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## **Balancing Flexibility and Safeguards in IFQ programs: A Plan For Action**

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Abstract: National ocean policy now includes a recognition that properly designed IFQs and other dedicated access privilege (DAP) programs are important tools that can promote long-term sustainable fisheries that support fishery-dependent coastal communities and healthy ocean ecosystems. I review recommendations and concerns that have surfaced over the past few years during the debate over IFQ national standards. I conclude that many of the process and evaluation, program design and initial allocation concerns that have been expressed in this vigorous debate are already addressed in at least broad terms within existing legislation.

I suggest some specific revisions to the Magnuson-Stevens Act that I believe are necessary to assure that councils have the ability to design dedicated access programs that best meet fishery-specific biological, economic and social objectives. These include:

- Defining and reaffirming authorization for the full range of dedicated access privilege programs available for management of US fisheries
- Removing the 3 percent cap on fee assessment contained in Sec304(d)
- Authorizing the use of auctions to allocate quota share
- Modifying Sec303(b)(7) and Sec402(a) to allow economic data to be collected from processors subject to the same confidentiality requirements that apply to harvesters
- Adding a new provision to the Magnuson-Stevens Act allowing quota holders to take legal action against private parties whose unlawful actions harm fishery and marine resources.

Beyond these revisions, I believe that any further guidance regarding IFQs should be through administrative guidelines, rather than additional legislative mandates. I recommend that NOAA Fisheries immediately begin developing a set of national guidelines to assist the councils in developing, implementing and evaluating DAP programs. The recommendations contained in the NRC report to Congress, the US Commission on Ocean Policy and other issues that have emerged during the national debate on IFQs should be taken into account when developing these guidelines. In addition, NOAA Fisheries should appoint and consult with an advisory group with representation from all eight regions when developing draft guidelines.

### **Introduction**

On December 17, 2004, the Administration announced their US Ocean Action Plan, in response to the report of the US Commission on Ocean Policy. Promoting greater use of market-based systems for fisheries management is highlighted in the action plan as an important initiative for achieving sustainable fisheries. This strategy is consistent with the recommendations of the US Commission on Ocean Policy which advocated that

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“every federal, interstate and fishery management entity should consider the potential benefits of adopting such (dedicated access privileges) programs”.

Now, two years after the moratorium on IFQ programs has expired, national ocean policy includes a recognition that by changing incentives IFQs and other dedicated access privilege systems can help provide long-term sustainable fisheries that support fishery-dependent coastal communities and healthy ocean ecosystems. We are not alone in acknowledging that properly designed dedicated access programs can provide significant conservation, economic, safety and community benefits. Over 75 IFQ programs have been implemented around the world, including four in the United States.<sup>2</sup>

Much of the discussion over the past two years has focused on what national guidelines are needed to shape the design of IFQ programs and safeguard against undesired distributional effects and other impacts. This paper will examine recent recommendations as well as draft legislation proposed during the 108<sup>th</sup> Congress with respect to the following:

- How do proposed “IFQ criteria” relate to provisions already contained in the Magnuson-Stevens Act?
- What changes in law are necessary to assure that regional fishery management councils can design the dedicated access program that best meets the conservation, economic, and social needs of a specific fishery?
- What issues are better addressed through NOAA Fisheries guidelines than through congressional mandates?

### **The Need for Flexibility**

As IFQs and other forms of dedicated access privileges are considered, flexibility is essential if regional fishery management councils are to develop programs that can best meet fishery-specific objectives and take into account the biological, economic and social characteristics of a given fishery.

Even a cursory look at some of the differences between US fisheries where IFQs are in the process of being implemented or considered illustrates this diversity among fisheries (Table 1). This diversity is also evident in the objectives that guide the development of a given IFQ fishery, as illustrated in Table 2.

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<sup>2</sup> IFQ programs for Alaska halibut and sablefish, Mid-Atlantic Surf Clam and Ocean Quahog, and South Atlantic wreckfish have been implemented; and a Bering Sea/Aleutian Islands Crab rationalization program will be implemented soon. In addition to these IFQ programs, other US dedicated access privilege programs are in place. These include the West Coast Fixed Gear Sablefish Permit Stacking Program (considered closed enough to an IFQ program that its implementation required an exemption from the IFQ moratorium), Pacific whiting fishery (at-sea catcher/processor coop), the Bering Sea pollock fishery in the North Pacific (co-op); Alaska’s Community Development Quota program, and the Chignik salmon fishery (co-op).

Table 1. Characteristics in fisheries for which IFQ programs are currently being developed or considered.

<b>Characteristic</b>	<b>West Coast Trawl Groundfish</b>	<b>Gulf of Mexico Red Snapper</b>	<b>Gulf of Alaska Groundfish</b>	<b>Bering Sea/Aleutian Islands Crab</b>
Number of Vessels/Permits	170	130 class one 350 class two	850 unique vessels (some with more than one gear)	275
Annual Ex-vessel Value	Approx \$45 million (includes approx \$20 million in the whiting fishery)	\$10-15 million annually	Approx \$65 million	Approx \$125 million
Multi-species Program being considered?	yes	Initially no, may be expanded	yes	Mostly single species
Currently a Derby Fishery?	No	Yes	Yes	Yes
Recreational Fishery on Same Stocks?	For some species; also other commercial fisheries on some stocks	Yes (equivalent to commercial harvest)	None (except halibut)	No
Gear types being considered as part of program	Bottom trawl and mid-water trawl (whiting)	Primarily bandit rigs (20 hooks per line); some longliners	Trawl Longline Pot Jig	Pot
Isolated Communities?	No	No	In excess of 50; Some with no or minimal involvement in the fisheries; others almost entirely dependent.	Yes, Issue is with processing in communities - approximately 9-10 have some significant crab processing history
Bycatch a concern?	Yes	Yes	Yes	No

Table 2. Examples of IFQ Program Objectives

Objective	Halibut/ Sablefish	Wreckfish	Surf Clam/ Ocean Quahog	West Coast Trawl Groundfish	Gulf of Mexico Red Snapper	Gulf of Alaska Groundfish	BSAI crab
Reduce Overcapitalization	x	x	<sup>a</sup>	<sup>b</sup>	x	x	x
Maximize efficiencies			x		x	x	x
Stabilize fishery	x	x		x	x	x	x
Conserve Resource	<sup>a</sup>	x	x	x	x	x	x
Improve Safety			<sup>a</sup>		x	x	x
Simplify Regulation					x		
Protect fishery participants	x					x	x
Minimize Ecological Impact				x		x	x
Reduce Bycatch				x	x	x	x
Minimize Adverse Impacts Or enhance opportunities for Communities				x		x	x
Increase Flexibility				x	x		
Reduce Gear/User Conflicts						x	
Promote cost- effective management/adequate monitoring				x	x	x	
Promote individual accountability				x			
Increase Net Benefits from the Fishery				x	x	x	x

<sup>a</sup>While not specified as an official objective, this outcome is important to the program.

<sup>b</sup>The west coast trawl groundfish fleet has recently completed an industry-financed buyback which reduced the fleet by approximately 35 percent. Therefore, while long-term capacity management is an important goal, immediate reduction of overcapacity is not a high level objective.

The National Research Council emphasized the importance of flexibility when they recommended that:

*Congress should recognize that the design of an IFQ or other limited entry system in relation to concentration limits, transferability, distribution of quota shares and other design questions will depend on the objectives of a specific plan, requiring flexibility for*

*regional councils in designing IFQ programs. Regional councils should have flexibility to adjust existing IFQ programs and develop new ones.*<sup>3</sup>

The US Commission on Ocean Policy concurred with this need for flexibility when they recommended that, in addition to affirming that fishery managers are authorized to institute dedicated access privileges, Congress should:

*...direct National Marine Fisheries Service to issue national guidelines for dedicated access privileges that allow for regional flexibility in implementation.*<sup>4</sup>

The real question then becomes how to assure that maximum flexibility is maintained while providing a framework to ensure that a council has considered all reasonable design alternatives, fully assessed the biological, economic and social impacts of the proposed plan, and developed a plan that is likely to meet the council's objectives.

### **Balancing Flexibility and Safeguards: A Common Theme in US Fisheries Management**

The recent recommendations stating that regional councils are the most appropriate authorities to design IFQ programs are consistent with decisions throughout the history of the Magnuson-Stevens Act.<sup>5</sup> When Congress first authorized the Magnuson Fishery Conservation and Management Act in 1976, the architects of the Act recognized the importance of regional flexibility in developing fishery management plans. At that time, regional management was a relatively untested and innovative concept. Throughout the years, the basic fishery management framework involving federal and state managers as well as stakeholder representatives has been maintained.

Over time, the Magnuson-Stevens Act has been amended numerous times as fisheries first became fully "Americanized" and then in some cases over-utilized by domestic fisheries. Many of these amendments have strengthened safeguards and have recently legislated more stringent obligations regarding conservation of the resource and protection of habitat. Of particular importance were the revisions contained in the Sustainable Fisheries Act (SFA) which added three new standards related to considering opportunities for and impacts on fishing communities, minimizing to the extent practicable bycatch and bycatch mortality, and promoting human safety. The SFA also included significant requirements to end overfishing and rebuild stocks and protect essential habitats. With respect to IFQs, SFA identified new requirements for IFQ programs proposed after expiration of a moratorium on new programs. During the moratorium, SFA also outlined the issues to be considered by the National Research Council (NRC) as they developed recommendations regarding IFQ national policy.

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<sup>3</sup> Sharing the Fish: Toward a National Policy on Individual Fishing Quotas, NRC(1999), pg.6

<sup>4</sup> An Ocean Blueprint for the 21<sup>st</sup> Century. Report of the US Commission on Ocean Policy (2004), pg 290.

<sup>5</sup> It is important to recognize the difference between the principle of regionalism (which applies regional expertise and accommodates regional concerns to result in more effective management) and the governance issues that have become associated with the regional councils (e.g., conflicts of interest, politicization of science).

Today, regional fisheries management councils continue to be authorized to design fishery management plans that utilize a diverse set of management tools to address fishery-specific objectives, provided that they also meet procedural requirements and are consistent with the national standards of the Magnuson-Stevens Act as amended by the SFA. Since October 2002, IFQs have been once again included among these tools and three Councils are currently exploring IFQs or other DAP alternatives for fisheries under their jurisdiction.

### **Recent Discussion on IFQ Criteria: Common Themes and Diverse Solutions**

While the use of IFQs is now once again authorized under the Magnuson-Stevens Act, the debate over how much national oversight is needed continues. Since the moratorium expired in October 2002,

- Draft legislation with provisions for IFQ national standards has been introduced in both houses of Congress.
- Two GAO reports requested by the Senate Commerce committee have evaluated issues related to quota consolidation, new entry and community protection and impacts on processors in existing IFQ programs.
- The US Commission on Ocean Policy, the Pew Oceans Commission and the White House's Ocean Action Plan have all endorsed dedicated access privileges as important management tools and have provided recommendations on criteria to guide development of such programs.

These post-moratorium activities build on at least four hearings on IFQ issues held by the subcommittees and full committees of both the House and the Senate during the moratorium period, the findings of the National Research Council study mandated by the Sustainable Fisheries Act of 1996<sup>6</sup> and numerous regional and national workshops on the topic of IFQs and other forms of dedicated access privileges.

When I step back and look at the issues and proposals that have been articulated through this extensive national debate, I find that they can be categorized as primarily focused on process and program evaluation, program design or initial allocation. Tables 3 through 5 summarize the provisions recommended by the US Commission on Ocean Policy (USCOP), the Pew Ocean Commission, the National Research Council, as well as those contained in the most recent draft legislation that was introduced in the House and Senate during the 108<sup>th</sup> Congress<sup>7</sup> with respect to these three categories.

I have deliberately separated proposals related to initial allocation from other design element recommendations. While it is true that decisions regarding to whom, why and how initial shares are allocated can have an impact on the shape of the fishery, they remain one-time decisions. Too often, the debate seems to focus heavily on initial allocation at the expense of overall program design.

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<sup>6</sup> Sharing the Fish: Toward A National Policy on Individual Fishing Quotas, NRC, 1999.

<sup>7</sup> HR2621 introduced by Congressman Allen and others on June 26, 2003 and S2066, introduced by Senator Snowe on February 11, 2004

Table 3. Recommendations regarding process and evaluation related issues and criteria<sup>a</sup>

<b>PROCESS RELATED ISSUE/CRITERIA</b>	OAP	USCOP	PEW	NRC	S2066	HR2621
Affirm authorization for use of DAP/IFQ systems	x	x	x	x	x	x
Congress to mandate IFQ-specific national standards and criteria	x <sup>b</sup>		x		x	x
NOAA fisheries to develop IFQ-specific national guidelines	x	x				
Establish control date or other mechanism to avoid speculative behavior				x		
Inclusive and transparent design process with all stakeholders represented		x		x		
Referendum requirements					x <sup>c</sup>	x <sup>d</sup>
Objectives must be specified (conservation, economic, social)		x		x	x <sup>e</sup>	x <sup>f</sup>
Implement a central registry system				x		
<b>Pre and Post Evaluation</b>						
Data collection protocols must be specified		x				
Periodic Review of program, with modification procedures required		x	x	x	x	x
Ongoing collection of economic and social data necessary to assess performance and impacts of IFQ programs				x		

<sup>a</sup>OAP=Ocean Action Plan, USCOP= US Commission on Ocean Policy, Pew=Pew Commission, NRC= National Research Council (Sharing the Fish)

<sup>b</sup>Unspecified what standards might be proposed. Ocean Action Plan states that Administration will proposed legislation in 109<sup>th</sup> Congress that will “strike a balance between assuring flexibility in development of IFQ programs and the need to observe certain protections”.

<sup>c</sup> Prior to Secretarial approval and implementation, must be approved by a 2/3<sup>rd</sup> majority vote of eligible permit holders through a referendum process.

<sup>d</sup> Two referendum process. First is to determine support for development of a DAP fishing quota program. Requires a 2/3<sup>rd</sup> majority of eligible permit holders. Second referendum determines whether to submit specific program for approval and implementation. Requires 2/3<sup>rd</sup> majority of both eligible permit holders and crew members who derives at least 75 percent of income from fishery where individual quota program is proposed.

<sup>e</sup>Must improve conservation, including reduction of bycatch

<sup>f</sup>Must provide “additional and substantial conservation benefits to the fishery”

Table 4. Recommendation regarding program design related issues and criteria.<sup>a</sup>

<b>PROGRAM DESIGN RELATED ISSUE/CRITERIA</b>	<b>USCOP</b>	<b>PEW</b>	<b>NRC</b>	<b>S2066</b>	<b>HR2621</b>
Privilege, not a right	X	X	X	X	X
Transferability allowed; provisions restricting transferability decision of Council	X	X <sup>b</sup>	X <sup>c</sup>	X	<sup>d</sup>
Caps on consolidation to prevent excessive share accumulation <sup>e</sup>	X	X	X	X	X <sup>f</sup>
Limited Duration for program as a whole				X <sup>g</sup>	
Quota assignments for limited amount of time	X <sup>h</sup>	X			X <sup>i</sup>
Require fees for cost recovery	X <sup>j</sup>	X <sup>k</sup>	X <sup>l</sup>	X <sup>m</sup>	X <sup>n</sup>
Rent recovery beyond costs of management		X	X		X
Mitigate impacts on communities	X	X	X	X	X
Consider co-management, community-based strategies and cooperative arrangements	X		X	X	
Require that quota be partitioned into categories (area based, vessel size categories, etc)		X			X
Provide opportunities for new entrants		X	X <sup>o</sup>	X	X
Criteria for reallocation of quota				X <sup>p</sup>	X
Adequate enforcement and monitoring			X	X	X

<sup>a/</sup> USCOP= US Commission on Ocean Policy, Pew=Pew Commission, NRC= National Research Council (Sharing the Fish)

<sup>b/</sup> No transfer allow between categories of quota

<sup>c/</sup> Transferability should generally be unrestricted; Council may decide some constraints necessary to maintain character of the fishery

<sup>d/</sup> Transfers allowed only in case of hardship

<sup>e/</sup> With exception of HR2621, cap level to be specified by Council on fishery by fishery basis

<sup>f/</sup> Defines as 1% but Council can raise up to 5% with justification; for fisheries with less than 20 participants, 15%

<sup>g/</sup> Limit to 10 years, but Council can extend for successive 10 years after review

<sup>h/</sup> Recommendation is somewhat contradictory as it suggests that one reason for limiting duration assignment is to provide stability to fishermen for investment decisions; this is usually an argument against limited duration (see NRC, p 201)

<sup>i/</sup> Requires that assignment expire every 7 years; reallocation based on performance of quota holder

<sup>j/</sup> User fees based on percent of quota shares held to be used to support eco-system based management. Waivers or phase in allowed until fishery declared recovered or profits increase.

<sup>k/</sup> Funds (from auction royalties) first go to fund buybacks and community economic development, then cost recovery, then improved research, management and enforcement

<sup>l/</sup> If Magnuson-Stevens amended to allow rent capture beyond administration costs, dedicated funds should be considered

<sup>m/</sup> Fees must be proportional to amount of quota held and be used for costs related to fishing quota system

<sup>n/</sup> Initial allocation fees, annual use fee based on percentage of ex-vessel value, transfer fees

<sup>o/</sup> Must assure that provisions for new entry do not expand total amount of quota share

<sup>p/</sup> Must reallocate quota if quota holder ceases to “substantially participate” in fishery

Table 5. Initial Allocation Related Provisions

<b>INITIAL ALLOCATION RELATED ISSUE/CRITERIA<sup>a</sup></b>	<b>USCOP</b>	<b>PEW</b>	<b>NRC</b>	<b>S2066</b>	<b>HR2621</b>
Specify recipient groups eligible for initial allocation; Consider groups beyond vessel owners	x	x	x <sup>b</sup>	x <sup>c</sup>	x <sup>d</sup>
Consider other criteria than catch history for initial allocation <sup>e/</sup>		x	x	x	x
Provide authority for auctioning initial quota shares		x	x		

<sup>a/</sup> USCOP= US Commission on Ocean Policy, Pew=Pew Commission, NRC= National Research Council (Sharing the Fish)

<sup>b/</sup> Consider whether to allocate to crew, skippers, other stakeholders as determined by Council

<sup>c/</sup> Consider entry-level fishermen, small vessel owners, skippers, crew, and fishing communities

<sup>d/</sup> Must allocate a portion of annual harvest for new entrants

<sup>e/</sup> Among suggested criteria are conservation commitments or performance, dependence on fishery, present and historic participation

### **Facilitating the Use of Dedicated Access Privileges: What Needs to Be Done**

*“All truth passes through three stages: First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident.”*

- Arthur Schopenhauer

I believe that we are finally in the third stage with respect to understanding that IFQs and other forms of dedicated access privileges can put an end to incentives that cause fishermen to overcapitalize and race for fish, allowing them to instead focus on minimizing costs and timing deliveries to maximize the value received for the fish that is harvested. Properly designed IFQ programs, coupled with effective monitoring, can provide significant conservation benefits.

Dedicated access privileges have been endorsed as an important management tool in all major reviews of national ocean policy. I suggest that the national debate over the past several years has more than adequately identified issues and concerns. Now it is time for action. In recommending a course of action, I turn back to the three questions identified in the introduction to this paper.

#### **How do proposed “IFQ criteria” relate to provisions already contained in the Magnuson-Stevens’ Act?**

When the general issues and criteria described in Tables 3-5 are compared to provisions in the Magnuson-Stevens Act, we find that many of the process, evaluation, program design and initial allocation concerns are already addressed in at least broad terms.

Specifically the Magnuson-Stevens Act

- Authorizes the use of IFQs, but others forms of dedicated access privileges are not specifically addressed (Sec 303 (d)(5))

- Requires that any IFQ program developed by a Council and approved by the Secretary establishes review and revision procedures and requirements (Sec 303(d)(5) (A))
- Stipulates that IFQs do not constitute a right to the fish before they are harvested, and can be revoked or limited at any time without compensation (Sec 303(d)(2)(B-D))
- Contains both national standard language and IFQ-specific language requiring that no person (no entity) acquire an excessive share of fishing privileges (National Standard 4 and (Sec 303(d)(5)(C))
- Provides for cost recovery for enforcement and management costs, subject to the 3 percent limitation on fees (Sec 303(d)(5)(B) and Sec304(d))
- Requires that IFQs take into account the importance of fishery resources to fishing communities to provide for their sustained participation and to minimize adverse impacts (National Standard 8)
- Provides that councils consider opportunities for new entrants by considering allocation of a portion of the annual harvest for entry-level fishermen, small vessel owners and crew who do not hold or qualify for IFQs (Sec 303(d)(5)(C)); the Act also permits the Secretary to establish guaranteed loan programs financed by fees assessed on the quota holders to facilitate the purchase of IFQ by small-boat and entry-level fishermen (Sec 303(d)(4))
- Stipulates that approval of IFQ programs must include provisions for effective enforcement and management of the programs, including adequate observer coverage (Sec 303(d)(5)(B))
- Requires councils and the Secretary to take into consideration a number of criteria when developing limited access programs including present and historical participation, dependence, economics of the fishery, capability of vessels to engage in other fisheries, and the cultural and social framework relevant to the fishery and any affected communities and any other relevant considerations (Sec 303(b)(6) (A-F))

**What changes in law are necessary to assure that regional fishery management councils can design the dedicated access program that best meets the conservation, economic, and social needs of a specific fishery?**

Do councils currently have the authority to utilize a full range of dedicated access privilege designs? While IFQs are presently mandated under the Magnuson-Stevens Act, some forms of dedicated access privileges, such the cooperatives prescribed for the Bering Sea pollock fishery, would still require special legislation.<sup>8</sup> Therefore I **recommend that the Magnuson-Stevens Act be amended to define and reaffirm authorization for the full range of dedicated access privilege programs available for management of US fisheries.** Central to this recommendation is my belief that regional fishery management councils are required by the Magnuson-Stevens Act and other applicable law to evaluate a full range of alternatives and assess the costs and benefits, as well as the distributional impacts of these alternatives. If councils do not have the full

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<sup>8</sup> Mariam McCall, NOAA General Counsel, NW Region, personal communication

range of options available to them, then the rationale for legislating programs directly is strengthened. While I understand the temptation to fast-track programs through legislative action, doing so undermines the requirements for full analysis and attention to safeguards contained within the Magnuson-Stevens Act and associated guidelines.

This issue deserves serious attention. To date, there are several types of dedicated access privileges that have been legislated that restrict in some way entry opportunities for shoreside processors as well as where fishermen can sell their catch. Other fisheries managed under the Magnuson-Stevens Act are precluded at this time from using these same design elements in dedicated access program alternatives. Congress needs to clarify its intent on whether such design options can be considered for other federal fisheries and, if so, whether any additional criteria are needed to govern their use. After Congressional intent has been clarified, then I suggest that Congress stand by the Magnuson-Stevens Act and allow fishery management programs to be designed through the regional council process, with its legislated requirements for full evaluation of the tradeoffs between alternatives.

The Magnuson-Stevens Act already authorizes collection of fees for cost recovery but such fees are currently capped at three percent. This may be too low to achieve the cost recovery objectives of a given plan. **Therefore I recommend that the three percent cap on fee assessment be removed.** At the same time, it should be recognized that many of the fisheries where dedicated access privileges are needed may have been in a depressed state for some time. Therefore, a phase in of cost recovery may be warranted.

Auctions are another mechanism for quota allocation and recovery of rent from the fishery not currently authorized. **I recommend that the use of auctions be authorized.** While I am not advocating the use of auctions as a preferred method for allocating of quota shares, I believe that councils should have the ability to use this tool to capture some of the resource rent if deemed appropriate. Careful consideration should be given on how auctions could adversely affect the council's ability to meet other allocation requirements of the act such as those described in National Standard 4 and the criteria that must be taken into account when establishing a limited entry system (Sec303(b)(6)).

In order to fully evaluate both the potential impacts of dedicated access privilege alternatives and to provide documentation of actual impacts after implementation, **I also recommend that Sec303(b)(7) and Sec402(a) be modified to allow economic data to be collected from processors subject to the same confidentiality requirements that apply to harvesters.** Collection of such data is necessary to determine the impacts among stakeholders of various alternatives, as well as continuing to evaluate the economic performance of the fishery after a dedicated access privilege program is implemented.

Finally, I would like to propose one other revision to the Magnuson-Stevens Act that was a NRC recommendation but has gotten little attention since then. To continue strengthening the stewardship incentives of dedicated access privileges, **I recommend that Congress add a new provision to the MSA allowing quota holders to take legal**

**action against private parties whose unlawful actions harm fishery and marine resources.** If share holders know the value of their quota shares is secure and defensible from such damage, the incentive to conserve stocks is strengthened.

**What issues are better addressed through NOAA Fisheries guidelines than through congressional mandates?**

One other mechanism that has been suggested as a “safeguard” has been a mandatory referendum prior to the implementation or possibly even before initial discussion of IFQs. I do not support referendum provisions for a number of reasons. First, many, if not most, conservation measures have either direct or indirect allocation consequences. Why single out this promising tool for a “vote”, but not other allocation decisions by councils? Second, for many fisheries, a minority of permit holders catch the majority of the available harvest. Therefore, individuals with a smaller investment in the fishery could decide the fate of an IFQ program depending on the design of the referendum. Finally, as councils consider a larger universe of potential quota recipients (e.g., processors, crew, communities) even deciding who could be eligible to vote in a referendum becomes extremely difficult.

The underlying goal of referenda appears to be assuring that any IFQ program (or ideally other management measures) has broad support from stakeholders. I suggest that this is better addressed by including all affected stakeholders in an inclusive and transparent design process. Additional guidance on assuring this broad support could be included in national guidelines related to development of dedicated access privilege systems.

As noted above, many of the IFQ criteria that have been suggested as safeguards over the past few years are already addressed in broad terms in the Magnuson-Stevens Act. Guidance is now needed to help interpret these with respect to design and implementation of dedicated access privilege programs and provide a thoughtful framework for evaluating alternative program designs.

**I recommend, consistent with the recommendation of NRC and the US Commission on Ocean Policy<sup>9</sup>, that NOAA Fisheries take the lead in developing national guidelines for the development and implementation of dedicated access privilege programs. I also recommend that NOAA Fisheries establish an advisory body with representation from all regions to assist in the development of these guidelines.**

NOAA Fisheries has already begun development of IFQ related guidelines. Responding to a recent GAO report<sup>10</sup>, NOAA Fisheries is in the process of developing guidelines on defining “excessive share”.

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<sup>9</sup> This recommendation has already been incorporated into the Administration’s Ocean Action plan which “directs NOAA to develop, in consultation with the Regional Fishery Management Councils and interested parties, national guidelines for the development and implementation of IFQ allocations”. US Ocean Action Plan, pg 19.

<sup>10</sup> Individual Fishing Quotas: Better Information Could Improve Program Management, GAO Report 03-159, December 2002.

Three of the four regions are presently developing DAP alternatives. These efforts can help inform the national guideline development process, highlighting areas where more clarification and guidance is particularly needed. A national guideline advisory group will provide a forum for identifying other issues in balancing safeguards and regional flexibility.

Among the issues that national guidelines should consider are the following:

- **Program Review and Revision**

As noted by the National Research Council in their report to Congress<sup>11</sup> requiring specific term limits, or sunsets, in the Magnuson-Stevens Act is counterproductive. Decisions regarding whether to limit the duration of IFQs require careful thought, as a limited duration IFQ is likely to reduce the holder's incentives to conserve fish stocks because the holder's own future in the fishery is uncertain.

While decisions regarding program or quota share duration should be left to the councils, the Magnuson-Stevens Act does require that any IFQ program also establish procedures and requirements for the review and revision of the terms of any such program, and if appropriate for the renewal, reallocation or reissuance of individual fishing quotas. National guidelines on providing measurable performance measures related to the DAP program's objectives, timelines for review, and other related measures necessary to monitor and improve the effectiveness of the program should be developed. In developing these guidelines, the recommendations of the GAO in terms of providing periodic review of community protection and new entry provisions, as well as the recommendation of the NRC report, should be taken into account.<sup>12,13</sup>

- **Initial Allocation**

Guidelines should address procedures and criteria that should be considered when determining participation in and allocation of initial quota shares. The goal is not to make these decisions for the council but should provide a framework to assist the councils in assuring that the program provides for a "fair and equitable allocation of individual fishing quotas".

- **Providing for Communities**

Guidelines interpreting National Standard 8 related to communities in the context of developing and evaluating IFQ and other dedicated access privileges alternatives should be developed.

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<sup>11</sup> Sharing the Fish: Toward a National Policy on Individual Fishing Quotas, National Research Council, 1999.

<sup>12</sup> Individual Fishing Quotas: Methods for Community Protection and New Entry Require Periodic Evaluation, GAO, 2004.

<sup>13</sup> Sharing the Fish, NRC, pg. 218

## Summary

IFQs and other dedicated access privilege measures are valuable fishery management tools that can help address conservation issues and increase the net benefits from the use of our nation's fishery resources. The Magnuson-Stevens Act contains a number of national standards and specific IFQ provisions that provide oversight for IFQ development. I have suggested some specific revisions to the Magnuson-Stevens Act that I believe are necessary to assure that councils have the ability to design dedicated access programs that best meet fishery-specific biological, economic and social objectives. These include:

- Defining and reaffirming authorization for the full range of dedicated access privilege programs available for management of US fisheries
- Removing the 3 percent cap on fee assessment contained in Sec304(d)
- Authorizing the use of auctions to allocate quota share
- Modifying Sec303(b)(7) and Sec402(a) to allow economic data to be collected from processors subject to the same confidentiality requirements that apply to harvesters
- Adding a new provision to the MSA allowing quota holders to take legal action against private parties whose unlawful actions harm fishery and marine resources.

Beyond these revisions, I believe that any further guidance regarding IFQs should be through administrative guidelines, rather than additional legislative mandates. I have recommended that NOAA Fisheries immediately begin developing a set of national guidelines to assist the councils in developing, implementing and evaluating DAP programs. The recommendations contained in the NRC report to Congress, the US Commission on Ocean Policy and other issues that have emerged during the national debate on IFQs should be taken into account when developing these guidelines. NOAA Fisheries should appoint and consult with an advisory group with representation from all eight regions when developing draft guidelines.

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