLUTION NO. 94-37**

**A RESOLUTION URGING THE ALASKA MUNICIPAL LEAGUE
 AND ALL COMMUNITIES TO SUPPORT
 THE LAWSUIT AGAINST INDIVIDUAL FISHING QUOTAS**

WHEREAS, the Kodiak Island Borough Assembly believes that Individual Fishing Quotas (IFQs) will lead to corporate-ownership of the North Pacific fishing industry; and

WHEREAS, this will have an adverse impact on tax bases and community structures; and

WHEREAS, IFQs would result in financial loss to both the public and private sectors of the economy; and

WHEREAS, the Kodiak Island Borough has contributed \$30,000.00 to support the lawsuit against IFQs;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT the Alaska Municipal League, concerned communities, and individuals financially support the lawsuit against Individual Fishing Quotas.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
 THIS THIRD OF NOVEMBER, 1994**

KODIAK ISLAND BOROUGH

Jerome M. Selby
 Jerome M. Selby, Borough Mayor

Mary A. Monroe
 Mary A. Monroe, Presiding Officer

ATTEST:

Donna F. Smith
 Donna F. Smith CMC, Borough Clerk

3. ITQ's breed acute social and community dissension

Indicator

Kodiak fishermen's wives fight over halibut and sablefish Quota Shares in the check-out line at Safeway.

FRIDAY, NOVEMBER 25, 1994—KODIAK DAILY MIRROR—5



Public safety blotter

A young boy missing without his coat for several hours was found Thursday in the Lilly Lake area.

\$50 and complete eight hours of community service for theft.

* A woman had her finger broken Thursday when another woman assaulted her at Safeway.

John Olsen, Jr., 21, has to pay \$250 and serve three days in jail for refusing a breath test.

M. J. Lapointe + Kendrick

4. ITQ's guarantee higher food prices to American consumers for decades to come.

Indicator

- A. BC-export halibut prices under ITQ's
- B. Homer fishermen's plan to "coordinate" with Canadian ITQ-fishermen to establish and maintain highest possible U.S. consumer prices for halibut
- C. Honor Thy Supplier article

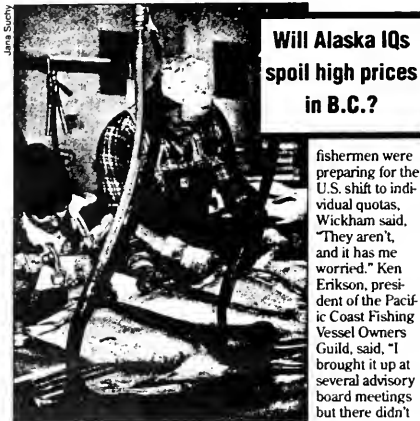
VANCOUVER, BC

B.C. Halibut Ends Upbeat

The weather was rough for British Columbia longliners making their last halibut deliveries of the season; but overall, it was smooth sailing for these fishermen whose quota share system allowed them to pick their fishing days and capitalize on market conditions. The preliminary end-of-season totals ran to 9,897,000 pounds for Canada out of a quota of 10 million pounds (compared to 44,957,000 pounds for the U.S.). Virtually all of Canada's fish were caught and sold fresh into a market which has expanded from 300,000 pounds per week several years ago to 600,000 pounds per week this year.

B.C.'s halibut season saw excellent prices with few fluctuations, according to Eric Wickham, past president of the Pacific Coast Fishing Vessel Owners Guild, which represents most of the halibut industry in B.C. "I had a great year. I fished the first of the season and got just over C\$4.00/lb. (U.S.\$2.60/lb.) and I thought that would be the best all season. In fact, it got better and fluctuated at just over C\$4.00/lb. most of the time," said Wickham. He added that he heard reports of some fishermen receiving over C\$5.00/lb.

In large part, the high prices and lack of fluctuation were a result of the Department of Fisheries and Oceans (DFO) hot line, said Wickham. "It is a real good service which has stopped the gluts." This service provides information to fishermen about landings throughout the province, allowing them to spread out deliveries and help prevent glutted markets that cause downward price fluctuations. Wickham explained that halibut fishermen have had to learn how, when and where to



Janis Strydom

Will Alaska IQs spoil high prices in B.C.?

fishermen were preparing for the U.S. shift to individual quotas, Wickham said. "They aren't, and it has me worried." Ken Erikson, president of the Pacific Coast Fishing Vessel Owners Guild, said, "I brought it up at several advisory board meetings but there didn't seem to be

much interest in the issue." The main reason for this, Erikson believes, is that Canadian fishermen have been told by processors that if the price drops below C\$3.00, it will be worthwhile freezing the halibut.

Where halibut was once caught in short derby fisheries and delivered at the dock to large processors, the quota share system has favored smaller, leaner buyers who tend to specialize in these fisheries. In fact, said Wickham, there is one buyer who purchases about one-third of the weekly poundage. "He is a guy with three phones attached to his head and some employees to drive trucks, and he specializes in halibut for eight months of the year. The big companies can't match that kind of operation," Wickham said. The rest of the quota is spread out among a number of buyers, some operating out of single trucks and delivering to a small network of customers.

When asked how Canadian

processors that if the price drops below C\$3.00, it will be worthwhile freezing the halibut. That price is still significantly higher than prices were before the introduction of IQs in the Canadian halibut industry so there may be little impetus to examine the upcoming impact of fresh American halibut on the markets which B.C. fishermen have been supplying. A measure of how little concern there is over the prospect of competition from American quota shareholders next season is the fact that the price of Canadian halibut quota has risen to about C\$15.00 per pound.

Still, Erikson believes B.C. fishermen should be examining and reacting to the upcoming change, preparing themselves for a price drop and market gluts. Wickham added that the Americans could enter

the fresh market with reduced impact on all concerned if they learn from the Canadian experience. He said Canadians have built up their market because they have learned how to smooth out the gluts. "The distributors want a constant amount... If the Americans try dumping 3 or 4 million pounds one week then none the next week, they will glut the market and drive the price down. Then we will have to live with it. But if they supply the distributors with consistent amounts of fresh fish every week, then we could build the market."

In the meantime, DFO continues to review the use of IQs in general in Canada and, as of yet, have not made them permanent. Given the amount of investment that most fishermen have in their quota purchases, however, it seems unlikely that IQs will be reversed.

On the international front, the International Pacific Halibut Commission had not yet set 1995 quotas as this issue went to press. These will be set during meetings of the IPHC in Conference Center, downtown Victoria, January 23-27. The shift to IQs in Alaska is not expected to have any impact on these negotiations. Said IPHC biologist Gordon Peltonen, "The IPHC will continue to set the overall allocations. How the catch is divided up is a domestic issue."

At press time, stock assessments for next year were not yet available. In general, however, Peltonen said, "The stock has experienced a gradual downturn over the past few years." He added that the stock was not threatened and "we have seen these kinds of cycles before."

—T.J. Doherty

ALASKA FISHERY
JOURNAL FEB '9

Drew Scalzi of Homer, owns the 63-foot *Anna Lane*. He longlines for halibut and blackcod, fishes crab and tenders salmon in the summer. Scalzi, too, was encouraged by Singleton's strong message and said of opposition funding, "The money would be better spent buying long-line IFQ than paying it to an attorney."

As a fisherman, he said, he welcomes the opportunity to deliver fish when the market is right. "We'll look at the markets, talk to the cannery and see what the best time to deliver is," he said.

The next challenge for the fleet is to maximize the value of the fishery under

RIGHT = HIGHEST
PRICE

the new management structure. And that, Scalzi said is going to take "a lot more work."

One job will be to coordinate deliveries in both Canada and Alaska to ensure that the full market benefits of the new plan can be realized by the fleet.

Scalzi added that the fleet should take a conservative, long-term approach to setting quotas, and "present a stronger front to the North Pacific Fishery Management Council to limit bycatch."

AMERICAN CONSUMER
PAYS THE PRICE

The court battles may be over, he said, but the work for what he termed the new "owner-stewards" of the resource has only begun.

Honor thy Supplier

I was just out of fisheries school at the University of Rhode Island, working wholesale seafood in the New York metro area. Thrilled with it all, I was, and as I approached the grizzly old timer out on that dock in Connecticut, it was with a sense of power. I was going to talk to him about doing business with his dock—about maybe letting him ship me some fish.

He wouldn't talk to me. He looked at me, but he wouldn't talk to me. I felt like a ghost—like the guy in the movie *Ghost* when he's first dead and hasn't figured out yet that nobody can see him or hear him.

It took me a couple of years and a couple of knock-downs until I figured it out. This guy had great fish—day-boat flounder and cod—and it was spoken for. Sure, there were times when he had too much fish and he could have used another customer or two, but then what would he do when bad weather came along and he had to piece the fish out? No, this old-timer knew what he had and he didn't need new customers, especially the kind that didn't get the picture.

That was then and this is now. Everything's changed and nothing's changed. That dock in Connecticut is probably a marina now, but good shippers are still good shippers, and there are still folks out there who don't get the picture.

There's a company in Ecuador that ships fresh mahi-mahi, sword, wahoo and mako that's so fresh you'd swear it was local. Think he needs new customers? He could sell twice what he produces. The people he does sell to know what they've got—gold—and they display their loyalty every day. They give fair

returns for what they've received; they communicate any difficulties they're having (claims, soft markets) instantly; and they pay their bills on time.

Seafood supplies are tight. Don't kid yourself. And I'm not talking just North Atlantic cod, either. I'm talking shrimp, scallops and salmon—the horses that pull the wagon. Atlantic salmon didn't go in the tank this fall as expected. And tiger shrimp never got cheap. Sea scallops are priced like U/15 shrimp, and sure, there are some inexpensive Chinese scallops around, but how long will they last?

Fact is, our industry is maturing; production is smoothing out; and world demand for high-quality seafoods is rising rapidly. Third World nations are going First World in a hurry—and they love seafood. Witness China's almost overnight transformation from shrimp producer to shrimp consumer.

There's less and less seafood available on the world market and more and more demand for it. This makes good suppliers more valuable than ever before. Those that realize it are strengthening their alliances in the world of production and positioning themselves for the future. Those that don't will find a rough road

ahead, for the days of playing one producer against another are drawing to an end. **Supply is King.**

A consultant specializing in establishing and upgrading seafood lines for broadline and chain distribution centers. Phil Walsh has been buying and selling seafood for 20 years.

There's less and less seafood available on the world market and more and more demand for it. This makes good suppliers more valuable than ever before.

5. ITQ's undermine the "Opportunity Society" of the 104th Congress.

A. Creates Expensive Bureaucracy

1. Blanket Onboard Observers
2. Blanket At-Sea and Landing Enforcement
3. Ultra-Regulation (1995 ITQ Halibut Regs)

B. Oligopoly favors the richest citizens and companies.

C. Oligopoly discourages innovation compared to Open-Access history

NMFS officials: IFQs will change the way you fish

By CECIL RANNEY

Mirror Writer

This year's halibut and sablefish seasons will be very different because of individual fishing quotas. Just how different because a little clearer yesterday when a team of officials in charge of the program met with the public in the auditorium.

D. Jeffrey Passer, National Marine Fisheries Service enforcement agent, said the IFQ program was very restrictive.

"There's nothing in the world that I've seen so restrictive," he told a surprisingly small crowd of fishermen and processors. "It's going to change the way you fish."

Most of the changes deal with requirements and paper work that give NMFS information about the fish from where and when it is caught to its final destination. Fishermen are just now getting their final quotas share information in the mail.

The halibut season will begin March 15. Before the season begins they will be issued a card, much like a credit card. The card will track the fisherman's quota. Like an ATM card the fisherman will have

a PIN to stop unauthorized use.

According to the new rules fishermen must notify NMFS by phone at least six hours before making a landing. Some fishermen at the meeting questioned Passer about how rigid these rules were.

"Sometimes things come up that change when I can get to the dock," one said. Passer said a landing was when the fish were actually transferred from the boat, not when the boat tied to the dock.

"We know things can change. If it is just a matter of a couple of hours, no problem. If it is the next day, we might have to start a new notification time," he said. The fish must be delivered to a registered buyer with a transaction terminal. The terminal is a card machine that transmits the information to the computers in Anchorage.

More rules govern transactions: The buyer must be registered and file a landing report within six hours. Landings must begin between the hours of 6 a.m. and 6 p.m. There are rules to cover dockside sales and shipping out of Alaska. Passer was assigned the task of setting

up the enforcement system to deal with IFQs. His main message seemed to deal with a need for communications.

"It's going to be an education for all of us," he said. "If you can't figure out what to do, call the local enforcement office and we'll come down and sit down with you and figure it out together."

"Something's are going to need changing. We need your feedback so we can go back to the council and make changes to things that aren't working," he said.

Passer said NMFS enforcement in Alaska doubled from about 20 people to 40 to deal with IFQs. New offices opened in Keetchikan, Petersburg, Yakutat, Cordova and Seeward.

L. Bob Wilson gave the group a look at the Coast Guard's plans to help enforce IFQ's rules. He said there would be some increase in cutter patrols and aircraft flights.

When the Coast Guard conducts a boarding they will be looking at a safety check first but then they will want to see IFQ related permits and cards. "We will be asking questions like, when

you left port, where you are fishing, where you plan to deliver and when," he said.

"I see the frequency of aircraft asking fishing vessels questions going up."

Shawn Carey works in the Restricted Access Management Division of NMFS. His part to the presentation covered the quota shares and how they could be used, sold or transferred.

"The most frequent question I get is, how much are they worth? I can't answer that, Contact a broker," he said.

The questions from the fishermen revealed the many ways the shares may be combined and used.

Several fishermen with quota shares can get on one boat and fish together as long as their total doesn't exceed the vessel's harvest cap. Initial quotas share recipients can hire skippers to run their boat and catch their quota. A vessel may fish more than one IFQ area during the same trip but it is only allowed to have onboard the amount allowed for the area in which it is fishing.

These are but a few examples of the

See IFQs, Page 6

Rough Estimate of Initial Windfall Value* for U.S. Fishery ITQs
(Based on 1993 U.S. Harvests/Ex-vessel prices)

| | Thousand dollars† | Thousand pounds† | Dollars per pound | Average IFQ value per pound | Regional value for average IFQ |
|------------------------|----------------------|---------------------|----------------------|-----------------------------------|-----------------------------------|
| New England | \$552,280 | 604,897 | \$0.91 | \$4.57 | \$2,761,400,000 |
| Middle Atlantic | \$154,989 | 257,537 | \$0.60 | \$3.01 | \$774,945,000 |
| Chesapeake | \$161,516 | 813,283 | \$0.20 | \$0.99 | \$807,580,000 |
| South Atlantic | \$161,314 | 250,346 | \$0.64 | \$3.22 | \$806,570,000 |
| Gulf | \$630,738 | 1,714,772 | \$0.37 | \$1.84 | \$3,153,690,000 |
| Pacific Coast & Alaska | \$1,722,396 | 6,759,704 | \$0.25 | \$1.27 | \$8,611,980,000 |
| Great Lakes | \$19,145 | 31,974 | \$0.60 | \$2.99 | \$95,725,000 |
| Hawaii | \$69,082 | 34,582 | \$2.00 | \$9.99 | \$345,410,000 |
| Total | \$3,471,460 | 10,466,895 | | \$1.66 | \$17,357,300,000 |

Estimated Total Initial ITQ Value of U.S. Fisheries:

\$17,357,300,000

* *Initial windfall value* refers to the initial trading value that accrues to the initial quota recipients when they sell their ITQs. Based on the past performance of fishery quota systems, the ITQ trading price has been assumed to be 5 times the ex-vessel price. The value to the nation of a renewable resource is a potential continuing revenue stream over time.

† Data based on: Fisheries of the United States, 1993, U.S. Department of Commerce, NOAA/NMFS, (1994)

U.S. COMMERCIAL LANDINGS

U.S. DOMESTIC LANDINGS, BY STATES, 1992 AND 1993 (1)

| States | 1992 | | 1993 | | Record Landings | |
|----------------|--------------------|---------------------|--------------------|---------------------|-----------------|--------------------|
| | Thousand pounds | Thousand dollars | Thousand pounds | Thousand dollars | Year | Thousand pounds |
| Alabama | 21,689 | 35,566 | 22,093 | 34,242 | 1973 | 36,744 |
| Alaska | 5,637,937 | 1,577,421 | 5,905,638 | 1,429,536 | 1993 | 5,905,638 |
| California | 102,080 | 136,106 | 201,476 | 119,749 | 1936 | 1,760,193 |
| Connecticut | 19,634 | 62,672 | 17,398 | 50,005 | 1930 | 88,012 |
| Delaware | 6,554 | 4,207 | 7,191 | 4,628 | 1953 | 367,500 |
| Florida | 152,169 | 154,889 | 170,751 | 200,833 | 1938 | 241,443 |
| Georgia | 17,620 | 22,957 | 15,743 | 21,231 | 1927 | 47,607 |
| Hawaii | 27,893 | 70,209 | 34,582 | 69,082 | 1993 | 34,582 |
| Illinois | 187 | 367 | 194 | 275 | - | (2) |
| Indiana | 1,358 | 2,550 | 1,596 | 2,294 | - | (2) |
| Louisiana | 1,011,575 | 294,986 | 1,292,893 | 261,822 | 1984 | 1,931,027 |
| Maine | 201,217 | 163,341 | 236,406 | 181,136 | 1950 | 356,266 |
| Maryland | 57,067 | 36,424 | 84,938 | 53,399 | 1890 | 141,607 |
| Massachusetts | 274,269 | 280,589 | 219,166 | 232,103 | 1948 | 649,696 |
| Michigan | 35,057 | 10,337 | 16,861 | 9,336 | 1930 | 35,580 |
| Minnesota | 269 | 101 | 373 | 148 | - | (2) |
| Mississippi | 187,634 | 31,348 | 181,339 | 29,446 | 1985 | 439,518 |
| New Hampshire | 10,320 | 11,503 | 10,971 | 11,836 | - | (2) |
| New Jersey | 204,368 | 97,500 | 196,101 | 96,288 | 1956 | 540,060 |
| New York | 50,112 | 51,985 | 54,340 | 54,163 | 1880 | 335,000 |
| North Carolina | 154,035 | 57,458 | 164,883 | 57,890 | 1981 | 432,006 |
| Ohio | 4,985 | 2,555 | 5,332 | 1,711 | 1936 | 31,083 |
| Oregon | 256,912 | 76,240 | 210,246 | 61,332 | 1992 | 256,912 |
| Pennsylvania | 485 | 195 | 230 | 171 | - | (2) |
| Rhode Island | 141,655 | 95,681 | 120,756 | 76,320 | 1957 | 142,080 |
| South Carolina | 39,272 | 25,621 | 38,843 | 25,843 | 1965 | 26,611 |
| Texas | 96,125 | 181,353 | 90,573 | 152,755 | 1960 | 237,684 |
| Virginia | 630,521 | 90,500 | 728,345 | 108,117 | 1990 | 786,794 |
| Washington | 121,512 | 104,960 | 162,344 | 111,779 | 1941 | 197,253 |
| Wisconsin | 8,484 | 5,914 | 7,295 | 5,110 | - | (2) |
| Total | 9,637,303 | 3,677,935 | 10,466,895 | 3,471,460 | - | - |

(1) Landings are reported in round (live) weight for all items except univalve and bivalve mollusks such as clams, oysters, and scallops, which are reported in weight of meats (excluding the shell). Landings for Mississippi River Drainage Area States are not available.

(2) Data Not available.

NOTE: Data are preliminary. Data do not include landings by U.S. flag vessels at Puerto Rico and other ports outside the 50 States, or catches by U.S. flag vessels transferred to internal water processing vessels (IWP) in U.S. waters. Therefore, they will not agree with "U.S. Commercial Landings" tables on page 6. Data do not include aquaculture products, except oysters and clams.

U.S. DOMESTIC LANDINGS, BY REGIONS, 1992 AND 1993 (1)

| Region | 1992 | | 1993 | |
|-----------------------------|--------------------|---------------------|--------------------|---------------------|
| | Thousand pounds | Thousand dollars | Thousand pounds | Thousand dollars |
| New England | 647,101 | 601,786 | 604,697 | 552,280 |
| Middle Atlantic | 260,817 | 355,478 | 257,537 | 354,989 |
| Chesapeake | 687,580 | 126,924 | 813,283 | 181,516 |
| South Atlantic | 237,720 | 152,037 | 250,346 | 161,314 |
| Gulf | 1,426,399 | 652,141 | 1,714,772 | 630,738 |
| Pacific Coast and Alaska | 6,310,741 | 1,894,927 | 6,759,704 | 1,722,396 |
| Great Lakes | 31,042 | 22,433 | 31,974 | 19,148 |
| Hawaii | 27,893 | 70,209 | 34,582 | 69,082 |
| Total | 9,637,303 | 3,677,935 | 10,466,895 | 3,471,460 |

(1) Landings are reported in round (live) weight for all items except univalve and bivalve mollusks such as clams, oysters, and scallops, which are reported in weight of meats (excluding the shell). Landings for Mississippi River Drainage Area States are not available.

NOTE: Data are preliminary. Data do not include landings by U.S. flag vessels at Puerto Rico and other ports outside the 50 States, or catches by U.S. flag vessels transferred to internal water processing vessels (IWP) in U.S. waters. Therefore, they will not agree with "U.S. Commercial Landings" tables on page 6. Data do not include aquaculture products, except oysters and clams.

add ... my ...
for ...

East Coast Fisheries Federation, Inc.

NEWSLETTER

MAY 1994

ROLLIE SCHMITTEN HAS TAKEN AN ENORMOUS STEP IN RESTORING A MORE HONEST AND OPEN NMFS BY RELEASING THE SECRET SURF CLAM REPORT. Copies are available at the office, and it's interesting reading. In short, the ITQ system is a ugly joke in almost every way. Enforcement is poor, boats and plants collude to hide landings, hundreds of jobs are gone, the resource is in the hands of two or three companies, nobody knows who "owns" the resource. Worst of all, vessels and lives have been placed in jeopardy because the ITQ holder now has such power over the fisherman.

THERE ARE MORE QUESTIONS RAISED THAN ANSWERED in the report. The biggest one is whether an ITQ system can ever be free of those problems, given the usual catch-up game that government plays with industry, especially the wise guys. See the Atlantic City Press.

BUT THE REPORT IS A TWO-EDGED SWORD, because it can definitely be used to demonstrate that there are huge costs associated with regulating an ITQ system. Count on Administration testimony during Magnuson Reauthorization to that effect, asking for user fees. Here's hoping that our elected representatives realize that if money goes from the industry to Silver Spring, it costs jobs, plain and simple.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway,
Silver Spring, MD 20910
THE DIRECTOR

APR 15 1994

MEMORANDUM FOR THE RECORD:

FROM: Rolland A. Schmitt *RAS*

SUBJECT: Review of the Effectiveness of Our Administrative and Enforcement Obligations Under the Surf Clam/Quahog ITQ Plan

This is to certify that the attached subject document (except for page 12 which lists the names of the individuals interviewed) is no longer considered CONFIDENTIAL or CLOSE HOLD. With the exception of page 12 (omitted from the attached copy), it can now be distributed to any interested persons.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

February 25, 1992

CONFIDENTIAL

CLOSE HOLD

MEMORANDUM FOR: Richard Roe
Jon Rittgers
Ed MacLeod
FROM: Ed MacLeod, Chairman Surf Clam/Quahog
Review Committee
SUBJECT: Review of the Effectiveness of Our
Administrative and Enforcement Obligations
Under the Surf Clam/Quahog ITQ Plan

In addition to the comments and recommendations made in the attached individual reports, I personally would like to emphasize the following in executive summary:

1. It is apparent that each fishery has its own peculiarities and that each fishery that is being considered for an ITQ must have the amendment or plan suited to that particular fishery. This is a Council responsibility.
2. Although there may be a split in those harvesters that favor an ITQ system and those that oppose it, there is unanimity in their real fears of a monopolistic control of the fishery in the relatively near future. Monitoring should be provided by the Councils.
3. Based on observances and conversations held last week in the field, I would suggest that a full review be conducted relating to the economic and social impact that has resulted through the acceptance of an ITQ amendment to the surf clam/quahog plan. It is an issue that will surface in all future discussions in the proposals for an ITQ amendment. A proposal similar to that proposed by Dr. Wang (attached) will prepare the Regional Office/Center for the debate.
4. This field trip has reenforced my belief that the right to charge resource rents should accompany an ITQ amendment. The cost of administration and enforcement has to be increased considerably. Without enforcement



there cannot be proper management of any marine resource. The wholesale value exceed \$75 million. I realize it will require a legislative act to provide us with the authority to collect resource rents.

5. My participation in conversations concerning the stock status of surf clams and quahogs has been limited. I have always been under the impression that the stocks have been, and are in excellent shape. However, in my recent field trip to Maryland and New Jersey several fishermen commented that quahogs are playing out in southern New Jersey and that operations would soon shift to the northern New Jersey/New York bight area.
6. It became apparent during our conversations that there is a by-catch but it is treated as "shack". It is recommended that the Council revisit the issue.
7. Data requested in an application for a permit must be reviewed and revised. There is a real need to know the identity of major stockholders. This issue is being addressed currently.
8. Another material should be used for the cage tags in order to avoid the breakage problem. The Committee has discussed several options, and feels that a tag made out of Tyvek, a flexible plastic material as thin as paper, yet exceedingly strong, with the code numbers imprinted upon it twice in such way that one strip can be peeled off and placed directly in the vessel logbook, and the second strip removed later at the processing plant and placed in the processors logbooks would be ideal. The tag itself would be attached to the cages in a manner similar to the new luggage tags in use at major airports now, with self-adhering panels.
9. We recommend that enforcement agents step up visits to the processing plants to check on cage tags as the most effective method of policing the fishery. Visible periodic visits to the waterfront should be increased, also.
10. We recommend that an analysis be conducted on the current practices of quota transfers.
11. We recommend that statistical reports be

prepared from the computer database in a timely fashion, either monthly or quarterly, including, but not limited to analyses of landings and transfers of quota.

12. Many weaknesses were identified in the current logbooks. We recommend a small committee be formed to evaluate complaints and suggestions, and to develop improved logbooks for both vessels and for processors.
13. Required call ins for vessel departures and call ins will be met by substantial opposition.
14. NOAA Counsel should notify the Council of NMFS procedures to be followed if allocations are seized.
15. Many complained that fishermen who used the federal/state line illegally to their advantage were rewarded in distribution of quota. Although there has been a decrease in that activity, it is still taking place.

Attached you will find reports from the following individuals:

Exhibit 1: Bob Ross's summary on the interviews he conducted with the processor segment of the surf clam/quahog industry in the Mid Atlantic Region.

Exhibit 2: Ken Beal's summary on the interviews conducted by Ed MacLeod and him with boat owners, dock operators, captains and crew members in the surf clam/quahog fishery in Maryland and New Jersey.

Exhibit 3: Joel MacDonald's overview of the existing surf clam/quahog ITQ plan for a Counsel's perspective.

With reference to Joel's suggestion in his last paragraph, the Fishery Management Operations Division is prepared to assign the task suggested to an individual. However, the Division has to be advised as to the information that should be provided, the frequency of issue, and to whom the reports should be submitted.

Exhibit 4: John McCarthy has presented an overview of the existing surf clam/quahog ITQ plan from a Law Enforcement Special Agent's perspective. With reference to John's comments on page 2 in the paragraph entitled Intelligence Base, the Fishery Management Operations Division is prepared to cooperate and communicate as requested. However, Law Enforcement must be specific as to the data it requires, and the frequency of the reporting that it requests. A meeting between John or his designees and senior staff of the Fishery Management Operations Division can resolve this element.

Exhibit 5: Combined comments from Myles Raizin, Policy Analyst, and Hannah Goodale, Resource Management Specialist, who are the NER staff personnel who have the responsibilities of monitoring the surf clam/quahog ITQ plan.

The ownership issues that they raise should be addressed by NOAA Counsel. The data issue can be resolved by periodic meetings between the responsible parties in the Regional Office and the Northeast Science Center.

Exhibit 6: Dr. Stanley Wang's general comments on the ITQ plan from an economists perspective as well as a brief outline on this proposal for an economic review.

This report is in its final form. Members of the committee have reviewed the draft package that was submitted. Any substantial additions, deletions, or revisions were discussed and attended to in accordance with a majority concurrence. Minority opinions were discussed and proponents were notified that their comments would be included if they so desired.

Finally, members of the committee were notified that this report is to be treated as an "eyes only," "inhouse" report. It is not for public distribution or discussion without the consent of the Regional Director.

I, also, would like to extend my sincere gratitude to the active members of the committee for giving me the utmost cooperation in fulfilling the request of the Regional Director in a timely manner while fulfilling their other job responsibilities.

We are most grateful to the Port Agents who did a commendable job in lining up the schedule and interviews. We assured those harvesters interviewed that no names would be mentioned in filing our reports. We can state emphatically that they talked openly, and periodically vented their anger. It was difficult, if not impossible to keep the conversation confined strictly to the tagging system and enforcement as you can see from our reports.

Submitted on behalf of the Review Committee:

By Edward J. MacLeod
Edward J. MacLeod, Chairman

SUMMARY: SURF CLAM ITQ IMPLEMENTATION-PROCESSOR EVALUATION.

by

Bob Ross, F/NEO Fisheries Analysis Division

Amendment #8 to the Surf Clam/Ocean Quahog Fishery Management Plan (FMP) included the first implementation of an Individual Transferable Quota (ITQ) system under the Magnuson Act. The ITQ can be fished, sold, bought, leased, given or held by the designated allocation holder. The following report is an attempt to represent issues from the viewpoint of processors actively involved in the surf clam FMP.

- >>MONOPOLY ISSUES: Real concern that one major firm will acquire a controlling percentage of the allocations (GCNE).
 - >Can there be a limit placed on ownership of allocations?
 - >Use It or Lose It: Concerns that allocations are being acquired beyond levels needed to meet market demand (hoarding).
 - >Ownership Disclosure: Require an accounting of major Dealer or Processor shareholders as part of annual Permit renewal.
- >>PROCESSOR LOGS: Most processors did not have problems with logs.
 - >For accountability, procedures should be established to require designated company officials signoff on logbooks/transfers.
- >>TAGS: Most processors did not have problems with tag breakage.
 - >Tag breakage was reported at 2-5%.
 - >Procedures should be established to provide clear guidance on tag storage and disposal. (GCNE and F/EN3)
- >>FOREIGN OWNERSHIP: Some processors are worried about a well financed effort to gain control of allocations.
 - >Ownership Disclosure: Require an accounting of major Dealer or Processor shareholders as part of Annual Permit Renewal.
- >>VESSEL CALL-IN: Most processors objected to pre-departure call-in requirements for greater inventory control and safety reasons.
 - >Alternatives suggested landing only during designated times and calling in prior to landing/unloading.
- >>MINIMUM SIZE REGULATION: Most processors felt the end-user market demanded larger clams and with unlimited fishing time, vessels can target beds with larger clams and larger yields, so the minimum size is no longer an issue.
- >>REDISTRIBUTION OF SEIZED ALLOCATIONS: Allocations can be seized by government agencies for MFCMA violations or non-fisheries related seizures like bankruptcies or drug related activities where allocations were ill-gotten gains from laundered monies.
 - >Processors would like to know the NMFS procedures if allocations are seized.

DETAIL REVIEW: SURF CLAM ITQ IMPLEMENTATION PROCESSOR EVALUATION.MONOPOLY CONCERNS:

The number one concern from processors, large and small, was "control" of a majority of the clam allocation by one major processor. The issue of control verses ownership is important here. Many vessel owners do not own enough allocation to profitably run their business without acquiring (leasing/renting) more from allocation holders with excess. Processors with allocations can rent/lease their allocation in exchange for exclusive rights to all landings by a given vessel owner - in effect the vessel becomes a company controlled vessel. To ensure consistent supply, processors without allocations have to use other incentives to encourage exclusive rights to all landings. These incentives add to the cost of the raw material and include; p a y more per bushel at the time of purchase, pay a premium per bushel at the end of the year, offer vessel services (fuel, dockage, gear storage etc.), or offer business loans (vessel mortgage, line of credit, etc.).

Most processors felt the industry was close to control by one processor already. Large blocks of allocations may reportedly be available in 1992, enough to influence supplies of raw materials. Opinions on ways to prevent a monopoly varied, and suggestions included; holding the industry to where it is now, setting a cap of 25-50% maximum ownership by one party, and creating a non-quota Research and Development allocation in deep offshore waters. The consensus was that by the time any controls were implemented, it would be too late to prevent a takeover if one were planned. At any rate, the industry is heading rapidly towards consolidation of control of the clam allocations into a few large controlling owners.

-Initially it appears that allocation acquisitions are primarily to control resource, not a direct attempt to raise prices. The emphasis here is to limit competitors supplies, since most processors rely on independent vessels for at least a part of their raw material supply.

-Supply pressures appear to have set up a two-tier system of pricing: market price if the allocation is vessel owned and purchased by a processor without any allocation, and market price minus the lease/rental fee for allocation that is leased to the boat by a processor with a surplus allocation.

-Independent processors are concerned about a lack of access to resource as independent vessel owners are bought out by large national or multinational corporations with larger financial

assets.

-vessel owners without allocations are turning into company boats to meet payments.

ALLOCATION - USE IT OR LOSE IT:

-The majority of the processors feel strongly that the allocations holders should be required to fish or otherwise use their resource allocation.

-If the allocation is not fully used, the allocation holder should provide NMFS with justification for non-use.

-Obvious efforts to "hold" allocation, with the intention of reducing competitors' supplies, could require: the re-evaluation of un-used resource allocation, loss of unused allocation, etc.

-Processors want some appeal mechanism to ensure that allocations which were not used for justifiable reasons are not revoked. The allocation may not be harvested for market reasons, i.e. if consumer sales are off or if inventories are high. If a vessel owner has vessel repairs, or other unforeseen problems, he should not lose allocations.

VIOLATIONS/ILLEGAL ACTIVITIES:

No processors indicated any enforcement irregularities in their own plant, but often they were willing to provide potential scenarios of violations by other processors. With landing restrictions removed, vessels are literally unloading around the clock, and monitoring of the unloading and tagging operations at the vessel level are more difficult. Processors felt that violations were common but had decreased from earlier times when effort limitations were in place and potential allocation numbers were being established.

NON-TAGGED CAGES:

-The most likely location for using non-tagged cages would be in areas where the processor has a dock and processing plant at the same location.

-Processors have mentioned situations where 2 tags were found on cages, and some tags on cages during my visit appeared old as if they may have been recycled for more than one load.

-One individual mentioned a practice of only tagging the last 4 cages in a tractor-trailer truck capable of holding 14-16 cages/load to pass in-transit spot checks of loaded trucks by enforcement agents.

NON-REPORTED LANDINGS:

-Several processors had current NMFS FOIA data on the clam industry and questioned the NMFS records. Not all vessels known by processors to be fishing in a given time frame were identified as fishing on the NMFS records, which indicated not all tags were being reported.

INSHORE VS OFFSHORE HARVESTS:

This practice involves the use of state issued clam tags to harvest clams found in waters under federal jurisdiction (offshore). Due to various quality and meat yield factors, inshore clams are worth less than offshore clams.

-Fishing offshore and tagging with inshore (state) tags was felt to be a common practice, especially since many processors reported overall meat yields are down and most processors felt supplies will run out before the end of the year.

-Proposed requirements for vessels to report before departure were universally rejected by the processors. In addition to the safety concerns, the impact of 24-48 hour notice before departure would seriously impact the processors ability to manage their raw material supplies.

-There were no objections by processors to call in requirements prior to vessels landing clams, including reporting harvest locations as part of the reporting requirements.

NON-UNIFORM CAGE SIZES:

Under Amendment #8, one tag corresponds to a "standard" 32 bushel wire cage. It was mentioned that in practice cage sizes have reportedly been increased deliberately to increase yield. In this case collusion between the vessel and plant is needed.

TAG REQUIREMENTS:

Most processors have a daily login sheet by the unloading area of the plant which is filled out as/after the cages are unloaded. At the end of the day/week, the data is compiled and entered onto the federal logbooks. Several processors have the tag numbers entered onto PC's, often as part of an inventory or meat yield analysis process.

-The mechanics of the federal tagging requirements (the processor logbook) were not viewed as a major problem for most processors. Issuing and keeping tag numbers in a numerical series is identified as an ongoing effort in discussions with vessels. Tags in numeric series help speed up the data entry process if using a PC or when filling out the processor logbooks.

-Most processors did not feel tag breakage was a major problem for them. Processors felt they averaged about 2-5% breakage (2-5 tags per 100 cages received) on incoming cages. Most reported the missing tags could be located if necessary (on the dock, on the bed of the truck, in the plant) but most didn't go to great lengths to locate so few tags.

-Some suggestions were voiced to improve/eliminate the tags, including;

>> Replace the current tags with stronger tags made of nylon or metal which are harder to break

>> use re-enforced fiber paper tags such as those used by the airlines on luggage with peel off allocation numbers to stick on the vessel log and processor log to ease record keeping requirements. If the fiber paper tags can be written on, other information could also be included.

>> a hand held credit card/scanner system which would store a given number of allocations and electronically reduce the allocation as cages are landed or sold or transferred to another allocation holder.

>> use an Honor System similar to that used in January 1992 when no tags were available to allocation holders.

>> The idea of serial numbers on cages was mentioned but rejected since most processors rely on several vessels for supplies, cages are often not returned to the same vessel. It would be difficult to ensure a cage would be returned to the correct allocation holder.

-TAG STORAGE IS A PROBLEM. Almost all processors are unclear as to how long they should keep their used tags. Often the tags are taped together as they come off the truck or vessel, or they are taped together at the end of each day and then boxed. With some processors going through 400-500 cages a day there can be a large volume of tags in storage. Record keeping and inventory controls over the used tags was routinely poor, and it would be difficult to normally locate a given tag within a reasonable time frame.

-Processors have been told conflicting information related to holding tags. Information has varied between enforcement agents, NMFS statistics agents, and different NMFS regional office personnel.

PROCESSOR LOGBOOKS:

-Processor logbooks are not a significant problem for most medium and large processors with adequate clerical staff. Small processors with minimal staff or generally poor record keeping

procedures voiced complaints over the time and effort it took to complete the logs. Small processors often receive supplies from several sources which also increases reporting requirements since many different vessels may be involved and tags were often not in numerical series.

-Medium and large firms generally felt one more person was hired to maintain the logbook reporting requirements (part to full time depending on the volume of clams processed).

-Responsibility and accountability for correctly completing the logbooks should be more clearly defined. In many cases it is the clerical help that completes and signs the logs often with minimal verification of the details by upper management. To encourage accountability there should be some procedure to identify a designated number of company officials (in upper management) with signoff authority for the logbooks.

ALLOCATIONS:

The vast majority of the processors had problems with the way the resource was initially allocated, whether they actually received any allocation or not.

-A routine comment stated that "the vessels with the most violations received the most allocations". There was a general feeling that landings were inflated for the logbooks, vessels violated the fishing time provisions of the FMP, and inactive vessels were reported as fishing to maintain the vessel permit.

-Several processors felt that the Mid-Atlantic Fisheries Management Council acted too quickly and did not listen to the Industry Advisory group recommendations before Amendment #8. Most agreed the plan development process had been going on far too long, and felt that initially the industry was not working effectively within the FMP process. By the time Amendment #8 was passed, many felt the industry was working more effectively together as a group, but recommendations were ignored. Interest is keen and there is strong support for the creation of a new Industry Advisory Panel.

-Several processors felt the addition of Ocean Quahogs in the Surf Clam ITQ allocations process was a mistake based on poor statistical data. There were complaints that processors were not kept adequately informed as the FMP developed and changes, like the addition of quahogs, were not fully discussed.

-Processors questioned existing procedures if allocations were to be held by government agencies under various circumstances. Two examples mentioned were:

>If a vessel were to be found in violation of the MFCMA and the allocation was reduced or forfeited by NMFS, how would the

allocation be redistributed?

>If the allocation holder lost his allocation to a government agency (as ill-gotten gains) for drug violations, how would the allocation be redistributed?

-Processor concerns about potential shortages of supply as allocations are consolidated into fewer owners. This is discussed under Monopoly Concerns above.

-Processor concerns about allocations owners who do not actively fish or allow their allocations to be fished. This is discussed under Allocation - Use it or Lose it above.

ENFORCEMENT OF AMENDMENT #8:

Most processors noted a drop in the frequency of plant site visits by NMFS Law Enforcement officers since Amendment #8 has been in effect. Prior to Amendment #8, processors indicated weekly visits were routine, while most processors indicated that visits occur once every 2-3 months now.

-Enforcement agents have checked all aspects of the plan pertaining to processor compliance with Amendment #8 including;

>> stopping company owned trucks in-transit to verify all accessible cages are tagged,

>> watching trucks unload at the plant receiving dock with tagged cages,

>> verifying tag numbers are properly assigned to the owner of record,

>> verifying that a specific days plant receipts are in order and agree with vessel records for the same day, and

>> checking storage procedures for the used tags.

-There was a consensus opinion that smaller processors were more concerned with enforcement issues, while the larger processors felt they have more adequate internal controls in place, less financial incentive to violate current regulations and more to lose if violations are identified.

REGULATIONS:

CLAM MINIMUM SIZE ISSUE:

-Most processors felt the minimum size requirement is not needed mainly because market forces require larger clams anyway. Vessels are frequently paid on meat yield and smaller clams provide less of the valuable foot meat, are more time consuming to shuck and process, and can have negative quality characteristics. With the fishing effort restrictions removed, vessels can afford the time to locate beds of larger clams and thereby increase yields and ex-

vessel revenues.

VESSEL CALL-IN PROPOSALS:

-Proposed requirements for vessels to report before departure were universally rejected by the processors. In addition to the safety concerns, the impact of 24-48 hour notice before departure would seriously impact the processors ability to manage their raw material supplies.

BETTER PROCESSOR INVENTORY CONTROLS:

-Processors felt Amendment #8 allows them to better control inventory to match market demand. Prior to Amendment #8, processors had to pack when vessels had their fishing day and hold finished inventory in the plant. Now processors can plan out supplies and work with allocation holders to schedule fishing effort when needed. This reduces the amount of capital that has to be tied up in finished product inventory, and allows for other cost savings by scheduling for such things as down time for employee vacations, equipment maintenance, plant improvements, etc. without worrying about a vessel which has to fish 6 hours within a three week period.

EXPERIMENTAL MAHOGANY CLAM ISSUE:

Most Mid-Atlantic processors felt the clam had little impact on them and the end product was targeted for a different end-users market. There was little outward concern over the issue, unless the inclusion of the Gulf of Maine resource impacted existing allocation holders.

FOREIGN OWNERSHIP CONCERNS:

Several processors voiced concern over foreign ownership of the allocations. With the transferability of the allocation, a wealthy foreign party could acquire a controlling interest of the industry. Since segments of the industry are currently experiencing financial difficulties, if a large conglomerate or wealthy investor groups' long range goals outweighed short term losses, large blocks of allocations could be acquired. Since dealer/processor permits are issued annually, disclosure of ownership requirements may be useful as part of the application renewal process.

-Processors felt more concern over possible foreign ownership than over a possible monopoly by a U.S. corporation. Nationalism was an issue with a feeling that this is a U.S. resource and only U.S. citizens should own it.

RAW MATERIAL PRICES SINCE AMENDMENT #8:

SURF CLAM PRICES:

-Surf clam prices have remained fairly stable since Amendment #8 was approved. There are various payment mechanisms involved in

establishing market price for surf clams. Meat yield is a key factor with expected yields for offshore (EEZ) clams averaging 12-14 pounds/bushel while inshore clams average 9-10 pounds/bushel. Tied in with yield is the fishing location where the clams were harvested, and whether the beds are densely packed which in effect reduces individual clam size and lowers yields.

-Several processors commented that yields are down this year and they felt the allocation would be fully harvested by the end of the year.

-Tied in with reduced yields, most processors expected clam prices to rise by year-end as allocations were exhausted and processors used up remaining carryover inventories.

EX-VESSEL SURF CLAM PRICES:

-Ex-vessel market prices for surf clams vary by processor but currently (2/92) range from \$8.00-8.50 per bushel for offshore clams and \$6.50-7.00 per bushel for inshore clams. Some processors have contracts with allocation holders which includes a per bushel year-end bonus if all clams are sold exclusively to the one processor for the entire year. These price incentives can be up to \$0.25 per bushel.

SALE OF SURF CLAM ALLOCATIONS:

-Surf clam allocations have reportedly gone from initial values of \$13.00 - 15.00 per bushel in late 1990, to \$18.00 in 1991 and are now reportedly selling at \$20.00 per bushel. Processors expect to see the sale of several blocks of allocations in 1992 as the industry continues to consolidate and cash-flow problems force sales of allocations by over-capitalized allocation holders.

LEASE OF SURF CLAM ALLOCATIONS:

Surf clam allocations are currently being leased to vessel owners for \$3.00-4.25 per bushel, with most leases running \$4.00 per bushel.

-There has reportedly been manipulation of the leasing of clam allocations to reduce the ex-vessel price paid to the boat (known as the boat share) by the vessel owner or use "creative accounting" techniques to improve corporate profits for tax purposes. i.e. the owner receives \$8.00 per bushel from the processor, but only pays the vessel on \$4.00 per bushel because the owner is deducting the cost of leasing the allocation from the processor. The vessel owner may actually own the allocation but claim it as a lease to the boat or more likely, he may transfer a like share to the processor to create a paper lease trail for tax purposes. Depending on use of general accounting practices for income tax determination, the money used to "lease" an allocation may be taxed differently from the vessel "owned" allocation. (see vessel section of this committees report for more details on the leasing

issue)

OCEAN QUAHOG PRICES:

In contrast with the surf clam, ocean quahog prices have risen significantly since Amendment #8 was approved. As with surf clams, there are several factors which establish the market price. Meat yield is a significant factor in determining the price and yields are dropping. The industry reportedly averaged a standard 8-10 pounds per bushel, but as productive beds are overworked, yields are running 7-8 pounds per bushel now. Location of harvest is an important factor in pricing quahogs. The quality of the meat, amount of sand, size of quahog, amount of trash, etc. vary depending on where the vessels are fishing. Quahogs have continued to gain market share both as an acceptable substitute for some surf clam products, and for use in a wide range of new quahog end products. Health concerns about raw shellfish have also reportedly improved the market for cooked clam products.

EX-VESSEL OCEAN QUAHOG PRICES:

Ocean quahog prices have risen significantly since Amendment #8 was approved. In late 1989 average quahog prices were \$3.00 - 3.15 per bushel. After Amendment #8, prices rose quickly to average \$3.35 to \$3.50 per bushel, and even with processor resistance, prices continued to strengthen and increased again in 1991 to an average of \$3.75 per bushel. With declining yields, prices are now running \$3.75-4.00 per bushel for quahogs harvested from preferred locations. These are average prices and do not include trucking to the processor. Quahogs caught off Ocean City, MD average \$4.00 per bushel, quahogs caught off Atlantic City, NJ average \$3.75 per bushel, and quahogs caught off Long Island, NY and Virginia average \$3.50 per bushel.

SALE OF OCEAN QUAHOG ALLOCATIONS:

Ocean quahog allocations are reportedly selling for \$4.00-6.00 per bushel, with most averaging \$5.00 per bushel.

LEASE OF OCEAN QUAHOG ALLOCATIONS:

Ocean quahog allocations are currently being leased for \$0.25-0.50 per bushel, with most averaging \$0.40-0.50 per bushel. There has reportedly been some manipulation of the lease of quahog allocations - see "Lease of Surf Clam Allocations" discussed above.

IMPACT OF IMPORTS:

Most processors felt that imports would have little impact on domestic supplies in the near term, even if supplies continue to tighten. Processors did not feel there was a good substitute for the surf clam, and none indicated any effort to explore non-U.S. substitutes at this time. Processors did identify potential

foreign substitutes for ocean quahogs (Iceland and Norway were mentioned), but again there had been no reported effort to contact foreign suppliers.

- B. Atlantic Surf-Clam Report wishes claims that market forces caused fishermen to take high risks to maximize the value of their quota-shares.



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IBIT 2

Surf Clam/Ocean Quahog ITQ Evaluation

Based on Interviews with Captains, Owners and Crews

By

Kenneth L. Beal

*See
Next
Page*

Interviews with NMFS Port Agents and surf clam and ocean quahog fishermen, skippers and vessel owners were conducted in fishing ports in Maryland and New Jersey on February 10-13, 1992. The primary points which we focused on were the acceptability of the cage tags currently in use and the perception of whether enforcement has changed as a result of Amendment 8 to the Surf Clam & Ocean Quahog Fishery Management Plan. Most of the people interviewed offered additional comments on other aspects of Amendment 8, although these comments were not solicited. For purposes of reporting all observations, I will first address the key issues, followed by general comments.

CAGE TAGS

Plastic tags, each with a consecutive number, are issued to the holder of the individual transferable quota, and may be kept aboard the vessel, at home or elsewhere in a safe place. Tag numbers are recorded in the vessel logbooks and in the processor logbooks. The theft of tags is not a major concern, as the tag numbers would have to be recorded in the logbooks, and the thief would be easily identified. However, when quotas are transferred, this information is not reported to NMFS, so NMFS Port Agents are not aware when boats are fishing on a purchased or leased quota.

Tags are attached to the 32-bushel cages when the cages are unloaded from the vessel. Previously, tags were attached aboard the vessel, and this practice was both unsafe and resulted in greater tag breakage. Breakage of the plastic tags is generally caused when two cages rub together. Since the cages are fairly rigid steel frames with wire mesh, the tags are sheered off, normally breaking just behind the locking mechanism. When a cage without a tag arrives at the processing plant, the plant notifies the vessel owner and a search for the broken tag begins. Tags are usually found in the truck, on the wharf, and elsewhere in route.

another material such as a more flexible plastic. It has been suggested that a thin, tough, flexible plastic, as used in Federal Express mailing bags could be used. We have not investigated the cost of these various options. Failure to use tags does not appear to be a problem with the independent vessel owners, as their catch is normally trucked to the plant, and the likelihood of an enforcement agent being present at the plant is greater than seeing the agent at the wharf. On the other hand, the potential for landing untagged cages is greater if company vessels are landing at company processing plants. It should be noted though, that we are not aware of any such illegal actions, and in fact we were assured by some captains that they would not expect a plant to engage in this practice.

Overall acceptance of the tagging requirement is good. The record-keeping adds another layer to the workload, but the documentation of the catches is quite accurate. The NMFS Port Agent in charge of surf clam and ocean quahog statistics feels that the discrepancies between vessel logbooks, processor logbooks and weighout data is only about 3% annually. It would be desirable, though, to analyze landings statistics on a regular basis. Perhaps a short report could be prepared monthly or quarterly based on the computer data.

ENFORCEMENT

In all instances, captains, crew and owners reported that law enforcement officers are seen less frequently since Amendment 8 was approved. This is understandable since the primary tool for enforcement now is the cage tag. Furthermore, since the tagged cages are destined for a processing plant, a law enforcement agent could be more efficient by visiting the plants, rather than the wharfs. Agents must still check vessels for the presence of the fishing permit and other regulations, but they do not have to police the fishing hours and days. The primary reason for a recent visit by one enforcement agent was to explain new regulations. We routinely heard comments from the industry that the law enforcement agents were fair and did a good job. One skipper mentioned that he has seen agents at the wharf at midnight and even at 2:00 and 3:00 a.m. We did not hear any criticisms of the agents or how they enforce the regulations.

Certain individuals alleged that New Jersey vessels will fish for a portion of their catch in the EEZ, and also fish inside the state's waters, then claim all the clams came from state waters. This practice would "save" their federal quota until needed. Those complaining of this practice also allege that an informant broadcasts on the ship-to-shore radios when the U.S. Coast Guard helicopter takes off for a fisheries patrol, and boats working in the EEZ then dash into the state waters. However, others stated equally emphatically that this practice is not done. It should

be noted that New Jersey has a quota on the harvest of surf clams within their waters, too. Furthermore, processing plants control whether they want inshore or offshore clams, based on the yield.

OTHER COMMENTS ON AMENDMENT 8

Overall, there is a split in opinion whether Amendment 8 is a success. Some feel that giving a public resource to a select few is wrong. Many boats did not receive a quota equal to their fishing record and tough decisions had to be made whether to continue in the fishery or not. Another complaint involved vessels which intentionally violated the previous regulations, fishing before or after hours, or on wrong days, for instance. Whether or not these violations were detected, the landings were added to the vessel's record, and the ITQ for the vessel was automatically inflated by these illegal landings. In effect, the outlaws were rewarded for their dishonesty.

Some boat owners have had to lease or purchase quotas from others. Purchase prices for surf clam quotas is about \$20/bushel, while purchase price for ocean quahogs is about \$5/bushel. While this approach is possible if financing is available, small operators without adequate funding have often sold out. Some processing plants have been concentrating quotas, and some family fishing companies have begun an aggressive approach to buy quotas, too. Partnerships have been formed with several vessel owners, mainly to concentrate the amount of quota. Another approach taken by many operators is to concentrate quotas onto fewer vessels, and sell or convert the excess vessels to other fisheries. One operator reduced effort by putting the quotas from 17 boats onto 3, and a family operation with 9 boats has concentrated quotas onto 3 boats. At another dock, only 5 boats are fishing out of 18. Unfortunately, many of the older boats from which the quotas have been taken are unfit to be converted to other fisheries. One owner said he has given a vessel away, and another said one of his was now an artificial reef. Overall, an estimate has been made that about 75 boats are fishing out of 175 permitted in the fishery.

The impact on fishing vessel crews has been significant in many ports. As a result of the concentration of quotas onto fewer vessels, many men were laid off and have been unable to get another berth on a clam vessel. Some were able to fish in other fisheries, and some have shore-side jobs; but still others are unemployed.

The dockside value of surf clams and ocean quahogs has not changed appreciably. Clams are now selling for \$8.00/bushel (same price as pre-Amendment 8), and quahogs for \$3.85 (up slightly from \$3.50). However, the crew shares at settlement have not improved as a result of Amendment 8. Since many of the vessels currently fishing have purchased quotas, the cost of the

extra quota is added to other operating costs, and crew share is reduced accordingly. The normal practice is for operators to assign a value of \$4.00/bushel to the leased quota, and this is subtracted from the dockside price of \$8.00/bushel. Obviously, crew share is less, and one owner of several vessels estimated a crewman earns about \$20,000 less per year now. Some boats have cut crew size from 5 to 3. Most crews are working harder, and earning less.

Under the previous provisions of the FMP, with severely restricted fishing hours and days (6 hours every 3 weeks), boats had to go fishing in bad weather or lose their day. It was hoped that Amendment 8 would eliminate this danger, but unfortunately this has not happened. Processing plants now tell captains when they want a load of clams. Their demands are based on markets, and weather is not a consideration. So boats are often forced to go fishing in bad weather, or lose the connection with that processor. Two vessels which sank in late 1991 (the John Marvin and the Valerie E) were caught in a rapidly-building storm. The crew from the Valerie E were lost, but the crew from the John Marvin were rescued by the Coast Guard. Many people mentioned these sinkings as an indication of no change in the safety factor.



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RECOMMENDATIONS

By

Kenneth L. Beal

CAGE TAGS: Another material should be used for the cage tags in order to avoid the breakage problem. The Committee has discussed several options, and feels that a tag made out of Tyvek, a flexible plastic material as thin as paper, yet exceedingly strong, with the code numbers imprinted upon it twice in such a way that one strip can be peeled off and placed directly into the vessel logbook, and the second strip removed later at the processing plant and placed in the processors logbook would be ideal. The tag itself would be attached to the cages in a manner similar to the new luggage tags in use at major airports now, with self-adhering panels.

ENFORCEMENT: We recommend that enforcement agents step up visits to the processing plants to check on cage tags as the most effective method of policing the fishery.

TRANSFERABILITY OF QUOTAS: We recommend that an analysis be conducted on the current practices of quota transfers, and the potential for monopolistic concentrations of quotas.

IMPROVED DATA REPORTING: We recommend that statistical reports be prepared from the computer database in a timely fashion, either monthly or quarterly, including, but not limited to analyses of landings and transfers of quota.

REVISIONS TO LOGBOOKS: Many weaknesses were identified in the current logbooks. We recommend a small committee be formed to evaluate complaints and suggestions, and to develop improved logbooks for both vessels and for processors.



EXHIBIT 3



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February 14, 1992

CONFIDENTIAL

SUBJECT: Individual Transferable Quota (ITQ) Management System

By

Joel G. MacDonald, Regional Counsel

We recently embarked on a project to check the integrity of our management of the ITQ system implemented under Amendment 8 to the Fishery Management Plan for the Ocean Quahog and Surf Clam Fishery. All of us are of the opinion that an accurate tracking of ITQ harvests and transfers is imperative if the annual quotas for these species are not to be exceeded.

You asked me if there are any legal deficiencies in the ITQ management system that might be remedied through a change to existing procedures, the regulations and/or Amendment 8. The short answer is no. The Seawatch International v. Mosbacher and the Pearson v. Mosbacher lawsuits argued that there were numerous legal deficiencies that warranted a judicial finding that Amendment 8 was arbitrary and capricious and not otherwise in accordance with law. The Court's finding in our favor dispelled the notion that there are any legal deficiencies in Amendment 8.

There is an issue that still remains to be addressed. In the preamble to the final rule implementing Amendment 8, we advised the public that we will monitor periodically the amount of ITQ owned by each person. If it appears that one individual has an "excessive" [whatever that means] amount of ITQ, we will advise the Department of Justice (DOJ).

Some of the attorneys in GCF met with Department of Justice Anti-trust Division attorneys to discuss the implications of allocations, particularly the inshore/offshore allocation system under consideration. The surf clam and ocean quahog ITQ system also was discussed. The DOJ attorneys were unsure of whether the surf clam and ocean quahog market was a "market" within the meaning of the Sherman Anti-Trust Act. They are looking into the question. Conceivably, if the Sherman Anti-Trust Act does not apply to control of the surf clam and ocean quahog market, the issue of excessive ITQs is moot.



- 2 -

Regardless of the outcome of the DOJ inquiry, we should do a periodic report as to the amount of ITQ owned by each allocation holder. I am sure that the report will be of interest to the Mid-Atlantic Council. This report is best done in conjunction with the issuance of revised allocation percentages and cage tags towards the end of each year. Whether we need a report on a more frequent basis is open to question since the ITQs do not appear to change hands on a permanent basis very frequently.



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EXHIBIT 4

February 19, 1992

SUBJECT: SURF CLAM/QUAHOG ITQ REVIEW

By

F/EN3 John J. McCarthy

The following is updated and condensed from a report filed by F/EN3 with our Washington Headquarters in December, 1991. All material is the result of direct input from field law enforcement personnel in the mid-Atlantic area who routinely work with this fishery. Any and all references to open or ongoing investigations and/or specific individuals or companies associated therewith have been deleted from the original version of this report. For the same reasons, certain date, location, or other identifiers have been deliberately protected within certain remaining material. Hereinafter, references to the surf clam/ocean quahog fishery at issue will be abbreviated as SCO.

Overview: One of the (many) obstacles to effective enforcement in this fishery is the obvious additional enforcement burden the ITQ system imposes in the exact geographic area where the Northeast Area is currently most seriously understaffed - New York, New Jersey and the Delmarva Peninsula (Delaware, Maryland, Virginia). In the six states between the Rhode Island/Connecticut border and the Virginia/North Carolina border, F/EN3 has a grand total of five field law enforcement personnel (four Special Agents and one (new) Fishery Enforcement Officer). Most of the SCO fishery is contained within this same geographic area. The other Fishery Management Plans in effect in the Northeast (and their attendant regulations) and various other laws under our jurisdiction, both civil and criminal, have not disappeared from our responsibility by mere adoption of the ITQ system for the surf clam fishery. Approximately 75 vessels are involved in the SCO fishery. It would be disingenuous to represent that there are enforcement "tactics" in active effect in this fishery, due to its numerous informational and regulatory shortcomings, understaffing notwithstanding. Specific details on these points follow. Suffice it to say that, at present, enforcement personnel can do little more with the current system than examine and compare logbook reports and entries against observed offloadings, when and where those offloadings can be observed or otherwise documented (i.e., via informants).



Enforcement personnel also examine federal permits and check "cages" (the 32 bushel medium of offloading in this fishery) for proper tagging whenever possible. We need not elaborate on the sorry state of affairs regarding the suitability, security (or more recently, even availability) of the tags themselves.

USCG helicopter overflights are regularly used between October and May, the period during which inshore waters (0-3 miles) are open for surf clam harvest in the state of New Jersey. These overflights serve to minimize the claims of federally permitted vessels alleging harvest from state waters (not subject to federal quota) when the harvest actually occurred in federal waters, thereby resulting (unless proven otherwise) in under-reported federal quota figures.

Processing Sector/Shipping: With the exception of tagging requirements, the transportation of surf clams is only minutely applicable to existing pertinent regulations for this fishery (see 50 CFR, part 652); carriers do not share the same regulatory responsibilities of the vessels and processors. Processors are periodically checked (see item 1) to ensure that product received is properly tagged and recorded and that empty cages with tags affixed are not simply used over again without proper reporting.

Intelligence base: Information documenting enforcement efforts is maintained by Law Enforcement, for internal (F/EN3) use only. The Northeast Region's Management Division (F/NER) has provided little information to Law Enforcement personnel regarding allocated quotas, the issuance of tag numbers to vessels, transfers of individual vessel quotas to other entities, status of individual vessel quotas during the year, or any other pertinent, information. In the absence of this information, the limited prospects for successful enforcement efforts are evident. Internal (F/EN3) reports and occasional informant contact from disgruntled competitors constitute the totality of F/EN3's information/data base.

Enforcement emphasis: There is not an ongoing enforcement emphasis within the Surf Clam fishery's ITQ system, given the inadequacy of existing regulations, absence of necessary operating information and/or sufficient enforcement personnel resources to use it. Violations have nonetheless been documented and filed. It is also vitally necessary and relevant to point out that only as recently as December 2, 1991 (Federal Register, 12/02/91, pages 61182-61184) was an offloading notification requirement added to the pertinent regulations (50 CFR, part 652.9(a) to facilitate enforcement, in spite of repeated F/EN3 identification of this necessary measure as a critical enforcement component since before the inception of Amendment 8 (October, 1990 effective date). In short, this

particular enforcement component of the regulations went into place over a year later than the initial regulations. Almost immediately thereafter, the notification requirement was eliminated entirely. The negative impact of this action upon enforceability was immediate and obvious. The state of New Jersey has also recently expressed NJ support of a notification system. Enforceability shortcomings aside, F/EN3 has numerous other (more enforceable) regulatory responsibilities, coupled with personnel resources averaging less than one enforcement representative per state in the mid-Atlantic area.

In ***** , F/EN3 became aware of ***** collusion among a vessel, trucking firm and processor. The possible (potentially criminal) conspiracy was apparently designed to harvest, transport and process surf clams without completing required documents or tagging the clams at issue. This practice would obviously "extend" the vessels quota since untagged cages would not be recorded. Further comment on an open investigation would not be appropriate in the context of this particular correspondence. The point here is merely to address inadequacies in the current system without compromising open investigations.

Foreign investors: Special Agents have obtained and examined corporate papers and articles of organization for ***** significant processors in the mid-Atlantic area. One ***** corporation has (3) Japanese names among its corporate directors, representing (2) different Japanese companies, but F/EN3 does not presume filed corporate papers to be conclusively indicative of the presence or absence of foreign investors in any instance. Another corporation was known to have been sold to a multi-national corporation with roots in ***** and ***** , but the latter corporation subsequently resold its ownership interests to a wholly owned (on paper at least) U.S. company.

Fleet operation: There are approximately 75 active vessels in the mid-Atlantic area. Some processors either own, operate or lease company owned vessels for the harvest of surf clams/ocean quahogs. Other processors do not have company owned vessels and purchase clams from independently owned vessels. Contrary to the wishes of some captains in the fleet, processors in fact dictate the size, amounts, price and timing of harvest by each vessel.

It is important and relevant to acknowledge the fact that the SCO fishery is decidedly unique in the Northeast, with or without ITQ. It would be presumptuous, indeed naive, to attempt to somehow "extrapolate" the suitability and/or enforceability of an ITQ system to other regulated fisheries in the Northeast. For example, there is a finite (and limited) market for surf clam products and a finite (and limited) array of dealers/processors even able to physically offload and/or process this product.

These facts and circumstances are not the case in any other fishery in the Northeast (lobsters, scallops, groundfish, tuna, swordfish, etc.). In addition, dealers and processors literally control the SCO fishery, irrespective of ITQ; there is no option for the fishermen to "take their business elsewhere"; an option universally available in any and all of the other previously identified regulated fisheries in the Northeast. The geographic range of the SCO fishery operations is finite and distinctive within the Northeast, unlike most of the other identified fisheries. Finally, SCO vessels are unique hydraulic dredge rigs, ill suited to multi-fishery conversion and use. Vessels in other fisheries (scallops, groundfish for example) can readily convert their gear and harvest, thereby substantially complicating any potential ITQ monitoring process for enforcement personnel. In short, few, if any, generalized or comparative conclusions could be reasonably drawn from an examination of the ITQ system in the decidedly unique Surf Clam/Ocean Quahog fishery; application to other Northeast fisheries would indeed be very much an "apples and oranges" comparison without validity. Given the sudden, if unsubstantiated, appearance of (and interest in) ITQ as some sort of potential universal panacea in fisheries management, this point must be made and clearly understood. This is not New Zealand, nor do we share or practice that country's unquestioned and unrestricted government control of the industry.

Effectiveness: An ITQ system (and any other regulatory regime) must seriously take into account realistic enforceability before implementation, preferably by way of direct consultation with those on whom actual enforcement responsibilities will fall. The surf clam fishery ITQ process at issue in the Northeast has (to date) failed to do so, as outlined in foregoing parts of this document. There is currently, little effectiveness, efficiency or accountability in the present ITQ "management" program of this fishery. F/EN3 has endeavored to point out in the Northeast that adequate enforcement of any law or regulation requires that sufficient personnel resources and practicable regulatory language be identified from the very beginning planning stages, in order to provide for a realistic prospect for successful/enforceable implementation. In the particular SCO fishery at issue here, cooperation in routinely providing real time quota data and other relevant information is obviously another necessary component to compliance success. For the record, F/EN3 remains completely willing to provide experienced field personnel to participate in the regulatory process, asking only that any such requests be processed through this office in Gloucester.

To date, F/EN3 experience with ITQ in the SCO fishery can be briefly summarized as another lesson in "the politics of fish."

We look forward to extensive future improvements; specific recommendations to repair the inadequacies of the current regime follow. Since we have identified a number of specific problems herein, we also propose a number of equally specific solutions:

1. Defined offloading times or "windows" (as currently exist in the sea scallop fishery) in addition to reestablishment of recently deleted notification requirements. Such an additional measure would facilitate efficient enforcement, without any hardship or particular inconvenience to those impacted.
2. Addition of a prohibition against "false statements to an authorized officer". Such prohibitions are specifically addressed and included in other federal fishery regulations, but are conspicuously absent from existing SCO regulations.
3. Refinement of the definition of "landing" in the SCO regulations in order to specifically require that logbooks be completed before return of the vessel to port for offloading. Due to the 32 bushel cage units generally used in this fishery, vessels know exactly the quantities in their possession long before returning to the dock to offload. This requirement would be an innocuous and reasonable addition which would help discourage "forgetful" reporting, "spontaneous", reporting, non-reporting, or other related fraudulent activity currently occasionally observed.
4. Addition of carriers/transporters to those required to complete and maintain accurate logs and records of product handled. Such an addition would create another level of "cross check" documentation which could facilitate enforcement, increase accountability and, presumably, provide a further disincentive to "forgetful" (or entirely inaccurate) reporting. Non-compliance could enhance exposure to criminal prosecution for conspiracy; presumably a possibility imposing its own deterrent effect on would be violators.
5. Last, but certainly not least, would be the routine inclusion of informed, experienced, knowledgeable law enforcement personnel in the development of regulations only they will be required to enforce and only they have to deal with in the field after the paper process of Federal Register entry. It is counter-productive for this process to occur without the knowledge, experience and input of the people with routine, first-hand contact with the various components of the fishery. The process should not continue to occur without the benefit of knowledgeable law enforcement input if there is to be any realistic prospect(s) for any degree of success. A good start in the particular SCO fishery at issue would be routinely providing F/EN3 with the

necessary information and details specifically itemized in section (3) preceding, without which no effective or credible enforcement effort can be launched. Without further belaboring the point, we need additional personnel in order to effectively implement enforcement efforts in the first place.

It is with regret that F/EN21 reports on the sorry state of affairs in the SCO fishery's current ITQ system from a law enforcement standpoint. It is currently an ineffective system from a law enforcement point of view. Additionally, it is a system from which the limited F/EN3 personnel resources have, to date, been "left out of the loop."

CLAM/QUAHOG ITQ ADMINISTRATION
HEATHER GOODALE AND MYLES FAZIN
FEBRUARY 18, 1992

OWNERSHIP ISSUES

GC/NE has suggested that it may be necessary to monitor ITQ ownership because of anti-trust concerns. We believe that the current administrative system cannot be used to reliably determine ITQ ownership because many of the allocations are held in vessel or corporate names. Working with the allocations reveals some ownership patterns, e.g., Warren and Merna Alexander own allocations as Alexander & Pearson, Palex Inc., and Southern Clam Co. However, other than sharing a common mailing address, our records do not show this. We can examine our database for duplicate mailing addresses, but there are several allocations which are managed by seafood dealers so the address would falsely indicate common ownership. This may pose a problem in producing any summary of legal ownership (unless a unique name is a separate owner for legal purposes).

The inability to identify owners poses a greater problem as far as allocation transfers are concerned. Permanent and temporary transfers of allocation are processed upon receipt of a form which is to be signed by both parties to the transfer. However, we have no way to verify whether or not an individual is authorized to submit a transfer. There is no way to know what signature should be associated with an allocation, particularly if it is held in a corporate or vessel name. Since these transfers deal with a valuable commodity we need a way to identify legal owners or authorized agents, otherwise it is only a matter of time until we encounter a circumstance where a transfer is submitted by an unauthorized person and processed.

Contributing to our concern is the fact that the permits themselves are distributed as public information so anyone can receive the information required needed to complete a transfer request. The only suggestions we have are either to require a signature card like that kept by banks or to require the transfer form to be notarized or both.

There has been some debate about whether or not there is a need for tags to be used to track the allocations, and this potential problem is a good reason to keep the tag requirement. Our concern about the possibility of fraudulent transfers would be much more serious if the tags did not exist. As long as we require tags to be used, a false transfer is prevented from becoming actual theft of an asset because it is not usable without the tags to go with it.

DATA USE

We wish to reiterate the need for close cooperation with the Northeast Science Center concerning data collected under the mandatory report requirement for the ITQ system. Because there are two users of the data, the Center and FMO, we must work closely to see that the data satisfies the needs of both users, and that modifications made to the system by either party are coordinated.

TEMPORARY TRANSFERS

We have noticed that several allocation holders have been leasing their quota to their own vessels. While this practice may aid enforcement in tracking tags, there may be tax issues involved. We suppose that it is legal if the vessels are registered as separate entities, however, it may be worthwhile to investigate its implications regarding tax laws.



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February 19, 1992

Surf Clam/Ocean Quahog ITQ Program Evaluation

Stanley Wang, Ph.D.
Supervisory Economist

It is a common knowledge that fishery management systems generally impose constraints on fishery operations and alter producers' strategies in exploiting the fishery resource. The US Atlantic surf clam and ocean quahog fisheries are the first US fisheries which have been managed under a vessel ITQ management system. Prior to 1990, these fisheries were managed with overall quotas and a vessel moratorium program coupled with a set of area closures and trip regulations and gear restrictions. This was a very complex management system for maintaining a year-long fishery and meeting various social and economic objectives. This complex management system had evolved over time and was in place for a period slightly longer than 10 years. During this period, various arguments and counter-arguments were forwarded with an intent to change or maintain this complex system. Finally, the system was replaced with a vessel ITQ system in 1990.

AS the first US fisheries to be under an ITQ management system, the US Atlantic surf clam and ocean quahog fisheries are unique for studying industry behaviors under different management regimes. Our preliminary analysis of the behaviors has revealed some interesting findings. In the Northeast Regional Office, Dr. Stanley Wang has been charged to evaluate the industry performance under different management systems. While his study has been under way, it is to emphasize the evaluation of the industry (harvesting and processing sectorial) behaviors and strategies under the complex management system prior to 1990 and the ITQ system after 1990. Several criteria will be adopted in his analyses and include industry concentration, market share control, pricing, price spreads, fishing patterns, fishery productivity, capitalization, labor employment (fishing crew and related industries), and optimal combination of input (capital and labor). Economic theory of firms and industrial organization as well as statistic theory will be vigorously applied. Relevant statistical tests will be also conducted in the study. Some concerns, arguments and counter-arguments during the development of the ITQ system will be selected for detailed examination and evaluation.



Finally, in view of the current enthusiasm toward limited entry programs including ITQ management systems, this general review chaired by Mr. Edward MacLeod coupled with the Wang study could shed light on design and implementation of any ITQ management systems.

Senator STEVENS. Mr. Smith?

STATEMENT OF THORN SMITH, NORTH PACIFIC LONGLINE ASSOCIATION, SEATTLE, WASHINGTON

Mr. THORN SMITH. Thank you, Senator Stevens. I welcome both of you. My name is Thorn Smith. I am with the North Pacific Longline Association. I represent freezer-longliners that fish for groundfish off Alaska and process their product at sea.

As you are aware, Senator Stevens, a number of these vessels are owned and operated by Alaskans. Before I get into my testimony—I was talking recently with some NMFS officials who are quite concerned about downsizing as it may affect the National Marine Fishery Service. I would just like to remind you folks that this national treasure that we have enjoyed the benefit of in Alaska is there because the Council and the National Marine Fishery Service have been able to set quotas, reasonable quotas; they have been able to monitor these quotas in season so we do not overfish; they have been able to monitor bycatch caps and shut us down when the time comes.

If we had not been doing that, we would be in the same circumstance New England is in, and we hope that you folks do as much as you can to see that NMFS gets financial backing to continue its critical role.

I would like to talk about a few issues that we think might be improved in S. 39: Bycatch, discards and waste; conservation issues; procedural issues—that is, open appointment of advisory panel members; emergency rules; fishery-dependent communities; standard of judicial review, and ITQs.

With regards to bycatch, discards, and waste, the fixed gear fishermen-longliners—the cod fishermen—certainly catch their fish one-at-a-time. We are able to carefully release them for that reason before they even come on board the vessel. I have a little video here to demonstrate that, if I can make it work. I am not very good at this, but I will give it a try.

You will see here a halibut coming aboard. This is in a longline survey in the gulf of Alaska. We prepared hundreds of these tapes and passed them out to the fleet so people could learn to release fish carefully in this manner. You will notice when this halibut comes up, that they will get the hook with the curve of the gaff, allow it to pull up against the roller like this. The hook is going to snap out straight and the fish falls off. They will then recover the fish. You will see that there is only a small exit wound behind the lip. This is the way to release fish. We can do this with other bycatch. In this video they are not because it is a survey, and they are retaining everything so the biologists can tell what is out there. This is a technique we use on all of our bycatch. There is language in your bill that suggests—

Senator STEVENS. Once you pull them on board, you just dump them out of the net? That is what you are showing us, if I am correct?

Mr. SMITH. Yes, sir. They are bringing it in to show you that there is just a little exit wound. You will see when he goes back in the water, he takes off like a shot.

There is language in the bill suggesting total catch measurement of both catch, bycatch, and full retention and utilization. All our longliners could certainly measure our catch, because we keep it. Where bycatch is concerned, it does not make any sense to bring it aboard, kill it, weigh it, and throw it back in the ocean. We need to release it this way, and the way to estimate our bycatch is to have observers estimate it and extrapolate by sampling, just as they do with halibut and other prohibited species.

The same thing goes for full retention and utilization, so I do not think those concepts should be dropped with respect to fixed gear fishermen, including pot fishermen. I have given you each a copy of that video, so that you could continue to watch it, if you wish. There is some very interesting additional material there.

Open Council meetings for advisory panel appointments. You suggest negotiation panels. I think we agree with Judith Freeman that we are pretty much operating that way now. We also agree with Dale Alberda that we need fair representation of all the interest groups on these panels. Our Council, for whatever reason, has taken to appointing its industry advisory panel in closed meetings. We do not think that bodes well for fair representation. Both the crabbers and the freezer-longliners were recently kicked off the panel in favor of other groups at a closed meeting. We have offered some specific language which would make these meetings open so we can at least speak our piece at the time the Council is making these appointments.

Emergency rules. The bill proposes to raise the length of emergency rules to 90 to 180 days. We think for renewal—for a biological emergency, we think that is fine. However some emergencies are of an economic or social nature. They are allocated—by definition, they are not going to allow all the analysis to see what the impacts are going to be on these folks. If it is not a biological emergency, it ought to be limited to 90 days.

Fishery-dependent communities. You suggest that a national standard suggesting that the Council should implement management measures that would address these questions or the needs of these folks, but you have not been very specific about just what it means. Does it mean CDQs? Does it mean inshore/offshore? I can understand that given the rapidity with which our fisheries were developed, perhaps overdeveloped, there may have been some deserving would-be participants who were left out.

We may need to address that for them. Maybe we can do something for them, but we do not think we have to have a blank check for the whole country. We think that it is important that the statute include guidelines. Who participates; how does it work; how does the money get spent; and most important, what is the cap or limit on the amount of fish used for these programs. I would ask you to consider that these fisheries have been developed by people under the law and under the policy established in the Magnuson Act. Most of the ITQ—or the TAC's are fully subscribed. If we take a significant chunk and give it to somebody else, we are going to be pushing some of these folks off of the table.

Standard of review. I am a former NOAA attorney. I have been on both sides of this issue for years. I do know we have the rational basis test in the Magnuson Act which is the lease searching stand-

ard. I firmly believe we need to move to a preponderance of the evidence.

the Councils now are able to ignore the record. They often do. They make decisions which may be very inimical to someone's interest. The decisions get rubber stamped at the Department of Commerce, they get into Federal Register. We go to court, get thrown out of court, no relief. I do not think it will increase litigation. I think if we go to that standard, we are going to have the Secretary of Commerce taking a hard look to do what Judith Freeman said, make sure there is a rational basis for these things.

We are going to recognize that brings lawsuits. But the record as created now, if I may so, is so off the wall that attorneys come up with all sorts of theories. We have got about 15 theories. I think we will effectively reduce it if we adopt a high standard.

Finally, ITQs. I think it was Mark Twain who said, "I would have written you a short letter but I didn't have time."

We testified a year ago in ITQs. You have seen this transcript, I am sure. If not, we will provide you a copy—we put about 250 pages in there. We think it is very interesting stuff.

At the recent hearing on the House side, Rollie Schmitt suggested there are three ITQ plans in place now: The Surf Clam Plan, the Wreck Fish Plan, and the Sablefish/Halibut Plan. He went out of his way to emphasize the Sablefish/Halibut plan is *the* test of ITQs for this nation; *the* test. We absolutely agree with Rollie. All those who have read the Surf Clam report, which we obtained from the office of Senator Stevens, know that the Surf Clam Plan was a disaster.

Sablefish/halibut, we are advised by one of our Council members, is the largest ITQ plan ever attempted in the world. We support that plan. We think that plan should be implemented very carefully, administered very carefully, enforced very carefully, and that NMFs should have all resources to do it right. At the same time, we think we should take a hard look at the results of that plan *before* we look at more ITQ programs. We really think the jury is out on ITQs.

We would support a moratorium on the development and implementation of new ITQ programs until after such time we develop such program and had a chance to see how this one really works empirically. There is a lot of theory out there. We do not have a lot of real experience.

Finally, one thing that sort of bugs me or gnaws at the back of my mind is the mention of auctions in your bill. There was a William Safire article which I have included for your review Thursday evening in the New York Times, and it talks about auctioning off the broadcast licenses instead of, as he said, giving them away as political favors, and of course they were auctioned for \$8- billion recently. There is a lot of discussion how much they were worth.

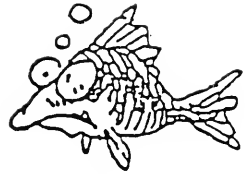
Senator STEVENS. That was my provision.

Mr. SMITH. I know, sir. You are familiar with this issue. The difficulty I have is that the rationale here is so compelling—that you just substitute "fish in the sea" over broadcast bands, or whatever. I do not know how long it is going to be before public interest groups, or whomever, is going to come after us on this kind of thing. It is logically compelling. We have got folks saying, "Gee, we

have to have a market here." And others saying, "Fine, here is your market, come up and pay for it." I think our guys would not be able to compete against the big boys in that kind of circumstance. Thank you, sir.

[The prepared statement of Mr. Smith follows:]

North
Pacific
Longline
Association



TESTIMONY OF THORN SMITH, EXECUTIVE DIRECTOR
NORTH PACIFIC LONGLINE ASSOCIATION
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
MARCH 18, 1995
THE SUSTAINABLE FISHERIES ACT

Senator Stevens, Senator Gorton, my name is Thorn Smith. I serve as executive director of the North Pacific Longline association, with offices here in Seattle. Our association represents owners and operators of freezer-longliners that fish for cod and other groundfish off Alaska with hook-and-line gear, processing and freezing their catch at sea. Freezer-longliners are owned and operated by Alaskans as well as citizens of Washington. We very much appreciate the opportunity to comment on S.39, the Sustainable Fisheries Act.

Freezer-longliners engage in what has come to be known as "conservation-oriented fishing." We catch fish one-at-a-time, on hooks. Our gear is species selective and size selective, to a degree. We do not harvest anything like the volumes taken by our trawler colleagues, nor do we have bycatches of similar magnitude. Our bycatch is released before it comes aboard the vessels using careful release techniques - shaking, hook straightening, gangion-cutting. Time out of the water, which is the most critical element in bycatch mortality, is reduced almost

to zero. The carefully - released fish have an excellent chance to survive. (Please see NPLA video on careful release.) A full description of conservaiton-oriented fishing with references to all of the scientific, academic and descriptive papers on the topic in English may be found in TRANSFERABLE QUOTAS UNDER THE MAGNUSON ACT, Hearing Before the House Subcommittee On Fisheries Management, February 9, 1994, Serial No. 103-82.

We would like to offer comments on the following aspects of Magnuson Act reauthorization:

FISHERY HABITAT

We are not aware of any serious habitat problems affecting the federal management of fisheries off Alaska. We have been advised that identification of essential fish habitat in FMP's will serve to notify federal and state agencies of habitat concerns, and to prevent adverse actions in those areas.

BYCATCH, DISCARDS, AND WASTE

During the House Subcommittee hearings on H.R.39 last month, Representative Studds remarked that in order to restore fish stocks and reduce effort we might have to use hook-and-line and pot gear. Happily we are not in the position of having to "restore" many fish stocks off Alaska, but the advantages of fixed gear fishing should be recognized.

S.39 states that FMPs shall have measures to reduce bycatch, discards, and waste - including harvest preferences for clean gear and other incentives. We approve of such measures, and have developed an elaborate careful release program to reduce halibut bycatch mortality in the longline fisheries (please see attached

regulations, careful release video, and TRANSFERABLE QUOTAS UNDER THE MAGNUSON ACT, pp. 184-187). Preferences and incentives should not be applied only "within" gear groups, however. Councils need authority to provide incentives within and between gear groups, if we are to achieve these conservation goals. The language on page 71 of S.39, subparagraph (3), should be amended accordingly.

On the same page the bill mentions measures to ensure "total catch measurement." As explained above fixed gear operators (longliners and pot fishermen) are able to return unwanted fish to the sea immediately, maximizing their chance of survival. It would be nonsensical to require that they bring unwanted fish aboard, kill and weigh them, and throw them back into the sea. Observer sampling and extrapolation to determine discard levels, which is now practiced for prohibited species, is quite adequate for determining levels of bycatch and discard in the longline fisheries.

The same facts should be recognized where "full retention and utilization" are concerned. It is far better to return unwanted fish to the sea in good condition than it is to kill them. The Act should be amended to reflect these realities of fixed gear fisheries.

OPEN APPOINTMENT PROCESS - ADVISORY PANELS

S.39 provides for the establishment of "negotiation panels" to assist in the development of conservation and management measures. Since the selection of members of such a panel can determine the direction of its policy recommendations, the

selection process should be conducted during an open council meeting with public comment and participation. This will help to assure fair representation of all interest groups. Recent selection of an industry advisory panel during a closed meeting of the North Pacific Fishery Management Council resulted in the disenfranchisement of significant elements of the Washington's fleet (please see attached materials and proposed amendment language). Such occurrences impugn the credibility of the council process.

EMERGENCY RULES

The bill proposes to extend the life of an emergency rule from 90 to 180 days, with an extension of another 180 days. This provision should apply only to biological emergencies certified as such by the Scientific and Statistical Committees. Emergency rules are potentially allocative, and are promulgated without the full evaluation, cost/benefit analysis, and further scrutiny otherwise afforded regulations. Without these analytical protections, emergency rules could be adopted and be in place for as much as one full year with no serious analysis and at considerable potential detriment to a given sector of the industry.

"FISHERY DEPENDENT COMMUNITIES" AND CDO'S

The bill proposes a new National Standard which would "take into account the importance of the harvest of fishery resources to fishery dependent communities." There does not appear to be any clarifying language as to just what management measures are contemplated. We can understand that the rapid development of

our fisheries may have left some deserving participants behind, and that adjustments may be necessary to serve their interests - but we all need to know exactly what is contemplated in this regard.

If this language anticipates the reservation of a portion of the total allowable catch for the use of "fishery dependent communities" (CDQ's), the bill should spell it out. No such authority should be open-ended. Careful guidelines should be drafted to specify just how any such program might work, who qualifies, and how the money is spent (accountability). A specific cap should be set on the amount of fish involved.

It should be recognized that most of our fisheries are fully developed, perhaps overdeveloped. Following the law and national development policy set out in the Magnuson Act, individuals and companies have invested in harvesting and processing capacity. Dedication of portions of fully-utilized TAC's to CDQ programs could put some of these people out of business. If larger communities such as Seattle are excluded, long-term participants could be disadvantaged in the allocation process. Such a priority could ignore the fundamental principal that the resource is a national one. It could also weaken National Standard 4 which prohibits discrimination among residents of different states.

Finally if the new National Standard is aimed at perpetuating inshore/offshore, that purpose should be made clear. Freezer-longliners are not a preemptive threat, and should not be included in any such program.

STANDARD OF REVIEW

The standard of judicial review prescribed by S.39 and by the Magnuson Act is the least searching - the "rational basis test." Under this standard, the Secretary of Commerce and the courts can approve any management action which has any support whatsoever in the administrative record. Relevant facts may be ignored, politics may reign supreme. We propose that the standard be raised to "a preponderance of the evidence," the standard for civil actions. The councils, the Secretary and the courts would be obliged to follow the administrative record more closely. The council system is unique in American government, a new departure in administrative law. A more searching standard of review is appropriate. Please see attached materials.

INDIVIDUAL TRANSFERABLE QUOTAS

Our views on ITQ's are set out at length in TRANSFERABLE QUOTAS UNDER THE MAGNUSON ACT.

During the recent House hearings on Magnuson Act reauthorization, Rollie Schmitten of NMFS stated that we have three ITQ programs in the U.S. today - the Surf Clam Plan, the Wreckfish Plan, and the Sablefish/Halibut Plan - and that "Sablefish/Halibut is the test for this nation of IFQ's."

We agree with Rollie. A NMFS internal report, "Review of the Effectiveness of Our Administrative and Enforcement Obligations Under the Surf Clam/Quahog ITQ Plan", makes it clear that the plan was an abject failure. The Sablefish/Halibut Plan is reportedly the largest ITQ program ever attempted in the world. We support the careful implementation and enforcement of

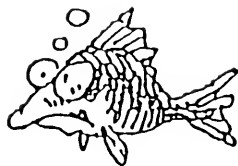
that plan. Our President, Don Iverson, sits on the industry implementation committee for the Sablefish/Halibut plan. He supports it, but honestly questions whether NMFS has the capability of implementing it effectively. He seriously doubts NMFS' ability to implement a wider plan at this time.

We propose that the Sablefish/Halbiut Plan be implemented carefully, and the results studied extensively before any additional ITQ plans are developed or implemented. We favor a five-year moratorium on the development and implementation of further ITQ programs. During the interim period careful guidelines can be prepared, based on actual experience under the Sablefish/Halibut plan.

Meanwhile the councils should concentrate on reducing bycatch, bycatch mortality and associated waste in our fisheries. Human nature being what it is, it is unlikely that these issues will receive adequate attention while potential windfalls are dangled before industry.

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

North
Pacific
Longline
Association



- FAX TRANSMISSION -

DATE: December 15, 1994
 TO: All Freezer-Longliners
 FROM: NPLA - Thorn Smith *Thorn*
 SUBJECT: FIS Longline Industry Bycatch Monitoring Program
 PAGES: 5

ATTACHED PLEASE FIND INSTRUCTIONS AND A SIGNUP SHEET FOR THE 1995 FISHERIES INFORMATION SERVICE BYCATCH MONITORING PROGRAM (JANET SMOKER). LET'S ALL PARTICIPATE - PLEASE!!!

THE PROGRAM AND ITS BENEFITS ARE DESCRIBED IN THE ATTACHED INSTRUCTIONS. OUR ASSUMED HALIBUT MORTALITY RATES AND OUR FALL FISHERY WILL BE DEPENDENT ON HOW WELL WE PERFORM IN THE FIRST TRIMESTER OF THIS YEAR. THERE WILL BE NO LOOKING BACK - IT'S DO OR DIE.

PLEASE FAX THE REGISTRATION FORM TO JANET RIGHT AWAY, AT (907) 789-5580. SHE CAN BE REACHED AT THE SAME NUMBER, IF YOU HAVE ANY QUESTIONS. I CAN BE REACHED AT THE NUMBERS BELOW. JANET ESTIMATES THAT THE NUMBER CRUNCHING WILL COST ABOUT \$20 PER BOAT PER WEEK. THE ONLY ADDED EXPENSE WILL BE THAT OF FAXING OR TELEXING THE SUMMARIZED DATA TO YOUR COMPANY OFFICES. JANET WILL BILL YOU MONTHLY.

THE INTERNATIONAL HALIBUT COMMISSION HAS LOOKED AT OBSERVER REPORTS FOR BOATS REPORTED TO HAVE HIGH HALIBUT BYCATCH AND MORTALITY IN 1994. WE HAVE TALKED TO LOTS OF FISHERMEN. HERE IS OUR ADVICE:

1. IF YOU ARE IN HALIBUT AND/OR SAND FLEAS, MOVE RIGHT AWAY. MOVE EVEN IF COD FISHING IS GOOD;
2. CAREFULLY RELEASE EACH AND EVERY HALIBUT BY STRAIGHTENING THE HOOK, CUTTING THE GANGION, OR SHAKING CAREFULLY WITH THE CURVE OF THE GAFF - IT'S THE LAW. SLOW THE ROLLER IF NECESSARY;
3. EMPLY ONLY EXPERIENCED ROLLERMEN. MAKE SURE THEY KNOW THE CAREFUL RELEASE PROGRAM, AND CAN COMMUNICATE ITS DETAILS TO THE OBSERVERS;

4. WORK COOPERATIVELY AND IN A FRIENDLY MANNER WITH YOUR OBSERVER; HAVE A TALK WITH HIM OR HER BEFORE THE VOYAGE, SO YOU KNOW THE DRILL; AND

5. SEND YOUR OBSERVER DATA TO FIS PROMPTLY EACH WEEK, SO YOU WILL KNOW WHAT YOUR OBSERVER IS REPORTING.

THIS REALLY IS OUR LAST CHANCE TO ESTABLISH AN ASSUMED HALIBUT MORTALITY RATE THAT WE CAN LIVE WITH - AND IT WILL LAST A LONG TIME, AFFECTING OUR FISHERY FOR YEARS TO COME. IT'S WORTH MANY MILLIONS TO US AS A FLEET, SO LET'S GO FOR IT!!!

50 CFR Ch. VI

§ 675.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(m) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title—

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than;

(i) Cutting the gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut; or

(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

**KODIAK LONGLINE
VESSEL OWNERS' ASSOCIATION**326 CENTER AVENUE, P.O. BOX 13
KODIAK, ALASKA 99615
(907) 486-3781 FAX (907) 486-2470

HALIBUT • SABLEFISH • PACIFIC COD • CRAB

February 17, 1995

Honorable Don Young
U.S. House of Representatives
2331 Rayburn House
Washington, D.C. 20515

RE: Magnuson Act Amendments

Congressman Young:

We would like to have you review and consider the following proposed amendment to the Magnuson Act.

To amend Section 302 under Procedural Matters by adding a new subsection (j) (4), "Each Council shall appoint members of committees and advisory panels during an open meeting at which public testimony on the appointments shall be heard."

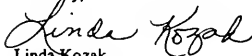
We understand that this has become an issue with segments of the industry who are not currently being represented fairly on the Advisory Panel to the North Pacific Council from the state of Washington.

By having the appointment of committees conducted in a closed process, it does not provide the public an opportunity to fully participate in the process. This is a problem, especially when we see lopsided appointments being made on an industry advisory panel.

We believe that putting this process in a more public forum will help to alleviate some of the concerns that industry has expressed to us.

We appreciate the consideration you will give our proposal. Please don't hesitate to contact us if you need information or clarification.

Sincerely,


Linda Kozak
Director

January 11, 1995

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
604 West 4th Avenue
Anchorage, Alaska 99510

RE: ADVISORY PANEL COMPOSITION

Dear Rick:

Yesterday Washington State fixed gear representatives and Council members met to discuss the makeup of the Washington delegation to the Advisory Panel. Present were Bob Alverson, John Bruce, Kris Fanning, Thorn Smith, Arni Thomson, Morris Barker, Dave Fluharty, Al Millikan and Wally Pereyra.

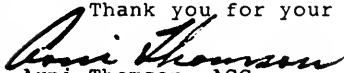
For the second time fixed gear representatives expressed their deep concern regarding the removal of two fixed gear representatives from the panel, a freezer-long-liner and a crab fisherman, and their replacement by two trawl gear representatives. The Washington Advisory Panel delegation of six now includes four trawl gear representatives. Fixed gear representatives emphasized the very real need of the different competing gear groups for representation on the Washington delegation in 1995, when many serious management issues will be decided. The Council members agreed to ask for an executive session of the Council to address this issue.

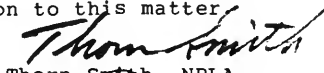
The GUIDELINES FOR COUNCIL OPERATIONS/ADMINISTRATION, at 50 CFR 605.23(d)(3), require that "balanced representation" should be maintained on the A.P. The Council's SOPP states that "The Council will attempt to appoint as broad a spectrum of interests as possible, including the various fisheries around Alaska...emphasizing fair representation of all fishing interests." It also specifies that the A.P. members "serve at the pleasure of the Council." (emphasis added)

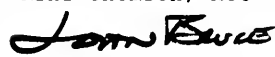
Elimination of significant competing interests will seriously inhibit the ability of the A.P. to reach useful industry consensus.

It is our sincere hope the Council will take action now to rectify the imbalance on the Washington delegation to the A.P.

Thank you for your attention to this matter.


Arni Thomson, ACC


Thorn Smith, NPLA


John Bruce, DSFU


Bob Alverson, FVOA

Proposed Amendment To The
Magnuson Fishery Conservation And
Management Act

_____. Section 302(j), **PROCEDURAL MATTERS** (16 U.S.C. 1853), is amended as follows:

(1) By adding a new subsection (j)(4), "Each council shall appoint members of committees and advisory panels during an open meeting at which public testimony on the appointments shall be heard," and

(2) By redesignating current subsection (j)(4) as (j)(5), current subsection (j)(5) as (j)(6), and current subsection (j)(6) as (j)(7).

Proposed Amendment to the
Magnuson Fishery Conservation and Management Act

Purpose of the Amendment

Section 303 of the Magnuson Act sets out certain requirements to which regional fishery management councils must adhere when developing fishery management plans. Management plans are the basis for fishery regulations promulgated by the Commerce Department.

The proposed amendment would require that provisions of a fishery management plan be "based upon a preponderance of evidence in the record." The thrust of this change is to depoliticize council actions, requiring actions to be based on scientific, including biological, data. The council process includes public hearings, support from scientific and statistical committees, and industry advisory panels. However, nothing in the Act requires councils to base their actions on a preponderance of the evidence submitted. The purpose of this proposed change is to do just that.

Need for the Amendment

Many councils are now facing highly controversial conservation and allocation issues. Some of the measures being considered have the potential to change drastically and forever the way in which we manage our living marine resources. It is time to establish a more searching standard for analysis and review - every management action would benefit from this increased scrutiny.

Conflict-of-interest on the councils has been at issue. At the time the Magnuson Act was promulgated, it was assumed that we would need the specialized knowledge of fishing industry participants in management. We can retain this aspect of our system, while making it difficult if not impossible to pursue a conflicted agenda - by requiring substantial evidence on the record to support council actions.

In the original Act the councils' decisions were merely advisory - the Secretary of Commerce held decisionmaking power. The Act has since been amended to give most of the decisionmaking power to the councils. A more searching standard of analysis and review of council actions is required.

Proposed Amendment To The
Magnuson Fishery Conservation And
Management Act

_____. Section 303 (16 U.S.C. 1853) is amended as follows:

- (1) By striking the word "and" at the end of subsection (a)(1)(B); and
 - (2) By adding a new subsection (a)(1)(C), "based on a preponderance of the evidence in the record; and", and
 - (3) By redesignating current subparagraph (a)(1)(C) as subparagraph (a)(1)(D).
-

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 USC 1853
95-354, 99-659, 101-627**

(a) **REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both;

(C) based on a preponderance of the evidence in the record; and

(D) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

Senator STEVENS. Slade?

Senator GORTON. We have got an interesting and lively discussion of ITQs here, and I think perhaps I would like a specific comment. You invited it, Mr. Benson, with the remarks of your president to the effect that an ITQ or good ITQ program would have a more positive impact, I think is what the thrust of the testimony is, on bycatch and discard production and other methods. Go ahead and tell me why, but then I want to hear from Mr. Fraser on that and maybe even a little bit more on safety, and I might say it again, Mr. Casey, you took exactly the opposite point of view. I want your commentary, not from an economic standpoint, but from the standpoint of the race for fish and safety of fishing in the ice of Alaska.

Mr. Smith, you on that subject said, well, let us wait until the experiment is over. I would like you to comment further on that and especially how long the wait is that you want. So, let's us start with you, Mr. Benson.

Mr. BENSON. Thank you, Senator, for the opportunity to elaborate on this. In the interest of saving time, if I may submit for the record several pages of response to this question. I will just briefly touch on some of the points, and there are two primary points.

The first one being the same rationale that we use for a new national standard on bycatch and waste being more appropriate because we feel it is better to deal with at the Council level since they are more familiar with their own regions.

The same holds true for individual accountability under ITQ System. As a former skipper who has been involved with many fisheries in Alaska over a period of 13 years, I can tell you that as hard as I tried and some of the other skippers that I know tried to clean up their bycatch, it did not really matter because in the end there was a handful of the greedy fishermen that shut down an entire fleet.

You basically have two quotas. You have got a quota for target species or you have a quota for prohibited species, halibut, salmon, et cetera, to sustain that quota, and many times it is often bycatch of the prohibited species that actually shut down the fisheries, and we leave a lot of fish on the table, and nobody talks about that waste of the actual target species.

Under an ITQ system, if you can get X amount of fish, then you can slow the pace of your fishery down. You can take the time to experiment with gear modifications, different mesh sizes, you can move away from bycatch. You can time your seasons to avoid the bycatch that you know is going to be there, for instance, the seasonal migration of halibut, the deep and shallow season. It is really the skipper who is on the front line that is best equipped to make these decisions, and there is a lot of options available to him, and I do not think it should be somebody, Congress or the Council, telling him exactly what is the best way to do that.

The other thing is that under an ITQ system, we have all, I think, pretty much all agreed that we are going to have to pay a user fee of some kind for that. Given that user fee is going to be applied for total catch, not what are you retaining. So, it creates an economic disincentive to discard those fish because you are pay-

ing for it. So, without taking up any more time, I will submit the rest of my comments for the record. Thank you.

Senator GORTON. Mr. Fraser.

Mr. FRASER. Thank you, Senator. I echo what Dave has said, and I would like to touch on something that relates to this and that nobody else has mentioned on this sector of the Act here: Confidentiality provisions on data. Under open access, we all share a common bycatch cap, and as Dave said, when it is reached, we are all shut down together. So, there is no incentive at all for me to be good; I think he is being bad or vice versa.

The only thing we have right now as a tool is to get published the individual bycatch rates of individual vessels so that at least there is peer pressure if nothing else, and that is really all that we have at this point. The confidentiality provisions, as I read them here, would make it more difficult to get that information out, so I just wanted to point it out, and we have written comments about that.

But if you shift to an ITQ world, you have the ability to start taking advantage of the information technology that is out now. We are starting to develop a data base of history of fishing. You can start to use that knowledge to figure out the times and places you ought to be fishing, but if you are under a common quota, either for your target species or your bycatch cap, as I said, I could be fishing in May for yellow fin sole in Kodiak area and have very little bycatch of any PSC species, but we will be closed very likely before we get there. And that is—

Mr. CASEY. We are not changed the opening day. We have done that. We are not pushing it into May.

Mr. FRASER. Without getting into the details of that, we try to time—we keep moving our seasoning openings around and timing them, but as seasons compress, they get faster and faster. You have to keep changing the opening date every year in order to end up straddling the best window of opportunity, therefore—

Senator STEVENS. I am compelled to say that in days gone by, there was a group that fished one species, a group that fished another, and group that fished a third species. Now we have vessels that fish all three of those and probably four or five more during the year, and what has happened is that many of the small fishermen who were involved in the three are gone. ITQs look to me like they are going to push everybody else that is small out of the business. They are all going to be investor-owned before long, and I do not see anything that says that they are not going to be.

Somehow or other we have got to have some concept of freedom back into the fisheries. The total North Pacific Fishery is going to be investor-owned by the year 2000, unless we do something about it.

Mr. FRASER. The only answer is that I am probably the smallest vessel operator in the trawl fleet or one of them. We have got an 86-foot vessel. I am the skipper, owner/operator. I am not afraid of ITQs. If somebody wants to sell their birthright for a mess of pottage, so be it. If the initial allocation does not create big winners or big losers and treats people fairly, and I get a fair share, I am going to work that share.

Senator GORTON. That is—

Mr. FRASER. I think the safeguards that have been built into the halibut program have their parallels that can be built into other crab or groundfish programs to make sure that there are portions of quota that when you sell or transfer your quota, you might have to be forced to only sell some portion of that to a bona fide crewman.

You know, you can create ownership caps. I do not want to see a corporate fishery. I do not want to see Caterpillar; I do not want to see General Mills owning this fishery at the end of the day. We can build those safeguards in, and I think that there is a sensitivity on the Council that shares those concerns, and we should build those safeguards.

Senator GORTON. Mr. Casey, it is your turn now, and I am particularly interested in the safety of this race question; whenever you open up the season.

Mr. CASEY. You know that the Northwest Mariner and the Entrance Point are members of the Alaska Crab Coalition. It is a lobbying group here in town. They lobbied the Alaska Board of Fisheries in the last years to move the king crab fishery from September to November. Do you know how rough it is in November in the Bering Sea? Because they thought they would get more crab, so they took it—a pretty easy-going fishery in September and moved it further into the winter.

They chewed our butt because we wanted to fish crab on November 1, instead of January 1. They wanted to push it further into the winter in the icing season, when vessels were likely to ice up and roll over. They are the ones that did that, not us. We wanted to fish king crab in September. So, you can survive. Why rush to get back with your wife? They really came down on us hard about fishing day in November. We knew we could get in and out without ice, so we took it.

So, I am telling you that the way you handle that safety problem is to go to the Alaska Board of Fisheries and ask them to change the season date. If it is too dangerous to do on January 1, why do we not start on March 1, get it out of the icing season?

But Senator, you know what is going on here. Everybody smells windfall profits on black cod and halibut. Can you imagine what the pollock ITQs are going to be worth if there are hundreds of millions of dollars now in the pockets of guys who receive them free in the mail, from newts, to halibut, to black cod? Several people were telling me that their net-worths tripled when they got one piece of paper in the mail. Now there are 65 factory trawlers, so 65 checks are going out. 65 mailboxes. You are going to have a real increase in the capital in this fishery.

So, if you want to deal with the safety, move the seasons into the months where there is not ice, and I ask you again, it was not us that pushed this fishery into the winter. It was a predominant Seattle group that did that. They have no place to hide on that. I want to repeat that those men on the Northwest Mariner are the best operators in the fleet. No one questions their seamanship, but they are victims of greed.

Their own organization wanted to open this fishery further into the winter. We did not want to do that. Thank you.

Senator GORTON. Mr. Smith, how long an experiment?

Mr. SMITH. I will get to that, if I may. We are kind of in the middle on this I guess, frankly. We have individuals in our organization who had a whole spectrum of views on ITQ.

Most of them share the concern with Senator Stevens in regards here about being taken over by larger corporations. Our guys have boats that cost a million to perhaps \$6- or \$7-million, and that is not a big-time deal.

We are small businessmen. Most of the guys I have worked for are fishermen themselves, worked their way up to the deck then got to the pilot house, then they got enough money together to get into freezer-longliners. A couple of them own factory trawlers. When I was managing a factor-trawler company I was involved with a multinational fish company, and I was told by my superiors there that there were other large multinational fish companies and large agri-business companies basically out there circling in the skies, waiting to come down and scoop up the American fisheries.

Our guys have sat down with a proposals for ITQ initial distribution and have figured out that maybe they get half of what they need or something like that to keep their boats going and to stay in business. They do not do anything else. They are going to have to go on the market and buy shares to keep going. They do not think they are going to be able to compete. They think that the bigger people—and you know who I am talking about—are going to come in and pay whatever it takes to buy those shares, and it will be gone, and they sincerely believe that.

We have seen what happened in the Surf Clam plan. It frightens the heck out of us. A big company came in from Canada, we're advised, went broke, shares went to a British bank, the fishery collapsed, and that has been going on for 4 years.

The whole purpose of the Magnuson Act is to get foreigners out of fishing and processing, and we have been successful. There are people who are really concerned that this ITQ system may come right back and bite them.

With respect to the race for fish, ITQs are not going to change the way we prosecute fisheries. As one Council member has told the House Committee, freezer-longliners—if it gets really rough—we just stay out and fish. We have not sunk one yet. We burned a couple up on the dock. Most of the fish taken in the Bering Sea, particularly, are taken by very large boats. I think the only factory trawler that ever sunk, sunk in calm waters. Allegations of negligence in its operation surround the sinking. It is not a big safety issue.

As I said, our pattern is not going to change. We fish slowly. It takes all year to take our quota basically. The trawlers like to concentrate their fisheries on spawning stocks. We have questioned whether that is a good practice, and there is a lot of argument about that on both sides, but I am not sure it is going to change the race for fish by trawlers, because I think they are going to want to fish on spawning stocks, and may all be out there doing it just as fast as they are doing it now. I do not know.

What we have said is we have apparently the world's largest program being implemented right now. Our president, Don Irishman, sits on the Industry Implementation Committee. He firmly favors ITQ management. He is a significant beneficiary of this plan. He

told me day before yesterday—we had a board meeting—said, “Look, we have got so many unanticipated problems here, and I am not sure the National Maritime Fishery Service is capable of implementing the Sablefish/Halibut Plan, even though they have got wonderful people working hard to do it.” We have encouraged them. We are not sure they can do it. He says he is absolutely certain that they could not do it and enforce the wider plan any time in the near future.

We are saying we have got this huge ITQ plan out there. Do it right. Take a good look at it. See what shakes out. Let us see if people like Caterpillar are coming in and doing something, whatever they may be doing. It is alleged that, you know, stacks of shares of ITQs are being faxed to Japan as collateral for loans that are pretty large. If there is default, the Japanese may end up owning all of these things. I do not know.

It is all hearsay, as far as I am concerned, but we would like to know about all that stuff. The only way to do that, in our view, is to try this thing out, see what happens. But just to race forward and do everything all at once frightens us. I am not saying it is the right way. I am not saying it is the wrong way. We are saying we are scared that we are going to fast.

Senator GORTON. One more quick question if I may, Mr. Casey. Mr. Smith raised a word, and it creates some real horror in the field. I take it you would not go for auctions?

Mr. CASEY. Senator, 20 years ago Senator Stevens let Bart Eaton and I into his House and his wife let us eat in their home. We told him what had—we had no chance against the big boys. They would buy it out from under us, and we would be sharecroppers. It is the first time I have seen, in legalese, that auction stuff in S. 39. Everyone in our association knows it is there, and we wish we could take it out and bury it. We lose. The game is over and we lose on auctions.

Senator GORTON. Quick comment from the two of you.

Mr. FRASER. Senator Stevens, Senator, if we were starting at ground zero when the Magnuson Act was authorized, auctions would probably be good public policy. At this point, what we have on the East Coast is a \$30-million Federal buyout for the fishery proposed where nobody is making money. No taxes are being paid as a result of fishing profits because the profits are nonexistent. We are going in that direction.

I did not pay much taxes last year or the year before. I used to pay good taxes, and I did not mind doing it and would not mind doing it in the future. Under ITQs, I will pay some taxes, I would anticipate. That is a public benefit. If you want to tax the transfer of shares, if you want a fee system on shares, those are some ways to get rents back to the public.

But an auction, I agree with Tom, starting out going bidding straight against Matsui or General Mills or whomever, it would be a different playing field, for sure.

Senator GORTON. Mr. Benson, you are the big boy, what do you say?

Mr. BENSON. Well, I still think that the quota-share system is best because I really feel you have to give some credit to the history that the folks have in this industry, and I think, you know,

it was one of the charges of the Magnuson Act originally to Americanize these fisheries, and it was done quicker than anybody imagined and with some financial risk, risk of lives, and I think that should be recognized. I do understand the fears of those other folks that feel they would be disadvantaged. I guess if there is anything close to an auction system right now, it might be CDQs.

Senator GORTON. Well, we are unanimous on this.

Senator STEVENS. We have a provision in S. 39 for recommendations concerning other options to deal with allocations, one of which would be the auctions as well as non-transferable quota programs. I have not recommended auctions for the offshore fleet yet.

In the provision that was adopted finally after three congresses for the FCC, the total it takes so far is \$12 billion, and they have only auctioned a small amount of the spectrum. Incidentally, we have set aside spectrum for police and fire and safety and for small communities, et cetera, so there is protection already similar to what we are trying to do with ITQs.

I am not sure you can measure the ocean in exactly the same way, though, and we will have to look and see what suggestions there are and whether it is possible to allocate and transfer quotas by auction rather than by right.

Quotas going out there now are theoretically not a property right, but in fact we all know they are because of the way the law will provide that you can transfer them and obtain a payment for them, and because the IRS is probably going to own some of them due to bad seasons, which is something you do not want to get me started on. That is another matter.

Let me ask you—by the way, before I do this, Mr. Smith, I thank you for that and thank you for doing this. I think it was very responsible for some industries giving this kind of information.

Under our bill, I believe that if you are taking this halibut off the hook before they come on board, you would not have to weigh them; you would not have to account for them. If you do not bring them on board, you do not have a problem.

Mr. SMITH. Would you tell that to NMFS, please.

Senator STEVENS. I think they should encourage not bringing fish on board, so long as they are returned to the sea alive.

That is the basic problem, and we want the accounting of those that are brought in and are returned dead primarily. That to me is waste, but in any event, we will discuss that later.

Let me turn to another thing though, because I think time is a problem. Slade asked you all about the time of the ITQ for halibut and black cod, and that really is a substantial experiment for the system.

Mr. Smith, I did not hear you say how long it would take that test to be run.

Mr. SMITH. In our testimony, sir, we suggested 5 years. Our reason for that partly is as far as I know, the Surf Clam Ocean Quahog plan has been around for about 4 years. I think it is still a mess.

Senator STEVENS. Let me ask you all this. I came up with the idea of the Regional Councils. The idea was we would transfer a portion of the Federal authority to a new—what I call a new level of government—and the States would have a portion of authority

at that level of government. They do so by their governors appointing people to represent them.

We have a situation here where, if you think about it, is still sort of an experiment. I do not know where we are going in terms of these quotas under the system. Mr. Smith mentions he is not sure that NMFS has the capability to do what we have already asked them to do. We have overloaded them, no question about it, and they have the power of the Federal Government notwithstanding the fact they might get reduced slightly. The National Oceanic and Atmospheric Administration is still getting about \$2 billion, I think. NMFS gets over \$250 million of that, but the Regional Councils are probably still underfunded.

They are without real funding, and yet you have a series of systems, ITQs or whatever else, and we are going to load off of these Councils now much more authority—regulatory, taxes, but we call them fees, scientific investigation—all on very small units of a newly created form of government.

How much of a workload can they take, and how much are you going to maintain your ability to rely on them if we turn them into what I would call massive bureaucracies? ITQs are going to give them more work. The whole system that we are talking about here in terms of allocation gives them more work. Are they going to be capable of doing this in your mind? Are we wrong to think—we can shift to that smaller form of government and give them that kind of authority in the North Pacific or the Pacific Council? Will the industry—will the participants have real confidence in this system if we expand it the way these concepts are going to with the demands of ITQs, and other methods of allocation? Will they be able to fairly allocate and monitor and keep track of the system that we are looking at which is basically a quota system for all fisheries in the future? Is that really within the range of possibility that we can maintain confidence in this new system under those conditions? What do you think, Mr. Fraser?

Mr. FRASER. Senator Stevens, whether or not we have ITQs, we have a reality of a fishery that has matured and is fully subscribed and we are forced into more and more micromanagement and we do not have staff to do it, whether we do it under open access or not. As Tom suggested, we should adjust the season. For bycatch reasons, it drops off the Council agenda.

You cannot have real time management, because there simply are not the personnel NMFS or the Council staff. Here is an issue. You can have a \$million of benefits somewhere. If you are lacking one staff person, then you cannot do it; ITQ or open access. I think that there—

Senator STEVENS. You do envision that there be ITQs for almost every species in North Pacific, do you not?

Mr. FRASER. Right, and I think there is so much potential for getting more value out of the fishery and through groundfish and crab, so much potential for value to be added in that kind of management environment. I think—you have heard the industry—those that think ITQs are a good idea.

We are more than willing to pay the cost of that. I do not expect the public to be—I do not know why—we are in a welfare system where we are welfare recipients. The public is subsidizing the man-

agement of fisheries and not getting back the benefits they are entitled to.

Senator STEVENS. We do not have these monstrous management plans yet. The thing the Councils are doing now is setting the optimum yield concept and allowable catch. That is basically what was envisioned in the Magnuson Act. Now on top of that comes all these regulatory devices as to how you allocate that catch, species by species.

Now, I do not know how many species there are in the North Pacific. I never counted them, but I would seriously question whether the management resources are there now to add two or three ITQ species and do it right. Do you disagree?

Mr. FRASER. I think we are willing to pay the cost of doing it right, and it can be done right. There are several things that have come together. One is an observer program. Could not have done an ITQ program without the observer program. That has come together. The industry has accepted the idea of full observer coverage. We need to wait or accurately determine what the removals really are. That is coming together, and the other thing that can come together through this bill is the ability to fund that kind of management by extracting the fees where you have that kind of management.

Senator STEVENS. I have a friend from agriculture country. I am obviously not from agriculture country. My friend from agricultural country tells me, what happens to the farm community in this country, once so stable, is that it finally dies when there are more people on the part of agriculture regulating farming than there were farmers. You want that with fishermen?

Mr. FRASER. Mr. Chairman, I think we are facing micromanagement either way, and that we see allocation games being played in the Council arena. Tom mentioned setting back the season to try and get one group getting the fish as opposed to another. We have played these games and we all suffer that way. I want a market system of—

Senator STEVENS. I want to pick on Mr. Benson now.

Mr. BENSON. I would be happy to respond, Mr. Chairman.

Senator STEVENS. I think yours is a very responsible company and worthwhile. I appreciate what you said about the volunteer ratings. You have tried to deal with waste. I still have some serious questions, however, of our ability to turn over to the Regional Council the capability to regulate companies of your size, and at the same time, keep track of things with regard to basic fairness of very small skiffs and on up to where you are. I am not just sure we have got that capability in these Regional Councils.

Mr. BENSON. Thank you for that comment, Senator. I would say again that fisheries are vastly different and the halibut/sablefish fishery involves somewhere in the neighborhood of 5,000 small boats, and that is much different than approximately 200 trawlers that are chasing pollock in the Bering Sea, and you have to do this by a fishery-by-fishery basis.

Mr. Blum mentions pollock industrial fishery. It is really an industrial fishery. So again, it is case-by-case, but in response to your first question, I see that once the Councils get through the hurdle of designing an ITQ program such as these already done for hali-

but/sablefish of doing that for other groundfish fisheries, that a lot of the allocation fights are going to go away, and that is taking up a tremendous amount of time right now.

In addition, my comments about individual accountability, I think, will also reduce the workload, because you will not be so concerned about the setting of the, seasons and the areas.

Again, if the individual skipper is more accountable for his own actions, I think some of the workload is going to go away. There is no question that the Council will still be very involved in the setting of the TAC and the ABC and the monitoring. ITQ fisheries are probably the key, knowing exactly what everybody is catching so there is still going to be plenty of work besides allocation.

Senator STEVENS. Those statistics are going to be very expensive in the North Pacific. I do not see our ability to get that money from the Federal Government. It is going to increase manhours for science in the North Pacific.

Mr. BENSON. We are willing to pay.

Mr. CASEY. Twenty-six different groups on the Council for innovative regulations. All 26 were swept off the agenda because of the time consumed by ITQs primarily. None, 0 for 26, were considered because there is no staff time.

You are right. People who say we will pay for it must think there is a lot of money in this business that you can spread out to create a brand new bureaucracy while the rest of the country is downsizing Government.

Mr. SMITH. Thank you, Senator. Tom was absolutely correct when he says that the Council for the last many years has actually been almost entirely concerned with allocative issues rather than on conservative issues.

We have had to beat the tambourine for 2 years to get any issues raised which finally led to a division of the cod TAC in the Bering Sea. Having said that, the allocative issues are there. We do not have anything like the resources we need to deal with now, nor as Dave pointed out, we do not have the resource to deal with continuing micromanagement of fisheries.

We are now monitoring all sorts of bycatch caps and what not. It is important that we do that, but NMFS needs resources to do that. This is even before we get to the collection of ITQs. They need more resources to do just what they are doing now under an open access system period. They do not stand a snowball's chance of doing any of this other stuff unless they get a whole lot of other resources, and I do not think they can continue to do the pretty good job unless they get more resources.

I am not arguing for or against ITQs at this level. I am just saying they need more resources. They have got a hiring freeze; they have got people absolutely worked to death. When I went to Juneau as an attorney in 1985, there was one lawyer there. I was lawyer No. 2, and now there are 6, and they are screaming, because they cannot get the work done. I was chief of fishery operations for year. I had maybe six or 8 people. Now they have got three whole divisions of people, armies of them, trying to keep ahead of all this. They are still having a hard time. I know those people well enough, see staff or Council staff, I can see personalities are fraying and cracking, people worrying about their mar-

riages, and that and they work all the time, and they are wonderfully dedicated people, but you need more resources period. Whatever you do.

Senator STEVENS. Senator Gorton knows my job a Chairman of the Rules Committee was to reduce the staff of Senate committees by 15 percent. We seem to be now intent on reducing the size of the agencies by about the same amount. NMFS is going to face a reduction of staff at the time when we want them to provide more capability to the system.

Mr. SMITH. Is the point they cannot administer and monitor these quotas—that has got nothing to do with ITQs—or something else?

Senator STEVENS. I am not mentioning the bad word. It might be interesting. Some of you here who testified might drop us a line and tell us if there is any way we might privatize any part of this with basic fairness to all concerned.

I do not know how we can get the money even under the current budget restrictions. The money that comes in will be subject to budget limitations. You know that.

Mr. SMITH. Interesting enough, Senator, if I may. I just attended a board meeting recently, and actually in a sense we are privatizing some of these, say, bycatch monitoring things. Our association started a program of monitoring, and it was receiving observer data by radio from the boats.

She does calculations, in real time, sends the information back to the boat, so they know what their halibut mortality and bycatch rates are. NMFS cannot do that. It takes them 3 weeks. We can do it inside of a day. I think David Frasier's program updates and works the programs exactly like that in various trawl fisheries.

So there is an increasing trend for us to use our own private resources without being told to do so by the Council without anybody commanding any statutes or anything else, just so we can keep going, and I think I anticipate more of that.

Senator STEVENS. I should not give away ideas how someone could make money, but I think we might be able to privatize the concept of lien registration. I do not see any reason why that has to be a government function, and some things do not have to be government functions. I am not sure that an allocation could be done outside the Council process, but I would like to have anyone's ideas of how we might do this.

My basic problem is I see demand, and all of us are talking about more and more staff to keep track. Even you, Tom, would have more and more staff involved, but less capability of getting that staff on the Federal level or finding a way of affording them, unless we go to taxes or fees of the size to really have a serious impact. In New England, they want a 5-year moratorium, which could really be costly.

Let us take a little recess. Let us take a recess for 10 minutes and come back for the fourth panel. Before we go, those who are in the audience who want a chance to express their opinion for the record in one of these mikes, please come see the staff during this break and they will allocate the time left after this next panel to that process. [Recess]

Senator STEVENS. Then we have 16 people that have indicated they want to talk. If we list those people and give them roughly 3 minutes a piece, it will be about time to wind up and talk individually. Others have told us they want to talk to us personally, individually is what I mean, so that will be the plan. We will listen to each of you and have a couple of questions, to each 3 minutes a piece. Sorry about that, but time is a commodity here today, and I hope that meets with your approval.

At this time, let us start. Who is the first one? Mr. Libby?

STATEMENT OF TOM LIBBY, GENERAL MANAGER, POINT ADAMS PACKING COMPANY; BOARD MEMBER, WEST COAST SEAFOOD PROCESSORS ASSOCIATION

Mr. LIBBY. Senator Stevens, Senator Gorton, my name is Tom Libby. I am general manager of Point Adams Packing Company, Monmouth, Oregon, her parent company is California Shellfish, and board member, West Coast Seafood Processors Association. I am speaking on behalf of the association today.

Our group, is composed of all major shore-based processors of seafoods harvested in the exclusive economic zone off of Washington, Oregon, and California. We were established to look at the interests of shore-based processors in those States and communities of which they are a part. Our members not only process fish, but they are also involved in distribution and retail sales, and some own vessels. Most important, however, is the fact that they are often a major economic component of their communities, through payroll and goods and services and taxes, they contribute \$millions each year to those communities.

Legislation such as this, good or bad, that affects us also affects thousands of other Americans that we live and work with. We have a number of detailed comments on S. 39 that are included in our written statement and with that I will summarize it here.

One general difficulty we have with the bill is your extensive change to the structure of the Act. Senator Stevens, all of us in the fishing industry have been living with the Act as you and Senator Magnuson originally wrote it. We are confused as to why the structure needs to be changed now. This is especially true when we find substantive changes within the structural changes.

For example, your new language on confidentiality of data could, we believe, force fishermen and processors to reveal sensitive business information that NMFS has no need to know. We hope you will reconsider this extensive rewrite of the bill.

On the issue of ITQs, please understand that we are not in favor of them. However, if they are going to be used, we prefer the approach taken in your bill, establishing moratoriums and then putting guidelines in place. We certainly appreciate your inclusions of shore-based processors as qualifying for ITQs.

We hope you will also make clear that the advisory committee developing guidelines should include shore-based processing. If we have ITQs, we are willing to pay reasonable fees as long as they are returned to the fisheries from which they were collected, and are not used to pay administrative overhead.

We also ask that you make sure where both processors and fishermen hold ITQs, the fees are shared. In regard to the Councils,

we strongly support the Council system and do want to see it bogged down in unnecessary procedural requirements. We also did not support mandating seats for any special interest, whether it be fishermen, processors, Indian tribes or environmentalists. Council members should be chosen on the basis of their qualifications, not who they work for or where they live or what they represent or what interest they represent.

On conflict of interest language, we prefer the standard for determining conflicts that is in the House bill. We think that standard is more precise and understandable, and will lead to less confusion when conflicts are determined, while still ensuring that nobody gets to line their pocketbook.

On overfishing, we are opposed to your changes to the definition of optimum yield and to National Standard 1. We are also concerned that your expanded emergency authority gives the Secretary far too much power without an adequate chance for public involvement. We generally support your habitat language, however. In whatever form you finally adopt, please make sure the Council is not called on to do more than they are capable of.

Councils should not be forced to get involved with local land-use planning because salmon have to spawn in a given area.

Economic assistance is not something that we that are involved in the Pacific Council particularly need. If you feel a need for it in the New England area, that is fine, as long as fishermen and processors in the rest of the country do not have to pay for it.

Further, we suggest that any assistance be equally available to all parts of the fishing industry. Vessel owners, skippers, crew, processing plants, and plant workers.

Finally, I would like to call your attention to proposal that was advanced in the House which falls in line with what you suggested with privatization. Due to funding constraints, we often suffer from lack of data on the West Coast. Major trawl surveys are conducted only once every 3 years. In fact, even NMFS admits that the stock assessment needs to be refined. They have announced their intent to redo them this year. We are trying to set up a trial program, involving fishermen, processors, and the environmental communities that would allow us to use more frequent vessel charters to provide data for stock assessment with an arrangement that will let the fishermen that participate in the charter, then sell their catch or otherwise be able to offset their lost fishing time. If that proposal is adopted by the House, we hope you will agree to it in conference.

Finally, let me thank you for taking the time to come to see us today. We appreciate our elected representatives spending time with those of us who work full time in the fishing industry every day. We look forward to working with you as you refine your bill. Thank you.

Senator STEVENS. Thank you. No comment. I hope you will send us some recommendations for those places you would like to have the language changed. I do not disagree with what you said.

[Prepared statement of Mr. Libby follows:]

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STATEMENT OF TOM LIBBY
BEFORE THE SUBCOMMITTEE ON OCEANS & FISHERIES
ON S. 39, THE "SUSTAINABLE FISHERIES ACT"
SEATTLE, WASHINGTON
MARCH 18, 1995

Mr. Chairman, members of the Subcommittee, my name is Tom Libby. I am the General Manager of the Point Adams Packing Company in Hammond, OR, a subsidiary of the California Shellfish Co., but I am appearing today on behalf of the West Coast Seafood Processors Association (WCSPA). Our parent company is a board member of the Association, which represents the major shore-based processors of fish harvested in the Exclusive Economic Zone off the coasts of Washington, Oregon, and California. WCSPA members also process fish caught in State waters and are involved in every facet of the fishing industry, including harvesting, processing, distribution, and retail sales. Our members employ thousands of local workers in the communities where their facilities are located, and provide millions of dollars to local economies through payroll, payment of taxes, and purchase of goods and services.

Before addressing the specific issues raised in your letter of invitation, I would like to make a general comment about S. 39. For reasons we cannot understand, the sponsors of the bill have decided to make significant changes in the structure of the existing Magnuson Act. Not only

does this make the bill confusing, but we have also found included in those structural changes some substantive changes to the Act's provisions. For example, section 402 of the Act, as revised by your bill, includes the provisions of existing sections 303(d) and (e). It also changes the provisions of existing section 303(d) which deal with the confidentiality of data in a way that we believe could adversely affect the routine business operations of the fishing industry. We don't know what "significantly impair the commercial interest" of a company means, but we expect that NMFS will define it by regulation and force fishermen and processors to reveal sensitive business information.

Mr. Chairman, we've lived for 20 years with the structure of the original Act as written by you and Senator Magnuson in the Senate and your colleagues Congressmen Young and Studds in the House. We don't see any reason to make these wholesale structural changes in the Act, especially when there may be other changes that cause us problems.

In regard to the specific issues that are mentioned in your letter, I will take them in the order identified and finish with some comments on other parts of the bill.

We are generally satisfied with the way that you have handled bycatch issues in your bill, insofar as they affect areas outside the North Pacific. Because our Association does not deal specifically with issues affecting the fisheries under the jurisdiction of the North Pacific Council, I will defer to the witness from the Pacific Seafood Processors Association in regard to those issues. One general comment is in order, however: we all need to recognize that there is not a

single fishery in the world - commercial or recreational - that has zero waste or bycatch. While we all need to take steps to minimize waste and bycatch, please make sure that what you require can in fact be accomplished. This was a problem that we identified with the House bill and commented on during the hearings held by the House Resources Committee.

Your definition of "Individual Transferrable Quota" is generally acceptable to us and we appreciate your recognition of the need to extend ITQ systems to seafood processors. The Association does not particularly favor the use of ITQs in our fisheries, but if they are going to exist, we think they should be available to all participants.

We also favor the approach taken in your bill to establish a moratorium on, and develop guidelines for, ITQ systems. We asked the House to adopt this approach. We do have some technical concerns with the way the moratorium and guideline language is structured and the Association has directed our Executive Director to work with your staff on solving the technical problems. For example, the moratorium has no ending date; the national lien registration system would work better as a separate statutory provision; and some of the guideline language is more applicable to specific fisheries, rather than as general language. We also want to ensure that processors are involved in the advisory committee that is established to develop the guidelines.

Although your letter does not request comments on fees, I think this is an appropriate place to do so. We are not opposed to reasonable fees being assessed on those who receive ITQs. However, the fees should only be used in the fisheries where they are collected in order to

offset the costs of conservation and management. We would oppose fees being collected in Alaska and used in New England, or vice versa. We also believe that fees should not be used to pay the administrative overhead of the National Marine Fisheries Service. Finally, in a fishery where both fishermen and processors have ITQ shares, some mechanism must be found to share the fee burden. Otherwise, the processor will be forced to pay double and will have to pass that cost on to the consumer, which in many fisheries will make our products too expensive for the market.

In regard to conflict of interest and Council procedures, we note that the Senate and House bills are similar. As we testified in the House, we prefer the Senate approach of establishing guidelines for conflicts, rather than rules. However, we believe that the standard for establishing a conflict that is used in the House bill is more precise and understandable to the general public and Council members. We also do not agree with the Senate provisions that allow appeals on a conflict ruling after the action has taken place, nor do we support requiring a Council member to state how he or she would vote if otherwise allowed. Finally, we note that the Senate does not apply conflict of interest and disclosure requirements to the proposed new tribal member of the Pacific Council. Not only do we strongly oppose designating a seat for a tribal member or any other specific interest, but we are greatly disturbed that the tribal representative has no accountability for his or her actions. Treaty tribe representatives have sat as regular Council members on the Pacific Council since its inception and they have had no problem complying with existing conflict of interest rules. If the Senate, in spite of our opposition, establishes a new tribal seat, then the occupant of that seat should be treated like every other Council member.

Finally, as a general comment on this issue, our Association strongly believes that the Councils are the backbone of the fisheries management process. To the extent that you change the Councils by imposing impossible regulatory burdens on them, by denying Council seats to those who are knowledgeable and experienced in the fisheries, or by turning them into forums for special interests by designating seats for those interests, you are hurting fisheries conservation and management in this country. We urge that you make only the minimal changes necessary to the Council system so that they can continue to operate.

We support inclusion of a new national standard regarding fishery dependent communities. Our members are an integral part of the communities in which they operate. We depend on those communities, and often those communities depend on us. For example, one of our members' plants is the largest employer in Westport, Washington. The fishing industry, including our members' facilities, is the most significant economic force in many communities on the west coast, especially during the winter when there are few tourists to be found. However, we suggest that you carefully refine your definition in legislative history so that it becomes neither so inclusive as to be meaningless nor so exclusive that it ignores those areas where fishing is extremely important but not the sole economic base.

In regard to overfishing, we are inclined to support the House approach over that taken by the Senate. We strongly oppose your change to the definition of "optimum yield", especially by your inclusion of language that begins to mix the provisions of the Magnuson Act with those of the Marine Mammal Protection Act, the Endangered Species Act, and the Migratory Bird Treaty

Act. We also strongly oppose your change to National Standard number 1, which deletes a specific provision designed to recognize the importance of the United States fishing industry. Finally, your modified section on emergency actions gives the Secretary extraordinary authority to close fisheries in response to overfishing, without any opportunity for public comment. We believe that this undermines the fisheries management system which currently exists and provides no protection to fishermen and processors from the arbitrary actions of federal bureaucrats.

In regard to essential habitat, we believe that both the Senate and the House have taken reasonable steps to address the issue. We would only caution you to make sure that you do not impose impossible financial or regulatory burdens on the Councils, or involve them in local land-use activities. The Councils have enough work to do as it is. Further, we don't think it appropriate that any Council have authority over State or local actions occurring hundreds of miles inland.

On the subjects of buy-backs and economic assistance, we suggest that you ensure that one segment of the fishing industry is not taxed to pay for the failure of others. Further, if public money is being used to buy out or otherwise assist individuals and companies, make it available to all parts of the industry similarly affected, including crew members, processing facilities, and processing plant workers.

I would now like to address some aspects of your bill that were not highlighted in your letter of invitation. The House bill addresses Council member compensation; the Senate bill does

not. While we have no opinion regarding the level of Council compensation, as a technical matter the federal pay scales no longer include a rate of GS-16, which is specified in the Act. Some change needs to be made.

We are concerned with the new section 302(i) which authorizes negotiation panels. Negotiation, public involvement, and public comment are already accomplished through the Council process; we question why this new section is necessary.

We support your addition of language in section 303(a) to make conservation and management measures enforceable and in section 304(j) to establish a time frame for review of regulatory amendments.

Our members have had a mixed reaction to your new language on gear evaluation and notification of entry in amended section 305(d). None of us want to see some new technology suddenly enter a fishery and have it decimate the stocks. On the other hand, there are advances in gear use that occur frequently which make fishing more economically efficient. Further, as new fisheries are developed, different gear may be needed. The Pacific Council has handled these situations by allowing limited experimental fishing permits to be issued. Your bill seems to leave this process to the Secretary. Given the experience that our friends in the Gulf of Mexico have had with NMFS and TEDs, I'm not sure we want to give the Secretary this responsibility.

We also have concerns with your new prohibition on "interference" with data collectors.

On the west coast, most data collection and enforcement is conducted on shore in our plants. Processors and their employees make every effort to cooperate with designated State and federal officials. Further, any sort of physical assault occurring in a processing plant would subject the offender to State criminal law. Since it is unclear what may constitute "interference", we oppose the potential of having a \$100,000 fine imposed on a plant worker for some unidentified action.

One additional issue that is not addressed in the bill is a parochial one involving stock assessment on the west coast. We have a problem in this area due to the lack of resources available to conduct regular surveys on important commercial stocks in the Pacific. When our Association testified before the House, we proposed a pilot project involving vessel charters, with the fish harvested on those charters being used to pay the cost. A number of House members have expressed interest in the idea and I expect that the bill reported by the House Resources Committee will contain appropriate language. We hope you will look favorably on this proposal when you meet to reconcile the House and Senate bills.

Finally, Mr. Chairman, I would like to congratulate you, the other members of the committee, and the staff for the hard work you have done in trying to produce a comprehensive bill which addresses the many issues facing our nation's fisheries. Although we agree with you on some aspects of the bill and disagree with you on others, we believe that those disagreements can be resolved in a constructive fashion and in the best interests of the fisheries, including the resources and those who utilize them. Our Executive Director has been charged with this

responsibility on behalf of our Association and will be available to work with you and your staff as necessary. Thank you for taking the time to come out here to the west coast and listening to what we have to say.

**STATEMENT OF BARRY FISHER, PRESIDENT, MIDWATER
TRAWLERS COOPERATIVE**

Mr. FISHER. Thank you, Senator Stevens and Senator Gorton. My name is Barry Fisher and I am president of Midwater Trawlers Cooperatives, which is an association of roughly 40 boats, who primarily land their fish in Alaska to shore plants. They also land on-shore in Washington and they land also at sea at the processors.

I would like to restrict my testimony to only a few topics. First of all, let me state the board of directors and myself have read the drafts and read S. 39 and think it is a first-class piece of work. It shows that somebody has been doing a lot of listening.

However, we are somewhat alarmed about an issue that you alluded to earlier: Where is the money going to come from to pay for this? and second: Where is the staff going to come from in the regional fishing management Councils?

They cannot keep up with the workloads that they have got now. Oftentimes if there is anything that comes along to complicate it, you wind up as you do in the North Pacific allocation, almost the exclusive issue and very little attention to other things.

If we start in having the Councils to find fishing, calling for plans to ensure that the overfishing does not occur and the bycatch is reduced, I am quite sure they are not going to be able to do this. There are some ways—the other things we are very concerned about and Tom Libby has already pointed out is the paucity of management data that drives Council decisions and NMFS decisions.

The law says we will use “the best management information available”. The amount of data now that is being used is inadequate. I doubt if there is enough people in time to process data. We also know that there is some 12 to 14 years from Alaska trawlers sitting in cardboard boxes, log books in the cellars of various buildings, that have never been looked at.

We would like to see somehow or another that we break this crutch. Tom has alluded to the approach we intend to take to do it, simply a system of giving an experimental fishing permit to NMFS to allow the vessels to go out and catch fish on well designed scientific surveys, the scientists designed that deserve support, but that the vessels time will be paid for out of the fishing catches and/or a provision of a few more tons out of the LY. That will work.

We will also do another thing that we think—it will tend to pull together practical fishery information for the scientists. Oftentimes scientists, in their desire for independent and dependent variables of certainty, will build complex models, and they are far more concerned at times of the form, the model than they are the substance or data. We think adherence to such a scheme will bring about a close marriage in both fishermen and scientific effort where we think it should be.

Our biggest single concern is something I think that happened to this administration to a greater extent other than before, and that is the overturn of fishery management recommendations by NMFS and by the Secretary of Commerce in a fashion that does not stand with the law.

The law clearly says Council to do recommendations, forward to regional office, they go off to Washington. If the Secretary feels he has to overturn them, he does so, but he is also supposed to point out to the Council why he has done that, and give them an opportunity to correct, and above all, give them the time to correct. This is not what is being done now. Another example is, the moratorium and entrance into the groundfishery and crab fishery in Alaska before the North Pacific Council in June 1992, we pushed a moratorium through. In the regional director's desk, it sat for almost 2 years, and then was turned down. We do not think you intended this sort of behavior when you wrote this in May.

The other thing, and I want to be very clear on this, it is not an association position, but it is a position of the directors and most of the members. We think that the time has come to make a serious cut of bycatch work. We want full retention. If we have to retain everything we catch, then you are going to get a damn good idea of what we are playing with in terms of numbers, which is only a guess.

You are also going to create a very motivated bunch of people to perfect their gear, their strategy, and their tactics, cut down on wasted hull space. Most of us want full retention. NMFS has not lived up to any of the promises and obligations that it made in February 1992 in National Fishermen's Conference on bycatch. The then director, Mr. Fox, made specific commitments. We have not seen these commitments fulfilled.

[Prepared statement of Capt. Barry Fisher follows:]

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March 17, 1995

MEMBER VESSELS

AMBITION
ARGOSY
BAY ISLANDER
BLUE FOX
CAPE FALCON
CAPE KIWANDA
CARAVELLE
COHO
EXCALIBUR
EXCALIBUR II
HAZEL LORRAINE
LESLIE LEE
LISA MELINDA
MARATHON
MISS BERTIE
MISS LEONA
MISS SUE
NEW LIFE
OCEAN SPRAY
PACIFIC
PACIFIC CHALLENGER
PACIFIC FUTURE
PACIFIC RAM
PEGASUS
PERSEVERANCE
PERSISTENCE
PIONEER
RAVEN
ROSELLA
ROYAL AMERICAN
SEADAWN
SEEKER
VANGUARD
WESTERN DAWN

U.S. Senate Committee on Commerce, Science and Transportation
Attention: Larry Pressler, Chairman
Washington DC

Dear Sir:

Midwater Trawlers Cooperative thanks Senators Pressler and Stevens and the Commerce Committee for this opportunity to testify on S 39 The Sustainable Fisheries Act. Midwater Trawlers Cooperative is an association of owners and operators of groundfish trawlers who sell their fish primarily to shoreside processing plants in Alaska, and in Oregon and Washington. Members also sell some of their fish in certain fisheries at sea to floating processors.

I would like to restrict my testimony to a few topics and I will not attempt to cover all the issues raised by the Senator's letter of March 8, 1995.

First let me state that I and my Board of Directors and many members have read the drafts of the proposed legislation to be included in the reauthorization of the Magnuson Fisheries and Conservation Management Act. This draft was entered into the Congressional Record by Senators Stevens and Kerry.

Without qualification MTC endorses and ascribes to every point raised in that draft legislation. We think it an excellent piece of work and we were struck by what was included in the way of knowledge of the Nation's fisheries problems, and, proceeding from this understanding, cogent remedies were proposed. We are indeed grateful for this proposed legislation.

However we are somewhat alarmed at the added degree of work and effort which this proposed legislation would entail when one asks questions of "where will the funds come from to carry out this extra work on a regional fishery management area basis?" In our opinion the regional Fishery Management Councils are already not adequately funded. Simply put, where is the money going to come from to fund these extra activities?

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We do not believe in a program of user fees which would disappear into the General Fund. Nor do we believe in giving the authority to determine the level of the fees and the direction of the fees to the National Marine Fisheries Service or any other organ of the Department of Commerce. These offices would be under no compulsion to be cost conscious.

We would rather like to see the question of user fees, if there are to be any, and/or the ability to raise funds directly from the fisheries to be centered in each regional Fishery Management Council.

While we are on this topic we ask the question as to whether or not the proposed legislature could include directives to allow necessary fishery research and management information acquisition to be funded by the fish reserves in each Council's area. This is not a new idea. It has been used several times in this country and in other fisheries nations of the world. It works very simply. If, for example, better management information is required to assess the stocks, population dynamics and other needed biological data of Pacific codfish, the experimental design or research program would be first described and fishing vessels in the fleet would be allowed to bid, based on their abilities not fees, to carry out that work. All fish caught during the surveys would be kept by the vessel and sold in the normal market place. This would probably not cover the entire costs of the survey. The vessel completing the work would also be given a certain number of tons of the target species, in this instance Pacific codfish. The tons awarded could be either inside or outside the normal quota to compensate the vessel and crew for the work performed.

Any amounts of fish offered to the survey vessel would be very, very minute in comparison to the overall stock strength of the species we manage, and above all in such a system would be well within the confidence limits associated with the survey of each species.

MTC believes that there needs to be much better fishery management information associated with the conservation and management of our renewable marine resources. The FCMA of 1976 talks about the management of resources based upon "the best information available". It is our feeling that the best that is currently used is not good enough, is not comprehensive enough, and may lead us into some precarious days in the future. The reverse is also true.

In the Pacific whiting fishery fishermen long pointed out to NMFS that we believed the whiting biomass cited by NMFS was much smaller than the biomass that we reckoned based upon our fishing experience. We informed NMFS that their surveys did not go deep enough and far enough. NMFS finally sent survey vessels to areas pointed out to them by the fishermen and then the biomass or total number of whiting in the ocean doubled in magnitude.

Utilization of the fishery management information acquisition as I have outlined would also bring about a closer marriage of knowledge and experience between the scientists and the industry which is badly needed.

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Fisheries scientists oftentimes try to rule out all uncertainties or independent variables in their calculations of stock strength and dynamics. In so doing they oftentimes focus far more upon the process or the viability of the computer models used than they do the actual substance, which is the amount of authenticity and accuracy of information regarding the species being measured or estimated.

It is with some small bitterness that I note to you that these ideas have been proposed to the current administrator of the NMFS several times in both oral and written form and I have never had the courtesy of a reply.

I am not so sure that all the welcome new ideas contained in Senator Stevens' and Senator Kerry's draft are enough to improve our performance under the Fisheries Conservation and Management Act. I am extremely disturbed by the way this Administration has administered the law through its appointed Commerce officials. In our opinion the Department of Commerce through NOAA and NMFS is dictating its own policies to the Regional Councils rather than following the standards of the law which state that Fishery Management Plans shall be evolved by the Regional Councils and their recommendations made to the Secretary of Commerce. The Secretary of Commerce then is to approve the recommendations and direct the National Marine Fisheries Service to see that these plans are carried out. If the Secretary of Commerce does not approve the plans because they do not square with the intent and standards of the FCMA he or she should then return them to the appropriate Council in a timely fashion with reasons given succinctly for the rejection of the recommendations. This then gives the Council benefit of the opportunity to rework its recommendations and resubmit them to the Secretary of Commerce.

This system has been shortchanged in the Pacific Fishery Management Council Area by the National Marine Fisheries Service on at least five occasions. NMFS has dictated its own policy and programs and put them in place rather than Council recommendations. I am not talking about preliminary management plans but rather normal Fishery Management Plan recommendations which the Secretary of Commerce has rejected, has not returned the recommendations in a timely fashion, and/or in almost every instance NMFS has interjected its own policy and programs as fait accomplis.

We are glad to see that the proposed legislation includes the specification of a time period by which the Secretary of Commerce must return recommendations. This would prevent such incidents as in the Alaska Region where a Council recommended moratorium on new entrants into the crab and groundfish fisheries was recommended in January of 1992 and the NMFS regional director made no protest at the time that the recommendation didn't square with the FCMA. It languished on this desk for almost two years. It was then summarily rejected.

I believe the intent of Congress is quite clear, that the fisheries were to be managed on a regional basis by the Councils. NMFS was to have the regulatory and enforcement responsibilities to carry out Fishery

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Management Plans recommended by the Councils and approved by the Secretary. No where in the law did it state, in our opinion, that NFMS was to be a policy setter, nor did the law accord that primary responsibility to the Secretary of Commerce.

MTC urges that the Senate Commerce Committee recognize these inequities in the administration of the Act. The final issue we want to address is bycatch. We note this is an extremely controversial subject but we also note that there is little being done in this Region and the Alaska Region. There are a very small number of projects underway but there is no comprehensive plan, there is little direct involvement of the National Marine Fisheries Service, industry and academia in comprehensive structure programs.

Until such time as there are meaningful programmatic and structural standards in place that mitigate against the current fishery practices which are wasteful we do not expect much change will occur. I would caution you that not all of my members agree with the next statement, but many do and so do the Directors of this cooperative. The fastest way to bring about a reduction of bycatch and economic discards is to adopt a policy of full retention of all species caught.

Full retention of all species would give you an extremely accurate method of how great the bycatch actually is. Having to devote hold space to product with low or no value would be the greatest possible motivation for fishermen in all fisheries to reduce their bycatch by changing fishing gear, tactics or strategy.

Thank you Mr. Chairman. This concludes my testimony.

Senator STEVENS. Thank you very much. Mr. Easely?

**STATEMENT OF JOE EASELY, ADMINISTRATOR, OREGON
TRAWLERS COMMISSION, PORTLAND, OREGON**

Mr. EASELY. Mr. Chairman, Senator Gorton. First let me thank you for the opportunity to testify on S. 39. My name is Joe Easely, and I am administrator of the Oregon Trawl Commission, and first thing I would like to do is apologize for testimony I turned in written. I did not have much time to do it. In fact, I did it just before I went back to Boston for the seafood show, and I got back last night. I proofread it this morning. I was a little disturbed.

Senator STEVENS. You can submit whatever you want.

Mr. EASELY. The points—I will try to get some of the point you raised specifically in the request, and we certainly back the provision requiring assessment reduction of bycatch, as long as it is something that can be reasonably done. We are instituting a program in Oregon this year that will amass sea-data-gathering analysis that will go on for 3 years. We are committing what to us is a sizable chunk of money. To do that, we really do not have the data base that you have in Alaska not having all the onboard observers, much smaller fisheries, smaller vessels, but we think it is something that needs to be done, and we certainly are going to try to look for solutions where we can.

Your definition guidelines for individual transferable quotas, do not fit most of the groundfish fisheries very well, or ITQs where you have got a multiple-species fishery, we would certainly encourage some guidelines for ITQs that would be in the national interest. We do not think they are going to go away, unfortunately, but they are another form of limited entry and they are being used, in my opinion, for a lot of other things and what they intended for in the first place. It is mislabeling.

The conflict of interest and recusal, I would have to agree with Tom Libby. We prefer the approach that the House took where NOAA general Council makes a decision at the meeting and you either vote or do not according to the general Council's decision.

The national standards, we would just assume the national standards stay the way they are. However, the standard that would deal with fishery dependent communities, your new standard, we think that would fit in very well with content of plans should be there, no doubt. We are very interested in what is going to constitute a fishery dependent committee. We think we have some in Oregon, but depending on the definition, they could fall through the cracks. The definition provision to protect against overfishing, in our opinion, is a little bit overkill. If the Councils are following the guidelines that are put out by the Secretary, they do have a definition for overfishing and the Pacific Council has one for every plan it has. We are very well aware of it, and it is fairly conservative definition in my opinion, but it is something we live with and something we supported, the final draft of that definition.

I think the Secretary had the power and authority to stop what went on in New England, but did not for various reasons, and I do not really see where that part of the law really needs to be changed if it is just enforced.

The provisions requiring assessment of essential fish habitat looks like a hell of a big task. I do not know where the bucks come from to do all of that, and we are talking about a lot of square miles and an awful lot of area, and not a lot of knowledge in a lot of cases. The part that is done has been on land, a lot of that has already been done and a lot of regional studies and so forth. In authorizations for vessel permit buyback programs, we would encourage a provision that would allow associations to set aside money if they wanted to buy back permits in a limited entry program, if there is a limited entry.

The authorizations for economic assistance, we are not looking for it, but we think a lot of disaster relief programs that are in the Government could be cleaned up a little bit and do good work. Thank you.

[The prepared statement of Mr. Easley follows:]

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March 18, 1995

TESTIMONY ON S. 39
"Sustainable Fisheries Act"
Before the Subcommittee on Oceans and Fisheries
U.S. Senate

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity for the Oregon Trawl Commission to present its views on reauthorization of the Magnuson Fishery Conservation and Management Act (MFCMA).

My name is Joe Easley and I am the Administrator of the Oregon Trawl Commission. I have been involved most of my life in the fishing industry. I spent 25 years as a fisherman, vessel owner/operator and have been involved in many aspects of government as it concerns the fishing industry. I was an advisor to the U.S. State Department in the old bilateral days and served on the Pacific Fishery Management Council for 11 years, two of those years as Chairman of the Council. I will not bore you with any more personal detail but would be glad to provide it, if asked.

The Trawl Commission is a commodity commission formed under Oregon State Law and is under the Oregon Department of Agriculture. We have as members all the trawl fishermen, druggers and shrimpers, who land their harvest in the State of Oregon. There are about a total of 200 trawl vessels that land in Oregon each year. Each shrimper provides a economic impact of 33 full time equivalent jobs (FTE). Each groundfish dragger provides an economic impact of 43 FTE jobs and each trawler in the shore based whiting provides an economic impact of 135 FTE jobs

for the State of Oregon. The economic impact of the fishing industry, measured in household income tops 20% of the household income in some of our coastal counties many years. The impact to the State of Oregon will reach 6 to 7% of the household income in the State on good years.

The trawl segment of the Oregon fishing industry lands over 80% of the seafood landed in Oregon each year. The trawl segment of the Oregon fishing industry has accounted for 55% or over, of the ex-vessel value for the last ten years. While the salmon fishery has many difficulties in Oregon at the present time, we continue to set new landing records for seafood in the State, with landings in excess of 225 million pounds a year the last three years. The landings for 1994 in the State of Oregon were about 250 million pounds.

I give all this background to point out that the fishing industry is an important part of the economy of the State of Oregon, it is of particular importance to the coastal economy. We are concerned that any changes in the Act, do not make it impossible for the fishing industry to continue to contribute to the well being of our coastal economy. Not only is an important part of our coastal economy it is an important part of our coastal heritage. Most of the owners and operators, who are most often the one and the same, are third and fourth generation residents of the State. Our industry has fought for better science and has been in favor of a conservative approach to the harvest of our resource. However, with all that said, it must be pointed out that the fishing industry is largely made up of small businesses. We as an industry cannot afford lengthy and costly legal battles in the court systems. Like many others, we operate with skinny margins so that we may compete with other protein products and the rest of the world for a share of the seafood market.

We think that while much of what appears to be the objectives of the amendment are

something worth pursuing, we have a very large concern with the way the proposed amendments are constructed. We find much of the language to be confusing and probably unnecessary. We believe that much of it will lead to costly legal battles that would end, tying up the fishing industry and taking it out of the food production business. There are many examples of this happening in natural resource based industries in recent years. The western part of the U.S. has been the brunt of much of the activity of the so called environmental community, with many battles still going on. There is not one segment of the natural resource based industries that we know of that is not being challenged. In many cases the objective of the challenge is to stop the activity altogether. We all have to exploit some natural resource based products to just exist. Without agriculture, fishing, forestry and mining, none of us could survive for very long. H.R. 39 the House bill for reauthorization of the Magnuson Act appears to be much cleaner and to the point. We believe that it would be much harder to mount a court challenge to the actions of the Councils or the Secretary under what the House has proposed.

We are opposed to amendment of the national standards. We would not make the amendment to the first National Standard. If the present standard is followed by the Councils and the Secretary there would be no need for rebuilding of overfished stocks. The amendment to National Standard no. 5 is tinkering, we do not see how it would change what NOAA general counsel is recommending what the Councils have to analyze in this area..

As for a new National Standard no. 8, we have no objection to taking into account the needs of dependent communities. We think, a better place for this type of consideration would be under SEC. 303 (a) of the Act, contents of fishery management plans. We do have some questions about dependent communities. Who will be considered a fishery dependent community, where will the line be that will establish who is and who is not? Whatever you do with it, we hope

that there will be a good legislative history on the subject of who is a fishery dependent community, and what needs to be considered in making the determination.

We are opposed to the amendment of SEC.302 that would designate one of the seats of the Pacific Fishery Management Council as a seat to be held by one from a Indian tribe with Federally recognized fishing rights from California, Oregon, Washington or Idaho. There is a big difference in our minds between treaty rights that were bestowed by a treaty negotiated between the U.S. government and a given tribe and the rights that were given by Congress to many tribes, to take fish for ceremonial and subsistence purposes. All the interests that want to participate in the Council process have had the opportunity to do so.

We see no need for the amendment to SEC.302 that would allow for a Council in consultation with the Secretary, establish a negotiation panel to assist in, etc. The Councils now have the power to appoint such panels on an ad hoc basis, and it has been used by the Pacific Council in the past, without any need to set it forth in the law. In fact in allocation areas the Pacific Council's Groundfish Plan gives weight to industry agreements.

We prefer the House approach to the conflict of interest issue with one notable exception. We think the Senate requirement for the establishment of guidelines is preferable to having the Secretary establish rules for conflict of interest.

In SEC. 111 of the bill the provisions for considering safety at sea are would be better if it just said to, the extent practicable consider safety at sea. When language is added such as “and to the extent practicable without adversely affecting conservation efforts in other fisheries or discriminating among participants in the affected fishery—” it opens up all kinds of legal challenges.

SEC.111 of the amendment, in paragraph 10 what you have added sounds reasonable,

however, it is not always possible to specify with objective and measurable criteria what overfishing is, at a reasonable cost. This ongoing effort to provide an definition of overfishing surely needs to be done on a fishery by fishery basis and not some unyielding definition sent down from above. There is all kinds of overfishing. In a mixed stock fishery it may be not be possible to provide for a MSY level of all species, some may be below that level while some are above it. That doesn't mean that those species that are under the MSY level will be driven to the point of extinction, or even economic extinction. The more effort that is put into trying to provide a definition that will describe overfishing, the greater the threat of ending up in a legal battle and the greater the threat of shutting down even healthy fisheries.

We believe that paragraph 11 it the way to go on the bycatch issue. Incentives tend to work better in the long run than punishment. We agree that every practicable effort should be made to reduce bycatch. However, it needs to be realized that all fisheries have bycatch and the possibility of doing away with it entirely in any fishery does not exist at this time.

The provision for the Secretary to prepare a fishery management plan strikes us as rather odd. We have seen cases where the Secretary has been very reluctant to have the Council prepare a plan and would be just as happy if the state or states did the management. While it could be appropriate for the Secretary to request a Council to prepare a plan, we have trouble with him having the authority to prepare a plan, while he can reject any plan that any Council prepares and then prepare his own, and substitute his judgement for the Councils, without really giving it any real consideration. Some of the most hard fought battles with the bureaucracy in our area has been with the Secretary substituting his judgement for the Council's judgement, in policy issues.

If we are going to have ITQs, and we think the issue is not going to go away, the establishment of guidelines as outlined in the legislation would be a very good idea. We would be

more than happy to take part in the process that would establish what the guidelines would be.

When it comes to fees, we have some very definite thoughts. We believe that any fees that are collected from any fishery should be in a fund that could be used for that fishery only. The fund should be able to be rolled over without going through appropriations. An advisory panel from the fisheries should be appointed to advise NMFS on how the money should be spent. Congress should review how the money is being spent on some set schedule.

Under SEC. 112 Plan Review and Implementation we agree with the proposal for action by the Secretary after receipt of a plan. We especially agree with the part that deals with action on regulations

Under SEC. 113 of the amendment, (b) Fishery Recovery Effort. (2) The time should not be spelled out in the law. The language above “The time period shall be as short as possible, taking into account the status and biology of the overfished stock of fish, the needs of fishery-dependent communities, and the interaction of the overfished stock of fish within the marine ecosystem.” covers it. Some of the long lived species in a multi-species fishery could not be rebuilt in ten years, even if the whole fishery were shut down.

We believe that the section dealing with Gear Evaluation and Notification of Entry is gross over kill and should be junked. We would be glad to work with staff to reach some reasonable objective, if it exists for this burdensome language. It appears that it could stifle many creative efforts to come up with a better mouse trap, that could help alleviate bycatch for instance. A better approach is the experimental fishery section of the Pacific Council's Groundfish Plan. While the Plan does have gear restrictions for the fishery, it allows the use of experimental gear under a permit process.

We believe that the Secretary has all the power he needs at present to take an emergency

action in the case of any legitimate conservation concern. We do not think all this is needed. It is the Secretary that does not like to use the emergency action. The Secretary's representative on the Council has instructions to abstain or vote no on any emergency action, so that the Secretary retains all his options, and can go a different way than the Council.

The tone of the amendments to contained in SEC. 117 Enforcement, gives us some concern. While we think the law should be enforced, it appears that the cost will not only go up for fishermen judged guilty, but it appears that fishermen will have to be concerned with anybody they come in contact with, who might turn them in not only for fishing violations but any marine violation. A fisherman already needs a Philadelphia lawyer on board to keep up with all the regulations that have come down in the very recent past.

SEC. 118. North Pacific Fisheries Conservation seems overly restrictive to us and we are concerned because of the precedent that may very will be set. While most fishermen I know would favor full retention and full utilization if asked, it is a much more complex subject than it would appear on the surface. Bringing some species in for which there is no market will add to the cost of doing business. Fish meal plants and such that could utilize some of it are a expensive road to go down. They may make money some years, and lose money others.

Instead of the buyout program envisioned in the bill, we would suggest that in any fishery with a limited entry program, fishery associations or cooperatives be allowed to buy out permits and retire them from the fishery, until a Council determined number of vessels are left in the fishery. The Council should develop the number of vessels for a fishery as an amendment to an established fishery management plan, or include it in the development of a new fishery management plan.

It seems to us that there are many federal disaster relief programs that could be turned to a

bona fide fishery disaster. What is needed is a better delivery of any disaster relief in our opinion. It appears to us that way too much of any disaster relief is spent in administration, and not on disaster relief. It also appears, to come much too late to do the kind of good it should.

Then you have something called fishery monitoring and research. This appears to be a flat out grab for the power to control each and every fisherman no matter where is. It smells of nothing but big brother to us.

The section on research will be hailed by many, but how are you going to pay for it. The fisheries certainly are not able to foot the bill that would result. At least not without a sizeable increase in the price of seafood. We think there can be no doubt that the consumer will not go for the kind of increase it would entail.

To sum up, we think that the language needs major work to make it clearer and less subject to legal challenge. Some parts of the bill, we do not favor at all. We would be willing to work with staff to try to meet your concerns with what we consider a major piece of legislation.

Thank you again for the opportunity to testify today.

Senator STEVENS. Mr. Leipzig?

Mr. LEIPZIG. Thank you.

Senator STEVENS. You are the Fishermen's Marketing Association. I failed to explain who you are. Director of the Fishermen's Marketing.

STATEMENT OF PETER LEIPZIG, EXECUTIVE DIRECTOR, FISHERMEN'S MARKETING ASSOCIATION

Mr. LEIPZIG. My name is Peter Leipzig, and I am the executive director the Fishermen's Marketing Association. I want to thank you for the opportunity to present comments concerning the reauthorization of the Magnuson Act.

The Fishermen's Marketing Association was founded in 1952 and represents groundfish and shrimp trawl fishermen from San Pedro, California to Bellingham, Washington. Our association has been active with the Pacific Fishery Management Council since its establishment. Members of our association have served on numerous committees of the PFMC, and I currently sit on the Council and serve as vice-chair.

Our association believes the Magnuson Act and its Council process does work. We support the reauthorization of the Act with a few changes which will strengthen the Council's role for Fisheries Management. I hope the Act can remain a framework within which Councils can develop management plans which suit their needs and interest.

I hope the Act can avoid broadbrush mandates, because the one-size-fits-all approach to fisheries is not proper. Today I will comment on four issues addressed in the bill: Vessel buybacks; conflict of interest; bycatch; and overfishing.

First, the issue of vessel buyback, or permit buyback, is introduced in the sustainable fisheries section. I believe the establishment of a buyback program should not be limited to only those fisheries which are overfished or soon to be overfished as specified. I feel strongly that Congress should authorize the establishment of vessel buyback, or permit buyback, programs in sections 303(b) of the law, which identifies the discretionary actions which are available to the Councils. Buyback programs should be initiated by a Council rather than by the Secretary and developed as an FMP or an FMP amendment.

The Pacific Council has developed and implemented a limited entry plan for groundfish. These stocks of fish are generally considered to be healthy, rather than overfished. They are managed with annual quotas and gear regulations. To achieve the management goal of providing a year-round fishery, trip limits restrict the amount of fish that any fisherman may land during any 1 month. Since the total of amount of fish which will be removed on an annual basis is fixed and will not increase, the industry has an interest in the establishment of a buyback program to reduce the current fleet size and thereby improve the economic benefit for those remaining in the fishery.

We envision a system where the industry pays a fee based on the value of the landed catch. These funds would be available to purchase permits from willing sellers, permits which are purchased

through such a system would be destroyed thus permanently removed from the fishery.

Second, conflict of interest by decisionmakers can be a serious matter, but in my experience, both on and off Pacific Council, I have not witnessed a problem. I believe it would be wrong for any Council member to line their pockets as a result of a Council decision. I feel that your language which links actions to benefits derived by an individual, which are greater than those shared by others in a similar situation, is the proper approach. I understand—as I understand this wording, this would not impact a Council member from voting on most issues, including setting season dates, selecting quota levels, or making allocations between gear groups.

Third, the term bycatch is one of those words difficult to define because it means different things to different people. It generally is used in a negative sense and often carries with it allocated implications. The concern you should have about bycatch is the wastage of the resource. Congress should not attempt to legislate a solution which will work in every case.

Management Council should be encouraged to develop regulations which tend to reduce wastage. To do so, Council must look to the cause of the wastage. Dead fish, which are not retained are discarded either for regulatory reasons or economic reasons. Stock assessment should account for discard mortality,

The new language in the bill addressing "bycatch" should be qualified with the phrase "to the extent practicable assess the level of bycatch occurring in the fishery." The section should also make it clear that the methodologies for the collection of these data and the level of precision and accuracy of the estimate must be made by each Council and their SSC and advisory committee. Each Council should be allowed to determine how best to collect data for their fisheries, balancing the cost of data collection against the potential benefits.

Last, overfishing is a terrible thing. However, in the real world, things are not always black and white. The environment can frustrate the situation, and the state of knowledge can confuse the issue. Changes in the environment can lead to declining fish stocks in the absence of all fishing. When this occurs, it is truly a misnomer to label declining stocks as overfished, but this is what occurs. All the good intentions and regulations in the world will not restore these populations until the environmental conditions are right for strong survival and good recruitment.

In other cases, the historical data are poor. We truly do not know how much fish of some species has been caught. Pacific Ocean Perch is an example. This stock is considered to have been overfished 30 years ago by the Soviets. When in fact, the fish which were caught, may not have all been perch. I believe that Councils need flexibility in determining when action should be taken to correct an overfishing situation. Requiring stocks to be rebuilt within 10 years is dangerous. If rebuilding is determined to be the best course of action, then the schedule for rebuilding should be based upon the biology and the environmental factors which control the growth of the species. Thank you.

[The prepared statement of Mr. Leipzig follows:]

COMMENTS
OF THE
FISHERMEN'S MARKETING ASSOCIATION
ON THE
REAUTHORIZATION OF THE MAGNUSON ACT

SUBMITTED
BY
PETER LEIPZIG, EXECUTIVE DIRECTOR

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Our association believes that the Magnuson Act and its Council process does work. We support the reauthorization of the Act, with a few changes which will strengthen the Council's role and improve fisheries management. I hope the Act can remain a framework, within which Councils can develop management plans which suit their needs and interests. I hope that the Act can avoid broad brush mandates, because the "one size fits all" approach to fisheries is not proper.

Today I will comment on four issues addressed in the bill - Vessel buy back, Conflict of Interest, Bycatch, and Overfishing.

- The issue of vessel or permit buy-back is introduced in the sustainable fisheries section. I believe that the establishment of a buy-back program should not be limited to only those fisheries which are over-fished or soon to be over-fished as specified. I feel strongly that Congress should authorize the establishment of vessel or permit buy-back programs in section 303(b) of the law, which identifies the discretionary actions available to the Councils. Buy-back programs should be initiated by a Council, rather than by the Secretary, and be developed as a FMP or FMP amendment.

The Pacific Council has developed and implemented a limited entry plan for groundfish. These stocks of fish are generally considered to be healthy rather than over-fished. They are managed with an annual "quota" and gear regulations. To achieve a management goal of providing a year round fishery, trip limits restrict the amount of fish that any fisherman may land during any one month. Since the total amount of fish which will be removed on an annual basis is fixed and will not increase, the industry has an interest in the establishment of

a buy-back program to reduce the current fleet size and thereby improve the economic benefit of those remaining in the fishery. We envision a system where the industry pays a fee based upon the value of the landed catch. These funds would then be available to purchase permits from willing sellers. Permits which are purchased through such a system would be destroyed and thus permanently removed from the fishery.

- Conflict of Interest by decision makers can be a serious matter, but in my experience both on and off of the Pacific Council I have not witnessed a problem. I believe that it would be wrong for any council member to "line their pockets" as a result of a council decision. I feel that your language which links actions to benefits derived by an individual, which are greater than those shared by others in a similar situation is the proper approach. As I understand this wording, this would not impact a council member from voting on most issues including setting season dates, selecting quota levels, or making allocations between gear groups.
- The term bycatch is one of those words which is difficult to define because it means different things to different people. It is generally used in a negative sense and often carries with it allocative implications.

The concern that you should have about bycatch is the wastage of the resource. Congress should not attempt to legislate a solution which will work in every case. Management Councils should be encouraged to develop regulations which tend to reduce wastage. To do this Councils must look to the causes of waste. Dead fish, which are not retained, are discarded either for regulatory reasons or economic reasons. Stock assessments should account for discard mortality.

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Changes in the environment can lead to declining fish stocks in the absence of all fishing. When this occurs it is truly a misnomer to label declining stocks as overfished, but this is what does occur. All the good intentions and regulations in the world will not restore these populations until the environmental conditions are right for strong survival and good recruitment.

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I believe that Councils need flexibility in determining when actions should be taken to correct an "overfishing" situation. Requiring stocks to be rebuilt in 10 years is dangerous. If rebuilding is determined to be the best course of action then the schedule for rebuilding should be based upon the biology and environmental factors which will control growth and survival of the species.

Senator STEVENS. Ms. Mormorunni, you are representing Ocean Ecology and Greenpeace.

STATEMENT OF CRISTINA MORMORUNNI, NORTHWEST FISHERIES CAMPAIGNER, GREENPEACE OCEAN AND ECOLOGY CAMPAIGN

Ms. MORMORUNNI. Mr. Chairman and members of the committee, on behalf of the Greenpeace and our 1.5-million supporters in the United States, I would like to thank you for the opportunity to comment on the reauthorization of the Magnuson Fishery Conservation and Management Act. As stated, my name is Cristina Mormorunni, and I am the Northwest Regional Fisheries Campaigner for Greenpeace Ocean and Ecology Campaign.

In this capacity, I have been working on the fisheries issues with the Native American fishing conservation and labor communities along the Pacific Coast from Northern California to the Canadian border.

Greenpeace's three major issues in this year's reauthorization and the goals of our platform are to prevent further overfishing and encourage expedited movement to rebuilding overfished stocks. Our second goal is to reduce all forms of bycatch. Our third goal is to prevent legislative authorization of individual transferable quotas. In the interest of time, I will focus my oral testimony on an issue of grave importance, ITQs or individual transferable quotas.

Certain sectors of the industry are touting ITQs as a revolutionary fisheries management paradigm which were apparently solved, pressing problems evidenced in U.S. fisheries. That is the problems with bycatch, the problems with overcapitalization, the problems with overfishing. Nothing could be further from the truth in our minds.

ITQs are largely driven by economics and the desire to maximize profits for a failing sector of the industry, that is the factory trawler fleet. Having failed to convince the North Pacific Fisheries Management Council to bail them out through an ITQ program, the factory trawlers have set their sights on Congress. We urge this body to consider the ITQs as a theoretical system which may carry heavy ecological, social, and economical costs. I would also like to add that there are other forms of limiting access in fisheries, which may not have these associated costs.

I would like to go now and enumerate a few of these costs for you. Greenpeace recognizes that there may be a need to limit access in certain fisheries in order to improve the conservation and also to improve the management of those fisheries, yet we do not feel that ITQs are a much needed conservation measure.

On their own, ITQs would do nothing to prevent overfishing. The prevention of overfishing ultimately can only be assured by studying and enforcing ecologically sound and sustainable total allowable catch levels. It also involves protecting critical habitat and restricting nonselective and destructive gear types.

Prospects for the longterm sustainability of an ITQ program looks dim if one looks and considers how the TAC for the halibut/black cod ITQ was set in 1995 as compared to 1994. Under this program, Area 2A increased 16 percent; 2B TAC was decreased 12

percent; the 2C 6 percent; the 3A 19 percent. And all of these increases flew in the face of the declining halibut biomass and also are surpassing scientifically acceptable exploitation rates. One can only hope this is not what lays in store for U.S. fisheries should ITQs go forward.

Second, ITQs did not address environmental impact of wasteful fishing practices. Specifically, the problem of bycatch and discards. Under the status quo, it is next to impossible to lower the amount of bycatch. How would we be able to lower it under ITQs? It has been said over and over, slow down the race for the fish, and the bycatch problem will be resolved. It is interesting to note the factory trawlers, the sector of the industry, which in 1993 threw overboard over 550-million pounds of fish in Alaskan waters. That made a stain in their mantra. It is this small sector of the industry who are rewarded most greatly under an ITQ system. Furthermore, it is recently said we should respect historical participation in the fishery. I question respecting this type of wanton waste.

It is also interesting to note that some of the most wasteful but lucrative fisheries, for example, the rock sole roe fishery occurred during the limited biological window of time for which the "race" cannot be slowed down. In addition, the ITQ will provide a greater incentive to high grade; that is, to discard fish which are not the right size, sex, or quality to be desirable for market maximum profitability. Therefore, the bycatch problem would be exacerbated.

Third, through the transferability of ITQs, fishery resources which could easily become concentrated into the hands of large corporations, which can afford to buy up quota shares. The consolidation process would force individual fishermen out of business and threaten community-linked fishing operations. This scenario has played itself out throughout the world in the Alaskan, New Zealand, and Canadian halibut fishery.

Finally, ITQs take what is presently a resource belonging to all people in the United States and transform it into private property belonging to few individuals or select corporations. Once the Nation's fisheries are privatized, fishing will no longer be a privilege, fish will become private property and fishing a property right; the public effectively shut out of all fishery management.

Finally—I know the red light is on—given the heavy ecological, social, and economic costs associated with ITQ programs, Greenpeace opposes this form of fishery management. In our view, ITQs are a total distraction from the conservation improvements which must be made in this year's reauthorization, and we would encourage you to look at these conservation needs more clearly. Thank you very much.

[The prepared statement of Ms. Mormorunni follows:]



STATEMENT OF GREENPEACE

AT THE HEARING ON S. 39,

A BILL TO REAUTHORIZE

THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

BEFORE THE UNITED STATES SENATE

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

MARCH 18, 1995
SEATTLE, WASHINGTON

DELIVERED BY
CRISTINA MORMORUNNI

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On behalf of Greenpeace and our 1.5 million supporters in the United States, I would like to thank you for the opportunity to present our organization's views regarding the reauthorization of the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act). My name is Cristina Mormorunni and I am the Ocean Ecology campaigner for Greenpeace's Northwest Regional office. In this capacity, I have been working with the fishing and conservation communities along the Pacific Coast, from Northern California to British Columbia, seeking to develop sustainable systems of fisheries management.

As an organization, we are pleased to see that the Magnuson Act reauthorization is a top priority for this committee and urge you not only to continue on your expedited schedule, but also to make the necessary legislative changes so that further overfishing is prevented, overfished stocks are rebuilt, bycatch is reduced and privatization through Individual Transferable Quotas (ITQs) is not authorized.

Greenpeace has worked with members of this subcommittee for many years in the battle to ban large-scale high seas driftnets that were being used by fishing fleets from Japan, Taiwan, South Korea, France and Italy. It was the continual passage of progressively restrictive legislation, by this committee, that put the United States in a position of leadership in the fight to ban this indiscriminate gear. The commitment of this body toward ending the use of driftnets successfully culminated in the passage of the United Nations resolution calling for the current moratorium on their use on the high seas.

We are pleased to report that two years after the moratorium was put in place, the North Pacific seems to be free of the large-scale driftnet fleet that once numbered more than 550 boats and used 20,000 kilometers of fishing net every day. The news from the Mediterranean, however, is not so positive.

The 600 Italian boats using large-scale high seas driftnets continued to fish in 1993-1994. Dismissing the law passed by this body, the Administration refused to certify Italy as a driftnetting country. Despite U.S. inaction, there was a glimmer of hope in late 1994, as the Italian government, responding to pressure from other European governments, began a program to buy back these driftnet boats. We are hopeful that this program can serve to rid the high seas of the last significant driftnet fleet.

GREENPEACE'S FISHERIES CAMPAIGN

By 1986, it became clear, that as an organization, Greenpeace needed to become involved in fisheries management on a broader scale. We recognized, at that time, the tremendous potential to work with sectors of the industry that shared our common goal of sustaining fisheries for future generations. We believed that

continued overfishing (the catching of more fish than can naturally be replaced) and increasing bycatch levels (the catch of non-target species) were two of the biggest obstacles to sustainable fisheries management. Therefore, prevention of overfishing, the rebuilding of overfished fish stocks, and the reduction of bycatch, became our top priorities.

To achieve those goals, the organization began working to reform the New Zealand fisheries policy, the Common Fisheries Policy in the European Community and the Magnuson Act during its reauthorization of 1989-1990. Additionally, we undertook work at the United Nations, International Convention for the Conservation of Atlantic Tuna (ICCAT) and the Inter-American Tropical Tuna Commission (IATTC) to address fisheries in international fora as well. Currently, we are working within the framework of the United Nations Conference on Highly Migratory Species and Straddling Stocks.

In 1992, after unsuccessfully attempting to amend the Magnuson Act in 1990, Greenpeace helped form the Marine Fish Conservation Network. This unprecedented network of 80 environmental and commercial, recreational and sport fishing groups united around a common agenda for changing U.S. fisheries management.

In 1994, the Network drafted a comprehensive package of amendments that were embodied in H.R. 4404 introduced by Congressman Wayne Gilchrest (R-MD). This package, which included amendments on overfishing, bycatch, habitat protection, fishery management council reform, protection of large pelagics and enhancement of enforcement and monitoring, was co-sponsored by 90 members of the House (45 Republicans and 45 Democrats). We encourage the Senate committee to continue to look at these amendments, and urge you to incorporate these changes into the final committee bill.

For Greenpeace, our priorities remain to: prevent overfishing, rebuild depleted fish populations and reduce bycatch. We also urge the committee to remove language which would legislatively authorize Individual Transferable Quotas (ITQs).

THE NEED FOR A CONSERVATION-ORIENTED ACT

Since the passage of the Magnuson Act in 1976, U.S. fisheries have experienced a major transformation. Nineteen years ago, the fisheries along U.S. shores were being exploited primarily by foreign fleets. Today, the "Americanization" of U.S. fisheries - a primary objective of the Magnuson Act - has been achieved.

However, the success of "Americanization" and the development of a the U.S. commercial fleet has brought new challenges. Instead of competing with foreign fishing fleets plying off the coasts, U.S. fishermen are now competing with each other. The familiar cry of overfishing and concerns about excess capacity and

destructive and wasteful fishing, are now being said by U.S. fishermen about U.S. fishermen.

As the Magnuson Act allowed for the rapid economic development of the U.S. fishing industry, conservation issues were put to the wayside. The result is clear. The problems facing our national marine fisheries are more severe today than during the tumultuous years prior to the Magnuson Act, and the status of fisheries in this country has worsened. In 1972, it was determined that 39 stocks were over-utilized. Today, the National Marine Fisheries Service (NMFS) believes that 64 of 153, or roughly 43%, of the known managed fish stocks are over-utilized. An additional 25% of the known stocks are considered to be fully-utilized.

Now that most major fish stocks in the United States are either fully- or over-exploited, policies that once promoted the growth of the U.S. fishing industry must be replaced by policies to contain the capacity of modern fishing technology and conserve fishery resources. Consideration must be given to the effects of fishery removals on the future viability of the fisheries and of the marine ecosystem as a whole.

As we have recently witnessed in New England, there are both strong economic, as well as environmental arguments for taking this approach. If not apparent before, New England has demonstrated that the health and survival of the fishing industry and fishing communities depend on the long-term sustainability of fish stocks.

We remain concerned that unless dramatic improvements are made in the conservation aspects of the Act, that no region in the United States will be safe from the threat of overfishing or the tendency to over-exploit the marine environment. We point out that "Americanization" did not alter the behavior of fishermen or the National Marine Fisheries Service to better conserve the resource. And, while the regions of the North Pacific and the North Atlantic are incomparable with respect to status of the fish stocks, we remind the committee that there is currently little in the Act to prevent a groundfish collapse from occurring in the waters off Alaska.

RESOLVING THE BYCATCH PROBLEM

Bycatch is the general term used to describe the catch of unwanted fish and other marine species taken during fishing operations. Typically bycatch is discarded overboard dead or dying. Due largely to unselective fishing practices, vast quantities of fish are caught and wasted each year. The reason fish are wasted is because they are the wrong sex, the wrong size, or the wrong species for the target fishery. The level of bycatch is different from fishery to fishery, from gear type to gear type and even from vessel to vessel. In most fisheries, bycatch is unwanted and discarded due to regulation or because of

low economic value. It is important to understand, however, that one vessel's bycatch may be another vessel's target catch.

Many of our nation's fisheries are allowed to continue irrespective of the wasteful manner in which they are prosecuted. For instance, in 1993, in the groundfish fisheries of the North Pacific, over 740 million pounds of fish were discarded. Approximately 76% of this figure was contributed by the factory trawler sector alone. In our view, bycatch is one of the single greatest threats to the long-term viability of our fish populations. Yet the Magnuson Act is silent on bycatch.

Conservation and management measures should focus on preventing bycatch. We, therefore, urge Congress to amend the law not only to define bycatch, but to include a new national standard to reduce bycatch in all fisheries, and tighten requirements under fishery management plans (FMPs) to ensure that bycatch reduction programs are established, and the goal of reducing bycatch is achieved. Furthermore, so as to address bycatch comprehensively, the definition of bycatch in S. 39 needs to be broadened to include seabirds, and reference marine species, the taking and retention of which is prohibited by other statutes.

Since all FMPs are judged against the national standards, the elevation of bycatch to a national standard would send a clear message from Congress to the councils that all bycatch must be reduced if the United States is to have truly sustainable fisheries. Greenpeace urges the committee to incorporate the following national standard into S. 39:

"(9) Conservation and management measures shall reduce bycatch to the lowest level practicable and avoid unnecessary waste of fish."

The bycatch reduction program proposed in S. 39 prioritizes reductions in economic discards, processing waste, regulatory discards and lastly, other bycatch. This prioritization scheme will result in little or no action being taken to reduce other forms of bycatch (i.e. species not managed under an FMP, seabirds, and marine mammals) which play an integral role in sustaining the marine ecosystem. Presently, there is little or no data regarding the impacts which current removals of other bycatch would have on commercially valuable fish stocks or the ecosystem of which they are a part.

In addition, Greenpeace believes that processing waste should be deleted from the list of priorities. Economic and regulatory discards and other bycatch are clearly bycatch; processing waste is not. In fact, Greenpeace believes that the inclusion of processing waste will wrongly sanction full retention and full utilization as a solution to the bycatch problem.

We strongly caution against the implementation of programs such as full utilization as a method to reduce bycatch. Full

utilization will not alter fishing practices. In effect, all that full utilization will achieve is the creation of markets for low value fish products. Instead, greater consideration should be given to programs which seek to avoid the catch of unwanted fish. Efforts must be made in the area of gear selectivity in order to improve the types of fishing gear used, as well as fishing methods.

One such approach would be to develop a harvest priority system which would provide incentives to promote clean fishing. For example, fishermen would agree collectively on a bycatch rate. Those who fish cleanly would be rewarded with an extra fishing season, or perhaps an extra allotment of fish. Those fishermen who did not fish cleanly would be penalized by not receiving this additional opportunity to fish. The intended goal is to provide a system whereby fishermen design a better way to fish, improving the selectivity of gear or method to catch the target species and avoid the non-target species.

Another critical element in the fight to reduce bycatch is to improve the information we have about our fisheries. We agree with the language in S. 39 that speaks to the need to assess the levels of bycatch and specify the effects on the fishery and associated stocks of fish. We urge the committee to direct NMFS to analyze the wealth of data already collected in the various regions of the country. As you know, the North Pacific boasts the most comprehensive data collection program, carried out by certified biologists (observers). These data are available and should be analyzed in order to move forward with a bycatch reduction plan. Moreover, NMFS must be directed to develop and implement similar data collection and analysis schemes in other regions.

THE NEED TO PREVENT OVERFISHING

One of the primary goals of the Magnuson Act, as originally authorized, was to halt the overfishing of U.S. fish stocks. As noted above, the law, to date, has largely failed in this regard. In fact, as written, the law does not prevent overfishing.

In S.39, we commend your efforts at redefining National Standard 5 to "consider" rather than "promote" efficiency. We believe that the term "efficiency" in the Act has been misused to justify indiscriminate types of fishing which focus only on short-term economic return. Clearly, a sustainable fishery must have the long-term viability of the resource as its primary goal. The modification in S. 39 is a small first step toward placing the Act's conservation mandate at least on par with its responsibility for economic development.

Greenpeace also supports the addition of a new national standard which takes into account the importance of fisheries to fishery-dependent communities. We believe that communities have a very

significant stake in maintaining viable marine resources over the long-term. We support the consideration of communities when developing FMPs. In addition, Congress should direct the Councils and NMFS to solicit and consider input from a broader spectrum of affected groups in the development and implementation of fishery management systems.

A critical problem affecting conservation of fish resources is that fish stocks are currently managed to provide "optimum yield." Optimum yield is defined with an emphasis on economic benefits to the nation which often results in catch levels being set higher than Maximum Sustainable Yield (MSY). MSY is dependent on fisheries science being sound. Fisheries science is far from that. Our methods of counting fish, estimating natural mortality rates, and our knowledge of their life cycles are still very limited. Due to these kinds of limitations, the level of catch that would result in the overfishing of fish stocks is an estimate at best. Therefore, we believe that the definition of optimum yield should be changed to allow for a greater conservation buffer in the face of scientific uncertainty.

Moreover, the concept of MSY assumes that each fish stock behaves independent of other fish stocks and other species in the marine ecosystem. Recently, scientists have begun to focus on the importance of better understanding marine ecosystem dynamics in order to more effectively conserve fish stocks. Greenpeace believes that efforts should be made to move away from single-species fisheries management and instead focus on a more holistic ecosystem approach.

Finally, the yield of a fishery must be defined in terms of long-term sustainability. Since marine ecosystems are dynamic and fish populations are subject to natural fluctuations and environmental variability, fisheries management must err on the side of conservation when determining levels of fishery removals.

Greenpeace supports language in the Magnuson Act which would define optimum yield as follows:

"The term optimum, with respect to yield from a fishery, means the amount of fish--

A) which would provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

B) which is prescribed as such on the basis of the sustainable yield from such a fishery, as lowered by any relevant economic, social or ecological factor;

C) provides for rebuilding of depleted and overfished fishery resources to a level consistent with providing sustainable yield."

Given the limitations of fisheries science, the sustainable yield levels determined for a given stock must be the ceiling beyond which further exploitation is prohibited. The luxury of developing fishing fleets and expanding catch levels irrespective of the ecological limits of the fish stocks and the marine ecosystem, is a practice we can no longer afford.

LIMITING ACCESS IN OUR NATIONAL FISHERIES

The majority of fisheries managed in federal waters are conducted under what is termed "open access" systems. Under open access, any vessel may participate in any fishery as long as the vessel has a valid fishing permit. In concept, open access was completely compatible with the desire to "Americanize" U.S. fisheries and develop a globally-competitive fishing fleet. However, as there is no limit to the number of participants in a fishery, open access has resulted in overcapitalized fisheries and competition between vessels, racing to catch as much fish as possible. This system has also exacerbated overfishing and increased bycatch and waste.

Presently, the debate over open versus limited access is focussed on a highly controversial management scheme known as Individual Transferable Quotas (ITQs). Under an ITQ system, each vessel owner would be permanently granted a percentage share of the fishery's overall annual quota. Quota shares would be based on the vessel's catch history for a given time period, and once allocated, could be bought, sold or otherwise traded. The only way for new participants to enter would be through the purchase or rental of existing quota shares.

In order to understand the current pressure that is being exerted to legislate ITQs during this current Magnuson Act reauthorization, it is important to look at the history that brought us to this point. In the mid-1980s, a joint industry-government task force was convened to develop a plan for the future of groundfish in the North Pacific. Their report, issued in 1988, recommended among other things, that entry in the fishery be limited. However, with numerous new vessels under construction, the North Pacific Fishery Management Council was unwilling to recommend cut-off dates for entry, and no sector or individual was willing to limit its own participation.

As a result, between 1986-1992, the number of 200-400 foot factory trawlers increased from 12 to over 60. Many of these vessels came on-line after the report was issued. These boats were built on the basis of a ten month fishing season, but in 1995 will fish barely two months. This part of the fishing industry, the main proponents of ITQs, is failing financially. Therefore, having failed to convince the North Pacific Council to bail them out through an ITQ program for North Pacific groundfish, the factory trawlers have set their sights on

Congress.

While Greenpeace recognizes that there may be a need to limit access in certain fisheries in order to improve conservation and management, ITQs would not achieve this goal. On their own, ITQs would not prevent overfishing. In New Zealand, the Orange Roughy stock has been seriously depleted since the implementation of an ITQ program in 1983. While ITQs may reduce the number of participants in a fishery, they do nothing to reduce fishing effort. In fact, "capital stuffing" is a common problem with ITQ schemes.

Additionally, ITQs would not address the environmental impacts of wasteful fishing practices, specifically the problems of bycatch and discards. Indeed, ITQs would provide a greater incentive to discard fish which are not the right size, sex or quality desirable for maximum profitability, further exacerbating the bycatch problem.

Due to the transferability of ITQs, fishery resources would be concentrated in the hands of large corporations which can afford to buy up quota shares. This process would force individual fishermen out of business, and threaten community-linked fishing operations.

Moreover, in most cases, ITQs would be granted only to vessel owners. As a result, many long-standing captains and crew members would not be granted a quota share, and may no longer be able to participate in the fishery.

Under ITQs, monitoring and enforcement would become far more complicated and costly. As you know, there has been considerable controversy regarding the inadequacy of the enforcement regime established for the North Pacific Halibut-Sablefish ITQ program. You are likely also aware that it is generally accepted that ITQ enforcement regimes would cost two to three times more than present fishery management systems.

Finally, ITQs would fundamentally change the nature of fishery resources. ITQs would take what is presently a resource belonging to all U.S. citizens and transform it into private property, belonging to a few, select individuals or corporations.

Once the nation's fisheries are privatized, fishing will no longer be a privilege--the fish will become private property and fishing a property right. In doing so, the public would be severely limited in its ability to participate in or affect fisheries conservation and management decisions.

Given the heavy ecological, social and economic costs associated with ITQ programs, Greenpeace opposes this form of fishery management, and we strongly urge the Congress to forbid the development and implementation of any new ITQ systems.

While we understand that the intent of S. 39's ITQ language is to provide strict guidelines for the development and execution of such programs, we are extremely concerned that S. 39's approach will serve only as a catalyst for ITQ implementation. Whether intended or not, by singling out ITQs for the development of guidelines, the result will be the widespread use of ITQs over other limited access mechanisms which may not have the adverse social, ecological or economic consequences of ITQs.

At a minimum, the committee should strike all language relating to ITQs from its bill. If ITQs are to be employed in U.S. fisheries, their effectiveness should be debated in regional fishery management councils where the discussion can be fishery specific, regionally-focussed, and allow all affected parties in that region the opportunity to participate.

CONCLUSION

In 1975, when the U.S. fishing industry came to Congress asking for an end to overfishing by foreign industrial fishing fleets off the coasts of New England, Congress rose to the challenge with the passage of the Magnuson Fishery Conservation and Management Act of 1976 which did, among other things, end foreign overfishing. In 1995, with the closure of Georges Bank in New England, the Red King Crab Fishery in Alaska and declining catches around our coasts, U.S. fisheries are once again in a state of crisis. If the U.S. fishing industry is to survive, Congress must enact the comprehensive reforms that will change the Magnuson Act from its current role of development of US fisheries to one of long-term sustainability.



To: The Members of the Senate Commerce, Science and Transportation Committee
 From: Capt. R. Barry Fisher, President, Yankee Fisheries
 Gerald B. Leape, Legislative Director, Greenpeace
 Cristina Mormorunni, Ocean Ecology Campaigner, Greenpeace
 Re: Reauthorization of the MFCMA
 Date: March 18, 1995

To follow is a position statement written jointly by Greenpeace and Capt. R. Barry Fisher, President of Yankee Fisheries. This document should serve to underscore areas of mutual concern with regard to the reauthorization of the Magnuson Fishery Conservation and Management Act. This statement by no means fully defines either party's position on fisheries reform. The objectives laid out below are simply illustrative of a common recognition of the problems plaguing existing systems of fisheries management and are indicative of shared commitment to work to resolve said problems. Both parties feel that these issues must be addressed if the goal of sustainable systems of fisheries management is to be realized.

COMMON OBJECTIVES FOR THE REAUTHORIZATION OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

BYCATCH

* Immediate efforts must be made to dramatically and steadily reduce bycatch levels in all marine fisheries.

* A multi-faceted strategy must be utilized in order to carry out necessary reductions in bycatch levels. Funds shall be specifically earmarked within the NMFS budget to carry out these objectives. This strategy should one, call upon NMFS to build a framework for data collection and analysis -- a centralized data base which would identify fisheries with bycatch problems. This new information should be quickly assessed, analyzed, and used to improve not only the knowledge of fisheries but also increase awareness of which fisheries have contributed most significantly to the bycatch problem. Two, for fisheries where the bycatch rate is known, fishery management councils must set acceptable bycatch levels and an individual vessel accountability program established; vessels that exceed the established rate shall be penalized through fishing time restrictions. Three, a harvest preference strategy must be employed whereby cleaner fishermen are rewarded through preference in allocation decisions.

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* NMFS should continue to use observers to collect fisheries data rather than placing observers in enforcement roles. Furthermore, observer data should be utilized to determine whether or not a fisherman is fishing cleanly and warrants harvest preference in allocation decisions. Said determination should be based on strict criteria developed by regional fishery management Councils.

* Regional Councils shall specify allowable gears for each fishery under their jurisdiction and include testing mechanisms, based on strict ecologically sound criteria, for any new gears that want to enter into a fishery.

* New gears and methods that reduce bycatch and habitat degradation should be developed through an enhanced, better funded, federal research program done in complete cooperation, from the start, with fishermen in the fishery targeted. Rather than channeling these monies through the National Marine Fisheries Service Federal funds should be allocated to and directed through multiple agencies such as state Fish and Game Departments, Sea Grant, as well as regional agencies such as the Pacific States Marine Fisheries Commission.

USER FEES

* User fees under the Magnuson Act should be collected in an equitable fashion everyone paying their fair share. These funds should be earmarked specifically for carrying out the costs of fisheries management.

* User fees should not be administered by the Federal Government. They should be collected, if authorized, by the region and put back into the region in the form of paying the costs of: observers collecting data, the resources needed for analysis of these data, and fisheries research required in order to carry out the effective management of marine fisheries.

STOCK ASSESSMENTS

* Effectively managing fish populations whose status is not known is an impossibility. The need to rapidly assess these fisheries population levels is an urgent one. Congress must direct the NMFS to assess the status of fish populations, both commercial and noncommercial, and develop a strict timetable for doing so.
* Stock assessments must evaluate the status of fish populations

within the context of the broader ecological health of the marine ecosystem and its component parts. Knowledge of ecosystem functioning must drive the development of new fishery management systems.

* Greater use should be made of fishermen in fishing boats to collect data on status of stocks.

* Consider the idea of allowing fishermen who meet certain criteria, i.e. are to maintain low levels of bycatch, to participate in the collection of data, keep any fish or a percentage of the fish that they catch as a direct result of this effort, not counting it against their quota.

HABITAT PROTECTION

* Councils must declare what essential fish habitat is for fisheries under their jurisdiction and NMFS should be given Veto authority over federal projects that might impact essential fish habitat.

COUNCILS

* Council members should be subject to the same federal financial conflict of interest laws that apply to all other full or part time federal employees.

* The voice of non-industry, i.e knowledgeable consumers, academicians, Native Americans and conservationists, on regional fishery management Councils must be strengthened.

* Where not currently being done, fishery management councils should be required to direct the NMFS to define overfishing for fisheries under their jurisdiction and to develop plans to rebuild fish stocks if depleted.

FUNDING

* Presently, effective fisheries management is hindered by a general lack of funding. Increased monies must be allocated to the Councils and the NMFS in order to address the research, monitoring, management, and enforcement needs associated with sustainable fisheries management.

Senator STEVENS. Mr. Ponts is from California. I do not have—you are a fisherman, I think. You are going to tell us who you are.

STATEMENT OF MR. PONTIS, FISHERMAN, MEMBER, GROUND-FISH ADVISORY PANEL, INDIVIDUAL QUOTA INDUSTRY COMMITTEE, AND GROUND FISH SELECT GROUP

Mr. PONTIS. Senator Stevens, Senator Gorton, thank you for the opportunity to come here and represent what amounts to a pretty good sized group of unorganized fishermen on the West Coast.

In terms of thinking back at a couple of comments earlier, Tom Casey made reference to look around, there are no peasants here. I am not sure possibly if I should apologize to the peasants I know for wearing a coat and tie. I think that qualifies Mr. Casey or anyone else here. I probably qualify more as one of Mr. Alverson's orphan turnips.

Thank you again for this opportunity. I am a fisherman from California. I started fishing in 1957 when I was a junior in high school and landed a job in a salmon troller, and I have been a licensed commercial fishermen ever since.

In late 1979, I changed fisheries from salmon trolling to longlining sablefish on the West Coast, and that has been my primary occupation ever since. My father was a fisherman, my grandfather was a fisherman, and I have been involved in PFMC regulations and the political activities as a member of the Groundfish Advisory Panel, the Halibut Advisory Panel, and the Individual Quota Industry Committee, and the Groundfish Select Group since 1982. So I have been involved in this political process also, reluctantly.

I am going to restrict my comments mostly to ITQs and what this whole ITQ movement is going to do to myself and people like myself that are getting rather concerned on the West Coast.

As you know, the North Pacific ITQ program started last Wednesday, March 15th. When we heard of the North Pacific ITQ development, fishermen from the West Coast, California, Oregon, and Washington, went to the PFMC and started requesting an ITQ program here, because we realized right away what the North Pacific ITQs would do to our fishery down here.

In 1991, the Council formed an Individual Quota Industry Committee, and that committee worked with the help of Council staff and National Marine Fishery staff and spent 2 years making recommendations for ITQs for West Coast sablefish. By August 1994, the Council had decided to go ahead with the ITQ program and to make their final recommendations for options in October. In October, a letter arrived from Washington D.C. signed by several senators and congressmen urging that the Council delay implementation until the Magnuson Act reauthorization was completed and recommendations were made.

I am heartened by the provisions in Senate Bill 39 to address the problems of fisheries Council process reform. I can accept the ITQ guideline requirements. I think they are well considered, and I think the collection of fees is welcomed by those of us who want new innovative fishery programs so the public does not have to pay for it.

My only objection to this reauthorization bill as I see it is what looks like an open-ended moratorium until the Commerce Secretary

formulates these guidelines for ITQs. This to me looks like an unnecessary delay and to some a roadblock for further ITQ development.

What this North Pacific ITQ plan has done to people such as myself on the West Coast or what it is going to do this year, beginning this year, is it is going to ruin our viability as longliners and as sablefish fishermen. Those who have ITQs in Alaska will now be released. They will be able to harvest their Alaska ITQs at their leisure in Alaska starting Wednesday.

We will open our sablefish season here August 6, and that fleet will be reduced—released to come down here and participate in the West Coast fishery. Now the West Coast fishery is already subject to an unreal level of overcapitalization without this North Pacific ITQ development. Add in the overcapitalization that is coming this year, and we have got a horrible mess. This year our season is projected to be about 7 days this year, and if we go back to 1987, if we go back 10 years—if we wanted to, we could fish 12 months a year. We made it a 10- or 11-month season just to lick our wounds and recuperate.

What we are looking at, those of us who fish on the West Coast, is being out of business and losing our viability. Some of us try to enjoy every day we have in our homes, because we do not know how long we are going to keep them.

I will try to summarize. I had lots more. Not much has been said on conservation aspects. I might mention—referring back to testimony by the Environmental Defense Fund and the very eloquent testimony given to the House Committee on Merchant Marine Fisheries in favor of ITQs.

I will skip some of the things I wanted to say and go to a conclusion. In conclusion, I would remove the moratorium provision or the provision to require Federal guidelines be formulated before further ITQ programs went into effect. I have seen how the Federal Government worked. I have been involved in it on lower level fisheries management. That is going to take a long time. It will take probably longer than it would take any ITQ program.

If you cannot do that, make an exception for this West Coast sablefish fishery. Some of us are getting pretty desperate and looking down the road what is going to happen to this fishery. Nothing good is going to happen to this fishery unless we can get an ITQ program such as Alaska's. Sablefish ITQ program is not finished yet because of some us down here are pretty desperate. We did not go to Alaska. We do not qualify for ITQs up there. The Alaskan Council made the trap fishery—or the sablefish pot fishery, made it illegal in Alaska, so it made anyone who wanted to participate in that trap fishery had to participate on the West Coast. Now their viability is ruined, as is all longliners viability financially, with this new added level of overcapitalization. Thank you.

[Prepared statement of Mr. Ponts follows:]

TESTIMONY GIVEN BEFORE THE SENATE FIELD HEARING

ON MARCH 18, 1995

IN SEATTLE WASHINGTON

BY JIM PONTS

ON THE MAGNUSON ACT REAUTHORIZATION

Thank you for the opportunity to testify before you on the Magnuson Act Reauthorization bill, S-39. I am here to speak for those west coast fishermen who are in favor of I.T.Q. programs, and specifically the I.T.Q. program which has been designed for the sablefish fixed gear fleet of California, Oregon, and Washington. I am a longline fisherman from California and have longlined for sablefish, halibut, rockfish and ling cod along the entire west coast since 1979. I have been a commercial fisherman since 1957, when I took a job as a crewman on a salmon troller out of Fort Bragg, California, in order to subsidize my education. My father was a commercial fisherman, as was my grandfather. I have served on the Groundfish Advisory Panel for the Pacific Fishery Management Council since 1983. I have also served on the Halibut Advisory Panel and the Individual Quota Industry Committee.

As you know the North Pacific Fishery Management Council has developed and implemented an Individual Quota Program for the Alaskan Sablefish and Halibut Fisheries. In fact, that I.T.Q. Fishery began this Wednesday, March 15th.

When The North Pacific Council began development of The Alaskan I.T.Q. program, Fishermen from California, Oregon, and Washington began requesting an I.T.Q. Program for the west coast fishery. Representatives from the fishing and fish processing industries, along with Pacific Fishery Management Council and National Marine Fisheries Service staff began work on an I.T.Q. program in 1991. Approximately three years was spent by industry, PFMC, and the National Marine Fisheries Service on this program. In August of 1994 the PFMC voted to go ahead with the I.T.Q. program and to make its final choices among several program options at its October meeting. In October the council was presented with a letter signed by several U.S. Senators and Representatives, urging delay of the program pending reauthorization of the Magnuson Act. This letter was apparently the result of lobbying in Washington D. C., by a small group of I.T.Q. opponents.

I have read the provisions of senate bill S-39, to amend the Magnuson Fishery Conservation and Management Act. I am particularly heartened by the provisions to address the problems of fishery waste, and to reform the council process. I think that the I.T.Q. guideline requirements are well considered and will help to ensure that any further I.T.Q. programs will be developed responsibly. The addition of a mechanism to provide for the collection of fees is welcomed by industry participants. It is generally felt that the industry is quite willing to pay its fair share of the cost of any management program which will benefit the resource, and those will profit from it.

My only objection to the bill would be the requirement to delay any further I.T.Q. implementation until the Secretary of Commerce completes the development of I.T.Q. guidelines. This open-ended moratorium will only hamper the further development of responsible fishery management by the regional council. The west coast fixed gear sablefish industry will be drastically affected by the delay resulting from the guideline development requirement of Senate bill S- 39. The implementation of an I.T.Q. program for the Alaskan sablefish Fishery, in the absence of a similar program for the west coast will result in a further over-capitalization explosion. Sablefish seasons have been intentionally scheduled to coincide in the past so that fishermen were forced to make a choice between fishing in Alaska, and fishing on the west coast of California, Oregon or Washington. With the new Alaskan I.T.Q. Program, the vessels fishing in Alaska can now complete their Alaskan fishery and return to participate in the west coast fishery. This fishery has, because of past over-capitalization, developed into another intense derby, much like the Alaskan sablefish derbies.

I have seen the fishery develop in 10 years from a 12 month fishery to the predicted one week derby of 1995. Derby fisheries such as we are now experiencing have many negative aspects, as you well know. To me a Magnuson Act requirement to develop federal guidelines before any new I.T.Q. Programs are approved represents little more than an unnecessary obstacle to responsible fishery management development.

The financial survival of those dependent on west coast sablefish is tied directly to whether or not the PFMIC is allowed to go ahead and implement the plan they have developed for the west coast fishery. Without an I.T.Q. plan the fishery will be mostly a small bonus fishery for the Alaskan I.T.Q. holders and others who will take time out each year from other fisheries to take part in the resulting derby or trip limit fishery. Those who have been in the fishery continuously for many years, who have invested their lives and their capital in it, whose production has supported crew men and communities year after year, will lose their financial viability and will be ruined by the lack of an I.T.Q. program to match that of Alaska.

Conservation will be severely compromised by the continued development of the derby fishery or the other alternative, trip limit management. This is a fishery in crisis and the only solution seen by those who have depended on it most heavily is the implementation of an I.T.Q. program as soon as possible. As I have always understood, the first responsibility of the management councils is to the resource. On this I would refer you to the eloquent testimony presented to the House of

Representatives Committee on Merchant Marine and Fisheries by The Environmental Defense Fund, regarding I.T.Q.'S as "The most promising fisheries tool on the horizon." It provides a convincing argument for the design and implementation of I.T.Q. programs for the U.S. Fisheries. EDF has studied and evaluated I.T.Q.'S on a resource conservation basis and has nothing to gain by the adoption of any I.T.Q. program. They have consistently supported the adoption of the Pacific Coast Sablefish I.T.Q. plan.

My sentiments regarding development of a west coast sablefish I.T.Q. program are not just my own. Throughout our sablefish I.T.Q. plan development the three significant fixed gear organizations, namely The Fishing Vessel Owners Association, The Deep Sea Fisherman's Union, and the Pacific Fixed Gear Association have consistently supported I.T.Q.'S. Keep in mind, that not all members of those organizations will benefit directly from an I.T.Q. program. All agree however, that the only management scenario which will ensure industry stability, while achieving the best possible conservation benefit, is the I.T.Q. program.

The options included in the sablefish program will give those who have produced the most quota shares which will amount to much less than their historical catch levels.. In my own personal situation, I.T.Q. adoption will mean I will get quota shares amounting to 30 to 40 percent of my historical catch average. Because of equal sharing options in the plan, most of the individuals with minimal production history will receive more than their historical catch average. There are many individuals such as myself who are quite willing to accept reduced harvest opportunities in the interest of conservation, safety, and industry stability.

In conclusion, I would like to urge the senate to remove from the proposed bill, S-39 the requirement that I.T.Q. programs are delayed until after an advisory panel formulates guidelines for I.T.Q.'S. The recommended guidelines as stated in the introduction of the bill by Senator Stevens are quite proper and acceptable as they now stand. The requirement of fair and equitable allocation is already in the Magnuson Act under National Standards. S-39 allows fee collection to pay for the added cost of and I.T.Q. program. Both the Alaskan I.T.Q. program and the west coast sablefish I.T.Q. program have provisions allowing participation by entry level fishermen. Both programs recommend strict sanctions for I.T.Q. violations. It seems inconceivable that any further I.T.Q. development would be done without satisfying the requirements as listed.

If the senate cannot proceed with this bill without requiring an open ended moratorium

pending guideline development, I would like to request that a specific exception be made so that the sablefish I.T.Q. program which has been developed by the Pacific Fishery Management Council is allowed to continue, if the council chooses to give its final approval. It is a vehicle which has been designed, built, and is ready to implement. It has been designed for a fishery in crisis and meets all the recommended guidelines. Without it this fishery will be subject to a greatly increased level of derby or trip limit management along with another ugly surge of over-capitalization. All of this will result in another round of resource depletion and industry suffering.

Thank you once again for giving me the opportunity to present testimony on this subject of such great importance.

Senator STEVENS. Thank you. I thank you for coming.

Senator Feinstein mentioned to me that you were coming. Thank you very much. Senator Gorton?

Senator GORTON. I think we better listen to our other people.

Senator STEVENS. I have one comment for you, Mr. Ponts, and that is, I do not know why you do not get yourself a limited-entry program. You have the authority within your Council. Do not hang it on me that you are going to go out of business. You have the authority, and you ought to use it.

I do not want to be too tough with you, Mr. Fisher. You told us you want to have full retention. You tell me how you can avoid what happened to the halibut fleet when the pollock fishers caught more halibut than we—Bob, don't you lay back, because I can get the year this happened—pollock fleet caught incidentally more halibut than we were supposed to catch with the halibut fleet, and the halibut fleet had to lay up for that one quarter of the year or maybe half year. I am all for full retention, but I think there has to be tremendous disincentive for full retention that is uneconomical for fisheries. Do you want to comment, Mr. Fisher?

Mr. FISHER. Yes, sir, I would. The idea for that grew out of the controls that we had on ourselves on the first bottom fish fisheries in the Bering Sea which the fleet imposed within the joint venture. If you wound up with too much of a percentage of prohibited species, you took a day off. The company would not buy any fish.

Senator STEVENS. We need to figure out a system to fully retain fish.

We are trying to do that. I think there has to be a disincentive, a burden on those who waste fish. I do not want to complain. I think we ought to utilize fish that we take out of the ocean and cannot get back in the ocean alive. But we have not figured it out yet.

Mr. FISHER. That is true, but you suddenly see a lot of creative characters come to forward in order to cut that bycatch. Our point is that it is not going anywhere the way it is happening now.

Senator STEVENS. I see a lot of overtaxed fishermen from my point of view. You would have to pay something for catching the other guy's fish enough to pay him to be laid up. That is the great problem about that.

Thank you all. We are going on now to these other people. We do have some limitations and we do appreciate your time.

I want to call up here the first group—Bob Wojcik, Harold Hoem, Per Odegaard, Tuck Donnelly, James Miller. If I am right, I have got 6—and in addition David Edick. There is room there for each one of you. I wanted to call each of you and give you 3 minutes to tell us what you would like us to hear.

Again, let me remind you. You can send a statement to us. We would like to have it within a week or 10 days. We will print a record, a full statement. Bob Wojcik, Vice-President of Seattle First National Bank.

STATEMENT OF BOB WOJCIK, VICE-PRESIDENT, SEATTLE FIRST NATIONAL BANK, SEATTLE, WASHINGTON

Mr. WOJCIK. Here, Senator Stevens. Thank you Senator Stevens. Thank you for the opportunity to make some comment. My name

is Bob Wojcik. I am a vice-president of Seafirst Bank. I am a vice-president with Seafirst Bank, and I currently manage a lending unit within the bank that specializes in lending to the commercial fishing industry specifically.

Seafirst has been and still is committed to the seafood industry, as are several other lenders in the States of Washington and Oregon—Alaska—excuse me. I am personally speaking from a general lending nature.

I have been in the banking industry for 22 years and want to make sure my comments reflect more of a general personal nature than speaking for any coalition or the bank to any great degree.

I agree with the previous comments made by Mr. Dale Alberda made earlier today. I want to specify and emphasize the need for a central lien registry that would work for the lending industry as a whole. I think it is important that the lender be allowed, first off, to perfect his collateral position in the collateral that they take when they are lent money and also to be able to realize on that collateral when necessary.

Currently I believe that the lenders are proceeding cautiously under the current ITQ program because of three main problems. One is the ability to establish the range of values for the ITQs as they have initially come out. Second is the inability at this time to perfect on that collateral as we take it. Third is the inability to sit down with our customers, and in this case they are all fishermen, and have them present us a business plan, which is what was alluded to today, that identifies a repayment program within a reasonable number of years for any loans made against the ITQ shares; and by reasonable number of years, it has to be a length of time that the bank can live with, but more importantly it has to be a length of time the fishermen can repay the loan back in the normal course of business recognizing his other obligations, his other debts, his crew shares, his insurance, et cetera.

Generally the credit being extended under the current ITQ program combines its ITQs with other collateral. The lenders as a group and as a whole have been taking this approach, which in essence eliminates some of the fishermen that do not have other assets at this time other than these newly issued shares. There is not enough collateral coverage that allows the bank to say, "This is great, you have got 100,000 pounds of share quota share; we cannot lend you the amount of money you need; we need some additional collateral." Some of fishermen do not have that, and that is unfortunate.

Whether this is a government or a privatized agency, there needs to be enough authorization and power for this central registration agency to be able to perfect the collateral and assist the lenders in realizing it.

Senator STEVENS. I want to assure you on that one, we are working on that. I appreciate your comments, and we will work out something.

Harold Hoem, you are a fisherman, Fishing Vessel Owners Association, sir.

STATEMENT OF HAROLD HOEM, FISHING VESSEL OWNERS ASSOCIATION

Mr. HOEM. Senator Stevens and Senator Gorton, I appreciate the opportunity to come before you today. I have been a fisherman and longliner for 23 years, both in Alaska and off the West Coast here, and I guess since I have such a short time, I want to concentrate on two things: One is safety, and the other is viability of the fishery.

Nothing gets adrenaline going faster than the situation where you may lose your life or where you may go broke. That is the way our fisheries were headed. I cannot tell you how nice it is to be tied up in harbor here in Seattle knowing that I could be fishing right now, but not wanting to shovel two feet of snow off the deck. It is quite a thing to time when you can go out fishing. I think this is going to add quite a bit of value to our product and make for a healthy fishery in general.

The one thing I wanted to elaborate on is what Mr. Ponts was saying. We have gone through a limited entry program off this coast. I was the chairman of the Appeals Board that heard over 80 cases here for deciding who was going to get one of these permits and who wasn't. The problem is, it simply is not sufficient. I mean, everyone recognizes this was not going to do the job.

There is still overcapitalization. There simply is not enough fish to go around. Even though we have reduced the number of fishermen through this program—and I am concerned the language that I understand is in this bill—a moratorium would stop all of the effort that we have tried over the recent years here to get an ITQ program established off this coast as well as in Alaska.

Senator STEVENS. For what?

Mr. HOEM. For sablefish and halibut industry as well; halibut fishing here instead of the Bering Sea, but that program has gone by the wayside and has been given over to the recreation fishery for the large part. I am speaking about the sablefish industry off this coast. When I say they really need an ITQ system down here, and I hope since this program is already so far in advanced that it will be allowed to continue and not to be cutoff by a moratorium.

Similarly, I hope that the ITQ system that we have in place now off of Alaska for sablefish and halibut will be allowed to continue to have a chance to give people an opportunity to make this thing work. I do not know where else in your travels you have come across a group of people that want to pay taxes, but I think you have heard that several times today. We want this program to work and we are willing to pay for it.

Senator STEVENS. Thank you very much. Per Oldegaard?

STATEMENT OF PER OLDEGAARD, LONGLINER FISHERMAN, ALASKA

Mr. OLDEGAARD. I am Per Oldegaard. I have been a halibut longliner for 28 years. I am a second generation longliner for the same vessel that I bought from my father, and my uncles and my cousins have all been longliners in Alaska since about 1927.

I am here to basically ask you to grandfather the halibut sablefish ITQ process, you know, the program as it is. It has covered all the bases. It has stood the suit, and any further, as you said your-

self, we want to avoid litigation. Any further tampering with it will only set it up for further litigation, and as far as the North Pacific Council, you know it is the only body we have that gives us direct input into the process of our fisheries regulation, and admittedly it is not perfect, but it is all we have and it should continue as such.

Senator STEVENS. Thank you very much. We appreciate you being here. I think I knew your Dad. I recognize the name. It is nice to see you.

Tuck Donnelly?

STATEMENT OF TUCK DONNELLY, REPRESENTING NORTHWEST FOOD STRATEGIES

Mr. DONNELLY. Thank you very much, Senators Stevens and Gorton. I represent Northwest Food Strategies, and Northwest Food Strategies has been small nonprofit which has managed salmon bycatch for food bank program for national fishing service for 2 years.

Based on the experience we have had with this program, we feel that Magnuson Act contains a terrible shortcoming in its failure to require that fisheries managers at least seek alternates to mandatory discard of dead food fish. In the Alaska region alone, roughly 20-million pounds a year of dead fish, much of it has already landed ashore, it is toted up, and sometimes sits on the dock for 12 hours is carted out to sea and dumped, at a point in time when Federal Government, State governments, and private nonprofits are seeking adequate resources for hunger relief, particularly high protein resources.

We feel that this is something that can be addressed by the Magnuson Act which in a way that does not undermine fisheries management objectives that leaves resource protection priority one, and I have provided a copy of the Terra Marine Amendment proposal for the record and for your review, and that is the proposal or language similar to that we would like you to support. I would like to pick out a couple of key elements which I think are important in this.

This amendment proposal would require—or the amendment would require—any FMP contain a description of measures taken to assess and implement means for reducing unnecessary waste including wherever possible alternatives to regulatory—that is, mandatory discard of dead prohibited fish. At the discretion of Council, alternative means of the disposition of dead prohibited fish can allow—can include the option to allow or report processing foreign contribution to national fisheries services to nonprofit distributors serving economically disadvantaged, provided that—and these are the two key ingredients—it is made explicit, I think, wording that some opponents of this, or people that had questions, not necessarily opponents, wanted to see in this, so we included it in that.

The wording is that the dead prohibited fish provides no economic incentive or economic benefits to those who catch, process, or distribute or utilize fish; and No. 2, every reasonable means of existing fishery management policy been employed to reduce bycatch and the mortality of dead fish—of prohibited fish.

This would give the Councils a mandate to seek alternatives to the discard of dead PSC, but it would not require they find one. It would just simply give a responsibility, in light of the mass amount of discard caused by Federal regulation that require discarded food fish at a time when one in 10 people in the country, roughly 30-million, require charitable services for their food.

We have as shown in our salmon program funding—we have processors; we have the ability to transport, deliver in a forceful manner, fish to hunger relief organizations. It has the support of the National Fisheries Service, and we believe that it needs to have a mandate which only the Magnuson Act can give it to further develop these programs efficiently. Thank you.

Senator STEVENS. Mr. James Miller, President of Fixed Gear Association.

STATEMENT OF JIM MILLER, REPRESENTING FIXED GEAR ASSOCIATION

Mr. MILLER. I am Jim Miller of the Fixed Gear Association. I appreciate the opportunity to comment. I represent 60 boats in the Pacific area that catch with fixed gear, which is longline as well as pot gear, and they are from Oregon, Washington, and California.

Our association feels like we are caught between what we see as a rational management plan in Alaska and the way the sablefish has been handled in the Pacific region, and we have suffered through a series of allocation battles that we have lost by close votes, and we currently are reduced to less than 8 days (we anticipate this year) to fish.

We would like to see Magnuson Act mandate that the kind of fisheries that are species specific and that have low discard mortality and low bycatch are protected and nurtured at the Council level. We feel that our fishery style has been sacrificed for the bycatch needs of the trawl fishery. We have been told we were insignificant in terms of the bottom line, and that, for us, is a conflict of interest.

If you look at representation, we have never had a representative for the fixed gear on the Pacific Management Council. We have been told by the Governor that we will not have any commercial fishermen representing this State. We feel that representation should be based on fairness more than the bottom line. I was heartened by the comment, Senator Stevens, regarding managing on the bottom line as a business owner as opposed to managing a resource as a bottom line. We also see this conflict when it comes down to managing for bycatch and for caps and for overfishing. We see the bottom line of the fishermen becomes the bottom line of the Council, and they manage more to keep the processors working and the fishermen fishing than they do to protect their resource. We have seen consistent fishing down of every species that the Pacific Council has managed in the last 10 years, and we see reluctance to change when that fishing down comes to the point that the scientists say it is dangerous.

We see reluctance to cut back. We have also found a reluctance to have observer programs and collect good data to back up management decisions. We see these as conflict of interest issues that we would like the Magnuson Act to address.

We would like to have mandates to the Governors that commercial fishermen have to be represented from the States, and that the Council does not become the political football of the Governors that are more interested in managing votes than in managing ocean resource.

The IQ program would be a rational approach for us. We watch the Council address other management approaches like the fixed gear trip limits and accumulative trip limits, and they find they would not be as good as IQ's. But they cannot do much because of restrictions at the Council level—I am sorry—at the Senate level. We are hoping the moratorium on IQs does not go into place.

Senator STEVENS. Appreciate your comments. Mr. David Edick?

Mr. EDICK. Senator Stevens, Senator Gorton, I appreciate the chance to talk to you today.

Senator STEVENS. You are general manager of Alaska Observers, Inc.

STATEMENT OF DAVID EDICK, REPRESENTING FISHERIES OBSERVERS

Mr. EDICK. I work with an observer contractor located here in Seattle, and I first worked as an observer beginning in 1983 in the foreign observer program in the Bering Sea, and I began working as domestic observer in 1987 when it was a voluntary program. Since the inception of the groundfish observer program in 1989, I have been working at Alaskan Observers.

Observers have been mentioned numerous times this morning by different people. They are clearly important and fundamental for the successful management of this fishery, but they are a strangely unrepresented group. They do not have a voice. Their concerns generally are not heard by anyone or given much thought. I think the Magnuson Act would give you an opportunity to address the legal status of observers, which has been in doubt over the last decade.

It is really not clear whether they have the status of seamen or not. I have not seen the current language in the Senate version of the bill, but I have seen the House language, and it tends to center on limiting circumstances under which an observer might make a claim against a vessel to those cases where injuries result from willful misconduct.

I think what is missing is language that addresses what rights an observer does have vis-a-vis the vessels they work on or vis-a-vis their employer. Whoever is responsible for insuring them, observers ought to have the same rights and protections as the fishermen working alongside them. They are, after all, assuming the same risks the fishermen assume. They are doing the Government's work, work the Government considers important. In the North Pacific, they are essential to the mission of the vessel. The vessel cannot leave the dock without the requisite observer coverage.

I think if we do not see to it that we secure those rights and protection for observers, what we are risking is creating a group of second-class citizens on the high seas, and as a result it is going to be impossible for companies like mine to generate a group of dedicated and professional observers to gather management data.

In the end, this will have a negative impact on the quality of the data that is available to managers, which will have a negative impact on the quality of fisheries management. Thanks very much.

Senator STEVENS. Thank you very much. You have grown sort of like Topsy. He have done our best with provisions that never went anywhere before. We will be glad to have your submission as to what you think should be in the bill.

Move on to the next group. John Bruce, Director of Deep Sea Fishermen's Union; Paul MacGregor, general counsel for U.S. Surimi and Factory Trawlers Association; Dan Albrecht, director of Yukon River Drainage Fisheries Association; Jack Crowley, owner/operator from Seattle; and Christine Adams Forde, wife of deceased Northwest Mariner crew member, Bruce Forde.

Senator STEVENS. John Bruce, you were first.

Mr. BRUCE. Yes, sir. Mr. Stevens, Mr. Gorton, my name is John Bruce. I am a fisherman of 28 years history and here as representative of the Deep Sea Fishermen's Union, as well. I am a second generation turnip, and in defense to my friend Mr. Casey, I have to admit that I live in a home that is more than 3,000 square feet, and I say those two things, because I think crewmen under this program for halibut and sablefish are going to succeed.

I think it is a program that our association initially fought against because there was no provision in there for fishermen and deck guys to go up into the wheel house. And through the development of the program over the years that it has been worked on as the North Pacific Council put in some safeguards that have been put there to help fishermen and protect fishermen, and get entry level into the program.

Not only do we have the requirement that you be a certified fisherman, but there is a block proposal, as well, that should give us some protection and see that fishermen who want to step up into ownership at least in this small unindustrial-type fishery step up. We are in full support of that.

The only thing that I will speak against as far as the Senate bill before us now is the provision for revisitation of an open access portion in this fishery later on down the road during the development of this fishery plan, an industry team dealt with issues like this, and there were a lot of reasons we chose to stay away from that.

We are privatizing the resource. We are taking a huge step forward in giving this resource to individuals, and at the same time we are trying to eliminate a lot of the bad things that were involved in open access, and nothing has changed, as far as I am concerned, in the years that we have been doing this that would maybe change our mind with regard to open access portion.

There is entry-level positions available, ways for people to get into the fishery, and I think they would rather buy into a healthy fishery than one that is bankrupt, which is the way we were going with open access fishery.

Our guys, in the past, were fishing for 6 to 9 months of the year, and toward the end, I believe last year we fished probably less than a month total for both the halibut and black cod species we were targeting.

One other issue I want to cover quickly is the issue of method of which we appoint people to our advisory panels in the management system in the North Pacific Council, U.S.-wide.

It is kind of a closed system.

We had a very unsettling thing happen in the north Pacific this last go around where we had two gear groups that were removed from the process, and it was very unsettling. It is two groups that have a huge stake in what happens up there. The crab guys and the freezer longline group both had their representatives removed from the Council, and I think some of the language you have heard before from Thorn Smith that would open that system again and make it more public, would be much more fair and allow all industry to participate in this process. That is all I have. Thank you, sir.

Senator STEVENS. Thank you very much. Appreciate it. Paul MacGregor.

Mr. MACGREGOR. Mr. Chairman, my name is Paul MacGregor, and I am the \$200.00 an hour lawyer Mr. Casey referred to earlier. I loaned my \$400.00 suit to Mr. Bruce.

Mr. BRUCE. I had to put two of them together, though. [Laughter.]

Mr. MACGREGOR. That makes it an \$800.00 suit. You can charge anything you want in the industry representing fishermen. It is collecting that is the problem.

At any rate, it is been my pleasure and privilege to represent several different groups before the North Pacific Fishery Management Council over the last 15 to 17 years. In fact, I have the distinct privilege, if you want to call it a privilege, to have attended every minute of the North Pacific Management Council meetings since 1978. When I started, I had a full head of hair, and I was six and a half feet tall.

During the first 10 years of that experience, I represented one of the Japanese fishing associations. The last 8 years I have represented U.S. companies involved in the offshore processing industry—Factory Trawler Association related companies. I would like for just a minute to give you a contrast of those two experiences, because I think it would help shed light on some of the subject matter we have been discussing today.

In the 10 years that I represented Japanese fishermen, we never lost a boat; we never had a problem with discards; we never had an unsolvable problem about bycatch; we never engaged in a race for fish. What we did have was a very elaborate quota system, a transferable quota system. It was a quota system that was managed by the Japanese Government, and the associations that represented the various Japanese fishermen over here. It was a system that worked very, very well. It is ironic to me that we now have a system where the U.S. fishermen who came in and replaced the Japanese, have to go out and race for fish. A system where we have wastage and discard problems that are acknowledgedly in need of correction.

We have people and vessels being lost, in what I believe to be an insane way of going about managing this fishery. Ironically, it was in many ways a lot easier to represent foreign fishermen in this process than it is to represent American fishermen, because we do not have the tools to manage ourselves the way the foreigners

did. That should be an object lesson as you go forward in this bill; to learn from the fact that we did have an elaborate quota system at one point in the North Pacific fisheries, but it was the foreigners who had the benefit of it. With regard—

Senator STEVENS. You have to realize we were decreasing their quota every year. That gave the incentive for an allocation system. Do not forget that.

Mr. MACGREGOR. That is right, Senator, but for almost 6 or 8 years of the 10-year period I represented them, their allocation stayed almost the same for that entire period of time, and had the same quota management system in place from day one. It was the way the system was set up and the way the Japanese Government operated. It worked very well, and it was manageable.

If I may make one other comment about another provision of your bill. It has to do with recusal provisions. I would certainly be one that would argue that lawyers should have a part in this process, but I firmly believe that fishermen are the ones that ought to serve on the Councils. I am afraid that the way you drafted your recusal provisions is going to eliminate fishermen from the Council because they are the people who have a direct financial interest in the issues being considered. The effect of that is going to be to eliminate fishermen and replace them with lawyers and/or lobbyists who do not have a direct financial interest in the issues.

Senator STEVENS. Send us your language. I disagree with—

Mr. MACGREGOR. I realize that, sir, but the result in that you are going to have lobbyists and lawyers and other representatives who do not have a *direct* financial interest, and who would not therefore be subject to recusal—even though they are being paid to represent a particular point of view or interest.

Senator STEVENS. We will keep this in mind. Thank you. Dan Albrecht, Yukon Fishery Association from Anchorage. What are you doing down here, vacationing?

Mr. ALBRECHT. I was in town. Thank you Mr. Chairman and Senator GORTON. I am Dan Albrecht, Executive Director of Yukon River Drainage Fisheries Association. I am representing several hundred commercial salmon permit holders in Alaska and Native subsistence users along the Yukon River. As you are aware, Senators, the U.S. has recently signed an Interim Agreement for the management of Yukon River salmon with Canada. It is a 3-year agreement. It sets up joint management and conservation of chinook and fall chum salmon which originate in Canada headwaters along the Yukon River, and it sets up mutually agreed upon escapement goals and harvest guidelines for chinook and fall chum salmon.

One key portion of the agreement is the clause which states that the parties, i.e., the U.S. and Canada, agree to undertake efforts to identify, quantify, and reduce marine bycatches of Yukon River-origin salmon. Both parties have not done on much on the "identify" part of the origin of salmon caught in the trawl fisheries. The Council is taking some efforts on chum salmon bycatch reduction; it recently put in a large block closure for the whole month of August during the pollock B season fishery which should significantly reduce chum salmon bycatch. And our fishermen applaud those measures. The chinook salmon bycatch issue has been ongoing, it

appears to be down this year, although that may be a function of increased efficiency on pollock, but chinook salmon bycatches are completely uncontrolled and unregulated in the Council right now, and that is of concern to our fishermen.

With regards to S. 39, many elements of it are a breath of fresh air to salmon fishermen who often are mere observers in the Council process. The habitat language, language on bycatch, particularly the language on a fee system, is critical.

With salmon, we have had debates how many salmon are really caught; how fast can they be reported, can you do time-area closures; are the good boats being rewarded; are the bad boats being penalized? It is difficult to get a legally defensible system set up so you have individual quota systems of bycatch, something that would really reward the good boats.

A fee system may be the simplest way to solve that system, and we do have mandatory retention of bycaught salmon right now. With regard to observer coverage, you have language that says 100 percent observer coverage. I would like to see a definition of observer coverage, but that 100 percent does not mean all the hauls are observed. CDQ boats have two observers which leads to more coverage and analysis of all catch. Why the rest of the fleet is capable of having many people on board and cannot have two or three observers, I do not know.

Last, several of our fishermen on the mouth of the Yukon participate in the CDQ program. It has been a great benefit to the villages and leads to the investment back in the salmon industry in the villages, and it is helping the salmon industry, as well.

Senator STEVENS. Thank you. Jack Crowley, Seattle owner/operator.

Mr. CROWLEY. Good morning, Senator Stevens. My name is Jack Crowley, as you know, and I have been fishing since 1943.

We hear a lot of numbers around here, but this makes 52 years that I have not missed a season, so I think you ought to listen to me.

I think the ITQ program, being in the fishery as many years as I have, the ups and downs and all those things, the ITQ program is the greatest thing that has happened to the American fishing industry, and I think it is going to contribute to the greatest management we have ever had, it certainly makes a better life for all fishermen, but I ask you to give the system here a chance now.

We are talking about making some changes here. We just got started a few days ago, so I would ask you not to do anything at this time. I think Thorn mentioned—what is it—5 years to look at it before a program for them. I would think up to 10 years would be an adequate time to look at this program and see if you want to make any changes at that time, but I am really sad to hear that there is provisions in there already to make some changes.

I know that you are capable of doing these things, because I first met you, Senator Stevens, 25 years ago when we were having mercury problem in the halibut. We could not sell halibut over 100 pounds. I was living in Alaska at that time.

You came to Juneau on weekends and spent your time up there, and apparently you were successful, because Pure Foods changed their parts per million, almost doubled it, and so we no longer had

a problem. So, I thank you belatedly, 25 years later as well, as I am thanking you now. Keep this Magnuson Act with something we can live with, so thank you for giving me the opportunity today.

Senator STEVENS. We do not intend to stop the existing ITQ. If there is any such interpretation we can change, we will change it. Now Christine Adams Forde. Am I pronouncing it correct?

Ms. FORDE. Forde.

Senator STEVENS. F-o-r-d-e.

Ms. FORDE. It is the Norwegian way to spell it. Thank you for this opportunity to speak. Actually, Senator Gorton and Stevens, we have previously met also in the fall of 1991 when my husband Bruce Forde and several other men from the Seattle-based Deep Sea Fishermen's Union went to Washington, D.C. to lobby ITQs initiation in the longlining industry. Thank you for hearing us then and acting on that request.

My husband's father and grandfather fished and thrived under the open access system. In light of today's fishing concerns for safety, discard, and economics, that system is antiquated. Today I am here as a widow.

My husband Bruce Forde was a crew member of the Northwest Mariner, a crabber, which capsized in January 1995, and all 6 crewmen were lost. I represent the invisible but real group of family members, wives, children, siblings, and parents whose homes and lives and beds are now empty. I believe this void exists in part because of current lack of appropriate management of fishing resource in the crabbing industry.

The numbers tell the story. In 1993, 18 crewmen died off the coast of Alaska; in 1994, 13; in 1995, 7 so far, my husband among them. Since January 1st, 1990, the Bering Sea crab fleet has grown from 162 to 255 vessels, an increase of 57 percent. Concomitantly, fishing days on the crab grounds have declined, during that period from 234 to 72 annually, a decrease of 320 percent. It does not take a brain surgeon to recognize the adverse safety effects of the dramatic reduction of the fishing season.

I work in the health care industry where major transition is also occurring. Our industry is also becoming increasingly prevention-focused. Consider a busy intersection near an elementary school without crosswalks or flashing red four-way stop lights. Month after month, year after year, children's lives are endangered in their walks to and from school. How many children's lives must be forever changed from serious injury or lost until the community recognizes the inherent safety benefits of the four-way stop.

When regulatory agencies, government, failed to do their jobs appropriately, citizen action groups are born. How can safety not be an issue in this process? The safety of these men's lives and livelihoods is an issue. In British Columbia where ITQs were enacted, fishery officials cite the safety as No. 1 outcome.

Thank you for taking the time to recognize the vast research and organizational groundwork that these diverse, yet for the most part, collaborative industry groups have placed at your disposal. If only health care reform were equally as straightforward.

Senator STEVENS. Thank you very much. My son is on the beach now, he is going back to school, but I have watched the statistics of the North Pacific Crab fleet now for 17 years, because he has

been a member of it, and every time I hear a report of a vessel going down, I have a sinking feeling. I respect you for coming, and thank you very much for your contribution.

Let us turn now to another panel. Ronald Blake, owner/operator of the Fishing Vessel Hunter; Paul Clampitt, Jack Knudtzen, commercial fishermen, Fishing Vessels Association; Keith Whittemore, owner of a Seattle-based construction company; Bob Czeisler, partner of an IFQ fishing vessel, Margaret Lyn, I guess it is; and Chris Fanning, President of the Alaska Crab Coalition, Glen Spain, Northwest Regional Director of the Pacific Coast Fishermen's Associations.

That is the order in which I have been given the cards, so lets go that way through. Ronald Blake.

Mr. BLAKE. That is I. Mr. Stevens, Mr. Gorton, I am a third generation fisherman from Sitka, Alaska, and I started fishing on my own boat 5 years ago. My brother and I went fishing and saved \$30,000. We went out and bought a boat and we went black cod fishing, halibut fishing, fishing for seafood companies, abalone, gray cod, dungeness crab.

Right now if we were to start fishing, we would not have been able to buy a boat and go fishing under the current management plans, because you have got IFQ's for halibut and black cod and rock fish fishery (which is where we made most of our money). They cut the quotas in half (that is the current year individual quota is about half of their average catch). That is the direct result of the moratorium on dungeness crab, and the trip limits on sea cucumbers, and abalone because of the sea otters. When you go fishing on a little boat, you do not have bycatch problems.

If you went black cod fishing with us, you could count the halibut we catch on one hand the whole season. Because we are not out there after 100,000 pounds of fish, we are setting the good grounds because we are getting 15,000 pounds; that is a good trip.

The big boats, they are out to make money, they are raping and pillaging, and they do not fish because they love to fish. I love to fish. Under IFQs—they are talking IFQs for all the fisheries. I will not be able to fish longline. I will have to do something else. I do not have a college education, and there is lots of people that are in this predicament.

The little guys in Alaska cannot afford to fly down here and talk to you guys every time there is a meeting. They just cannot attend—they would go under. Of the IFQs that were issued, the poundage, 60 percent of the pounds were issued to people who have not even fished in the last five years. It is a giveaway, that is what it is, and you should give IFQs to fishermen, and now it is not for the fishermen but the boat owners. I guess that is basically it.

[Prepared statement Henry J. and Linda B. Blake follows:]

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May 5, 1995

If possible I would like to have my testimony on the record regarding the reauthorization of the Magnuson Act.

I have been involved in the Alaskan fisheries in various capacities since 1962. I have seen the results of many management programs and proposals. The current ITQ management is the worst I have seen. It is a dramatic departure from the usual resource management and sets a very dangerous precedent.

First let me say that the resource is basically in good shape. Right now it is in a slight cyclic downturn and does need protection.

There has been a tendency to have the fall halibut openings at the time of year when the weather is the worst of the year. There also has been some conflict because the larger processor ships have mostly been kept fishing in the Bering Sea. The weather is worse there and there is more area to fish. The other parts of Alaska have mostly been reserved for the smaller boats which fish closer to their local areas. The fish they catch are delivered mostly to local processors and processed in shore based processing facilities. The large ships mostly process their fish aboard and hold them until delivery of the finished product is made. This can be done on the high seas in International waters.

Because the processor ships are usually run by hired skippers, they are under pressure from the owners to make as much profit for the shareholders as possible. The smaller boats are usually owned by the skippers. The small boat fleet is mostly composed of skippers to whom fishing is more than a job, it is a lifestyle and an occupation they love. They are the backbone of most Coastal communities of Alaska. The fish they deliver for processing is the basis on which most of the economies of these communities are based. The crews that are hired to process the fish, the businesses and employees who provide goods and services to the fishermen, and the crew members hired by the fishermen are what make up most of the communities. The small boat owners know the local area very well, they can set their gear where it will catch the most fish of a given specie. They are better able to carefully release fish they are not targeting, before the fish have been hauled aboard. By nature of

the business the fishermen are competing to catch the most fish possible, so the skippers tend to be independent and self-reliant. This makes it difficult for them to work together and present a unified voice to make their concerns heard.

The ITQ management has been tried in several areas of the world and has always resulted in the consolidation of the quotas in the hands of the corporations which have the money to buy the quotas. It has resulted in loss of jobs to crew members. It has also resulted in great harm to the resources. In fact, it is the factor most responsible for the annihilation of the Atlantic Cod fishery in Canada. This fishery had been viable for over 500 years, until it was put under ITQ management.

By the nature of the program, it creates personal property and gives that property to individuals who own a specific amount of fish each year. There is no bidding on the resource and no provision for anyone not owning quota shares to catch fish. The shares were given to the owners of the boats which delivered fish in specific years which began almost 10 years ago. It created a system while it was in the development, which encouraged more vessels to fish in case they might need to in order qualify to get the quota shares. And still 67% of those receiving shares have not fished in 5 years, if at all. This system rewards those who have fished illegally and not been caught, because it is based on the amount of fish sold.

However, the net result is that boat owners are allowed to catch only about half the fish they were catching before the program. There are also many small boat owners who did not own boats during the chosen years who do not get quota shares. Some bought their boats with the belief that the shares would go to the current owner of the vessel because they had to buy boats with a history of fishing before 1989 (There was supposed to be a moratorium on new boat entrants in the fisheries.) This means that there are numbers of small boat owners who have fished up to 5 years and now do not receive any quota shares. Some boat owners who have fished up to 10 years and now cannot earn a living doing so. Some do not get any quota and some do not get enough quota to make it feasible to fish their shares.

The results which are already seen are the reduction in income to the crew members who are lucky enough to even have jobs. Formerly, the usual income to a crew member was in the neighborhood of 8%-10%, now they may receive 2 1/2%-1 1/4%. Some skippers work together and fish their quota shares together with no hired crew members.

Additionally, many who would have delivered the fish in the local area take the fish to Seattle or Canada because they can usually get more money for their fish for doing so. In addition, there is the problem of those who throw away legal but smaller fish (this is called bygrading). The larger fish are worth more per pound (\$2.10 per pound for halibut over 40 lbs and \$1.60 per pound for those under 40 lbs. at a local processor yesterday). My husband recently witnessed this happening and tried to contact those responsible for enforcement.

And we also see that the local people who work at the processors are not getting the hours of work that they were used to getting in prior years. Local businesses are also seeing a decrease in sales. This, is in addition to the fishermen who have lost not only because they did not get IFQs but have also lost nearly all the rockfish to the IFQ program. Now the shrimp and other fisheries are getting increased pressure from these fishermen who are trying desperately to find a way to survive.

Besides these problems with the program, there are some basic issues which have not really been addressed. The program tramples on the free enterprise system that made our country great. The constitutional question of requiring vessels to contact local ports in

Alaska before leaving the state is one question. This is clearly a violation of the Constitutional prohibition on requiring a vessel traveling from one state to another to clear claims in one state before going to another state. The enforcement is so expensive and almost impossible to assure. The Catcher processor ships can easily transfer fish on the high seas and there is no way to know what they caught or sold.

Additionally, the way the CDQ program is set up is not right. This gives the processor vessels from the Bering Sea quota in all areas of the state. And at the root is the basic question of what right does any agency have to virtually give any public resource to any group of people. In addition, the way the Council and the Commerce Department ignored the numerous and overwhelmingly critical comments and letters they received during the hearings should not have been possible. If the program were just a regular limited entry type program it would have been better. There were many suggestions about programs which would solve the problems perceived without the negative and destructive effects of the IFQ or ITQ management program. We have already seen that the Halibut Commission biologists recommended a TAC (Total Allowable Catch) reduction from last year's and because, in part at least, of the pressure the TAC was set at a higher level than the biologists recommended. Is this a pattern which we should expect to see in the future, with so much pressure that the TAC may be left at a dangerously high level because of pressure from quota shareholders?

This program is totally unnecessary, the constitutionality and legality is questionable at best. It is potentially destructive to the resource and to fishermen who have been fishing the fisheries. The destruction of the resource results from hygrading and in Canada there have been instances where loads of halibut were thrown overboard because the price went down while the fishermen were out fishing. So they wanted to wait to use the ITQ until the price went back up. The program allows a quota share holder to catch 10% more than the amount of quota he is supposed to catch. All of this results in a potential catch and kill of much more than the quota allowed.

The program should be abolished because the way the program is organized it is extremely expensive and destructive. As to those who have purchased quota shares, it is part of the program that there are no guarantees to anyone buying or qualifying for the shares. In addition, the financial harm to them is small compared to the harm to the Alaska fishermen, their crew members, and to the communities which rely on the income generated by the fisheries. And those who would be hurt by the system are less able to survive the damage than those who were able to buy quota shares.

Yours for a free society,

Linda B. Blake

Senator STEVENS. Thank you very much. I do appreciate your contribution, and one of the reasons we are taking a look at the IFQ guidelines are because of the things you have just said.

So to move on Paul Clampitt and Jack Knudtzen. Are the two of you here? Who is who?

Mr. CLAMPITT. I am Paul Clampitt. I am a State of Washington commercial fisherman. I appreciate the opportunity to talk to you two and to Gorton, I have written you many letters. Maybe you recognize my name, but it is a real pleasure to speak to you personally.

I would just like to say that I have heard a lot of things here against this ITQ program and a lot of things in favor, but I guess my main emphasis is that we should let this program have a chance to stand on its own feet and see how it works out.

I guess I am mainly concerned about the parts of the bill that might change our current program. If you want to fiddle with other people's program before they are implemented, before they were on paper, that is one thing; but we have worked on this program since 1980.

I am talking about, I started as a deckhand in 1979 and I was a part of the process that brought about the halibut moratorium, and that was shot down because it could not be traded. Commerce department said if you cannot trade, somebody cannot get into fishery—you cannot have that. We went to a license limitation system which the Council threw out because they believed it would not solve our problems. It would not solve our problems of the bycatch. It would not solve our problems of safety issues.

Finally, 1995, which is 15 years from 1980, we finally have a program that has been turned over, and over, and over, and changed and microscopically looked at. There are enough provisions in this thing, I believe too many, but we are willing to accept the restrictions so that we can maintain a fishery that maintains historical structure. I believe PSPA overstated the changes that are going to occur.

When you have a 1 percent ownership cap, in some areas halibut ownership cap, if you sell quota, if you sell it, the next generation has to be on board to fish that quota. I do not see Rainier Pacific buying this thing out so the president of the company has to fish on board this boat and own 0.5 percent. I do not believe that is going to happen.

I am concerned about the provisions in the Magnuson Act that might make any changes in our program before it has gotten a chance to really work.

All it is going to do is bring up more litigation. It gives the lawyers a chance to say hey, you guys did not look at this thing carefully enough. We are going to have to bring this in front of the courts again. And we just passed one bill through the courts, and we have another one to go through. At least this program should have a chance to go forward without being tinkered with it. Let us see how it works, and I do not want to chance any more lawsuits to be brought against it.

Senator STEVENS. Do you have comments?

Mr. KNUDTZEN. Senator Stevens, I am in the same Fishing Vessels Owners Association in Seattle. Last year we had a com-

bination black cod and halibut opening on September 12th in the Gulf of Alaska. First day was not bad, but the second day was 60, 70 miles an hour. We participated in a mayday capsized boat went down, but there was no loss of life, thankfully. In the year before we had a halibut only in the western Aleutians.

We were pass fishing that night in 60-mile an hour winds with the current running up against to 30-foot sea, seas coming from every which direction, but it was the only shot we had the entire year. Point being, we should not have been fishing, but fishing being what we are, the only chance we had, we have to go for it.

I have been doing that for 42 years, and it just does not make sense any more. People should not have to fish in that kind of weather. I got my start fishing the old-fashioned way. I fished with other people for a number of years, saved my money, when my dad retired, I bought his boat a quarter at a time. In those years we fished anywhere from 8- to 10-month seasons, I would put out a longline, come home for a week, but you cannot do that. Those days are gone forever.

It was not too many years ago we could black cod fish for 12 months a year in southeastern Alaska. Last year the entire cod season for the entire Gulf of Alaska was 12 days, the derby system. Maybe Greenpeace likes it, maybe Tom Casey likes it, but I think it is a mess. If you got a bunch of people and sat them down for a couple days, you could not come up with a worse system than the derby system. Just poor quality fish, the safety factors, all the gear left on the ground.

One other thing I would like to comment on is the conflict of interest. We have got especially one newspaper in Seattle editorializes once a week about what a horrible thing it is and a huge conflict of interest on the North Pacific Fisheries Management Council. They like to point out at one time there was as many as four vessel owners serving there, but what they failed to point out, these people represented different gear types and different species, and to put it mildly, we were not the best of friends.

Senator STEVENS. See what they say about me. Do not take it to heart, Jack. [Laughter.]

Mr. KNUDTZEN. I have been doing it for 42 years. I guess I am losing patience. It is really hard to deal with new people who show up and say well, I do not know what you are doing, but I am just here to learn. To me, it is important to have people who are involved on the Council. I think conflict of interest is way overblown.

The important thing is balance, so what if you have four vessel owners? They are not going to send each other Christmas cards. The only thing they have in common is that they are vessel owners. As long as that balance from all facets of the industry, that is the important thing. Thank you.

Senator STEVENS. What do you do about balance if this young man from Sitka has not been fishing in the past 5 years and is not entitled to get an allocation under your plan because his historical catch does not figure in?

Mr. KNUDTZEN. I first testified on limited entry halibut in 1978 and 1984 black cod. This is the most well advertised, prolonged program. We almost had a moratorium in 1983.

Senator STEVENS. Historical catches do not count the last five, 6 years, do they? Do they, or do they not? They do not.

Mr. KNUDTZEN. Up until the last 5 years, they do not.

Senator STEVENS. For the people involved in the last 5 years, you put them on the beach. All we say in our bill is, within 3 years you have to comply guidelines for ITQs, sort of like national ITQ standards. That is the only thing that impacts your ITQ plan—that one provision says within 3 years, you have to comply with these guidelines. What is wrong with that?

Mr. KNUDTZEN. Are you saying that when we consider any kind of limited access—any kind of limited program, we should wait 20 years to implement it?

Senator STEVENS. I have been around for 20 years. We did not overturn this plan. Several people say we overturned the plan. Read the bill again.

Keith Whittemore?

Mr. WHITTEMORE. That is me. Thank you, Senators. I am a commercial fisherman and boat builder. Today I am here as an owner of Seajack Marine, Seattle-based fishing vessel building company for the past 2 years. I am here actually in support of CDQ program and continuation of it.

For the last 2 years, we have been working with Aleutian Pribilof people and Yukon Delta people on a 2-phase program. First is design and development of small inshore fishing fleet for the community members to operate. The second is a training program to train them to maintain and repair actual new construction of the vessels. The program has two phases; One, apprentice program here in our shop in Seattle; Second, in support of construction program of Avtech in Seward.

Clearly on a new construction basis, we have—it is good business for us in a time when there is very little new construction. It has been a wonderful influx of capital and labor hours, and work for our guys and Seattle communities businesses that support us.

As far as the whole program, I have worked with these people with 2 years. It is my belief that opportunities of the CDQ program for training, fishing, and employment will have long term benefits for everyone, and should continue. Thank you.

Senator STEVENS. Thank you. Mr. Czeisler?

Mr. CZEISLER. My name is Bob Czeisler, and I am on the board of the Independent Fishermen for Fair Quota, and I am also a partner in the Margaret Lyn and the Ocean Phoenix. Margaret Lyn is a 98-foot fishing vessel that started fishing, delivering groundfish in Kodiak. She started the groundfish fishery. She also helped develop, through the Alaska development foundation, the flatfish fishery off of Kodiak, and we are very much in favor of fishing quotas for individual boats based on historic participation, and we are so because we feel that safety issue is a major factor and concern to us.

We fish for at-sea processors and are pitted against factory trawlers. With 98-foot boat we have to fish. The pollack fishery starts January 26th in the wintertime, and that is the spawning season. That is the high value fish. Every year there is a 10- to 15-day period of time when the weather gets to the point where there is icing spray and dangerous conditions, yet if that stormy period of time

is during that 24-day period of time, we are forced to fish in terrible weather. It is unsafe at times, and yet we are forced to do so because of the competitive nature of the fishery.

We are pitted against much larger boats, so we are concerned and want to have individual fishing quotas so we are not forced to do that. The spawning season is roughly 65 days. We would then stay in a safe harbor and not fish for that 10 or 15 days of stormy weather and instead would wait that storm out but still be able to take our quota during that 65-day period. Now, instead we are forced to fish during those terrible winter storms.

There was an earlier speaker on factory trawlers. We are not a factory trawler; we are a 98-foot boat. We feel we can maintain our share better if we were to get a quota share against the factory trawlers. We see quota shares based on historic participation as a way to prevent factory trawlers from having an even larger share of fishery.

Also I wanted to comment about the increased value of the fish and whether or not we should have a moratorium. Right now CDQ is a form of quota share. Factory trawlers competitively bid for the right to harvest and process these quota shares. Each winning factory trawler gets a quota share and then can fish whenever it wants. For that right, that vessel is willing to pay more for uncaught fish that is still in the water than what we as fishermen get for catching and then delivering the fish at sea to a mother ship or at shore to a shorebased processor.

We get less during the derby fishery than factory trawlers are willing to pay for fish in the water, and that shows there is an increased value to the fishery when there are individual quota shares. We want that to be expanded, not just the CDQs, 7 percent of the pollack, but all 100 percent. It is a success story. It has clearly increased the value, and we want to expand it.

Finally, in terms of just one point of bureaucracy that you mentioned, the Canada experience for quota shares is a good model. Rather than having increased bureaucracy, they have privatized the administration of the quota shares. They have set up a separate corporation that monitors each individual boat's catch and they have to report daily to this. They put out daily reports how each vessel has done, and it has worked to the satisfaction of both government and the fishermen. Then the Canadian fisheries only sets the TAC and the bycatch, and all of the rest of it is done by a private corporation which is funded by the fishing community, and that is the way of going around the hiring freeze, and all that is to be able to do it—privatize that.

Senator STEVENS. We are going to look into that. Mr. Fanning?

Mr. FANNING. Senator Stevens, Senator Gorton, my name is Kris Fanning. I am president of the Alaska Crab Coalition. Tom Casey referred to us as the other group. We have been in existence since 1986. We are a conservation-minded group. In response to Tom Casey, the reason we recommended moving the seasons to a later date was threefold.

One, the quality of the product is highest at that time of year. Discards are proven to have a lower mortality rate at that time of year; and Three, a later crab season allowed us to combine para-

dise with the crab season in order to reduce discards and mortality and bycatch.

The ACC represents 60 boats. We support ITQ for a number of reasons. No. 1 is safety. We are losing too many people. One percent of our fleet sank in our last Opilia season. Actually, in the last 2 weeks of the season in January and February. It was either 7 or 8 lives that were lost; No. 2 is conservation; Third reason is IFQs is better economics; Forth, would create more stability in the fishing industry; and Fifth, the consumer benefits with a fresh product for a longer period of time during the year.

I own three small crab boats. I had four, but one sank September 1st, 1993, while racing for an opening of a season in bad weather. Five people were lost. I am in favor of the IFQ program myself. We must stop the race and insane way we are managing the fishery. Thanks for the opportunity to speak today.

Senator STEVENS. Mr. Spain, you are from Eugene, Oregon.

I did not notice that.

Mr. SPAIN. Good afternoon. My name is Glen Spain. I am the Northwest Regional Director for the Pacific Coast Federation of Fishermen's Association. We are a federation of 25 different marketing and fishermen's associations collectively representing several thousand individual fishermen and fishing families. We are also the largest organization of commercial fishermen on the West Coast. Our members deal daily with the Magnuson Act issues. I am going to perhaps take a refreshing tack here, and not deal with the intricacies of quotas and bycatch, but look at a much more fundamental issue; an issue that unless that is addressed is going to make most of the rest of these discussions moot, and that is habitat loss.

You may know that our productivity in terms of all of our fisheries all around the country is greatly reduced. More than 75 percent of the landed catch are species that are highly dependent for some part of their life cycle on near shore, estuary, or inland fresh water conditions. That is very, very much the case all around the country.

Certainly salmon is one issue here, but we have Gulf shrimp problems, problems on the East Coast as well. Let me read a couple of quotes. This is from the national symposium on coastal fish habitat, Baltimore, Maryland, 1991: "Over the long-term, nearshore ocean and estuary fishery habitat, loss is probably the greatest threat to marine fishery productivity throughout the United States. Fisheries management will be moot if habitat loss and degradation destroys the productive potential and the quality of our natural marine resources."

Another quick quote. This is from a study done by Hinneman and Safina, two well known scientists in fishing management: "The increasing loss of fish habitat, to pollution, unwise development, and other human activities is the single largest long-term threat to the future viability of the marine fisheries of the United States. Protection of habitat is the cheapest investment the Nation can make to sustain productive fisheries."

I have prepared written comments on these issues as well as some other comments on fishery management issues. I have also got attached to these written comments language that is going

around the Hill right now which would improve some of the habitat language in both your bill, Senator Stevens, as well as your companion bill in the House.

The language I have is actually in terms of the insertion points in the House bill, but it applies equally well to the Senate bill. You are going in the right direction with those issues. There is better habitat language in both of those bills than ever before, but we really have to move forward in that habitat direction.

The language, by the way, is from a group of conservation organizations called the Marine Fish Conservation Network. You might be surprised that we fully endorse that language, so you have bipartisan support, which is a very good thing here. I would urge you to continue moving in that direction.

I have also included a report we prepared for Congress in the last session. Hopefully, you have received copies, but for the record, it is a report called Marine Fishery Habitat Protection, a report to the U.S. Congress and the Secretary of Commerce, prepared jointly by our organization PCFFA the institute for Fisheries Resources and the East Coast Fisheries Federation.

[Prepared statement of Mr. Spain follows.]

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**STATEMENT OF THE
PACIFIC COAST FEDERATION
OF FISHERMEN'S ASSOCIATIONS
TO THE
U.S. SENATE COMMERCE, SCIENCE AND TRANSPORTATION
COMMITTEE,
SUBCOMMITTEE ON OCEANS AND FISHERIES**

**FIELD HEARINGS ON THE MAGNUSON ACT
Senate Bill 39**

**Seattle, WA
March 18, 1995**

My name is Glen Spain. I am the Northwest Regional Director for the Pacific Coast Federation of Fishermen's Associations (PCFFA), which is the largest organization of commercial fishermen on the west coast. PCFFA represents many of the thousands of hard working men and women of the Pacific coast commercial fishing fleet who create jobs in our communities and put food on America's tables. We are a regional organization with member associations from San Diego to Alaska whose individual members participate in every commercial fishery on the west coast. We have worked with the Magnuson Act since its inception, and are familiar with both its strengths and its weaknesses. We thank you for the opportunity to present testimony in this forum.

Overall the Act works well. Particularly important in the process is regional decision-making in which all interested parties may participate. While there are occasional disputes over the composition



STEWARDS OF THE FISHERIES

of the Management Councils, and some Councils do a better job than others, these flaws are largely due to the individual strengths and weaknesses of its members, not to the Council concept itself. The Council process as a whole has been very important in crafting regional decisions which meet the needs of local communities, and is one of the strengths of the Act.

However, there are also clearly flaws in the fishery management process, some of them serious. Among these flaws are the following:

I. No protection for habitat -- The Magnuson Act does not adequately protect habitat for aquatic species. Yet habitat is the very foundation of all marine biological resources. Without protection of fish habitat, there is little point in the rest of the Act, as sooner or later this habitat -- and the fish species it supports -- will be gone.

Both fishermen's organizations and other conservation groups support amendments which would provide a streamlined process for the protection of essential fish habitat. This can be built on the framework provided in this bill. In particular, we strongly urge the following amendments

(a) a better definition of "essential fish habitat";

(b) The NMFS Habitat Program should be required to develop both general guidance for identification and conservation of essential fish habitat, as well as specific recommendations for the identification and conservation of habitat as part of individual fishery management plans,

(c) The individual fishery management plans should require provisions for the identification and conservation of essential fish habitat,

(d) The Act should encourage the use of other NOAA programs in furtherance of fish habitat conservation; and,

(e) A meaningful and effective process should be adopted for interagency consultation on projects which may impact essential habitat.

Our organization has also endorsed proposed habitat protection amendments submitted by the Marine Fish Conservation Network which are enclosed as (ATTACHMENT A). We urge their adoption. They are timely and much needed.

II. Need for Reform of Management Council Membership and Elimination of Conflicts of Interest --

Assuring balance on the Councils: The Council composition does need in many cases to become more balanced and more representative. While we may disagree with some members of the conservation community on how this should be accomplished, we do support amendments which would assure more balanced representation on the Councils overall, particularly as between sport and commercial interests. Even in Councils in which there is in fact an equitable balance, there is often still the perception of bias or imbalance which causes unfortunate animosities to develop and fester between interest groups. Better numerical designation of appointment slots may help cure these problems. We also welcome the appointment of a certain number of public members (i.e., persons not directly participating in any fishery), provided those selections are on the basis of actual fisheries expertise or experience.

However, we urge the Subcommittee to preserve one of the fundamental points of the original concept behind the Management Council structure -- that the active participation of actual fishermen in the management process is essential to good fisheries management. It is only by their active participation on the Council that fisheries management has the full benefit of their practical experience and expertise. The fact that they are also fishermen should be a qualifying, rather than a disqualifying, factor. In fact, fishermen have the most compelling possible reasons to look to the long-term sustainability of the resource -- certainly far more compelling than any other member of the general public -- as our lifestyle and our livelihoods depend on the future of that resource.

In spite of some notable failures in the Northeast, by and large the fishermen members of the Councils have done a creditable job, particularly here in the Pacific Fishery Management Council, and have consistently served the long-term best interests of the resource. There are also some "public members" who have done poorly in those positions. Often it is the competence, conscientiousness and expertise of the individual Council member which makes the difference, not their affiliation. Some additional designation of experience requirements would help assure that competent Council members are chosen.

Eliminating Conflicts of Interest: The above said, there still is a need to eliminate to the degree possible any actual conflicts of interest in Council decision-making which might affect the impartiality of decisions. However, mere participation in a fishery should not be seen as a conflict in and of itself that would disqualify a fisherman from service. If that were the standard, no fishermen could ever participate in the process, and their expertise would be utterly lost. This would likely result in poorer management rather than better.

As presently written in S 39 (pp. 28-31), we are satisfied that pervasive conflicts of interest would be eliminated by this procedure. However, we are also open to other suggested amendments which would accomplish the same purpose.

III. Conflicts in legal representation between Councils and NOAA — One of the problems that we saw in this region with the Pacific whiting dispute a couple of years ago is that the Management Councils are represented by the Office of NOAA General Counsel — the same legal counsel as NOAA itself. Thus in a situation (like whiting) where there is a procedural dispute between the Council and the Secretary, *they are both advised and represented by the same attorney*. This creates a conflict of interest with considerable repercussions and which can result in inappropriate advice being perpetuated throughout the regulatory process.

At a minimum, the Management Councils should be funded for and have their own legal counsel

to work with them on an ongoing basis on these highly intricate and technically difficult issues. NOAA General Counsel would then have an independent review over the procedures to assure compliance, and this independence would help assure that NOAA is not merely reviewing its own decisions

IV. Prevention of overfishing -- There has been considerable discussion about whether or not the Magnuson Act prevents overfishing. We would submit that the Act itself adequately provides for such protections, but in the absence of the political will to take the hard steps necessary (both at the Council level and by the Secretary) these safeguards are meaningless.

We could not support amendments which would allow the overriding of "maximum sustainable yield" (MSY) as the biological bottom line. Sustainability truly is the bottom line. However, since MSY is also defined in terms of "optimum yield," some definition of "optimum yield" also should be adopted in the amendments. This definition should also included measures to rebuild overfished stocks to levels consistent with providing maximum sustainable yield. The fish necessary to rebuild overfished stocks must be deducted from allowable harvest levels defined as "optimum yield" so that full rebuilding can be accomplished as soon as biologically possible.

We also see a real need for proactive stock assessment measures designed to detect the potential for and to prevent overfishing in the first place. No one deliberately overfishes. Overfishing only occurs when bad management takes place, for it is federal managers (and not fishermen) who set the seasons. The primary cause of overfishing, in our experience, has been bad data. Many decisions of the Council must be made on the basis of data that is less than complete or based on poorly conducted sampling. Often followup studies are incomplete or only barely adequate. Thus "overfishing" often cannot be predicted, but can only be detected after the fact, when it is already too late and the options are then far more limited. When harvest levels are based more on guesswork than hard data, overfishing is inevitably going to occur, simply because bad decisions are going to be made in spite of the best of intentions.

Therefore we urge the Subcommittee to fully fund the fisheries research and monitoring studies that are essential to good resources management. While uncertainties are inevitable, as they are in all scientific analysis, the narrower our research makes the error bars, the fewer serious errors will be made which result in overfishing.

Thank you for the opportunity to comment. We will have additional comments at a later date.

Comments of the Marine Fish
Conservation Network on H.R. 39
February 15, 1995

COMMENTS ON CONSERVING FISH HABITAT

The Marine Fish Conservation Network supports the provisions in H.R. 39 that recognize the importance of conserving the habitat that is essential to the long term well being of our fisheries. Both fishermen and conservationists support the amendment of the Magnuson Act to provide a streamlined process for the protection of essential fish habitat. Recognizing the existence of this common ground, a panel composed of representatives from the fishing industry, major conservation organizations, and state and national fishery management agencies has been working to develop a legislative proposal aimed at better conserving fish habitat. The panel has attempted to build upon the framework provided in H.R. 39. Our new proposal would:

- 1) Define "essential fish habitat" somewhat more narrowly than H.R. 39;
- 2) Utilize the expertise and resources of the NMFS Habitat Program to develop both general guidance for the identification and conservation of essential fish habitat, as well as specific recommendations for the identification and conservation of habitat in the context of individual fishery management plans;
- 3) Preserve the traditional role of the Councils by calling for the adoption of provisions for the identification and conservation of essential fish habitat as part of each fishery management plan;
- 4) Encourage the use of other NOAA programs in furtherance of fish habitat conservation; and
- 5) Create a streamlined and effective process for interagency consultation.

The language that follows represents our collective attempt to address the goals set forth above.

SEC. 3. FINDINGS; PURPOSES; AND POLICY.

Page 2. Lines 18-23: delete existing text in lines 18-23 and insert the following:
Section 2 (16 U.S.C. 1801) is amended --

by adding at the end of subsection (a) the following:

(9) One of the greatest long-term threats to the conservation of commercial and recreational fisheries is the continuing loss of marine, estuarine and riverine habitats on a national level. Habitat conservation must receive increased attention in the management of fishery resources of the United States.

Comments of the Marine Fish
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SEC. 4. DEFINITIONS

Page 5. Lines 5-7: delete existing text in lines 5-7 and insert the following:
Section 3 (16 U.S.C. 1802) is amended --

by inserting after paragraph (5) the following:

(38) The term "essential fish habitat" means any waters necessary to fish for spawning, breeding or growth to maturity.

SEC. 8. REGIONAL FISHERY MANAGEMENT COUNCILS.

Page 13. Lines 17-25 and Page 14. Lines 1-2: delete paragraph (2).

SEC. 9. CONTENTS OF FISHERY MANAGEMENT PLANS.

Page 18. Line 14. insert the following:
Section 303(a) (16 U.S.C. 1853(a)) is amended --

by inserting in paragraph (2) after "location" the following:
"its essential fish habitat,"

Page 19. Lines 1-4: delete existing text in lines 1-4 and insert the following:
by striking paragraph (7) and inserting the following:

(7) identify essential fish habitat for the fishery, the significant threats to the conservation of the essential fish habitat of the fishery, and the actions which should be considered to encourage the conservation and enhancement of such habitat."

SEC. 10. AMENDMENTS RELATING TO MISCELLANEOUS DUTIES OF SECRETARY-- SEC. 304(h). ACTIONS BY THE SECRETARY ON HABITAT CONSERVATION.

Page 23. Lines 4-25 and Page 24 Lines 1-8: delete the existing text and insert the following:

Section 304 (16 U.S.C. 1854) is amended --

by adding at the end the following:

(h) Habitat Conservation.

(1) The Secretary shall, within one year of the date of enactment of this Act, establish guidelines to assist the Councils in the identification of

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essential fish habitats in fishery management plans (including the significant threats to such habitats, and the actions which should be considered to ensure the conservation and enhancement of such habitats) and set forth a schedule for the amendment of fishery management plans to include the identification of essential fish habitats.

(2) The Secretary shall provide each council with recommendations and information regarding each fishery under its jurisdiction to assist it in the identification of essential fish habitat, the significant threats to such habitat, and the actions that should be considered to ensure the conservation and enhancement of such habitat.

(3) The Secretary shall review other programs administered by the Department, and shall utilize such programs in furtherance of the conservation and enhancement of essential fish habitat identified under this Act. The Secretary shall assist federal agencies in carrying out their duties under this subsection.

(4) Each federal agency shall first consult with the Secretary with respect to any prospective action authorized, funded or carried out by such agency that may adversely affect any essential fish habitat identified under this Act.

(5) If the Secretary finds that an action authorized, funded or carried out by a federal agency would adversely affect essential fish habitat identified under this Act, the Secretary shall recommend to such agency measures that can be taken by such agency to conserve such habitat.

(6) If, after consultation with the Secretary, an agency does not adopt a recommendation of the secretary under paragraph (5), prior to undertaking the action it shall make a finding (together with a written statement of the basis for such finding) that adoption of such recommendation is inconsistent with other applicable law and that the action of the agency is consistent with the conservation of such habitat.



The
Institute
For
Fisheries
Resources

MARINE FISHERY HABITAT PROTECTION

A Report to the
United States Congress
and the
Secretary of Commerce

Prepared by

The Institute for Fisheries Resources
East Coast Fisheries Federation
Pacific Coast Federation of Fishermen's Associations

1 March 1994

SUMMARY

The nation's 65 billion dollar commercial and sport fisheries have been put at risk as a result of the continuing destruction of fish habitat in the nation's rivers, estuaries and coastal ecosystems. This destruction has led to billions of dollars in lost revenue to the nation, lost employment, lost food production, and lost recreational opportunities.

As habitats are effectively protected from inappropriate development and as degraded watersheds are restored, we can reverse the loss of anadromous fish and nearshore-dependent populations of marine fish and shellfish resources. Habitat protection by the National Marine Fisheries Service (NMFS), the Federal steward of the nation's living marine resources, can improve fishery habitat, including water quality. If such a program is vigorously pursued, we would expect at least a doubling of populations of anadromous fish and other nearshore-dependent marine fish and shellfish of the "lower 48" states. This could produce \$27 billion in annual economic output and more than 450,000 new jobs.

To accomplish this, Congress should:

Provide full funding for the staff and resource needs of NMFS to carry out its fish habitat protection mandate;

Strengthen NMFS' stewardship authority, in an amended Magnuson Fishery Conservation and Management Act, by giving it the power to modify actions that would damage important fishery habitats; and

Extend the Regional Fishery Management Councils' and NMFS' authority in the Magnuson Act to designate and protect important fish habitats.

The Secretary of Commerce should:

Require that NMFS provide strong national leadership for the protection of fish habitats by 1) immediately creating a National Habitat Protection Program, 2) placing the Regional project/policy review staff and the Science Centers' habitat research staff under the control of the Director of the National Habitat Protection Program, and 3) directing that NMFS treat the protection of stocks and the protection of habitats as the agency's primary and co-equal missions; and

Direct the leadership of the National Oceanic and Atmospheric Administration (NOAA) to provide real resource stewardship by focusing its various coastal environmental quality-related programs on supporting habitat protection objectives through their research, monitoring, synthesis, and management activities.

MARINE FISHERY HABITAT PROTECTION

According to the U.S. Congress: "The evidence of the decline in the environmental quality of our estuaries and coastal waters is accumulating steadily. The toll of nearly four centuries of human activity becomes more and more clear as our coastal productivity declines, as habitats disappear, and as our monitoring systems reveal other problems...The continuing damage to coastal resources from pollution, development, and natural forces raises serious doubts about the ability of our estuaries, bays, and near coastal waters to survive these stresses. If we fail to act and if current trends continue unabated, what is now a serious, widespread collection of problems may coalesce into a national crisis by early in the next century." (MMFC 1989)

Nation-wide, a large proportion of coastal marine species appear to have declined to vestiges of their former abundance. Hundreds of races of Pacific coast salmon are believed extinct (Nehlsen et al 1991). Thousands of fishing-related jobs and income have been lost, and fishing communities are being devastated because of reduced stocks due to both fishing pressure and habitat loss and degradation. It is important to understand that nearshore waters, including rivers and streams that drain to the coast, are essential nursery areas for about 75% of the entire U.S. commercial fish and shellfish landings (as recognized by the National Coastal Fish Habitat Symposium, Baltimore, MD, 1991), and for 81-89% of the marine recreational catch of the "lower 48" states (USDC 1992a, USDC 1992b). Degradation of these areas due to development, agriculture, and land use can destroy fishery populations harvested far offshore.

Nearshore-dependent fish and shellfish (and their supporting ecosystems) are valuable national assets. They contribute about \$46 billion per year to the U.S. economy, support more than 600,000 jobs, provide recreational pleasure for 17 million anglers, and provide the nation's healthiest source of food. U.S. commercial fishing supported total economic output (i.e., direct, indirect, and induced) estimated to be \$50 billion in 1991 (NMFS 1992a) and 700,000 jobs (from NMFS 1992b). Since nearshore-dependent fish and shellfish make up roughly 71% of the U.S. commercial landings by value (from Hinman and Safina 1992), they should account for roughly \$33 billion in annual economic output and 440,000 jobs. Moreover, marine recreational fishing produces \$15 billion per year in economic output and 206,000 jobs (Fedler and Nickum 1994).

The National Marine Fisheries Service (NMFS) has been the Federal steward of the nation's living marine resources since 1956. Its stewardship responsibility extends from the headwaters of drainage basins supporting migratory marine species to the edge of the U.S. Exclusive Economic Zone - 200 miles offshore. Federal agencies that construct projects or authorize projects by others (through permit, lease, or license), which affect "waters of the U.S." or adjacent wetlands, are required by the Fish and Wildlife Coordination Act to consult with the Federal and state fish and game agencies on the effects of these activities. NMFS is thus the "frontline" of the nation's defense of coastal ecosystem health through the protection of U.S. living marine resources.

NMFS' Director has spoken publicly on the importance of habitat protection, as follows: "My central message today is that the protection of fish and wildlife habitats is a national problem in critical need of attention...The assignment of endangered and threatened status to many species is symptomatic of the cumulative, ongoing nature of broad-based habitat deterioration...Habitat loss and degradation are the major factors contributing to endangerment and extinction...The war to conserve fish and wildlife habitats is being lost...Fish and wildlife agency habitat protection programs are in need of expansion and revitalization." (58th North American Wildlife and Natural Resources Conference, Washington, DC, 1993) "...over the long term [nearshore ocean and estuarine fishery habitat] loss is probably the greatest threat to marine fishery productivity throughout the United States...fisheries management will be moot if habitat loss and degradation destroys the productive potential and the quality of our living marine resources." (National Symposium on Coastal Fish Habitat, Baltimore, MD, 1991)

NATIONAL FISH AND WILDLIFE FOUNDATION

"The Foundation believes that an enormous impediment to successful habitat protection has been the lack of a unified national program...NMFS needs to: (1) establish a formal National Habitat Protection Program (involving both effect assessment and research components), (2) develop specific national and Regional strategies to guide the Habitat Program, and (3) set goals, objectives, and specific program and funding levels for all involved NMFS elements. Currently, Regional programs vary considerably and research is pursued largely independent of effect assessment needs... there is far too little coordination of research to meet the effect assessment information needs. Each regional management and research component should be working as a team to accomplish jointly determined activities to address the priority habitat issues of that region."

"The consultation process is one of NMFS' most effective mechanisms to protect habitat; its use has resulted in the cancellation or modification of thousands of habitat-damaging activities. Nonetheless, significantly more progress could be made if NMFS' recommendations were more binding (and if the agency had sufficient staff to fully participate in all significant potential development proposals)...The Foundation believes Congress should...consider measures to improve the accountability of other federal agencies to NMFS' trust resources."

The Foundation recommended that Congress increase NMFS' habitat staff by a total of 138 (from 260, currently) and by \$20 million (from \$13.7 million), saying "...without concerted action to protect and restore habitat, fisheries managers may find that depleted stocks do not rebuild despite reductions in over-fishing; habitat will be the limiting factor...Staffing is the primary impediment limiting the effectiveness of the Effect Assessment component of NMFS' national habitat protection program...Effectively dealing with all significant habitat issues would require a nationwide staff of approximately 300 biologists and support staff, compared to the 65 NMFS now has...NMFS has no base funding for any type of habitat research throughout the Gulf of Mexico and Caribbean, California, the Pacific

Islands, or the Great Lakes. Moreover, support for almost half of the Program's 300 scientists and their research activities is dependent annually upon competing for and securing funding from other agencies. In the case of NMFS' priority research on wetlands functions and organic contaminants' effects, 70 percent of funding comes from outside sources...The Foundation's recommendation is far less than the total funding that will ultimately be needed for habitat research." (NFWF 1992).

NATIONAL COASTAL FISH HABITAT SYMPOSIUM

"The increasing loss of fish habitat, to pollution, unwise development and other human activities, is the single largest long-term threat to the future viability of the marine fisheries of the United States...Protection of habitat is the cheapest investment the nation can make to sustain productive fisheries..." (Hinman and Safina 1992). Recommendations, later endorsed by the Regional Fishery Management Councils and the American Fisheries Society, included:

"Add tougher habitat provisions to fishery laws...NMFS should be given regulatory authority over projects that could severely damage fishery-supporting habitat...Congress must stand solidly behind agencies charged with stewardship for living resources so that they may effectively carry out the habitat protection laws Congress has enacted, by giving them the political and fiscal support they need to do their jobs...NMFS is the only federal agency whose habitat-related funding has not increased over the past decade. In terms of buying power, its funds have actually been cut in half while the need for NMFS' involvement has grown dramatically with increased coastal habitat degradation. Under-staffed and under-funded, NMFS is unable to fulfill its essential habitat conservation and stewardship mission. Roughly 10,000 development projects are proposed each year, potentially affecting well over 400,000 acres of important habitat. NMFS biologists must review an average of 200 projects each, making it impossible for the agency to adequately protect the public interest in habitats. Research, including the critical areas of wetland functions and contaminant effects, is similarly inadequately funded and staffed. Congress should give immediate consideration to appropriating the resources recommended by the National Fish and Wildlife Foundation."

"Habitat conservation must be elevated to the highest level within each department and agency, including...particularly the National Marine Fisheries Service...Create high level habitat program leadership in NMFS/NOAA, ...elevated in stature to provide effective program leadership, by establishing...an Office of Habitat Conservation. Its Director must have full authority over the conduct of the agency's National Habitat Conservation Program, including both research and management components throughout the agency's field structure. Moreover, NOAA should create a Habitat Program Director, reporting to the NOAA Administrator, to provide policy direction and coordinate NOAA's many habitat-related programs." (Hinman and Safina 1992)

INSPECTOR GENERAL, DEPARTMENT OF COMMERCE

"There is growing concern about the future economic prospects of industries that depend on abundant fish and shellfish stocks. Many of the past assessments of declining stocks have cited overharvesting as the primary reason, but we found that there is growing concern within NMFS and the fishing industry that overfishing is being overshadowed by an even more significant threat: loss of fish habitat. These views do not diminish the importance of properly managing the number of fish caught each year, but emphasize that many fish stocks are now facing a double jeopardy, not only on the open seas where they are overharvested but also along the shore where their breeding areas are disappearing."

"Since the loss of marine habitat is perhaps the greatest long-term threat to the productivity of U.S. fisheries, we believe that a strong habitat protection program - integrated with habitat restoration and fishery management - is essential for the health of our living marine resources and the economic survival of the U.S. fishing industry...If the Department is to play a major role in protecting the habitats of marine resources and in reversing the current trends of declining fish populations, a national policy, along with dedicated NOAA leadership, needs to be clearly articulated...NOAA's leadership must be more involved in marine fisheries issues, ...and NMFS' leadership must provide stronger national direction." Recommendations included: seek stronger legislative authority, determine the appropriate staffing and resource levels needed to fulfill existing mandates, and give NMFS' national habitat program director the authority to oversee regional program priorities and control of program funds. (USDC 1994)

PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS

"Our biggest disappointment with Magnuson [Magnuson Fishery Conservation and Management Act], and a major flaw in the Act, has been its lack of jurisdiction over fish habitat which is critical to the health of many of the nation's marine and anadromous fishery resources...it is time for more than lip service about conserving and managing our nation's fisheries. Under Magnuson, the regional councils and Commerce were empowered to regulate and phase-out foreign fishing; they were empowered to regulate domestic fishermen. But they have been powerless to deal with the loss of fish habitat. If this nation truly seeks to conserve and manage its fish and shellfish resources -- and the livelihoods of fishermen who depend upon its ability to do so -- then fisheries jurisdiction must be extended to fish habitat...Extending fishery jurisdiction to fish habitat should be neither onerous, nor burdensome,nor costly. Providing the regional councils, acting through NMFS, with the same type of consultative authority presently afforded agencies charged with species recovery under Section 7 of the Endangered Species Act, would be an important first step in protecting fish habitat and making the Magnuson Act an effective tool for fishery conservation and management."

CONCLUSIONS

Initiating a National Habitat Protection Program having adequate staff, funding, and legislative authority would not only reduce additional losses of habitat, fishery resources, income, jobs, seafood, and recreational opportunities; it would generate major economic and social benefits to the nation. Under committed leadership, vigorous operation of such a program would improve both habitat and water quality thus increasing marine fishery populations. In fact, we believe that nearshore-dependent populations of at least the lower 48 states could be doubled as a result of effective habitat protection. By our estimates, this would produce: \$1 billion per year to the men and women of our commercial fishing fleets, \$12 billion in economic output from related industries, and more than 250,000 new jobs; and nearly a doubling of recreational fishing that generates \$15 billion in economic output and 206,000 jobs (Fedler and Nickum 1994). Full funding of a National Habitat Protection Program is projected to cost \$60 million per year (NFWF 1992). Over the long term, a sound economy depends on maintaining a sound environment. Therefore, protecting our aquatic environment is essential to the nation's well-being.

RECOMMENDATIONS

The nation's 65 billion dollar commercial and sport fisheries have been put at risk as a result of the continuing destruction of fish habitat in the nation's rivers, estuaries and coastal ecosystems. This destruction has led to billions of dollars in lost revenue to the nation, lost employment, lost food production, and lost recreational opportunities. The Congress and the Administration need to make a serious commitment to the protection of those habitats and ecosystems that determine the future productivity of fish and shellfish resources of the U.S. If this commitment is made, at least a doubling of anadromous fish other nearshore-dependent marine fish and shellfish populations of the "lower 48" states can be expected. This could produce \$27 billion in annual economic output and more than 450,000 new jobs.

To accomplish this, Congress should:

- Provide full funding for the staff and resource needs of NMFS to carry out its fish habitat protection mandate;

- Strengthen NMFS' stewardship authority, in an amended Magnuson Fishery Conservation and Management Act, by giving it the power to modify actions that would damage important fishery habitats; and

- Extend the Regional Fishery Management Councils' and NMFS' authority in the Magnuson Act to designate and protect important fish habitats.

The Secretary of Commerce should:

Require that NMFS provide strong national leadership for the protection of fish habitats by 1) immediately creating a National Habitat Protection Program, 2) placing the Regional project/policy review staff and the Science Centers' habitat research staff under the control of the Director of the National Habitat Protection Program, and 3) directing that NMFS treat the protection of stocks and the protection of habitats as the agency's primary and co-equal missions; and

Direct the leadership of NOAA to provide real resource stewardship by focusing its various coastal environmental quality-related programs on supporting habitat protection objectives through their research, monitoring, synthesis, and management activities.

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Senator STEVENS. Thank you very much. Slade, do you have a last comment?

Senator GORTON. This has been extremely productive, and I know everyone thanks you, Ted, for coming to Seattle.

Senator STEVENS. I am glad to come and I am pleased everybody has shown up. I hear, however, some discordant notes and must tell you I feel either we get this bill this year or we don't have a shot at it until 1997. You do not pass bills like these in election years. There are too many considerations involved. There are some discordant notes here, and I would urge you to take a look at our bill again.

I do not think it does what a lot of people here today say it does. It does not stop the halibut/sablefish ITQ plan. That is in place. It may require some changes, depending on how the ITQ guidelines are adopted; but those changes would come about any way, in my opinion. It does not stop the plan. It does not put a moratorium on it, but it does really mean that we are going to use that plan as a test bed.

It is a national test bed that has been announced by the administration and by Congress, too. We either get this bill in place though, or by the time we get around it, we will be dealing with a chain of circumstances in the North Pacific, and we may well be dealing with some of the situations that are taking place in New England.

We do not have any overutilized species in the North Pacific right now. We will have before long if we keep up this race for the fish and excess gear keeps coming in to our waters to the extent that it is coming in now. The increase in the number of vessels has been documented here two or three times today.

I urge you all to take a look at the situation. If we do not get this bill by the end of the session you will not see a bill until August 1997 at the earliest.

Now, those of you who have criticized the bill, however, have said you want a bill and I do not think a mere extension of Magnuson Act for another 2 years would be much of an answer to keep us from being on the verge of New England as far as fisheries are concerned by 1997. I urge your cooperation and thank you very much for coming.

[Whereupon, at 1:20 p.m., the hearing was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

DAVE BENSON / ROY BROWN
FOR IDN
RESPONSE TO QUESTION REGARDING ITQs AND BYCATCH

INDIVIDUAL ACCOUNTABILITY REDUCES BYCATCH

The overall key benefit of an ITQ program is that it establishes a system of individual vessel accountability for bycatch.

Under the current open access system, essentially two quotas are set for the entire fishery--one for the target species and one each for the bycatch species. A season is set, and everyone races to catch the target species quota as quickly as possible--before the next guy does. While the fleet is busy catching target species, of course, the total catch of a bycatch species is being scored against the overall bycatch quota for the fishery. Once the bycatch quota for a species is reached, the entire fishery is shut down, regardless if one vessel did better on bycatch than another and regardless of whether the full target species quota was caught. In other words, there is no incentive for individual boats to take special steps to minimize bycatch because everyone wins or loses together.

In strong contrast, within an ITQ managed fishery, each individual vessel would hold individual target and bycatch species quotas. Once a vessel's bycatch quota is reached, then only that vessel--not the fleet--would be shut down. The penalty, of course, is not being unable to fully harvest the target species quota share for which that vessel may have paid a great price. The only remedy--to purchase more bycatch quota--would also be expensive and render the vessel's catch less cost competitive in the market. Thus, each vessel has a very strong economic incentive to be individually accountable for its bycatch so that it can fully harvest the target species quota.

From a practical, operational standpoint, individual accountability for bycatch under an ITQ system creates the strong incentive and opportunity for vessels to **slow the pace** of the fishery in order to (1) **avoid the harvest of bycatch it cannot utilize**, (2) **reduce the mortality of fish that cannot be utilized as well as prohibited species required by law to be discarded**, and (3) **increase the utilization of the catch (other than prohibited species)**.

(1) AVOID THE BYCATCH

Bycatch species, such as king crab, halibut or salmon, for example, are often encountered in distinct concentrations in distinct areas and seasons, while they can be entirely absent in other areas and seasons. A negative consequence of the open access race to catch target species is that no one has the time to avoid those concentrations of bycatch species

Vessels cannot take the time to move around the vast fishing grounds to find areas of low bycatch concentrations because that time directly diminishes fishing time-- fishing time that a competitor boat will be using to catch more of the overall target species quota. Similarly, vessels cannot delay their fishing until some later date in the season when concentrations of bycatch species may dissipate and allow for "cleaner" fishing. The consequence of such highly competitive, "pulse fishing" is to discourage exploratory fishing and exacerbate localized depletion.

Again, because we do not have the time to move or delay our fishing within the season, the bycatch quota is frequently reached before the target species quota is reached. Thus, the opportunity to harvest the full allowable quota of a target species is lost for the year at great cost to the industry. This, by the way, is another form of waste we don't hear much about--wasting the sustainable yield of target species.

Conversely, an ITQ system that incorporates individual quota shares for both target and bycatch species allows all participants to **slow the pace** of the fishery--allowing them to move away from and **avoid concentrations of bycatch** species or to wait until such concentrations dissipate during the season. In any case, the result is to **reduce the rate of bycatch** allowing for the total bycatch quota to be reduced. It will also provide for the full harvest of the target species quota.

(2) REDUCE MORTALITY OF BYCATCH

Slowing the pace under an ITQ fishery also allows a vessel to exercise a number of options with regard to fishing techniques--such as reducing the amount of fish in the cod end through slower and shorter tows, experimenting with gear modifications, and changing net mesh sizes-- all of which can substantially **reduce the mortality of bycatch**.

(3) INCREASE UTILIZATION OF BYCATCH

In the valuable roe fisheries, for example-- such as for pollock and rocksole-- bycatch utilization is a particular concern. In these fisheries the season is constrained not just by how fast the quota is reached, but also by the biological availability of the roe. In the rocksole fishery, for example, quality roe fish are available for a period of about 10 weeks.

However, under open access the rocksole quota is currently reached in about 4 to 5 weeks, half the time the roe fish are available. Thus, vessels are forced to financially maximize their operations by committing their entire processing capacity to handling only the maximum value product-- those rocksole with roe. All other less valuable fish including small male rocksole, Cod and Pollock, end up discarded (except in the case of Tysons which brings in the Cod bycatch to Kodiak).

Under an ITQ system, however, the same quota of roe rocksole fishery could be taken over a 10 week period-- more than twice the current fishery. The result of **slowing the pace** to a ten week season is that vessels would have twice the amount of time to process the same amount of rocksole. More importantly, what this also means is that they would have the other half of their time to process and **utilize an equivalent amount of the bycatch** that is now currently discarded.

TESTIMONY OF
ROBERT GUDMUNDSON, FISHERIES MANAGER,
NORTH PACIFIC FISHING INC.,
AND PATHFINDER, USA, INC.
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
MARCH 18, 1995
THE SUSTAINABLE FISHERIES ACT

North Pacific Fishing and Pathfinder USA operate the catcher/processor vessels AMERICAN NO. 1 and F/V PATHFINDER which participate in the groundfish fisheries of the North Pacific. One of these vessels is a trawler; the other is a longliner.

While we are concerned with many of the aspects of S. 39, we wish to confine our comments here to two issues: 1) the proposed National Standard regarding fishery dependent communities, and 2) the proposed Magnuson Act provision to measure actual weight and numbers of fish harvested, or total catch measurement, rather than estimated harvest. (S. 39, page 71.)

Fishery Dependent Communities:

The National Standards, which should be the heart of the Magnuson Act, have devolved into advisory status. The proposed new National Standard is ambiguous but it appears to allow preference to some citizens and communities over others. If a preference for fishery dependent communities is enacted, Congress should define fishery dependent communities to include:

"all villages, districts, towns, municipalities, regions, or distinct areas which are dependent on fishery activity regardless of geographic location, or the race, color, or creed of the residents of the region. A district or region may be fishery dependent regardless of the economic activity of surrounding communities."

We are concerned that a district such as Ballard, Washington, which is surrounded by a large municipality, could be considered not fishery dependent regardless of its long history in the Pacific Ocean Fisheries.

Any new National Standard should strengthen National Standard 4's prohibition of discrimination between residents of different states.

Total Catch Measurement

This issue was brought up by the North Pacific Fishery Management Council in September of 1994 under the name *Total Weight Measurement*. The Council chose to only partially

North Pacific Fishing, Inc./Pathfinder USA, Inc., page 2

implement the proposal. We urge Congress not to mandate total weight measurement for the same reasons it was rejected by the North Pacific Council.

The following are specific concerns and comments that we raised before the Council based on the National Marine Fisheries Service Environmental Impact/Regulatory Impact Review (EA/RIR) prepared for council consideration of the total weight measurement issue:

1. The draft analysis prepared by the National Marine Fisheries Service (NMFS) stated that, "NMFS cannot quantify the accuracy of current catch estimates..." In the absence of an ability to assess the accuracy of the current system, there is no clear reason to put a new system into place without reviewing studies of the accuracy of the current system and comparing it to a proposed replacement.

The NMFS analysis stated that NMFS has several ongoing projects to do exactly that, including:

a) Testing motion-compensated platform scales as a replacement for the current hanging scales used by observers, and

b) a comparison of codend (net) volume estimates, volumetric estimates, and in-line scale weights on the one catcher/processor that has all three methods of sampling available to it (Draft EA/RIR, page 22).

While these studies may not answer every concern NMFS raised, the results would certainly provide the Congress and Councils with more concrete data with which to analyze total weight measurement proposals before mandating them by regulation or legislation.

2. The NMFS analysis also noted that there was difficulty in achieving total weight measurement accuracy standards in both shoreside and at-sea processing facilities. While the analysis reported that Alaskan State weights and measures legislation mandated a 0.10 percent accuracy standard for harvest weight scales at shore plants (EA/RIR, page 19), this requirement is not practically enforced. The analysis stated that while certified scales are required to be used by shoreside processing plants:

". . . due to limited resources . . . only scales in major ports are certified. Many scales in processing plants have never been inspected or certified . . . There are few shoreplants in Alaska in which all scales pass annual performance tests . . . independent, licensed, and bonded repair services do not exist in Alaska." (EA/RIR, page 9)

The NMFS analysis indicated the difficulties that shore-based processing plants experience in maintaining accurate scales. Since many plants do not possess properly inspected scales, it is difficult to conclude that catcher/processor and delivery vessels will have more

North Pacific Fishing, Inc./Pathfinder USA, Inc., page 3

success in meeting new scale requirements.

3. While the council considered increased observer coverage to provide better monitoring of catch, there was no serious analysis of the cost of providing observer coverage at all shore plants to monitor 100% of offloads using the existing scales. By mandating total weight or number measurement, Congress will need to consider mandating 100% observer coverage of all harvest on all vessels and at all shore plants to give validity to the measurement. Currently the Act precludes such extensive coverage.

4. Another point of concern is the portion of the analysis that stated:

"Requiring hook-and-line vessels to bring all fish, except halibut, onboard the vessel to be weighed prior to discard would increase the mortality rate for any bycatch . . ." (EA/RIR page iv.)

New policies that increase the mortality of fish by requiring that they be killed in order to assure their accurate weight assessment could be counterproductive to the conservation and management of the resource. This would be true for both trawl and longline bycatch.

5. The analysis pointed out that headed and gutted product (H&G) vessels have higher product recovery rates than surimi vessels, causing the catch weight estimates on H&G vessels to be much more accurate than those on surimi vessels. The Council therefore understandably decided to require in-line scales only on surimi vessels and not H&G vessels. This decision was particularly important since the analysis concludes that the cost of modifying vessels to handle in-line scales would be most expensive on vessels that are already crowded (Draft EA/RIR, page 37). Congress should be cautious about overriding this decision.

6. NMFS biologists have indicated that improved accuracy is not necessary for successful management of the fisheries. At the most, a total weight measurement system would eliminate an unknown but "controllable source of error." (North Pacific Fishery Management Council, Scientific and Statistical Committee minutes, April 1994, page 5.) This error is however less than the error in stock assessments themselves.

While a new system of measurement may be necessary in order to implement individual fishing quotas, it seems clear that this question of applying greater precision to catch estimates is demanded in an analysis of the costs, benefits, and implementation of an individual quota system, not as a separate legislated component of all fishery management plans.

7. The NMFS Alaska Region already has what is probably the most comprehensive and accurate system for monitoring fisheries harvest in the world. Given the uncertainty of improved accuracy that can be achieved by changing from the current harvest measurement system to a new system, and the lack of study review that assesses this uncertainty, the Congress does not have the data available on which to base a cost benefit

North Pacific Fishing, Inc./Pathfinder USA, Inc., page 4

analysis of changing the current catch weight measurement system. Congress therefore has no information with which to assess the value of a new system. We recommend that prior to amending the Magnuson Act to require a total weight measurement, the Congress ask the following questions:

- a) What specifically is the accuracy of the current system compared to the accuracy of the proposed system(s)?
- b) Given that commercial catcher vessels, which are not equipped with scales to measure total harvest weight, are used to survey the stocks, what accuracy exists in the total stock assessment from a lack of scales? How does this impact the accuracy of NMFS harvest calculations?
- c) If a new system is put into place, how much will it improve stock assessment and management? Is it worth the cost?
- d) What would the economic or environmental gain or loss to the nation be from implementing a scale system for total weight measurement?

As members of the industry we urge Congress to utilize NMFS resources to review the accuracy of the proposed measurement requirements before mandating the industry's expenditure of tens of millions of dollars or more in order to eliminate an unknown problem.

Thank you for your consideration of these issues.



Robert Gudmundson
Manager, Fisheries Management

FINAL

STATEMENT OF THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
U.S. SENATE

FIELD HEARING
SEATTLE, WASHINGTON
MARCH 18, 1995

The National Oceanic and Atmospheric Administration (NOAA) appreciates the opportunity to present the views of the Department of Commerce (Department) on reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and S. 39, the Sustainable Fisheries Act.

S. 39 includes major steps necessary in our efforts to build sustainable fisheries. The Senate bill contains amendments to the Magnuson Act that will improve the stewardship of our Nation's marine resources.

NOAA believes that we must forge strong, even ironclad, stewardship principles for inclusion in the Magnuson Act to ensure we not only avoid future disasters but also reap the maximum benefits, consistent with conservation of the resource, from the fisheries for the Nation. By wisely managing fishery resources for the greatest long-term benefits possible, we will increase the Nation's wealth and, in turn, the quality of life

for members of the recreational and commercial fishing industries and dependent communities. Additional benefits of increased jobs, increased economic activity and greater supplies of safe, wholesome seafood will also be realized.

It is our belief that NOAA should seek to achieve the goal of effective fisheries management by concentrating on two areas:

(1) refocusing on developing more and better scientific information to guide policy development and fishery management policies and planning, rather than letting controversy and uncertainty drive decision-making, and (2) undertaking an aggressive approach to stewardship of our trustee resources to rebuild overfished stocks and maintain them at maximum sustainable levels, thereby avoiding the enormous economic and social consequences that accompany attempts to repair damage to resources after it occurs. This means being conservative in the management of fisheries today to assure sustainable levels of harvests in the future. It also means the use of management approaches that discourage both wasteful fishing practices and the investment in more fishing vessels than are needed to harvest the available fish.

The first area of action can largely be accomplished through our current authority. We have improved, and will continue to improve, our scientific data collection activities, resource surveys, biological studies, analyses and modeling of fish

stocks, and advanced fishery predictions. Our proposed Fiscal Year 1996 budget includes an increase of more than \$23 million for data collection programs, making them a top priority. Progress in the second area is critical and will require amendment of the Magnuson Act, coupled with a refocusing of in-house efforts, to achieve our goal of sustainable fisheries.

In order to achieve this second area of rebuilding and maintaining stocks at maximum sustainable levels, we need the help of Congress through amendment of the Magnuson Act. Many of the provisions in S. 39 are major steps in the effort to ensure effective stewardship. Foremost, we support strong attention to conservation issues. We enthusiastically support measures that will result in the termination or prevention of overfishing. Requiring action by a Regional Fishery Management Council within one year of notification that a fishery is in an overfished condition is a significant measure. Inclusion of provisions for preventing overfishing and rebuilding programs that emphasize maintaining stocks at, or restoring stocks to, their maximum sustainable yield on a continuing basis is critical to ensuring the long-term productivity of fishery resources. We cannot afford to continue the current practices permitted under the Magnuson Act, by which stocks are legally allowed to be fished down to, and managed at, the point that overfishing occurs. We can do better. The Nation deserves better.

The Department supports strongly the concepts of identifying essential fish habitat and providing for improved consultations with other agencies. Regulatory measures alone will not restore our fisheries. Measures to identify and protect essential fish habitats will provide the long-term foundation necessary to sustain viable commercial and recreational fishing industries. Any progress we make in addressing the issues of overfishing and rebuilding depleted stocks will be short-lived if we do not ensure adequate fish habitat. Given the importance of this issue, we are pleased to note that representatives of the conservation community and fishing industry have been working together with NMFS towards enhancing habitat conservation as part of this reauthorization. We support these efforts.

We also support the provisions in the bill that deal with bycatch. Much like habitat degradation, this is a very serious threat to achieving full benefits from our living marine resources. Large bycatches of undersized and non-target species have significantly reduced the populations of many of our marine fish stocks and other marine organisms. Emphasis on bycatch through a mandatory requirement for FMPs to contain information on bycatch is well taken and essential in our view. In addition to the provisions of S. 39, we recommend that a new National Standard be included to require all fishery management plans to minimize bycatch.

In addition to these amendments, we need to, and will, seek innovative ways to reduce bycatch. However, measures such as incentives and harvest preferences must be designed carefully to prevent "due process" problems. For example, we do not believe that such programs could prohibit some fishermen from receiving allocations of, or access to, fish stocks because of their individual bycatch levels without also providing for some sort of administrative hearing in advance of an agency decision.

While the Department supports many of the provisions in S. 39, it is opposed to section 107(h) that prohibits the Secretary from issuing permits to authorize the catching or harvesting of Atlantic mackerel or herring by foreign vessels before December 1, 1999. The provision raises concerns from the perspective of our international obligations. Additionally, the provision may prevent establishment of joint ventures between the U.S. fishermen and other countries for these species, is likely to affect negatively our Governing International Fisheries Agreement (GIFA) relationships, and may affect current fishing agreements between the U.S. and other countries regarding U.S. fishing in foreign waters.

NOAA supports the concepts contained in S. 39 of transitioning to sustainable fisheries and fisheries disaster relief. These are complex issues but we are prepared to work with the Committee to develop meaningful and lasting solutions.

NOAA strongly supports the inclusion of user fees associated with individual harvest share programs as provided for in S. 39. Establishment of an annual fee on the value of fish allocated under individual harvest share programs, such as individual transferable quota programs (ITQ), would recover costs associated with this specific form of management. Effective implementation of ITQ programs requires additional strict enforcement and other measures to ensure that the recipients of ITQs receive the benefits that are expected to accrue from such programs. Since such benefits will accrue directly to the holders of ITQs, to the exclusion of others, it is more equitable to fund such measures from fees paid by the beneficiaries of the program rather than from the general receipts of the Treasury to which all taxpayers contribute. Costs associated with administering ITQs are substantial -- \$3.5 million per year are estimated for the Alaska halibut-sablefish program alone -- and should not be borne solely by appropriated funds.

As part of its Fiscal Year 1996 budget request, the Department is asking for authority to collect a fee on the value of the fish authorized to be harvested under ITQ programs, similar to that in S. 39. We estimate that such a user fee would generate approximately \$10 million starting in Fiscal Year 1996. It is important that these fees be dedicated to the management and conservation of marine fisheries, with a large portion of the funds going back to the region from which they were derived.

Specifically, the Department suggests that such funds be used for programs important to, and directly benefiting, the fishing industry, including: collecting, processing, and analyzing scientific, social, and economic information; placing observers onboard domestic vessels; improving enforcement; and educating resource users.

The Department supports inclusion of strong provisions that would address the appearance or possibility of a conflict of interest on the regional councils. While the provision in S. 39 is a step in the right direction, we would like to work with the Committee to develop appropriate language to strengthen this provision.

We urge the inclusion of a nationwide data collection program similar to that proposed in last year's Administration bill, in addition to the provision for a commercial fishing vessel registration system contained in the bill. Current authority is limited to the voluntary submission of data to individual fishery management plan recordkeeping and reporting provisions, or to individual fishery data collection programs in advance of a plan. To improve the management of marine fisheries, there is a strong need to gather data in a consistent form and manner across the Nation to provide an underpinning for the various analyses of impacts that the Magnuson Act and other applicable law require. The intent with such a program is not to increase the reporting burden on fishermen; rather, it is to simplify and reduce it.

One significant benefit of a nationwide program to fishermen would be to prevent requirements for various logbooks that are often redundant, complex, and duplicative of the same data in different formats. This would allow the Secretary to integrate the current data collection programs of NMFS, other Federal agencies, the states, and the fisheries commissions into a comprehensive and consistent nationwide data collection and management system.

Thank you.

North Pacific Fishery Management Council



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NORTH PACIFIC FISHERIES ISSUES — 1995

We in Congress consider the fishery management council as a pivotal mechanism in our national fisheries management program . . . you are to be the decision makers, you are the policy planners, you must evaluate past performance and make changes if necessary for the better, but you alone will be responsible to the fishermen and to the nation, all people, all of us, for the proper management of these fisheries resources . . .

— Senator Warren Magnuson¹

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

The North Pacific Fishery Management Council is one of eight regional councils established by the Magnuson Fishery Conservation and Management Act in 1976 to oversee management of the nation's fisheries. With jurisdiction over the 900,000 square mile Exclusive Economic Zone off Alaska, the Council has primary responsibility for groundfish management in the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI), including cod, pollock, flatfish, mackerel, sablefish, and rockfish species harvested mainly by trawlers, hook and line longliners, and pot fishermen. The Council also makes allocative and limited entry decisions for halibut, though the U.S. - Canada International Pacific Halibut Commission (IPHC) is responsible for conservation of halibut. Other large Alaska fisheries such as salmon, crab, and herring are managed primarily by the State of Alaska.

The Council has eleven voting members, six from Alaska, three from Washington, one from Oregon, and a federal representative, the Alaska Regional Director of NMFS. The non-federal voting members represent state fisheries agencies, industry, fishing communities, and academia. The Council also has four non-voting members representing the U.S. Coast Guard, U.S. Fish and Wildlife Service, the Pacific States Marine Fisheries Commission, and the U.S. Department of State. The Council meets five to six times each year, four times in communities around Alaska, and once in Washington or Oregon. The Council's staff of eleven resides in Anchorage, Alaska. The Council receives advice each meeting from its twenty-two member Advisory Panel (AP) representing user groups, environmentalists, and consumer groups, and from its twelve-member Scientific and Statistical Committee (SSC) of highly respected scientists who review all information brought to the Council.

The decisions of each Council with respect to a fishery management plan are, therefore, subject to a very limited review by the Secretary. The fact that the Secretary would have reached a different conclusion on how to manage a fishery does not justify the Secretary in substituting his judgment for that of the Council and disapproving the plan. The Councils, not the Secretary, are to manage fisheries within their respective areas.²

Each Council decision is made by recorded vote in public forum after multiple opportunities for public comment. Final decisions are then referred to the Secretary for a second review, public comment, and final approval. Decisions must pass a variety of tests including conformity with the Act, the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and other applicable law including executive orders that require cost-benefit analyses of any proposed regulatory change. Regulatory changes can take up to a year or longer to implement, particularly those that are complex and contentious.

¹ Comments at the first national conference of regional fishery management councils in September 1976, Arlington, Virginia.

² Report No. 97-438, Oversight Report on the Magnuson Fishery Conservation and Management Act of 1976. By the Committee on Merchant Marine and Fisheries. March 2, 1982.

SUSTAINABLE FISHERIES — PRECAUTIONARY MANAGEMENT

Annual North Pacific groundfish harvests have been sustained in the 1.3 mmt - 2.0 mmt range (3 - 4.5 billion pounds) for the past 25 years, and could have been higher if not for prohibited species - related closures and the conservation-oriented harvest cap on Bering Sea and Aleutians fisheries. For 1995, the biologically safe yield from the fisheries is about 7.3 billion pounds based on the best scientific information.

Five basic principles have guided the Council's precautionary management of North Pacific groundfish:

- peer-reviewed scientific advice
- defined overfishing levels
- conservative harvest levels
- comprehensive observer coverage
- complete catch reporting

The Council strictly follows scientific advice in setting annual harvest limits. All scientific recommendations of its plan teams are peer reviewed by the Council's Scientific and Statistical Committee (SSC). An acceptable biological catch limit (ABC), or biologically safe harvest limit, is set for each species each year. For all 215 ABC decisions made in 1987-1994, the Council's ABC exceeded the SSC's recommendation only once when the ABC was set halfway between the SSC and Plan Team estimates. Never has the Council set a harvest limit or total allowable catch (TAC) that exceeded ABC.

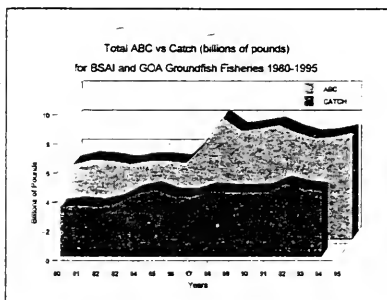
Overfishing levels are defined for each species. A recent independent review of overfishing definitions nationwide concluded that the 23 groundfish stocks off Alaska were not over- or underfished.¹ The definitions were considered conservative for 20 of the 23 stocks, including all major species in the Bering Sea and Aleutians, i.e., recruitment would not decline until catch is well beyond the overfishing threshold. Three stocks—sablefish, cod and pollock in the GOA—have neutral overfishing definitions, i.e., that recruitment would not decline until the threshold is crossed. No definition was considered risky. The SSC continues to review the definitions.

Harvest limits are conservative. The 2-million metric ton cap for Bering Sea and Aleutian Islands groundfish is a good example. The estimated allowable biological catch for 1995 is 2.8 million mt. Most groundfish stocks, particularly flatfish stocks, are being underfished now because of the cap. Removing the cap could cause additional bycatch of halibut and crab, and could impact Steller sea lions. To the industry's credit, there have been no recent efforts to raise the cap despite overcapitalization. The U.S. General Accounting Office investigated the Council in 1990 for keeping the cap, but it was maintained despite such pressures. According to the National Marine Fisheries Service, no Alaska groundfish stocks are considered overutilized.

¹ Scientific Review of Definitions of Overfishing in U.S. Fishery Management Plans. 1994. Prepared for NMFS. Andrew Rosenberg (Convener).

Observer coverage is comprehensive. As explained on page 4, the groundfish and crab observer programs are the most comprehensive in the U.S. and the only programs under the Magnuson Act that collect fees for other than administering annual fishing permits.

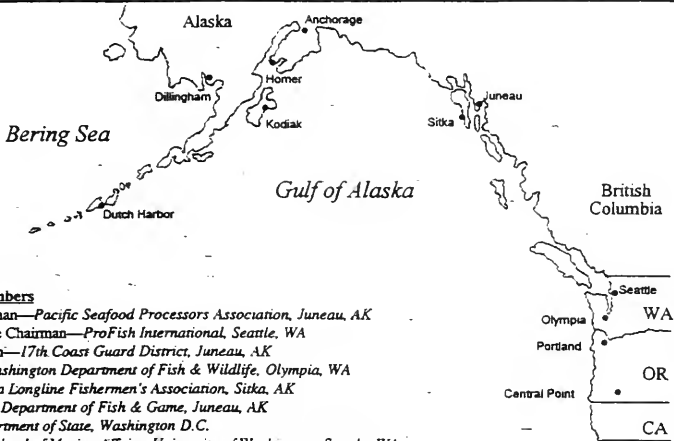
Monitoring of all catch and discards is the fifth essential to precautionary management. Off Alaska catch is reported by the vessels and verified by observers. The directed fishery on a species is stopped when its harvest (including the amount discarded) approaches the annual quota. Normally, it is stopped early enough to leave sufficient amounts to cover bycatch in directed fisheries on other target species. Retention of a species is prohibited altogether when its total catch (in directed or bycatch fisheries) equals the annual quota. Growing fleet capacity is kept in check by shorter seasons.



HALIBUT AND SABLEFISH IFQs

After years of study, debate, and extensive testimony, the Council in December 1991 approved a sablefish and halibut limited entry program for the fixed gear fleet. The centerpiece of the program is the individual fishing quota (IFQ) wherein each fisherman receives a quota based on his past history. The system includes a community development quota program wherein catch quota is set aside for disadvantaged communities in the Bering Sea/Aleutians area, much like with pollock CDQs.

It has taken the past two years for the rule to be approved and the administrative machinery established. A new division called the Restricted Access Management (RAM) Division was created within the NMFS Alaska Regional Office in Juneau. RAM has processed 5,900 applications for halibut shares, and 1,700 applications for sablefish shares. The fishery, under the new system, is scheduled to begin March 15, 1995. It has survived one court challenge in U.S. District Court. That finding is being appealed.



NPFMC Council Members

Richard Lauber, Chairman—Pacific Seafood Processors Association, Juneau, AK
 Dr. Wally Pereyra, Vice Chairman—ProfFish International, Seattle, WA
 Capt. William Anderson—17th Coast Guard District, Juneau, AK
 Dr. Morris Barker—Washington Department of Fish & Wildlife, Olympia, WA
 Linda Behnken—Alaska Longline Fishermen's Association, Sitka, AK
 David Benton—Alaska Department of Fish & Game, Juneau, AK
 William Dilday—Department of State, Washington D.C.
 Dr. David Fluharty—School of Marine Affairs, University of Washington, Seattle, WA
 Dr. David Hanson—Pacific States Marine Fisheries Commission, OR
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 Robert Mace—Oregon Department of Fish & Wildlife, Central Point, OR
 Steve Pennoyer—Regional Director NMFS, Juneau, AK
 Steve Rideout—U.S. Fish & Wildlife Service, Anchorage, AK
 Robin Samuelsen—Bristol Bay Economic Development Corporation, Dillingham, AK
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 Bruce Cotton, Lexington, KY
 Dan Falvey, Sitka, AK
 David Fraser, Port Townsend, WA
 Arne Fuglvog, Petersburg, AK
 Scott Highleyman, Anchorage, AK
 Spike Jones, Sealrock, OR
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 Pete Maloney, Dutch Harbor, AK
 Hazel Nelson, Anchorage, AK
 Doug Ogden, Anchorage, AK
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 John Roos, Seattle, WA
 John Sevier, Kodiak, AK
 Harold Sparck, Bethel, AK
 Mick Stevens, Seattle, WA
 Beth Stewart, Juneau, AK
 Robert Wurm, Kodiak, AK
 Gary Westman, Blaine, WA
 Lyle Yeck, Newport, OR

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 Dr. Susan Hills, University of Alaska - Fairbanks, AK
 Dr. Doug Larson, University of California Davis - Davis, CA
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 Dr. Marc Miller, University of Washington - Seattle, WA
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 Dr. Albert Tyler, University of Alaska - Fairbanks, AK
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COMPREHENSIVE OBSERVERS FOR ALASKA FISHERIES

Alaska's groundfish fisheries have one of the most ambitious observer programs in the United States as a result of a crisis in observer coverage in the mid- to late 1980s when foreign fisheries, extensively observed, gave way to Americanized fisheries that had little coverage (see History Highlights at right). The Council took action in 1989 to require, beginning in 1990, 100% observer coverage on vessels over 125 ft long, and 30% coverage on vessels between 60 and 125 ft long, and on certain shore-based processing plants. The Council required each vessel and processor needing an observer to pay through an independent contractor for that observer. This program will be replaced partially in 1995 and fully in 1996 by an observer fee program.

The observer fee program has its roots in the late 1980s when the Council recognized the need to spread the costs of observers out over all fisheries that would benefit from such coverage. For example, the halibut fisheries benefit through controls on bycatch of halibut in the groundfish fisheries which are better monitored through onboard observers. Therefore, the Council requested Congress to authorize it to charge fees to the fishermen and processors to cover the cost of observers, rather than having only the groundfish fishermen bear the entire cost of the program. Until then, the Magnuson Act did not allow any fees to be collected in excess of the administrative costs of providing a fishing permit. Congress approved the authorization in 1990, and by 1993, the Council had developed and approved a fee program to collect up to 2% of the ex-vessel value of the groundfish, crab and halibut fisheries to support observers. The new system will maintain the same levels of coverage under the earlier industry direct-pay program, and will overlap with that program in 1995. It will be fully operational in 1996.

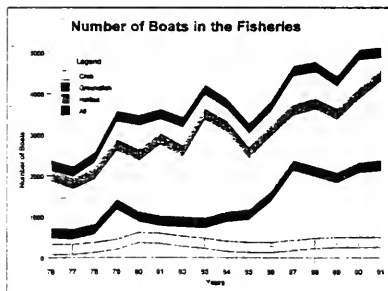
THE LONG PATH TO COMPREHENSIVE RATIONALIZATION

Overcapitalization is very much in the news these days, not just with North Pacific fisheries, but on both coasts of the U.S., and around the world. Recognizing there is a problem of too many fishermen chasing too few fish was the easy part. Developing a fair and equitable solution, acceptable to industry, which is a well documented key to success, is a long road to travel. The North Pacific Council has been examining approaches to limited entry ever since the early 1980s when it proposed a moratorium for the halibut hook and line fishery, only to have it disapproved by OMB. Through the 1980s, the pace of the halibut and groundfish fisheries quickened, seasons shortened, and many in industry called for limited access. Growth in the harvesting sector developed more rapidly than anyone anticipated, particularly for groundfish. While on the one hand, the groundfish fishery is a true success story for Americanization under the Magnuson Act, the fleet has grown so large that it is plagued by high bycatch of prohibited species and discards and waste.

The Council is taking steps toward comprehensive rationalization or limited access in North Pacific fisheries. **Step one** is the individual fishing quota system beginning this year for the sablefish and halibut fixed gear fishery, as described on page 2. **Step two** is to implement a moratorium on new entrants to the groundfish and crab fisheries. The Council first decided this issue in June 1992, but revisited it in late 1994. The Council's proposal will be forwarded to the Secretary of Commerce in February 1995 and could be in place for 1996, thus helping to stabilize growth of industry capacity.

OBSERVER HISTORY HIGHLIGHTS

- Mid-1980s: groundfish observer coverage decreases as fully Americanized operations, with no observers, displace observed foreign harvesters.
- 1986: Council requests NMFS to fund \$250,000 for pilot observer program, but no funds are available for 1986.
- 1987: NMFS provides \$200,000 for pilot program with four observers.
- January 1989: Council petitions Secretary of Commerce to implement and fund observer program.
- June 1989: American Factory Trawler Association contributes \$100,000 to observer program and pledges up to \$400,000 to match other industry contributions. NMFS contributes \$125,000. Other industry contributes up to \$28,000, bringing total to about \$250,000 to support observers.
- June 1989: Council approves mandatory comprehensive observer program to start in 1990. Industry must pay directly for their observers.
- 1990: Magnuson Act is amended to authorize Council to collect fees to fund observers.
- 1991-1994: Observer fee plan for groundfish, halibut and crab fisheries is developed by Council and approved by the Secretary. Total fee is limited to 2% ex-vessel value of the fisheries.
- 1995: Startup year for fee program.



NORTH PACIFIC COUNCIL ISSUES AT A GLANCE - 1995

• Limited Access and Comprehensive Rationalization •

Sablefish and Halibut Fixed Gear Individual Fishing Quotas: Fishery commences March 15 using IFQs. Regulations may be adjusted for 1996 after this shakedown year. (2)*

Moratorium: The original proposal was disapproved by the Secretary. The Council adjusted the proposed moratorium in September and December 1994, and will submit it to the Secretary in February 1995 for approval and implementation by 1996. (4)

Groundfish and Crab License Limitation: Many alternatives are being considered for a potential license limitation system for groundfish and crab. Analyses will go to formal public review in March 1995 and Council final action may occur in April (or June). Secretarial review probably will not begin until late summer. If approved, program administration, notification, and appeals would be completed in 1996. The system could be in place for 1997 or 1998. (5)

Inshore-Offshore Pollock/Cod Processing Allocations and Pollock CDO Program: Current allocations will expire at the end of 1995. A continuation is being analyzed and will go to public review after the April meeting. Final decision in June. If approved, inshore-offshore and pollock community development quotas would continue for another three years beginning January 1, 1996. (5)

Groundfish and Crab Individual Fishing Quotas: Study of alternative systems may begin in September 1995 after decisions have been made on licenses and inshore-offshore. Council decision is likely in 1996. Program administration, notification and appeals would occur in 1997, and implementation might occur in 1998. This schedule could vary considerably depending on complexity of program, number of species covered, and relationship to the license limitation program. (5)

Scallop Fishery Moratorium: A vessel moratorium, as part of a fishery management plan, has been adopted by the Council with an unpublished control date of January 20, 1993, to be submitted to the Secretary in April, and may be implemented for 1996. The next step may be an overall license or IFQ system, with a control date of April 24, 1994.

Demersal Shelf Rockfish License Limitation: A separate license limitation program has been proposed for a small rockfish fishery off Southeast which is managed jointly by the Council and ADF&G. The State of Alaska is performing the analysis which will be initially reviewed by the Council this fall.

• Conservation and Rebuilding •

Overfishing Definitions: The Council's Scientific and Statistical Committee is reviewing the groundfish overfishing definitions to determine if they can be improved. (2)

Ecosystems Management: Groundfish plan teams have been developing more comprehensive information on ecosystem management for inclusion each year in the Council stock assessment documents. The SSC will be reviewing ways to improve that information during 1995. (5)

Steller Sea Lions: Stellers are now listed as threatened and may be listed as endangered. The Council will bear a status report in April 1995 and then determine how to respond. (5)

Rebuilding POP: The Council already has approved a 14-year rebuilding plan for Pacific ocean perch in Gulf of Alaska. Minor adjustments may be made in 1995 to require bycatch-only and not allow any target fishery.

Capelin Prohibition: Capelin is a forage fish that is prey to many other fish species and marine mammals. The Council is considering a prohibition on any development of that fishery, because of the importance of capelin to Steller sea lions.

Crab Rebuilding: The Council has established a committee of groundfish and crab plan teams to review information on various sources of crab mortality and significant influences on crab abundance that would aid the development of a rebuilding plan for the crab resource.

• International Fisheries •

U.N. Law of the Sea: The Council will be monitoring closely activities on Law of the Sea and Straddling Stocks for possible impacts on existing regional international agreements. (6)

* Refers to page number where related article can be found in the accompanying pamphlet.

• **Bycatch, Discard and Waste** •

Full Retention/Utilization: An in-depth examination was initiated in December 1994. Extensive discussion is scheduled for the April 1995 meeting when the Council will determine which alternatives to analyze formally. Retention and utilization standards would be developed and incentives explored. Implementation could occur sometime in 1996 or 1997. (8)

Harvest Priority: Being examined concurrently with the full retention/utilization initiative, this proposed program would grant additional fishing privileges to vessels meeting certain "clean fishing" standards. Further discussion and review of legal hurdles are scheduled for April 1995. (8)

Crab Bycatch: Emergency action was taken in November 1994 to close an area in Bristol Bay to groundfish trawling to protect king crab stocks. In-depth examination of adjustments in bycatch limits for all species of crab and alternative closed areas will occur in 1995 for possible implementation in 1996. Long range rebuilding strategies will also be developed in 1995. Crab bycatch also is limited in the scallop dredge fishery.

Salmon Bycatch: Salmon is a prohibited species in the groundfish fishery. In January 1995, the Council approved bycatch limits and a trawl closure to limit bycatch of chum salmon, to be implemented for the pollock "B" season in the Bering Sea. Final decision on bycatch limits for chinook salmon will be made at the April 1995 meeting. (8)

Halibut Grid Soaring: The Council is considering a regulatory proposal to require grids to be placed over fish receiving holds so halibut can be sorted quickly and returned to the sea with increased survival. An ad hoc working group is examining the need for observers and changes in the vessel incentive program and will report back in April. New regulations, if approved, could be in place for 1996, but more likely 1997.

Minimum Mesh Size for Trawl Codends: Minimum mesh sizes for pollock, rock sole, and cod trawl fisheries were approved by the Council in December 1994. The proposed rule being prepared for possible implementation in 1996.

Pribilof Trawl Closure: Closed area around the Pribilofs to protect blue king crabs and forage for seabirds was approved by Council in 1994. The Secretary has approved the closure and implemented it in January 1995.

Careful Handling/Release of Halibut: The Council approved a regulation requiring careful release of halibut on longliners. Implemented initially on May 18, 1993.

• **Reporting and Monitoring** •

Seamount Fisheries Restrictions: In January 1995, the Council approved requirements for vessels fishing sablefish on seamounts in Gulf of Alaska to carry NMFS-provided transponders and offload fish before fishing in the EEZ. Regulations under preparation: will be implemented sometime in 1995.

Observer Fee Program: This will be the startup year for the observer fee program. Next year it will be fully operational. The Council will probably make adjustments for 1996 after this first year in operation. (4)

Total Weight Measurement: In October 1995, the Council approved requirement for all processors in the directed pollock fishery to weigh all pollock harvested on a scale. Will be fully implemented in late 1996 or early 1997.

• **Allocations** •

Halibut Charter Boat Cap: The Council is considering catch limits for the guided charterboat industry and possibly for all recreational fisheries. Analysis of options will be presented in December 1995 or January 1996. (7)

Inshore-Offshore and CDQs: As noted above under limited access, the Council will take final action in June 1995 on rolling over the inshore-offshore allocational split for pollock and cod, and the CDQ program for another three years. The current program lapses at the end of 1995. (5)

Scallop FMP: A joint federal/state FMP for this small fishery was recently adopted by Council for submission to the Secretary in April 1995; implementation scheduled for 1996. Emergency action was taken by the Council on February 17 to close federal waters as soon as possible.

Step three would be a rollover of the inshore-offshore allocations for pollock in the BSAI and GOA, and for Pacific cod in the GOA, first implemented in late 1992. The original program will expire at the end of 1995, so the Council is now considering its extension for another three years. Such a rollover could address problems with instability caused by unbuffered movements of catching capacity between areas in the Gulf of Alaska and Bering Sea and Aleutians, that have the potential to close seasons early for both the offshore and inshore fleet sectors. Inshore processors have voiced concern that when more local quotas are reached, they have no opportunity to go elsewhere to fish, and thus are put at an unfair disadvantage by the offshore processing fleet. The Council rollover of the inshore-offshore program likely would include the successful community development program that reserves 7.5% of the pollock harvest for six community complexes on the Bering Sea coast. That program is having immense positive economic consequences for those areas. A final decision on inshore-offshore will be rendered by the Council in June 1995, and if approved, implemented in January 1996. The program would lend stability to the major fishing sectors while longer term comprehensive rationalization approaches are developed.

Step four toward comprehensive rationalization is a proposed license limitation system now being considered by the Council for the groundfish fisheries of the Bering Sea and Aleutians and Gulf of Alaska, and the BSAI crab fisheries. It has taken the Council, working with industry, two years to develop a wide ranging suite of alternatives. The alternatives and associated analysis will go out for public review in March and the Council will be in a position to make a final decision in April or June 1995. If a license system is approved, it will likely take until 1997 at the earliest to implement.

Step five to comprehensive rationalization of North Pacific fisheries may be individual fishing and processing quotas for groundfish and crab. These may be fashioned after the halibut and sablefish IFQ system, though the overall groundfish system would be much more complex considering all the species and gear groups. Such a system may be designed over the next year, and the Council may choose to address just one or two of the more important species to start with, and then expand the program later. A final Council decision could not be made until April or June 1996 at the earliest, and could not be implemented until 1998.

STELLER SEA LIONS IN SPOTLIGHT

Marine mammals are an important component of the ecosystem of North Pacific waters, and one species clearly is in trouble. Steller sea lion populations have declined significantly over the past twenty years along the eastern Aleutians and eastward to the Kenai Peninsula in the Central Gulf of Alaska. The population decline has continued and Stellers may be placed on the endangered list in 1995. The North Pacific Council is concerned with the plight of the Steller, and has approved protective measures to restrict opportunities for unintentional harassment, reduce sea lion mortality, and minimize disturbances and interference with sea lion behavior, especially at pupping and breeding sites.

For 1992, rollovers of unused pollock from one quarter to the next were limited, and 10-20 mile trawl closures were added. For 1993, pollock harvest in the Gulf of Alaska was restricted to 111,000 mt, well below its biologically safe harvest of 160,000 mt, primarily to protect Stellers.

In November 1993, the NMFS filed a notice that it was going to review the status of Stellers for possible listing as endangered. The Council has taken note of this and is prepared to take action as necessary to protect that species. Incidental lethal takes are estimated to be about eight animals per year. A more fundamental link may be competition between the fisheries and Steller sea lions for prey items like pollock. Direct evidence that this linkage is having significant effects remains elusive. Regardless, the Council stands willing to help as much as possible to restore sea lion populations.



The Council hopes to channel its efforts into actions based on the most accurate observations and realistic models that the marine mammal scientists can provide. These would most likely entail analyses that account for overall ecosystems effects, draw on, but not overreach, databases that are long term, and realistically depict ecosystems changes, specifically those that likely will impact marine mammal communities, especially Steller sea lions. The Council already is moving ahead with analyzing a ban on fisheries for capelin, a prey item for Stellers. The Council's Scientific and Statistical Committee is examining ecosystems management and how it may be better incorporated into Council decisions. Council stock assessment documents also are being enhanced with more ecosystems information.

LAW OF THE SEA: ARE REGIONAL INTERNATIONAL FISHERIES AGREEMENTS IN JEOPARDY?

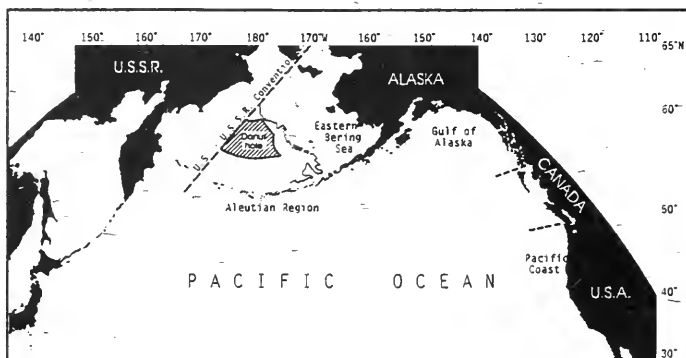
The United Nations Convention on the Law of the Sea is picking up steam. It was transmitted to the Senate in October 1994 for advice and consent. UNCLOS embodies a number of important principles relating to management of the world's oceans, including the establishment of the 200-mile zones and rules governing fisheries both inside those zones and outside those zones on the high seas. With regard to the high seas, the convention firmly establishes the right for nations to fish there, and provides general guidance concerning the need for cooperation in conserving living marine resources. The UNCLOS requires nations party to the convention to be bound by binding dispute resolution mechanisms, including settlement by an international tribunal if necessary.

An offshoot of UNCLOS is the Conference on the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks which would govern the management of stocks that cross EEZ boundaries, such as pollock. A draft for a binding convention has been developed and when adopted, will be an expanded interpretation of international law. It will require management inside and outside the EEZ to be compatible, and will have dispute settlement provisions of UNCLOS, including binding dispute settlement by arbitration.

Council and other parties in the North Pacific have worked so hard to develop. The Central Bering Sea Convention on pollock stocks is a good case in point. Presently, it is U.S. policy to discourage new entrants into that fishery even after the Aleutian Basin pollock stocks recover. Reopening that treaty to include binding dispute settlement, or worse yet having to agree to a binding settlement when six nations have fully agreed how to manage the pollock stocks, could erode the conservation effectiveness of the treaty.

A second example is the moratorium on the use of high seas drift nets. This is a voluntary moratorium and it has been very effective in eliminating high seas fisheries that ostensibly are targeting squid, but in practice are taking salmon, many of which may be bound for Alaska waters. For example, it has been noted in the news that recent coho salmon runs in Southeastern Alaska have been higher than normal and some are attributing that to fewer losses on the high seas.

The Council has been assured by representatives of the U.S. State Department that the driftnet moratorium and regional international agreements such as the Central Bering Sea



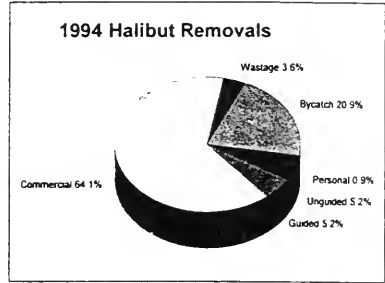
The U.S. would be bound to the dispute resolution mechanisms of UNCLOS. If a fishery were to arise that is detrimental to U.S. interests, and if the U.S. were to take action against the offending nation using trade restrictions or port sanctions, the fishing nation could take the U.S. to the international tribunal for binding arbitration. The U.S. is in a substantially weaker position to help shape a positive response to such binding arbitration than under the current regional agreements that the

pollock treaty, will be protected within the Law of the Sea and the Straddling Stocks conventions. While the Council recognizes that negotiators will do their utmost to ensure the integrity of current agreements, the Council will continue to press for recognition of these important agreements in international negotiations and conventions. The efforts that went into establishing those agreements were too great to place them in jeopardy in any way by recent international events.

HALIBUT CHARTERBOAT MANAGEMENT

In May 1993, the Council received a proposal to limit the catch of halibut by the guided sport industry. It said action was needed because the recreational fishery was catching increasing amounts of halibut, thus reducing the amount available to the commercial fishery. The Council first addressed this issue in September 1993 and announced a control date of September 23, 1993 for a potential moratorium cut-off date for the guided sport fishery.

The Council also established a work group to identify potential alternatives for managing this fishery. It met in 1993 and 1994 and presented its report in January 1995. The Council then developed a problem statement and initiated analysis of alternatives which include making explicit allocations of the halibut quota between commercial and recreational fisheries, a moratorium on charter vessels, and individual transferrable quotas. The Council may set a recreational cap of 105 to 140% of the 1994 charterboat catch as a cap for the charter industry, and the percentage could vary by area. Analysis of the options will be presented to the Council in December 1995 or January 1996.



Current distribution of halibut catch.

BYCATCH AND WASTE: A POLICY ISSUE WHOSE TIME HAS COME

Bycatch and waste are very prominent public policy issues for fisheries managers and industry. Congress is very likely to amend the Magnuson Act this year to require the Secretary and the regional councils to address discards. The North Pacific Council has been working on bycatch since 1976. Foreign groundfish fleets had to be restricted from taking traditional species of high U.S. interest such as halibut, salmon, crab, and herring, and later from taking groundfish species that became the targets of the developing U.S. groundfish fisheries. Many of these same bycatch controls were extended to the U.S. fleet after the foreigners left the EEZ in 1990.

Fish is wasted for several reasons. Regulatory discards occur when fishermen must discard certain fish whenever caught. Economic discards are fish not retained because they are not the right size, sex or quality, or there is no market, or they cannot be processed economically by a particular operation. That decision is up to the fisherman. Both types of discards are prevalent in North Pacific fisheries. Regulatory discards are known more generally as "prohibited species," a term applied originally to halibut, salmon and crab, which could never be retained in the early foreign groundfish fisheries. Groundfish species may be assigned to the prohibited species category to discourage any targeting on them if their quota has been, or is about to be, reached.

Regulatory Discards

The Council has paid greatest attention to controlling bycatches of prohibited species which provide profitable fisheries to other industry sectors. Halibut, for example, has long provided a highly profitable hook and line fishery for residents from many coastal communities in Alaska and Washington. Foreign bycatch depressed halibut stocks in the mid-1970s, and the Council incorporated closed areas and a prohibition on retention in its early groundfish management plans. The Council subsequently applied bycatch caps (prohibited species caps or PSCs) to the foreign fisheries, and most of those restrictions were carried over to domestic groundfish fisheries. When attained, the PSC for a particular gear group closes that group's groundfish fishery. This keeps one segment of the fleet from impacting another through bycatch. Bycatch caps now are taken for granted as a management tool, but they did not come easy. The Council had to show that there was a net benefit to the nation from the caps. The Council insisted that there had to be protection for the traditional fisheries and their target species, and in the end prevailed when its proposed regulations were adopted by the Secretary in the mid-1980s.

Today, PSC limits still control the fisheries and close down lucrative groundfish fisheries prematurely each year, leaving millions of dollars of groundfish unharvested. Various provisions have been added to improve handling of prohibited species while on deck to improve survival, and to give fishermen incentive to fish cleanly. The next big step in controlling PSC bycatch may take the form of bycatch quotas for individual fishermen. Then each fisherman could fish as he desired without closing down the rest of the fleet. Such a system could be very effective, but it also would be very expensive and complex to monitor and manage.

The prohibition on retention of halibut (or other prohibited species) in the groundfish fishery often is decried as a waste of valuable resource. It must be viewed, however, as a less-than-perfect compromise that protects the traditional fisheries while allowing harvest of the vast groundfish resources. The directed halibut fishery will be managed under an individual fishing quota system beginning in 1995. Quotas and the halibut fisheries will take on even greater value, so it is doubtful that the Council will change its present

system for controlling bycatch in the near future. It should be noted that there appears to be no biological problem with halibut because of bycatch. Bycatch mortality is deducted before setting the annual halibut harvest quota. Halibut has been well managed by IPHC, sustaining harvests at about 50 million pounds or more annually since 1985.

One thing to watch is the novel experiment with salmon bycatch underway in the BSAI where groundfish harvesters and processors are working voluntarily on a program that funnels salmon bycatch, after examination by an observer, to food banks for the needy. In the last half of 1994, 47 companies participated and 68,780 pounds of salmon were processed, packaged and delivered to an estimated 200,000 needy individuals through a network of welfare organizations. Industry also is paying a voluntary \$20 assessment per chinook salmon to fund to support research on stream of origin of the salmon and bycatch avoidance techniques.

Economic Discards

It is the issue of economic discards and profligate waste, rather than regulatory discards, that has most elevated the bycatch issue to national and international prominence. Economic discards, as noted earlier, result from fishermen not having a market for a particular species, or insufficient equipment, time or inclination to process that species. Total groundfish discards for both Bering Sea/Aleutian Islands and Gulf of Alaska for 1993 were 335,759 mt or 16% of a total groundfish catch of 2,099,035 mt. Fifteen percent of the total harvest in the Bering Sea and Aleutians was discarded, 94% accountable to trawl, and 6% to fixed gear fisheries. In the Gulf of Alaska, 19% of the total harvest was discarded, 87% accountable to trawl, and 13% to fixed gear.

To place this discard in perspective, it should be noted that worldwide commercial fisheries discards are about 27 mmt, or 26% of total catch. Shrimp fishery-related discards are particularly flagrant, accounting for 35% of the discards. The Bering Sea sablefish pot, Bering Sea rock sole trawl, and Gulf of Alaska flatfish trawl are on the top twenty list. Conversely, among the ten lowest discard rate fisheries (expressed as a discard rate by weight) is the Bering Sea pelagic pollock trawl, Bering Sea cod pot, and Gulf of Alaska midwater pollock trawl fisheries. Though most Alaska groundfish fisheries have intermediate or low bycatch rates relative to other world fisheries, the very high volume of the fisheries yields very impressive discard weights.

Each fishery has a different reason for discards. For example, the BSAI rocksole fishery has about a 69% discard rate, one of the highest in the North Pacific. The market in the orient is best for the roe in the females, so the males and other species are discarded. For arrowtooth flounder, which is almost all discarded, the flesh turns to mush upon cooking because of enzymatic degradation. The species is very abundant off Alaska, and also is a voracious predator on other species, and yet it will not be utilized until inhibitors are developed to counteract the enzymes. Experiments are now underway to resolve this problem.

One last example is the BSAI pollock fishery. The midwater trawl fishery for pollock is a very clean fishery that has little bycatch of other groundfish or halibut or crab. The discard rate for pollock is relatively low. In the past it has been in the 9-10% range because many juvenile fish were present. In 1994 the rate was down to 1.8%, or 21,000 mt. This is a considerable reduction from the 89,000 mt discarded in 1991. Though this is very "pure" fishery, the discard rates will fluctuate depending on the presence of strong juvenile year classes. Because of the intermingling, it would be very difficult for harvesters to avoid bycatch. Industry thinks that the increased retention of pollock in 1994 could be attributed to higher production of fish meal, growth of a pollock year-class, or larger mesh sizes being used.

Solving the Discard Problem

The Council already has taken steps to control discard of groundfish. Their first initiative occurred when a ban was placed on roe-stripping of pollock in 1990. Roe-stripping became a major problem in the Gulf of Alaska in 1989. As harvesters raced to catch a limited pollock resource, they found they could increase processing throughput by simply taking the roe (worth \$5/pound) from the female pollock and discarding the remaining flesh and carcass (worth five cents a pound) overboard without further processing. Most male pollock also were discarded. The Council responded by banning roe-stripping and seasonally apportioning the harvest so the fishery would not be concentrated in the spawning period. The Council also has approved minimum mesh sizes for trawls.

The Council now is moving to address waste and discard in a more comprehensive fashion. At its December 1994 meeting, it initiated an in-depth examination of a potential regulatory change that would prohibit discards of target groundfish. Retention standards would be developed and phased in over one to three years, possibly by mid-1996 at the earliest. The goal would be to achieve 100% retention. There also may be a utilization standard, with a minimum percentage of 50 to 90% processed for human consumption. Final action may be taken by the Council in December 1995. Secretarial review and approval would occur during the first six months of 1996, and the program could start in mid-1996, but more likely in 1997. It will concentrate on four fisheries to begin with: BSAI midwater trawl pollock, BSAI trawl rock sole, Gulf of Alaska flatfish trawl, and BSAI Pacific cod longline fisheries. When implemented, it will completely change the way the fisheries are prosecuted. Seasons will be longer, there will be much more product on the market, and it is hoped that fishermen will become more selective in their fishing patterns.



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