S. HRG. 106–1087

REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON OCEANS AND FISHERIES

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

JANUARY 18, 2000

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REAUTHORIZATION OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

TUESDAY, JANUARY 18, 2000

U.S. SENATE,
SUBCOMMITTEE ON OCEANS AND FISHERIES,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Anchorage, AK.

The Subcommittee met, pursuant to notice, at 9:04 a.m. at Anchorage Museum of History & Art, 121 West Seventh Avenue, Auditorium, Anchorage, Alaska, Hon. Olympia Snowe, Chairman, presiding.

Staff members assigned to this hearing: Sloan Rappoport, Republican Counsel; Stephanie Bailenson, Republican Professional Staff; and Margaret Spring, Democratic Senior Counsel.

OPENING STATEMENT OF HON. OLYMPIA SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Good morning. The hearing will now come to order. First of all, I want to thank Senator Stevens for inviting me and the Subcommittee to Anchorage to discuss the future of our Nation's fisheries, and specifically those off the coast of Alaska.

Senator Stevens was kind enough to bring this Subcommittee to my home State of Maine back in 1995, when we were discussing these very issues in a reauthorization process, so I thought it was only fair to reciprocate by coming to your beautiful State, Senator Stevens. I felt right at home when I came in last night. In fact, it was warmer here than it was in Maine when I left yesterday morning.

I think it is appropriate that we hold this field hearing here in Anchorage. When it comes to the issues that we will be discussing, Senator Stevens quite literally helped write the book. As one of the driving forces behind the Magnuson-Stevens Act in the first year of this Subcommittee, his institutional knowledge about our fisheries is unparalleled in the Congress.

Indeed, there is no one among our colleagues who has had such a meaningful and profound impact on our fisheries policy in this country. As chairman of the Appropriations Committee, he has brought a strong, able, and a no-nonsense approach to the allocation of more than $500 trillion. You are very fortunate to have such an able voice in the U.S. Senate, and along with Senator Murkowski I can tell you they never forget the people of Alaska, and they never let us forget the people of Alaska, either.

I also want to welcome our witnesses who have taken the time to express their views on this very important issue. This the most significant issue to come before the Subcommittee in this Congress. It affects you directly, and your feedback is essential to the decisionmaking process, as we consider changes to the act.

We are here to get your answers to some very important questions: what has worked, what has not worked, what requires improvements, what are your concerns? You are the people on the front lines, and so it is important to understand exactly how the changes in the act have impacted you over the last few years.

As you all know, the Magnuson-Stevens Act is the major and principal act governing our fisheries in America. It is administered by the National Marine Fisheries Service and the eight regional management councils, which establish the rules under which the fishing industry operates. They determine the harvest quota, season length, gear restrictions, and license limitations. These are decisions which have serious implications for those of you who fish and work in Alaska. That is why the difficult management decisions cannot be made in a vacuum. You are the ones whose livelihood is at stake. Your voices must be heard in this process, and as such it is critical that all sectors of the fishing community receive fair and balanced representation.

In July, in Washington, we held a kick-off hearing to examine a broad array of fisheries management issues. Mr. Rick Lauber, chairman of the Northern Pacific Fishery Management Council, provided us with an overview of the topics that we will discuss here today, and I am pleased he will also be part of the panel this morning.

The Subcommittee also held hearings in my state of Maine, in New Orleans, and tomorrow the Subcommittee will be in Seattle. It is my hope and my intention that we hear from as many people as possible, to develop a broad consensus on how to ensure healthy fisheries for the future. After all, can there be any doubt that fisheries are vital to our States and to the Nation as a whole?

In 1998, commercial landings by U.S. fishermen were over 9.2 billion pounds of fish and shellfish, worth $3.1 billion. Further, the recreational fishing catch was 195 million pounds. In Maine, fishing is more than a job, it is a way of life. We have the second longest sea coast in the country. Alaska, with 33,000 miles bordering the ocean, is the only State where Maine could suffer from any envy of coastline. All along the rocky shore are communities with long and rich fishing heritages.

As a result of my work with Senator Stevens on the Commerce Committee, I know the same can be said of Alaska, which produces more seafood than any other State. In fact, Alaska is responsible for one-half of the volume and one-third of the value of the entire U.S. catch.

In 1998, this State had the first and third-ranked ports in the country. Dutch Harbor is on the top of the list, and last year's landings exceeded 597 million pounds worth over $110 million. Kodiak, the third largest, increased its total landings by about 80 million pounds from the year before, and its value was over $78 million. Of course, the other ports like Ketchikan, Petersburg, Cordova, and

Seward were certainly providing major sources of revenue and jobs throughout the entire fishing industry.

While many regions of the country are dependant on commercial and recreational fisheries that are strong and robust, others have not fared as well. Their fish stocks have declined, and fisheries in those regions are feeling the economic impact. Throughout the reauthorization process we will examine ways to again bring about healthy fisheries and healthy fishing communities.

As you know, one of the overall goals of the Magnuson-Stevens Act was to provide a mechanism to determine the appropriate level of catch to maximize the benefit to the Nation, while at the same time protecting the long-term sustainability of the resource. It is a balancing act, to be sure, among competing interests.

We will also hear about the need for participation of nonfishing interests when managing public resources. The Sustainable Fisheries Act of 1996 reflects significant changes to the goals of the Magnuson-Stevens Act. Proper implementation of these provisions is of great concern to many different groups. Accordingly, there is considerable interest in the activities of both the regional councils as well as the National Marine Fisheries Service.

The most substantial change under the act was the mandate to stop overfishing and restore overfished fish stocks. The councils were given a timetable to achieve that goal, and today's witnesses will be giving us first-hand reports about the level of success the North Pacific Council has had in meeting that goal.

The councils and the National Marine Fisheries Service were also told to increase their emphasis on the socioeconomic impacts that regulations have had on fishing communities. Clearly, Congress intended to preserve the fishermen as well as the fish.

The Sustainable Fisheries Act also imposed a moratorium on the creation of new individual fishing quotas, or IFQ's, in which a percentage of the annual catch is held privately. As you well know, IFQ's were a divisive issue in 1996, and I know from my work with Senator Stevens how much it means to those of you who fish off the coast of Alaska.

Today's witnesses will offer recommendations to address IFQ's in the future. We will also hear about community development quotas, or CDQ's, and how they have worked in Western Alaska.

The final policy shifts in the Sustainable Fisheries Act are the provisions to minimize bycatch and protect fish habitat. Based on concerns that certain fish stocks have declined due to their loss of surrounding habitat, the act established a national program to facilitate long-term protection of essential fish habitat. Many have argued that these provisions have not been implemented properly, and we will be discussing this problem as well with our witnesses today.

During my trips home to Maine, I have had the opportunity to discuss many of these issues with fishermen and the people who live in fishing communities. I have heard over and over again how they have been affected by the law because it has been implemented improperly, and that—contrary to its mandate—the best science is not being used in the management and development of policy.

I know that some of these same concerns will be expressed by many of the witnesses here today. I am looking forward to hearing your testimony, because I think we have to develop ways in this process to make sustainable fishing and good management the norm and not the exception. The reauthorization of this act is an opportunity for us to take into account what everybody is saying all over the country, and to try to craft a sensible and balanced plan that affects all sides in this most important debate.

Senator Stevens.

STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Well, thank you very much, Senator Snowe. I am delighted that you have come to Alaska, and I thank you for coming in the winter time. I tell people that I think our best friends come and visit us in the winter time, and you are no stranger to our climate, but you are a stranger to Alaska, so we are delighted that you have come.

I have always believed that field hearings are the best way to get into issues such as this, because if we had set this hearing in Washington, as you know, with the bells ringing and people coming in from all over the country, Alaska would be fortunate to have 15 or 20 minutes of a series of hearings. This way, through your leadership, we are able to have a record made of the Alaska point of view, and it will be available not only to us but to anyone who wants to review the record, and particularly to those who are involved in the regulation of our fisheries nationally.

And it is nice to see—I think of the old movie, where we have rounded up the usual cast of suspects here.

[Laughter.]

Senator STEVENS. I am particularly pleased that Penny Dalton is with us. She used to be here on the podium with us when we held these hearings, and I am glad to see you here, Penny.

I really think that you have gone through most of the things that are before us, and I do not see any reason to be redundant. I do applaud our regional council, which I think is ahead of most of the councils in its fishery management plans, and as you say, Chairman Lauber was before us already on this subject last July. There are people here, too, who believe that the National Marine Fisheries Service and the councils have not implemented the 1996 amendments in a timely or appropriate manner. Some of that delay I think is our own fault in Congress. The AFA required substantial amounts of time and effort from the council and from the agencies during the period that those actions should have been taken, and part of it is the result of our being unable to prevent the courts from inserting themselves into these issues.

We know just recently, again, the Stellar sea lion litigation has come to a focal point, and the agency and the council now are going to be busy for some time to come. Those delays really, I think, lead the reasons for the untimely action, or the fact that we have not had timely action under the AFA, but as chairman of the Appropriations Committee I hope you all realize that since 1995 Congress has increased the Fisheries Service budget by 57 percent, and Congress in my judgment has never devoted more resources to ma-

rine conservation and fisheries management than it does today, and we have done that during a period of, a time when Congress was retrenching in order to balance the budget, so I think it is safe to say that it is going to be very difficult to continue the expansion of these programs at that rate, but we will certainly do our best.

I think the unique issues, particularly those of Stellar sea lions and the existing programs really need review, and I am pleased to be able to participate in that review. I do encourage the National Marine Fisheries Service to think more about long-term research. I am sure that they are on that course already, but I hope that the agency plans to continue in much of the resource that Congress has funded this year. That is an expansion—that money I talked about is aimed primarily at increasing our knowledge of the subjects we are trying to regulate.

And as you say, the IFQ issue is still before us. I hope these hearings give us additional knowledge as to how to deal with that. When the moratorium expires I think that is going to be a central issue for Alaska in terms of the reauthorization, and we need to know more from the witnesses in terms of their attitudes there.

We are also, as you said, going to hear about the community development quotas. I think that program has been very sound, and I do not know if you know it, but the Norton Sound Group recently paid $10,000 in dividends to each of the 15 communities in this region as a result of that program, which is a substantial thing, and the National Science Research Council found that the CDQ program was successful and should be continued.

I do have some questions about the whole question of essential fish habitat. It is a good idea, and I think we need to get re-involved and get more understanding of what the agency intends to do under that program. I certainly did not mean it to become another Endangered Species Act. I do think that there has to be some sort of a trigger in that before we decide that every acre of land under salt water in the United States needs a new Federal process.

I do think there are substantial areas that need that now, and the actions under the ESA should not be diluted by having it be applied across the whole spectrum of land that is under salt water.

But I am not going to prolong my opening statement. I think I have already. We set 20 minutes for the beginning, and we have taken that. I thank every one of you for coming. I will say, last, I thank all of the witnesses who gave us their statements in advance, because I literally read them all coming up here yesterday, and that is a luxury that we normally do not have, is to get the statements far enough in advance that we can really study them before the hearing, but I look forward to the hearing, and having you chair it, Senator Snowe.

Senator SNOWE. Well, thank you, Senator Stevens.

Senator STEVENS. I am glad to be sort of a spectator at this one.

Senator SNOWE. A spectator—yeah.

[Laughter.]

Senator SNOWE. Who believes that in this audience?

Well, before I welcome members of the first panel I just want to introduce our staffs. Sloan Rappoport, Stephanie Bailenson, and Margaret Spring are here from the Subcommittee staff in Washington. Dave Russell from Senator Stevens' D.C. staff, Bill Wolf

from Senator Murkowski's office, and Jean Bumpus from Senator Gorton's staff are also here.

So now I would like to welcome the first panel. Ms. Penny Dalton is the Assistant Administrator of the National Marine Fisheries Service. She is accompanied by Mr. Pennoyer, the NMFS Alaska Regional Administrator. We also have Mr. Rick Lauber, chairman of the North Pacific Council. Nice to see you again. The next witness will be Mr. Dave Benton, Deputy Director of the Alaska Department of Fish & Game, and our final witness will be Admiral Tom Barrett, who is the commander of the Seventeenth Coast Guard District. I thank you all. Ms. Dalton, we will begin with you.

STATEMENT OF PENNY DALTON, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, ACCOMPANIED BY STEVE PENNOYER, ALASKA REGIONAL ADMINISTRATOR

Ms. DALTON. Good morning. I am Penny Dalton, Assistant Administrator of NOAA Fisheries. It is a pleasure to be here today to participate in the committee's continuing review of Senator Stevens' namesake act, the Magnuson-Stevens Act, and to discuss North Pacific fisheries.

Senator STEVENS. : Penny, could you pull the mike forward a little bit?

Ms. DALTON. Sure.

Senator STEVENS. Thank you.

Ms. DALTON. With me is Steve Pennoyer, Alaska Regional Administrator.

With 34,000 miles of tidal marine coastline and 70 percent of the U.S. continental shelf, Alaska plays a central role in our Nation's fishing economy. In 1998, fishermen in Alaska had landings accounting for 52 percent of total U.S. seafood catches. The fishing industry is the largest private sector employer in the State of Alaska, providing 47 percent of basic employment, ahead of oil and gas production, mining, forest products, and tourism. Recreational fisheries are also important. In 1997, anglers spent about 2.6 million days to catch 22.3 million salmon and 673,000 halibut.

Under the Magnuson-Stevens Act, the North Pacific Council and NOAA fisheries have implemented five fishery management plans in Alaska, the Bering Sea, and Aleutian Islands groundfish, Gulf of Alaska groundfish, Bering Sea crab, scallops, and Alaska salmon. The council focuses much of its attention on the two groundfish plans, because routine management under the other three is done in large part by the State.

The Alaska region has achieved remarkable success in preventing overfishing. Relative to other regions, North Pacific fishermen have enjoyed sustained yield due to good stock assessments and conservative management measures. None of the 36 groundfish stocks covered by the groundfish plans is at or below a level of abundance that is considered to be overfished. However, three species of Bering Sea crab, Tanner, Snow, and St. Matthew blue crab are overfished. The council and the State have completed a rebuilding plan for Tanner crab and are developing plans for the other two.

With respect to a possible industry buyback program for this fishery, regulations have been prepared and are under review by the Department and OMB. We expect an interim final rule to be published soon.

In recent years, we have placed a high priority on efforts to reduce fishery impacts on endangered marine species in Alaska, particularly Stellar sea lions. In 1990, after severe declines throughout the Gulf and Aleutian Islands regions, Stellar sea lions were listed as threatened. Since then, numbers have continued to drop, and the western population was reclassified as endangered in 1997.

Because the pollack fisheries are likely to compete with Stellar sea lions for food, NOAA fisheries concluded in a 1998 biological opinion that measures were necessary to prevent jeopardy to the western population and adverse modification to critical habitat. Since then, we have worked closely with the council to develop management measures that disperse the fisheries in time and space and preclude fishing in critical rookery areas.

One change in Alaska fisheries over the last decade has been allocation of the catch among industry sectors, and limits to fishery access. Pollock and Pacific cod were allocated between in-shore and off-shore sectors in 1992, along with the establishment of community development quotas.

In 1995, we implemented council recommendations for individual fishing quotas for Pacific halibut and sable fish. These programs have allowed us to obtain the benefits of a market-based allocation system, protecting interests of small-scale fishermen and fishing communities, and address regional concerns in the program design about consolidation, transferability, and equity.

Among the most challenging issues in recent months is implementation of the American Fisheries Act that was enacted in October 1998. This new law is having a profound effect on the Bering Sea groundfish fisheries, revising in-shore/off-shore allocations, reducing off-shore fishing capacity through a buy-out funded in part by fees on in-shore harvests, establishing fishery co-operatives, increasing monitoring, and applying the harvesting processing restrictions that are commonly known as side boards to fishery participants who receive direct AFA benefits.

The council and NOAA fisheries have worked hard to complete interim AFA rules for the opening of the fishery this week. The next task will be to complete final rules. While the work load has been enormous, we look forward to the fishery management opportunities that the statute is making available.

Another key element of the groundfish management system is the North Pacific groundfish observer program. The Alaska Fishery Science Center, in co-operation with the industry, administers the program under which private companies contract directly with fishermen to provide observers. NOAA fisheries pays for program administration and the industry pays for direct observer costs. The program annually deploys about 350 observers on over 400 vessels and processing plants, providing 30,000 observer days of real-time data to NOAA fisheries, the council. and industry, through an extensive electronic reporting system.

Another Magnuson-Stevens priority is minimizing bycatch. Despite low bycatch rates, the enormous volume of the groundfish

fisheries produces large bycatch quantities. In 1998, we approved and implemented a full retention requirement for pollack and Pacific cod, which will be extended in 2003 to other species.

Biodegradable pinholes are required for pot gear to minimize ghost fishing. Industry co-operation is essential, and we are working with groups like the Groundfish Forum to study new bycatch reduction methods and gear. In addition, the IFQ and CDQ programs and fishery co-operative are contributing by slowing the pace of fishing and allowing more selective practices that reduce capture of unwanted species, increase the recovery rate, and reduce the amount of lost gear.

Another factor in Alaska management is increased emphasis on conserving and enhancing fisheries habitat. Large areas of the North Pacific have been closed to groundfish trawling and scallop dredging to reduce impacts of these fisheries. Habitat area closures encompass about 30,000 square miles in the Bering Sea and an additional 47,000 square miles in the Gulf of Alaska. Other small closures are Sitka and Cook Inlet.

To address nonfishing activities, NOAA Fisheries has conducted about 400 consultations in Alaska to date with Federal agencies whose actions may adversely affect EFH. These reviews integrate EFH consultations into existing environmental review processes to minimize impacts on the public.

In closing, NOAA fisheries is still working to implement the changes made to the Magnuson-Stevens Act in 1996, and would not propose major changes at this time. However, we have identified revisions that may improve the management proces and resolve relatively minor problems. These are summarized in my written testimony.

We look forward to working with congressional Members on high priority policy issues such as observer programs, individual fishing quotas, and funding and fee authorities.

This concludes my testimony. Thank you.

[The prepared statement of Ms. Dalton follow:]

PREPARED STATEMENT OF PENELOPE DALTON, ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Madame Chair and members of the Subcommittee, thank you for inviting me to Anchorage to testify on the implementation and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to speak on issues of concern to fishermen in the North Pacific Ocean and Bering Sea off Alaska. I am Penny Dalton, Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

BUILDING A FOUNDATION FOR SUSTAINABLE FISHERIES - ALASKA FISHERIES

With 34,000 miles of tidal marine coastline and about 70 percent of the total U.S. continental shelf area, Alaska is a state where fishing is a dominant aspect of life. In 1998, for example, commercial groundfish landings in Alaska totaled about 5 billion pounds with a wholesale value of about $1.2 billion. These landings accounted for 52 percent of the total commercial landings in the United States. The commercial fishing industry is the largest private-sector employer in the State of Alaska, providing 47 percent of basic employment, ahead of oil and gas production, mining, forest products and tourism.

While the commercial fishing industry dominates the overall use of living marine resources off Alaska, recreational fisheries also are important to State residents and visitors alike. In 1997, recreational fishermen spent about 2.6 million angler days to catch over 2.3 million salmon and 673,000 halibut.

The North Pacific Fishery Management Council (Council) is primarily responsible for the development of fishery management plans (FMPs) and amendments under the jurisdiction of the Magnuson-Stevens Act. Currently, NOAA Fisheries has five FMPs implemented, one each for groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) area and Gulf of Alaska (GOA), respectively, for the BSAI crab fisheries, the scallop fisheries and salmon fisheries in the EEZ. The Council focuses much of its attention on the two groundfish fishery FMPs because routine management under the other three FMPs has been undertaken for the most part by the State of Alaska.

None of the 36 groundfish species or species groups covered by the two groundfish FMPs is at or below a level of abundance that is considered to be overfished. Three species of crab in the BSAI, Tanner crab, snow crab, and St. Matthew blue king crab, however, are overfished. The Council has developed in conjunction with the State a rebuilding plan for the first species and is developing plans for the other two species that will facilitate the long-term potential yield of these highly cyclical species.

Ensuring that our fisheries do not negatively affect species protected under the Marine Mammal Protection Act and the Endangered Species Act (ESA) is a high priority for NOAA Fisheries. Here in Alaska, two species of particular concern are the Stellar sea lion and the short-tailed albatross. The Stellar sea lion was listed as threatened in 1990. The listing followed severe declines of the species throughout the Gulf of Alaska and Aleutian Islands region, which was the center of its range in the North Pacific. During the 1990s, the species continued to decline and, since the late 1970s, counts of Stellar sea lions in this region have dropped by more than 80 percent. In 1997, NOAA Fisheries recognized that the Stellar sea lion consisted of two distinct populations, and reclassified the population west of 144 W. longitude as endangered.

A number of factors are either known to have contributed to the decline, or are suspected of having done so. The leading hypothesis has been that sea lions have declined due to factors causing nutritional stress, which adversely affects the growth and condition of animals, and their probabilities of reproduction and survival. In December 1998, NOAA Fisheries issued a Biological Opinion that concluded that the pollock fisheries in the GOA and BSAI were likely to jeopardize the continued existence of the western population of Stellar sea lions and modify adversely their critical habitat. To reduce competition between the pollock fisheries and Stellar sea lions, NOAA Fisheries has worked closely with the Council to develop management measures that disperse the fisheries in time and space and preclude fishing from critical rookery and haulout areas.

We have made similar advances in protecting the short-tailed albatross from direct interactions with fisheries. This species, believed to be extinct in 1949, has been slowly increasing in abundance to approximately 1,200 birds in the world today. In 1997 we issued rules requiring the GOA and BSAI hook-and-line groundfish fisheries to use seabird avoidance measures, and in 1998 similar measures were implemented for the halibut fisheries off Alaska. The Washington Sea Grant Program and the fishing industry currently are conducting a Federally funded study to test the efficacy of these new rules. We are implementing a new rule regarding the use of blue-dyed bait in the Hawaiian longline pelagic fishery, and perhaps other such innovations could be employed in Alaska to lessen the attractiveness of bait to seabirds.

Fishing industry requests for allocations of the total allowable catch (TAC) among industry sectors and for limiting access to the fishery resources have grown over the past decade. Allocations of pollock in the BSAI and pollock and Pacific cod in the GOA began in 1992, along with the unique Community Development Quota (CDQ) program. In 1995, we implemented the Individual Fishing Quota (IFQ) Program recommended by the Council for the Pacific halibut and sablefish longline fisheries. Both of these programs are making significant progress toward their respective goals for Alaskan fisheries. They provide a useful model for attaining some of the benefits of a market-based allocation scheme while protecting the interests of small-scale fishermen and fishing communities, and integrating regional sensitivities about consolidation, transferability and equity into program design.

Some of the most challenging TAC allocation issues we have had to deal with recently are those raised by the American Fisheries Act (AFA) passed in October 1998. Implementing the AFA has had a profound effect on the groundfish fisheries in the BSAI and, to a lesser extent, the groundfish and crab fisheries in the GOA. Basically, the AFA established a new inshore-offshore allocation scheme for the BSAI pollock fisheries; reduced fishing capacity through a buyout of nine pollock catcher/processor vessels; established a fee on the inshore harvests of pollock to repay a $75 million loan used for the buyout; and listed vessels or specified criteria for the par-

ticipation of fishing vessels and processors in the BSAI pollock fisheries. The Act also provided for the creation of, and TAC allocation to, fishery co-operatives; increased observer coverage and scale requirements for pollock catcher/processors; required harvest restrictions (commonly known as ″sideboards″) on fishermen and processors who receive exclusive harvesting and processing privileges under the AFA; and directed the Council to develop excessive share harvesting limits for BSAI pollock processing and the harvesting and processing of other groundfish. The Council and NOAA Fisheries made implementation of the AFA a top priority and have worked hard to develop interim AFA rules that we plan to make effective this week. The next task will be to complete final implementing rules. We look forward tothe fishery management opportunities that this statute has made available.

The sophisticated management regime in effect for the BSAI and GOA groundfish fisheries would not be possible without the North Pacific Groundfish Observer Program, which is administered by the Alaska Fisheries Science Center in co-operation with industry. The program has responsibility for training, debriefing, data management, data analysis, and observer provider oversight. Observers are procured through private companies that contract directly with the fishing industry. NOAA Fisheries pays for program administration while the industry pays for the direct costs of hiring and deploying observers. The program annually deploys approximately 350 fisheries observers on over 400 vessels and processing plants. A variety of fisheries are observed and data are collected to meet multiple agency needs. The data are provided to end users in real time through an extensive electronic reporting system. The result is a system which annually provides over 30,000 observer days of readily available quality data to NOAA Fisheries, the Council, and industry.

IMPLEMENTATION OF THE SUSTAINABLE FISHERIES ACT (SFA)

As we enter the 21st Century, we are at a crucial point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of fisheries in federal waters (most dramatically in the case of Alaska), the expansion of the domestic fishing industry, declines in many fishery resources, and the rise of public interest in fisheries issues. We have seen some successes from our management actions, including rebuilding of Spanish mackerel, the initial rebound of a few depleted stocks like Gulf of Mexico red snapper and Georges Bank haddock, and the continued strong production of fish stocks off Alaska. However, as of 1999, 11 percent of U.S. living marine resources are overfished or are approaching overfished, 14 percent are not overfished, and there is another 75 percent whose status is unknown. In Alaska, about 1 percent of living marine resources are overfished or are approaching the overfished status, 12 percent are not overfished, and there is another 87 percent whose status is unknown. We at NOAA Fisheries are working to rebuild fish stocks to levels that could sustain fisheries of greater economic value. From a national perspective, scientists estimate that we could increase U.S. fishery landings up to 6.8 billion pounds by rebuilding all fisheries and maintaining harvests at optimal yields.

The Magnuson-Stevens Act provides the national framework for conserving and managing the wealth of fishery resources found within the 197-mile-wide zone of Federal waters contiguous to the United States (except for the coastal waters for Texas and the Gulf of Mexico coast of Florida where state waters extend out to 9 nautical miles). In 1996, Congress ushered in a new era in fisheries management, making significant revisions to the Magnuson-Stevens Act in the Sustainable Fisheries Act (SFA). The SFA addresses a number of conservation issues. First, to prevent overfishing and rebuild depleted fisheries, the SFA caps fishery harvests at the maximum sustainable level and requires fishery management plans to rebuild any overfished fishery. NOAA Fisheries now reports annually on the health of marine fisheries and identifies fisheries that are overfished or approaching an overfished condition. Second, the SFA refocused fisheries management by emphasizing the need to protect fisheries habitat. To enhance this goal, the SFA requires that management plans identify habitat that is necessary to fish for spawning, breeding, feeding, or growth to maturity. The new law also clarifies our existing authority to comment on Federal actions that affect essential fish habitat. Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that conservation and management measures minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for management plans to assess bycatch and to take steps to reduce it.

The most immediate and direct effect of any commercial or recreational fishery management regulation is on fishermen, their families and communities. To address this concern, the SFA establishes a new national standard 8 that requires, con-

sistent with conservation objectives, that fishery management plans provide for the sustained participation of fishing communities and minimize adverse impacts to the extent practicable. In addition, a national standard has been added to promote the safety of human life at sea. Finally, the SFA provides a number of new tools for addressing problems relating to the transition to sustainable fisheries, including amendments to provide for fisheries disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

NOAA Fisheries takes seriously its mandates under the SFA. We are working to ensure that SFA requirements are implemented, and that conservation and management measures fully protect the resource and provide for the needs of fishing communities and the Nation. A great deal of work remains to be done. We are laying a solid foundation for future fisheries management. The benefits of the changes made by Congress in 1996, however, will take years, perhaps decades, to realize. In addition, the management decisions that we face are becoming ever more complex and contentious, and good solutions are hard to come by. We need to direct resources and effort to the scientific and technical aspects of our work. We also must build consensus with the public and among various stakeholders to facilitate progress in developing management programs that will move us toward the goal of healthy and sustainable marine resources.

The SFA imposed a deadline of October 11, 1998, for amendments to each of the 39 existing fishery management plans to implement its changes. Despite the Councils' best efforts, there were some proposed amendments that did not satisfy the requirements, for which the analyses were inadequate, or that did not minimize socioeconomic or environmental impacts to the extent possible and achieve management objectives. NOAA Fisheries disapproved or partially approved those amendments and is working closely with the Councils to improve them, particularly in the areas of improving our social and economic analyses, rebuilding overfished stocks, minimizing bycatch, identifying and protecting fish habitat, and improving the scientific basis for management. I will outline some of the work we are doing in each of these areas:

Social and Economic Analyses: One of NOAA Fisheries' highest priorities is to improve our social and economic analyses. These analyses are required by a number of laws in addition to the Magnuson-Stevens Act, including the Regulatory Flexibility Act, the National Environmental Policy Act (NEPA), and Executive Order 12866. The requirement of the Magnuson-Stevens Act to include a fishery impact statement, and the new standard on fishing communities, also make clear our mandate to consider the social and economic impacts of any management program. This consistently has been an important part of the decision-making process and has affected our choice of fisheries conservation and management actions. For instance, when we implemented a full retention requirement for pollock and Pacific cod in 1998, we delayed the effectiveness of a similar requirement for flatfish until 2003 to allow development of new markets and gear technology that could minimize the costs of this requirement.

To strengthen our social and economic analysis capabilities, we are issuing revised Regulatory Flexibility Act guidelines to our employees, hiring more economists, sociologists, and anthropologists, and working with other Federal agencies and states to improve our data collection. As a result, economic, social, and biological considerations will be better integrated to assist fisheries managers in making the best possible decisions to balance conservation, the fishing industry, and community needs.

Rebuilding Overfished Stocks: I would like to point out the remarkable success that has been achieved in preventing overfishing of most of the important commercial stocks in the North Pacific. The conservative and scientifically based TACs that have been used in recent years have contributed significantly to the continued production of groundfish stocks. With the exception of the crab species I previously mentioned, fisheries management by the State of Alaska under the crab, scallop, and salmon FMPs also has prevented these species from becoming overfished. Rebuilding plans are being developed for the three species of crab in the BSAI that have been found to be overfished. Relative to fishery stocks in other regions: however, those in the BSAI and the GOA have enjoyed sustained yields due to the scientifically based stock assessments by the Alaska Fisheries Science Center and the conservation and management measures recommended by the Council. On the subject of buybacks, regulations have been prepared and are under Department of Commerce and Office of Management and Budget (OMB) review. We expect that an interim final rule will be published shortly, and that public comment on an additional referendum will be solicited. We can operate under the interim final rule once OMB has cleared the regulation.

Minimizing Bycatch: Minimizing bycatch continues to be a very high priority for NOAA Fisheries in Alaska. Despite low bycatch rates in the groundfish fisheries, relative to similar fisheries around the world, the large volume of these fisheries produces a large poundage of bycatch. Existing prohibited species catch limits and closed areas in the groundfish fisheries, however, effectively move fisheries out of areas of high bycatch of non-groundfish species. Improvements in bycatch control can still be made. We have been working closely with the Council and industry to make steady progress on reducing bycatch and discards. In December, we published a proposed plan amendment that would establish a framework to reduce the annual trawl bycatch limit for chinook salmon. Also in December, we published another proposed plan amendment that would prohibit non-pelagic trawling in a directed pollock fishery. Other potential bycatch reduction actions we are working on with the Council include development of a halibut mortality avoidance program. In 1998, we approved and implemented a full retention requirement for pollock and Pacific cod, which will be extended to rock sole and yellowfin sole in the BSAI and shallow water flatfish in the GOA in 2003. Biodegradable panels are required for pot gear to minimize the unseen bycatch of lost or so-called ghost fishing gear.

Industry co-operation has been critical in reducing bycatch. We have issued a number of experimental fishing permits, and are working with various industry groups, including the Groundfish Forum, to study new bycatch reduction methods and gear. In addition, the IFQ and CDQ programs and fishing co-operatives are contributing to bycatch reduction. Although minimizing bycatch was not their primary purpose, by slowing the pace of fishing under these regimes, they have allowed for more selective fishing practices that reduce the capture of unwanted species, increase the recovery rate and product quality of the targeted species, and provide for significant reductions in the amount of fishing gear used and lost. Care in the deployment of fishing gear is particularly prevalent in the CDQ fisheries in which most all bycatch of non-target species is counted against a specified CDQ allocation. This induces CDQ fishermen to focus on maximizing the value of all species harvested instead of maximizing the volume harvested of any one species as in non-CDQ fisheries.

Essential Fish Habitat (EFH): The SFA substantially increased the emphasis in the Magnuson-Stevens Act of conserving and enhancing fisheries habitat. Off Alaska, we have a long history with the Council in protecting important areas of bottom habitat. The productivity of the sea floor habitat has long been recognized as an essential component of an ecosystem-based fishery management regime and regulations have been implemented to protect specific areas of important sea floor habitat. Large areas of the North Pacific have been closed to groundfish trawling and scallop dredging to reduce impacts of these fisheries on bottom habitat and protect juvenile crabs. In the BSAI, habitat area closures encompass about 30,000 square nautical miles, more than twice the area of Georges Bank off the East Coast of the United States. The GOA closures encompass an additional 47,000 square nautical miles, but most of this area is off the continental shelf. In addition, the Council has proposed, and we are reviewing, an additional closure of about three square miles around the Cape Edgecumbe pinnacles in the southeastern GOA off Sitka. If approved, this action would prohibit all fishing activities in this area that is recognized as habitat particularly important for the spawning, breeding and growth of a variety of commercially important fish species. An additional closure to trawling in Cook Inlet also is under consideration.

To address non-fishing activities, NOAA Fisheries has conducted close to 2,500 consultations to date with Federal agencies whose actions may adversely affect EFH, including about 500 in Alaska. These reviews have been accomplished largely by integrating EFH consultations into existing environmental review processes as a way to minimize regulatory impacts on Federal action agencies and the public. We expect the number of consultations to increase as outreach efforts with Federal agencies continue to build awareness of the EFH statutory requirements. However, it is important to remember that even prior to the designation of EFH, most Federal actions affecting the habitat of marine and anadromous species were subject to review by NOAA Fisheries under other legal authorities. EFH has provided more emphasis and structure to these reviews, and we are working closely with affected agencies and industries to ensure the EFH consultation process is efficiently implemented. For example, in Alaska, we have reached agreement with the Corps of Engineers to combine EFH consultations with the existing permitting process for dredge and fill activities, and we are beginning discussions with the U.S. Forest Service to build EFH consultations into their environmental analyses under the National Environmental Policy Act.

Improving Scientific Information: NOAA Fisheries is committed to using the best possible science in the decision-making process, and to incorporating biological,

social, and economic research findings into fisheries conservation and management measures. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collecting a considerable amount of data. In the Alaska Region, NOAA Fisheries is continuing to augment a wide range of data collection activities. The frequency of groundfish surveys in the BSAI and GOA is being increased to improve monitoring and prediction of commercial stock status and distribution. The first new Fisheries Research Vessel is planned for deployment to Alaska. Coordination and co-operation with industry, academia and State agencies in a wide range of fishery-marine mammal interaction research is being expanded and pilot research on the impacts of fishing is underway in the BSAI and GOA. The North Pacific Groundfish Observer Program is continuing to work with industry and the Council to improve the quality and timeliness of the data it collects. Notwithstanding these exciting developments, we will continue to support a precautionary approach in the face of scientific uncertainty.

MAGNUSON-STEVENS ACT REAUTHORIZATION ISSUES

We are still working to understand and effectively implement the changes to fishery management policies and procedures made by the SFA. Consequently, we would not propose major changes to the Magnuson-Stevens Act at this time. However, we have identified some revisions of existing provisions that may be useful to make the management process more efficient and to resolve some relatively minor problems. We currently are reviewing various issues raised by the task force, the Councils, and some of our stakeholders. Among the issues identified are the following:

Review process for fishery management plans, amendments and regulations: The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, one result of that effort has been two distinct review and implementation processes -- one for plans and amendments and another for implementing regulations. This essentially uncouples the review of plans and amendments from the process for regulations, and as a result, the decision to approve or disapprove a plan or amendment may be necessary before the end of the public comment period on the implementing regulations. We are considering amendments that would modify the process to address this issue.

In addition, the Committee may wish to consider reinstating the initial review of fishery management plans and amendments by the Secretary. Considerable energy and staff resources are expended on plans or amendments that are ultimately disapproved because of serious omissions and other problems. At present, two to three months must elapse before the Secretary makes his determination, and if the amendment is then disapproved, it can be months or longer before the Council can modify and resubmit the plan or amendment. While the initial review was eliminated by the SFA to shorten the review process, reinstating Secretarial review may actually provide a mechanism to shorten the time it takes to get a plan or amendment approved and implemented.

Restrictions on data collection and confidentiality: The Magnuson-Stevens Act currently restricts the collection of economic data from processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the laws requiring social and economic analysis. In addition, the SFA changed the term "statistics" to "information" in the provisions dealing with data confidentiality. The change has raised questions about the intended application of those provisions, particularly with respect to observer information, and Congressional clarification would be useful.

Coral reef protection: Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats for many species. Currently, the federal government has the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. However, we remain concerned with threats to those resources from non-fishing vessels. We intend to work with other federal agencies to suggest amendments to the Act to clarify, consolidate, and strengthen the federal government's authority to regulate the actions of any recreational or commercial vessel that is directly impacting resources being managed under the Magnuson-Stevens Act.

Caribbean Council jurisdiction: The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the Council cannot develop fishery management plans governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Island, by including "commonwealths, territories, and possessions of the United States" within the description of that Council's authority.

Council meeting notification: To meet the notification requirements of the Magnuson-Stevens Act, Councils spend tens of thousands of dollars a year to publish meeting notices in local newspapers in major and/or affected fishing ports in the region. By contrast, fax networks, mailings, public service announcements, and notices included with marine weather forecasts are much less expensive and could be more effective in reaching fishery participants and stakeholders. The Committee may wish to consider modifying notification requirements to allow Council use of any means that will result in wide publicity.

We look forward to working with Congressional members on high-priority policy issues such as observer programs, individual fishing quotas, and funding and fee authorities, although, at this time, we have no specific recommendations for changes in the Magnuson-Stevens Act to address these issues. We will continue to work closely with the Alaska delegation, the Council and our various stakeholders to resolve problems affecting Alaska fisheries.

Madame Chair, this concludes my testimony. Thank you for the opportunity to discuss the implementation and reauthorization of the Magnuson-Stevens Act. I am prepared to respond to any questions you and members of the audience may have.

Senator SNOWE. Thank you, Ms. Dalton.

Mr. Lauber.

STATEMENT OF RICHARD B. LAUBER, CHAIRMAN, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Mr. LAUBER. Good morning, Senators. Thank you for the invitation to testify again before this committee. I will cover additional material, relying on the record for my previous testimony.

We have all heard that fisheries are doing poorly around the Nation and the world. For the most part, resource managers have not received very good marks. From my experience as council chairman for almost 10 years, and many, many more years in Alaskan fisheries, I think that we have good, sound, sustainable fisheries management here in Alaska.

We have put the Magnuson-Stevens Act to use, but to make the Magnuson-Stevens Act work requires a considerable dose of political will to restrain the fisheries so the fish can flourish but still keep industry viable. We have achieved a balance that maintains Alaska as the United States leader in fisheries production, as previously mentioned, with over 50 percent of the Nation's landings here. We have limited entry into our fisheries, and have initiated the largest IFQ experiment in the United States for our sable fish and halibut fisheries. We allocate many species by sector, and tightly control bycatch and waste of nontarget species.

I am proud that our industry has been willing to shoulder the cost of this highly regulated regime, as well as an expensive observer program to ensure the long-term sustainability of our resource.

Now, I want to focus on several key issues that are currently before the council. The Stellar sea lion protection has required much of our time since late 1998. Last year alone, fully 20 percent of our council meeting time was spent on sea lion protective measures. We responded directly to advice from the National Marine Fisheries Service in approving many restrictive measures that will place a severe economic burden on local fishermen. We need more research and experiments carried out to help us learn more about the impacts of fishing and adaptive management. We only hope that our actions will help the sea lions rebound.

The American Fisheries Act was a groundbreaking piece of legislation. It has consumed roughly 35 percent of our council meeting

time and 30 percent of our staff time. I sense that in the long run we will conclude that the AFA provided a very innovative approach to addressing overcapacity in the pollack fisheries and its use of co-operatives may provide a good template for other fisheries as well. It may have many advantages over the IFQ system.

For the year 2000, the off-shore and in-shore co-operatives will be up and running, and we have appropriate side boards in place to limit their impacts on non-AFA fisheries. Groundfish processor side board caps and excessive shares are up for final action this April. Our fisheries such as Gulf of Alaska pollack and Bering Sea crab are considering the use of co-operatives. we will present a full performance report to you in October.

Restricting halibut charter boat activities is a big issue that we will address this coming next meeting in February. We are considering guideline harvest levels not to close the charter boat fishery, but to trigger future fishing constraints to keep the overall harvest within the guideline harvest range. They will apply only to the charter fleet, but I am sure you will hear from unguided sport fishermen as well and the commercial fleet no matter what we do.

Overfishing definitions may be considered in the upcoming reauthorization. I noted earlier that we have generally robust groundfish stocks. We also realize that individual stocks can fluctuate wildly over time. Somehow, we must balance the need for protective overfishing measures with these natural changes in abundance. Let us be precautionary in our management, especially when the stock is low, but reasonable in our approach.

On essential fish habitat we have added descriptions to our fisheries plans and imposed measures to minimize fishing impacts on habitat. All in all, we have closed about 30,000 square miles of the Bering Sea to trawling, an area larger than Maine, and more than twice the size of George's Bank.

We have banned bottom trawling in some areas of the State. The Gulf of Alaska has closures as well, and I believe Congress should take a hard look at our habitat requirements and be more specific about defining essential fish habitat. Let us protect the habitat that really counts. The broad perspective current legislation and the NMFS guidelines just opens the door for wide types of lawsuits and criticisms.

Subsistence has come to the forefront because of the Federal take-over of fisheries in Alaska, but at the current time the council is only working with subsistence halibut issues. We quite likely will become more involved in the subsistence issue as this evolves.

Last, I want to touch on the Russian fisheries and our pollack stocks. Our pollack viability may hinge to some extent on how much is harvested in Russian waters. U.S. stocks mix with Russian pollack off Cape Naveran, and we are hit hard off our maritime boundary in the northern Bering Sea. We can expect even more intense pressure along the boundary, because their stocks are declining.

The situation further aggravated by the Russian State Committee on Fisheries licensing vessels from five or six countries to fish pollack for hefty fees, and recent reports of factory trawlers moving from Mermansk to the Far East.

We appreciate your support for scientific exchanges of information and increased patrol activities by the United States Coast Guard along the boundary and the donut hole. This problem needs our continued attention and resolution.

Thank you very much.

[The prepared statement of Mr. Lauber follow:]

PREPARED STATEMENT OF RICHARD B. LAUBER, CHAIRMAN, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Good morning, Senators. As always, it's an honor for me to appear before you, particularly with my esteemed colleagues from NMFS, the State of Alaska, and U.S. Coast Guard. It's a good time to have a hearing. We all made it through the end of the century, and appear to be Y2K compliant, and I think now is an appropriate time to take stock of how we're doing in fisheries management. The really good news to me, from my vantage point of over a quarter century being involved in Alaska fisheries, and almost ten years as the Council chairman, is that I believe we may be onto "sustainable fisheries management" for most of our fisheries up here. That can be a very illusive goal, as we all know from our collective experience in other regions of the U.S. and around the world.

For the most part, resource managers have not received very good marks. And it's not for lack of strong legislation such as the Magnuson-Stevens Act, which with all its myriad provisions and amendments, provides a very sound foundation for sustainable management. Rather, the vital ingredient that seems to be missing in many areas is a political will to establish effective management constraints so that fish stocks can flourish, while still allowing for an economically viable fishing industry.

We have achieved a balance up here that has allowed Alaska to remain the U.S. leader in fisheries production. Over 50% of the nation's landings come from Alaska stocks, and we are proud of that. We have strong support from NMFS and the State of Alaska, in providing comprehensive stock assessments, and we have constrained harvest levels through firm season closures once the harvest is taken. Last month our scientists again informed us that our groundfish stocks continue to be in good health, with Bering Sea pollock stocks rebounding with a very strong 1996 year class. That's good news for the industry and hopefully for the sea lions. Our flatfish stocks seem to have topped out for now and are cycling downward. Each of our stocks has its own unique cycle and we cannot keep all of them high all the time. But for the most part, the fisheries remain healthy off Alaska as we head into this next decade.

On the fishing capacity side of the equation, the North Pacific Council over the past ten years has limited entry into every fishery under its jurisdiction, and moved beyond that for the sablefish and halibut longline fisheries, to the use of individual fishing quotas, the largest such experiment in the U.S. to date. Overlaying most of our fisheries is a complex array of allocations of target species by industry and gear sector. Additional regulations control bycatch and waste of non-target species.

This complex management system, of course, comes at a high cost and is not without burden to industry. I am proud to say that our industry has been willing to shoulder those costs, as well as an expensive observer program, to ensure long term sustainability of the resource. You will be hearing from industry today, and I hope they share my view that the promise of sustainable fisheries is worth the pain inflicted by our management system.

When I appeared before Senator Snowe and the Senate Subcommittee last July, I conveyed various recommendations on amendments to the Act developed by the eight Council Chairmen at their meeting in June in Rhode Island. Also, I summarized our Council's progress on implementing the Sustainable Fisheries Act of 1996. I submitted extensive documentation on our actions and will not repeat it here today. Instead, in my remaining remarks, I want to focus briefly on several key issues that have required considerable attention this past year, and where we are heading on them.

STELLAR SEA LION PROTECTION

The first one that stands out above the rest is the protection of Stellar sea lions. Even though we've been working on various measures since 1990 to protect sea lions, our involvement increased by orders of magnitude when NMFS issued its Biological Opinion in early December 1998, prodded along by the lawsuit filed by several environmental groups the previous April. We spent significant time on sea lions

at our November and December 1998 meetings, and even more in 1999. In fact, in our five Council meetings last year, fully 20% of our time was spent considering sea lion protective measures. In some meetings it was much more, roughly 47%, for example, at the June 1999 meeting when we debated and then approved longer term measures for 2000. We certainly hope that the time spent and the resulting protective measures facilitate their recovery.

Our Council actions responded directly to advice from NMFS, though it should be noted that NMFS has added additional protective measures around rookeries and haulouts near Kodiak that could place a severe economic burden on local fishermen. I anticipate that you will hear more about this in the other panels. I believe we have done about all we can do for the time being, given our state of knowledge to protect sea lions. We have overlain a very complex management regime with even more complexity. We would like to see more research conducted on Stellars and some experiments carried out to help us learn more about the impacts of fishing and perform adaptive management.

Before leaving this topic, I do want to commend NMFS for including us in its decision making on measures to protect sea lions. Though we have never been able to convince NMFS to give us much of a hand in reviewing their draft biological opinion, they did a good job of bringing proposed measures to us for approval, mainly at the urging of the Regional Administrator, Steve Pennoyer. I think we have been very responsive to their needs, and hope the measures work to rebuild the sea lion populations and bring them out of jeopardy from any fishery.

AMERICAN FISHERIES ACT

A second big issue is the American Fisheries Act. I know that AFA is not the focus of this hearing, but it is pretty tough to keep it in the background. It was a groundbreaking piece of legislation. With all its trappings, it has posed a tremendous challenge to the Council. Consider for the moment that we really did not even have it on our tasking list as we approached the fall of 1998, and yet in 1999 it consumed roughly 35% of our Council meeting time and 30% of our Council staff time between meetings. That amounts to almost 3000 hours of staff time solely on AFA, and I don't even have an estimate of the amounts of time put in by NMFS and ADFG staff, though I know it is very significant.

So, I want you to know that we are very grateful for your successful efforts to send additional funds our way to defray costs of these AFA activities. The funds are sorely needed and will be spent over the coming year or two (if we can get an extension) on contracts for analysis of AFA amendments, and in developing a comprehensive benchmark study of the status of Alaska's fishing industry in the year 2000. I would hasten to add that, while the AFA was a huge burden on us and the industry, I sense that in the long run, we will conclude that it was a very effective and innovative approach to addressing overcapacity in the pollock fisheries, and its use of co-operatives may provide a good template for other fisheries as well. I would also note that the development of co-operative structures in the pollock fisheries has somewhat muted the heretofore urgent pleas for IFQs to rationalize the fisheries. I know that the extension of the IFQ moratorium may be up for consideration in the next reauthorization of the Act. I am not sure how important that really is to us off Alaska for the time being while AFA shakes out, and will be very interested in what others have to say.

For 2000, the offshore and inshore pollock co-operatives will be up and running, and we have appropriate sideboards in place to limit their impacts on non-AFA fisheries. In April, the Council will take final action on groundfish processor sideboard caps and excessive shares for pollock processors. Other fisheries, not envisioned within AFA, also are considering the use of co-operatives. This includes the Gulf of Alaska pollock and Bering Sea crab sectors. In October, we are scheduled to provide you with a full performance report on the AFA.

HALIBUT CHARTERBOAT RESTRICTIONS

A third big issue, restrictions on halibut charterboat activities, will be before the Council in February and I can imagine you will be hearing a lot about it from both sides, regardless of how the chips fall. The charter catch off Alaska has grown significantly the past few years, and because it has been taken off the top before the commercial quota is set, uncontrolled charter growth could take a significant bite out of the commercial quota, now fished under an IFQ system.

We are considering a proposed Guideline Harvest Level (GHL) for the charterboat fishery. We have listened closely to that industry and they do not want to be shut down in season. So the GHL will be designed not so much to close the fishery, as to trigger restrictive management measures in future years to bring the charter har-

vest within the GHL range. One of the measures our analysis has shown would be most effective, is to reduce the bag limit from two fish to one fish. The charter fleet is not happy with this approach, of course, because they believe their clients would not come for only one fish.

We will take final action next month in Anchorage and I have heard that there will be well over 300 people there to testify. This is our Council's first big foray into the classic commercial-recreational struggle that has played out for years elsewhere in the nation. I'm not sure what the outcome will be, but whatever restrictions we choose, will only apply to charter boat fishermen. Unguided sport fishermen will not be impacted by the restrictions. But I'm sure you'll hear from everyone.

OVERFISHING

As I noted earlier, we have been very fortunate in the North Pacific in that our stocks are robust and in good shape. One groundfish stock, Pacific ocean perch, was depleted by heavy Japanese and Soviet fisheries in the 1960s and early 1970s. It remained in low abundance for years despite little in the way of catch. We approved a rebuilding plan in 1993, and were very fortunate that some good year classes came along shortly thereafter and the stock has recovered nicely.

Our shellfish resources have not been so lucky. Three stocks, Bering Sea bairdi and opilio Tanner crab and St. Mathew blue king crab, have declined sharply despite the best efforts of ADF&G and very sound science provided by researchers such as Dr. Gordon Kruse. We approved a rebuilding plan for the bairdi stock last October, and will approve plans for the other two stocks next June . Its very difficult to predict if the stocks will come back according to schedule, but we will be making every effort to protect them.

We will be watching with great interest, any proposed changes to the Magnuson-Stevens Act concerning overfishing definitions. Somehow we have to ensure that we balance the need for protective overfishing measures with the natural tendency of stocks to fluctuate widely over time. Just because a stock takes a cyclical bounce to low abundance levels as a result of environmental shifts, does not necessarily mean that we should drop everything else we are doing to establish a rebuilding plan right away. I fully agree that we need to be precautionary and conservative in our management, especially when a stock is low, but we need to be reasonable and methodical in our approach, and not shut everything down as some environmental groups would have us do.

ESSENTIAL FISH HABITAT

A few brief comments on essential fish habitat: Our Council responded quickly to the SFA amendments of 1996 to add descriptions of EFH to our fishery management plans. We fully understood that within the same 24-month timeline for the descriptions, the SFA also called for concurrent measures to minimize fishing impacts on habitat to the extent practicable. Because of the workloads involved, we chose a deliberate two-step approach. First we worked at identifying EFH and adding those descriptions to our plans by June 1998. Then we established a process for considering the fishing impacts, and are now concentrating on identifying habitat areas of particular concern, based on ecological function and vulnerability to man-made impacts.

This is not to say that we have not acted to protect habitat. We've closed a unique pinnacle area off Sitka to bottom fishing. We've banned non-pelagic trawling for Bering Sea pollock. We've closed about 30,000 square nautical miles in the Bering Sea to trawling, an area larger than Indiana or Maine and more than twice the size of Georges Bank off the east coast of the U.S. Additional large areas on and off the continental shelf in the Gulf of Alaska are closed to bottom trawling.

Despite these efforts, a recent lawsuit has placed us and other councils under the gun to take additional actions to protect habitat. I am beginning to believe that Congress needs to take a strong, second look at our habitat requirements and give them more focus on exactly what is meant by "essential" fish habitat, rather than using the rather broad perspectives in the current legislation and NMFS guidelines. I believe we need to protect habitat, but the open-ended definitions now being used just leave too many hooks and handles for litigation in what is already a very litigious environment. These views closely parallel similar views raised by other Council chairmen.

SUBSISTENCE

As you know, Senator Stevens, subsistence management reached a milestone this past year when it was turned over to the Federal Government. Our Council has been involved with the issue only peripherally, mainly with halibut on the Bering

Sea coast. I have been involved with some of the higher level State-Federal planning bodies in the past year, and we will work closely with the U.S. Department of Interior, ADF&G, and the Alaska Board of Fisheries to resolve any management issues. As subsistence management evolves, we will keep you posted on our involvement.

RUSSIA FAR EAST FISHERIES

The last issue I want to briefly touch on, is the potential impact of Russian fisheries on our pollock stocks. I noted earlier that our Bering Sea pollock stocks are rebounding. Their long term viability, however, will depend to some extent on how they are fished on the Russian side of the maritime boundary in the northern Bering Sea. The extent of intermingling of our stocks and theirs off Cape Navarin varies year-to-year. For example, our scientists estimate that eastern Bering Sea pollock made up from 47-61% of the pollock catch off Cape Navarin in 1990-1994. More recently, they are estimated to make up only 2-7%. Regardless of the exact amounts, we know that there is considerable pressure on the pollock resource in the immediate vicinity of the maritime boundary.

Acoustic surveys have shown heavy concentrations all along the line. As I am sure the Coast Guard will show you in their presentation, their patrols detect numerous foreign vessels within 5 nm of the boundary all summer. These vessels are a mix of Russian fishermen, Russia-flagged foreign ships, and vessels from Japan, South Korea, Poland, China and elsewhere, licensed by the Russia State Committee on Fishing. Pollock stocks in the Western Bering Sea and in the Sea of Ohkotsk are faltering, so we can expect even more intense pressures along the boundary.

I have been privy to most negotiations on the boundary and on the Donut Hole. The moratorium on fishing in the Donut Hole seems to be durable for the time being, but we have not made much headway along the boundary. I and others in industry and government appreciate the funds that were made available to upgrade the hydroacoustic surveying capabilities of the Professor Kaganovsky a year or two ago, and certainly our scientists have been working co-operatively with the Russian biologists. It is apparent, though, that we need to be able to get our scientific vessels like the Miller Freeman, into their zone to work alongside the Russian survey vessels to determine the extent of the intermixing of our pollock.

We also will need to continue the cultivation of our Coast Guard contacts with enforcement types on their side, so that we do not run into the types of situations that developed last August when our Coast Guard cutter HAMILTON was surrounded by 19 Russian factory trawlers to obstruct the Coast Guard's effort to seize the factory trawler GISSAR for illegally fishing in the US EEZ. It's my understanding that RADM Barrett has initiated meetings with high level officers in the Northeast Region of the Federal Border Service, and that we are now providing them twice weekly with reports of vessel names, locations and activities of Russian and other fishing vessels operating within the 1.5 to 5 nm buffer zones along the boundary.

We appreciate your support of our efforts to strike a reasonable understanding with the Russians on coordinated management of Bering Sea pollock. Hopefully our efforts will bear fruit in the long term, though it may take awhile for the political system to settle down on their side. Certainly your continuing support will be needed, both in terms of funding for research and enforcement, and for any international agreement that may result from our efforts to establish a sustainable fisheries management regime in the northern Bering Sea.

In closing, I want to express my appreciation to you for holding this hearing up here in Alaska, especially considering that it is not the best time of year to be outdoors, though it is always beautiful, snow or sunshine. I would be happy to respond to any questions you might have, and I look forward to working with you on any forthcoming changes to the Magnuson-Stevens Act.

Senator SNOWE. Thank you, Mr. Lauber.

Mr. Benton.

STATEMENT OF DAVE BENTON, DEPUTY DIRECTOR, ALASKA DEPARTMENT OF FISH & GAME

Mr. BENTON. Thank you, Madam Chair.

Madam Chairman, I would like to welcome you again to the State of Alaska, and thank you for coming up here, and on behalf of the State I would like to express our appreciation for the efforts of yourself and Senator Stevens to understand the implications of

the Magnuson-Stevens Act on our State. I would like to just touch on a couple of key issues that are highlighted more fully in my written testimony and answer any questions you might have.

As we have already heard, the Magnuson-Stevens Act really represented a major change on national policy from its very beginning. It instituted a regime that took hold worldwide to establish the 200-mile zones and led the way for conservation and management around this country and in many ways throughout the world, and I think that is a record that the Congress of the United States should be very proud of.

The amendments in 1996, as you pointed out, constituted a major policy shift in the act and in the direction that fisheries management was going in our country. Those amendments acknowledged the need to be more proactive on conservation measures and preventing overfishing. It included new standards to protect fishing communities, and that is something that is very important in this State, and it is something that is very important around the country.

The measures for essential fish habitat have caused some consternation in some quarters. They are overly broad in some ways. But the council in our part of the world is really just beginning to try and come to grips with how we are going to address essential fish habitat.

As Chairman Lauber pointed out, we have a large number of areas that are protected now. We have spent a lot of time looking at criteria, and the broad policies that you would use to identify essential fish habitats, and we have got a lot of work in front of us. As has been pointed out, we have 34,000 miles of coastline and over two-thirds of the Nation's continental shelf, and that is a big area and a lot of work, and in many ways that is true for a lot of the measures in the 1996 amendments to the Magnuson-Stevens Act. We have been trying to implement that act. It is a very large task, and as Senator Stevens and yourself pointed out, other events have overtaken us. Stellar sea lions have taken up a lot of our time. The American Fisheries Act has taken up a lot of our time.

A couple of the amendments that I think are important from the State's perspective for you to think about first off is how the act has affected State and Federal relations. Section 306 went a long way to answering some problems that this State had working with the Federal Government on basically who is in charge of what species or what fisheries, and it was a great step forward and has solved a number of our problems.

The act has provisions in it that require the States and the Federal Government to work together on research and monitoring and fisheries management programs, and I have to say that from my perspective we have an excellent working relationship with the National Marine Fisheries Service in Alaska. That does not mean we always agree. It does not mean it always goes smooth. We have our bumps in the road, but over all we have a very good working relationship with the National Marine Fisheries and NOAA and are very appreciative of that.

Section 401 was one area where we have some differences this year. It pertains to fishery monitoring and reporting. National Marine Fisheries Service was under the gun to develop an electronic

reporting system for the fisheries off our coast. The State of Alaska also has management responsibilities in a number of those fisheries, and we were working with the National Marine Fisheries Service to develop what we call the Alaska Fisheries Information Network, a joint fishery information program between Federal and State agencies, but NMFS went off on sort of a tangent with their electronic recording program and was developing that independently.

After a lot of back-and-forth, sometimes friendly, sometimes not-so-friendly, we managed to resolve that. We are working together I think very well now, and I am hopeful that in the not-too-distant future we will have a combined State-Federal system that will work and will be of great benefit to the industry and reduce the cost to both the State and the Federal Government.

The other section of the act that has been of great help to us in terms of strengthening State and Federal relations is section 312, Fisheries Disasters. That has played a big role in the Western Alaska fishery problems that we have had. It again showed we are working with National Marine Fisheries Service and NOAA very closely. The State has been able to address some unique problems up here, and we are greatly appreciative of their efforts in working with us on that.

The one problem with that that I would like to call your attention to is that there is a requirement for a three-to-one match, which for many of those very small remote rural communities has caused some difficulties and is something that we would like to try and work with the Congress to address in the future.

I would like to mention just one other item, and I will close, and that is an issue that is coming before the Congress very quickly, and that is the moratorium on individual fishing quotas. Alaska has, through our council up here has the largest IFQ program in this country and possibly the world. It has been largely a success, but that did not come without great pain, and it was a program that was in many ways a simplistic program, in that it is basically two species and one gear type.

At the time that the Congress was considering the amendments to the 1996 act, we were looking at potentially putting IFQ's in place for multiple species and multiple gear types, and fortunately, at least from our perspective, the Congress did say, take a minute, slow down, let us have the National Research Council look at IFQ's and provide us with some advice before we go much further down that road. I think that was a very wise decision. There were big issues in front of the country and a lot of big issues in front of our council.

The moratorium will expire in the not-too-distant future. Many of those very large issues have yet to be addressed, issues such as consolidation, effects on communities, how much limitation there should be on ownership, what do you do about transferability, what happens to small boat fishermen versus big corporations, and how do you encourage or account for allowing entrance into a fishery that is closed with an IFQ program for people that are new entrants, people that want to get into the fishery, young people that do not really have the resources yet to buy in a major way.

Those all need to be addressed if we are going to allow IFQ programs to go forward. I am not saying do not allow them to go forward, and I am not saying that they are the greatest thing since sliced bread, but I am saying there are some issues that need to be addressed, and that allowing the moratorium to expire is not an insignificant action.

With that, I will close. Thank you very much.

Senator SNOWE. Excuse me? What was your final sentence there?

Mr. BENTON. Pardon me?

Senator SNOWE. You said, allowing the moratorium to expire——

Mr. BENTON. Is not an insignificant action. In other words, Madam Chair, if the moratorium is allowed to expire, those issues and many others are going to surface that will need to be addressed, and we will need congressional guidance, I believe, in some of those before we can put an IFQ program in place. That is really what I am saying.

Senator SNOWE. Thank you, Mr. Benton.

Admiral Barrett.

STATEMENT OF REAR ADMIRAL THOMAS J. BARRETT, COMMANDER, SEVENTEENTH COAST GUARD DISTRICT

Admiral BARRETT. Good morning again, Madam Chairman and Senator Stevens. Thank you for inviting the Coast Guard to appear before you this morning.

Let me begin with an update on Coast Guard operations this morning. We have two cutters, the STORIS and the JARVIS on patrol in the Bering Sea. They were originally positioned to provide search and rescue response for vessels in the State Opilio crab fishery, the most dangerous in the United States. However, the State recently delayed this fishery until April because of advancing ice. However, this month we still have major pollock and cod fisheries going on. Indeed, the Bering Sea pollock fishery is one of the largest commercial fisheries in the world.

Coast Guard personnel are also conducting voluntary commercial fishing vessel safety exams in Western Alaska, and providing training to fishers on stability and damage control. A third cutter, the ACUSHNET, is en route to the Aleutians to monitor the active mackerel fishery and enforce no-fishing areas around 37 Stellar sea lion rookeries.

Air Station Kodiak is assisting the cutters with C–130 overflights to locate the fleets, identify boarding contacts, and assist with the closed area enforcement.

All of these units are positioned and prepared to respond to any type of search and rescue case that may arise, which is particularly critical in winter, when bitter cold temperatures and frequent heavy weather dramatically reduce survival times even for those with exposure suits.

The Coast Guard's primary role in fisheries management is to enforce the regulations that make the various management plans work. We have traditionally provided at-sea enforcement in the form of cutter and aircraft patrols, and at-sea boardings. Our fisheries enforcement operations in Alaska emphasize four areas. First, we patrol the North Pacific beyond our EEZ, protecting U.S. salmon stocks from illegal high seas driftnet operations.

Because of the great distances involved, this is a mission suitable only for our largest cutters and most capable aircraft. It involves a co-operative international effort, under the auspices of the North Pacific Anadromous Fish Commission, with the countries of Japan, Russia, and Canada. In 1999, this international team detected 10 illegal vessels and apprehended three. We will be out there again this spring.

Our most resource-intensive mission is the U.S.-Russia maritime boundary in the Bering Sea. This past year we saw an aggressive Russian fleet pushing the line with more vessels for longer periods of time. Coast Guard flights in August detected over 170 foreign factory trawlers within 50 miles of our boundary, and over 100 of those vessels within 5 miles of the line.

This pressure required a nearly constant presence of high endurance cutters and C–130 flights. Although pollock is the target, the issue is also one of sovereignty and the security of our maritime boundaries.

The Russian Border Service has tried to help us by enforcing a so-called "buffer zone" on their side of the line. However, I understand that recently a Russian court dismissed penalties assessed by Russian authorities, and this will only exacerbate the situation on the maritime boundary, and will be a concern for the 2000 season.

Concerning domestic enforcement, we monitor over 200 time, area, and species openings and closings. The Coast Guard ensures vessels are fishing where they ought to be, when they ought to be, and that federally required observers are free to collect their data.

The IFQ fishery is perhaps the largest IFQ in the world. Providing enforcement presence requires more resources for us than what was required under the old Derby system. On the plus side, IFQs let fishermen better take weather conditions into account, something not possible under the old regime.

Finally, we provide surveillance of extensive rookery and no-trawl areas created in response to the decline of the endangered Stellar sea lions.

Overall, I think Federal fisheries management under the Act is working well in Alaska. Stocks are healthy, there is a commitment to the resource, and a culture of science and conservation guides the North Pacific Council and resource stakeholders.

The Act provided nonvoting council seats to the Coast Guard. I take that responsibility very seriously, and am pleased to report, in my view, the process works very well in the North Pacific. The Coast Guard is a partner in Council actions. Our input is often solicited and very carefully considered.

Fishing regulations are also increasingly complex. Though not a direct action under the Act, the resources that Congress with the support Senator Stevens and others provided to establish Coast Guard Regional Fisheries Training Centers has been critically important in helping our personnel stay abreast of the regulations. One of the largest of these facilities, which is in Kodiak, last year trained over 1,100 Coast Guard personnel.

Commercial fishermen help us review course content, speak to classes, and help our people better understand the industry we regulate. This dialog has gone a long way in improving our credibility and our effectiveness. With regard to the Act, I have no suggested

improvements to improve the effectiveness or the efficiency of the Coast Guard's law enforcement mission.

Although not a direct subject of this hearing, I also want to briefly comment on Coast Guard readiness, a challenge complicated by the extreme weather and distances that are a part of life in this great State in the North Pacific. Throughout the area of responsibility of the Coast Guard's Pacific Area command, we are stretched thin to meet the challenge posed by growth missions in counter-narcotics, migrant interdiction, as well as fisheries. I am feeling the impact in Alaska, and am trying my best to respond by ensuring our resources are directed at our most serious problem.

To the extent that our services are important to the proper stewardship of our Nation's fisheries resources, Madam Chairman, the area within your oversight, I ask your continued support for the Coast Guard. In Alaska, operational excellence in the air, in our ports, and on the water define what we are about. We are committed to providing the public with the best Coast Guard services possible. We will respond to search and rescue cases. We will enforce our fisheries laws, protect our natural resources, and prevent and respond to pollution incidents, and with continued effective partnership and your committee's support, we will continue to be successful.

Thank you, and with your permission I will submit my written statement for the record.

[The prepared statement of Admiral Barrett follow:]

PREPARED STATEMENT OF REAR ADMIRAL THOMAS J. BARRETT, COMMANDER, SEVENTEENTH COAST GUARD DISTRICT

Good morning, Madam Chairman and distinguished members of the Subcommittee. I am Rear Admiral Thomas Barrett, Commander of the Seventeenth Coast Guard District. On behalf of the Commandant, thank you for the opportunity to appear before you today to discuss the Coast Guard's efforts with regards to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

The Coast Guard is firmly committed to providing at-sea enforcement in support of the MSFCMA. The Coast Guard recognizes that the economic and biological health of our fisheries is of significant national concern. Our fisheries provide a livelihood for the commercial harvesting industry, a product for consumption by the American public, and enjoyment for millions of recreational fishing enthusiasts. The MSFCMA embodies the principle that we all have a collective responsibility to exercise good stewardship over these valuable resources.

The Coast Guard's role goes beyond enforcing fishery management regulations to minimizing the loss of life from fishing. In Alaska's harsh environment, this is a major challenge. Seventeen Alaska fishers lost their lives in 1999. We are working hard to ensure the vessels engaged in Alaska fisheries are safe, and that our cutters, aircraft, and crews are ready to assist should fishers get in distress. Our ultimate goal is for all fishers to operate their vessels safely and in compliance with the fisheries management regulations. The Commercial Fishing Vessel Safety Act and other safety initiatives have helped reduce the loss of life from commercial fishing by almost 50 percent over the last 10 years (from losing an average of 34 persons annually in Alaska in the 1980's to 16 in the 1990's). However, fishing in Alaska is still the most dangerous occupation in the United States. We have strategically positioned our cutters and helicopters during openings of the most hazardous fisheries to improve our search and rescue readiness posture. We are also expanding our fishing vessel safety program and focusing at-sea boardings and dockside exams on vessels engaged in high-risk fisheries. For example, we recently initiated Operation "Ready for Sea," a fishing vessel safety program focused on the top ten safety items designed to mitigate known risks and help ensure a vessel's safe return to port. If these vessels are truly "Ready for Sea," they should be able to survive the heavy weather we routinely face in Alaska.

Coast Guard Living Marine Resource Enforcement

We are deeply committed to the stewardship of living marine resources through an effective law enforcement program. We have developed a long-range strategy called OCEAN GUARDIAN to provide effective enforcement in support of the national goals for fisheries resource management and conservation. This strategy includes four key objectives:

- Prevent illegal encroachments of the U.S. Exclusive Economic Zone (EEZ) and territorial waters by foreign fishing vessels.
- Ensure compliance with domestic living marine resource laws and regulations within the U.S. EEZ by U.S. fishers.
- Ensure compliance with international agreements for the management of living marine resources.
- Ensure the development of viable enforcement schemes designed to protect, conserve, and manage living marine resources.

To prevent illegal encroachments of the U.S. EEZ, Coast Guard cutters and aircraft in Alaska patrol both the U.S./Russian Maritime Boundary in the Bering Sea and the U.S./Canadian Maritime Boundary in Dixon Entrance. Both borders call for near full-time Coast Guard presence during peak activity periods that may last several months. Of the two boundaries, the U.S./Russian Maritime Boundary is significantly more resource-intensive to enforce due to its remote location, extreme weather conditions, and high levels of activity. As many as 120 vessels from many different nations routinely operate within 50 nautical miles of the boundary from May through December. In 1999, this foreign fleet became very aggressive in ″pushing the line″ and in one case intentionally obstructed Coast Guard enforcement efforts. The number of detected illegal encroachments increased from the previous annual average of 12 to more than 90 encroachments in 1999. In response to this increased activity, the Coast Guard diverted cutters from other missions to provide nearly constant high endurance cutter presence and almost daily HC-130 flights. During the higher threat periods, the Coast Guard had two high endurance cutters patrolling the line. This mission is not just about protecting pollock, but also one of national sovereignty and the security of our maritime boundaries.

In Alaska there are over 300 Federal time, area, and species openings and closings in a given year. The Coast Guard ensures vessels are fishing where they ought to, when they ought to, and how they ought to. The Coast Guard in Alaska also enforces the largest Individual Fishing Quota (IFQ) fishery in the world. In 1995, halibut and sablefish management shifted to an IFQ system, and individual fishers were each given their own annual quota that could be taken at a time of their choosing during the season. The halibut season went from two 24-hour openings to an 8-month long season. The Coast Guard is committed to providing a law enforcement presence throughout the 8-month season both to ensure compliance with regulations and to be in position to respond to vessels in distress. IFQs allow fishers the opportunity to make their own choices as to when they fish, allowing them to take weather conditions into account without economic penalties, something not possible under the previous derby system. Another large part of domestic enforcement is patrolling rookery and no-trawl areas created to protect endangered Stellar sea lions. Rookeries and haulouts, and the closed areas that protect them, are spread throughout the Alaska region and are often found adjacent to historical fishing grounds. The Coast Guard patrols these closed areas with cutters and aircraft.

Coast Guard cutters and aircraft also patrol areas outside the U.S. EEZ to monitor compliance with international agreements for the management of marine resources by both U.S. and foreign fishing fleets. Important examples include monitoring the Central Bering Sea (commonly referred to as the "Donut Hole") to protect U.S. straddling stocks, and patrolling the North Pacific Ocean in support of the United Nations' moratorium on large-scale high seas pelagic drift net (HSDN) fishing. HSDN vessels targeting salmon in the North Pacific are of particular concern, especially in light of the importance of the salmon fishery to the state of Alaska. The Coast Guard works closely with the North Pacific Anadromous Fish Commission (NPAFC) to coordinate international enforcement efforts throughout the HSDN high-threat area in the northwest corner of the Pacific Ocean. Due to the remote location of this vast area, only our largest cutters and long-range aircraft can patrol it effectively. In 1999, Coast Guard and Canadian aircraft detected ten vessels using large-scale drift nets in this area. A Coast Guard cutter, with the assistance of a People's Republic of China (PRC) shiprider, later boarded three of these vessels. Two vessels were identified as Russian and were turned over to a Russian Federal Border Service vessel for prosecution. The PRC government refuted the third vessel's claim to PRC registry, and the vessel was assimilated to statelessness, seized, and brought into the port of Adak. Analysis conducted by National Marine Fisheries

Service (NMFS) indicated that many of the salmon that were seized from this vessel came from Alaska stocks. The Coast Guard is currently working with the NPAFC to coordinate enforcement plans for 2000.

Effective living marine resource management and enforcement requires a team effort. In Alaska, the Coast Guard has an excellent relationship with the North Pacific Fishery Management Council (NPFMC), NMFS, National Oceanic and Atmospheric Administration, the United States Attorney, Alaska Board of Fish, Alaska Department of Fish and Game, and the fishing industry. To improve foreign fishing vessel compliance with U.S. and international regulations, the Coast Guard has developed good working relationships with NPAFC, Northeast Border District of the Russian Federal Border Service, Fisheries Agency of Japan, Canadian Department of Fisheries and Oceans, and the PRC Bureau of Fisheries. These international relationships, developed in partnership with the Department of State, help improve the Coast Guard's effectiveness on the fishing grounds.

MSFCMA

From the Coast Guard's perspective, the fisheries management system is working well in Alaska. Federally managed stocks appear to be healthy, and there is a commitment to the resource by all stakeholders. The Fishery Management Councils develop plans to conserve and manage fisheries resources, and a growing part of this process involves allocation. The Coast Guard needs to remain neutral to allocation issues and to specific conservation and economic objectives. Our role, rather, is to aid fisheries managers in choosing among various management alternatives by providing them expert advice on the operational realities of at sea-law enforcement and vessel safety. Nevertheless, the Coast Guard can and does influence the development of regulations we are asked to enforce. Our participation as a nonvoting member on Fishery Management Councils is critical and is one of the foundations of effective enforcement.

The original MSFCMA wisely recognized that enforcement is needed for effective management; the Coast Guard and NMFS were tasked to provide that enforcement. The Coast Guard is dedicated to ensuring that enforcement is impartial, fair, consistent, and effective, and is also perceived as such. By necessity, fisheries regulations are increasingly complex, so in 1993 the Coast Guard conducted a comprehensive study on fisheries enforcement, the trends in the fisheries and fisheries management, and Coast Guard requirements to meet the challenges of this complex task. As a result of that study and implementing actions: (1) we have increased the training and expertise of our enforcement personnel; (2) we have developed a closer relationship with the fishing industry and other stakeholders; (3) we have provided higher quality information to the regional fisheries management councils; and (4) we have improved co-operation and coordination with the National Marine Fisheries Service and state enforcement agencies.

Although not a direct action under the MSFCMA, the resources appropriated during fiscal year 1994 to establish five regional fisheries training centers has been critically important in ensuring Coast Guard enforcement personnel remain professional and stay current with the ever-changing and complex nature of fisheries regulations. One of the largest of these centers is located in Kodiak, where over 1,100 Coast Guard people were trained last year. One of the reasons training is so effective is because commercial fishermen and fishery resource managers are included in the operation of the school. They make important contributions by participating as guest speakers and reviewing course materials. The net result is boarding teams that more effectively enforce regulations because they have a better understanding of the fishing industry they regulate and the conservation goals of the fishery management plans.

Enforcement Challenges

The Coast Guard sees several challenges to effective fisheries enforcement now and in the future. As foreign fisheries continue to decline, there will be an increase in the threat to fisheries over which the United States has jurisdiction. As pollock stocks continue to fall in the Sea of Okhotsk, more and more foreign vessels will look towards the fishery along the U.S./Russian Maritime Boundary. Illegal HSDN activity in the North Pacific has increased in recent years, and although fleet sizes are nowhere near the size of fleets that legally fished prior to the moratorium, the Coast Guard will need to continue our enforcement efforts in this area. Also, if pollock stocks recover sufficiently to open up the "Donut Hole" in the Central Bering Sea, the Coast Guard will again be called on to ensure the integrity of our maritime boundaries surrounding this area.

With the enactment of the Sustainable Fisheries Act (SFA), the 1996 reauthorization of the MSFCMA, an increased emphasis has been placed on the conservation

and sustainability of fish stocks. New mandates regarding essential fish habitat, bycatch, and overfishing have led to a significant increase in the number of fisheries regulations that require Coast Guard enforcement. In many cases these new mandates have prompted the establishment of closed areas, marine protected areas, and other management regimes requiring additional at-sea presence. In addition, fisheries managers, resource users, and others expect the Coast Guard's knowledge, expertise, and effectiveness in fisheries enforcement to keep pace with the rapid changes in regulatory regimes.

The Coast Guard, as a multimission service, is required to meet many national mandates and to counter an array of threats to national security. In the Coast Guard's Pacific Area there has been a significant increase in drug smuggling activity and illegal alien migration. Some of the assets used to respond to these threats also help to execute our living marine resource mission in the North Pacific. The environment in which our cutters and aircraft operate in the Pacific is also particularly daunting. Vast distances between operating areas means cutters may need to transit for more than ten days just to be in position to respond to these threats. Add to this the harsh weather conditions common to the North Pacific, and we find that our cutters and aircraft are pushed to the limits of their endurance. Another challenge of note in Alaska is the limited number of ports and airports where our units can resupply. As a consequence, we are constantly challenged to apply our resources against the most critical threats in support of national policy objectives.

To meet some of these challenges, we need to incorporate the use of new technologies, such as improved sensors on our cutters and aircraft, and Vessel Monitoring Systems (VMS), to help us be more effective and efficient in applying our cutter and aircraft resources. Although VMS will greatly assist in the monitoring of closed areas, it is not a panacea. VMS does not ensure compliance with many other management measures such as gear and catch restrictions and, therefore, cannot replace the need for at-sea boardings. It also cannot replace an enforcement platform that is available to respond to incursions or to conduct critical search and rescue.

We must also focus on Coast Guard readiness. We, like all of the military services, face significant readiness challenges and these challenges are impacting our ability to meet all mission requirements. I cannot allow my people to go in harm's way, as they do with regularity in the harsh Alaskan environment, without ensuring they have the proper training and that the equipment they use is properly maintained. In the past, the Coast Guard has been able to mitigate the impacts of some of these readiness challenges by leveraging flexibility, managing increased risk, and, quite frankly, by asking our people to work ever harder. We have reached the point that these problems can no longer be addressed this way. The Coast Guard is focused on maintaining our ability to respond to the most emergent needs of this nation.

In Alaska, this means taking the steps necessary to ensure first and foremost that we are able to answer the call when fishing vessels find themselves in distress. Why must we do this? There are numerous reasons and many examples, but none tells the story better than the readiness problems we are facing with our HC-130 aircraft. The HC-130 is the long-range "workhorse" in Alaska that is used to protect our fishing fleet and provide coverage of the U.S./Russian Maritime Boundary, the "Donut Hole," and HSDN areas. HC-130 availability is at an all-time low. We have older aircraft, we have worked them extremely hard, we have dwindling supplies of spare parts, and we have a less experienced team of mechanics. Unfortunately, most of these issues cannot be fixed overnight and we are taking steps to better understand these types of problems and develop the right long-term fixes.

Readiness is the foundation of all Coast Guard operations and we must ensure we remain "Always Ready," not only in the near term, but in the future as well. People are the backbone of the Coast Guard and we must be able to recruit, train, and retain those people who we ask on a regular basis to go into the "storm" or to endure the brutal conditions of the Bering Sea protecting our fisheries resources and those that rely on these fisheries for their livelihood. We must be able to maintain the equipment and facilities required to meet national objectives and we must give our people the right equipment to do their jobs safely and effectively. The fiscal year 2000 budget provides nearly $50 million in additional funds to improve readiness. Modernization concerns are being addressed by the Coast Guard through an innovative Deepwater Capability Replacement Project. This project is designed to ensure timely acquisition of a system of assets that will leverage technology to meet the demanding mission needs in the offshore environment, such as the large and sometimes very harsh North Pacific.

Conclusion

Protecting and sustaining this nation's fisheries resources and the marine environment is critical, and the Coast Guard plays a vital role in this process. The Coast

Guard is unique in that it is the only U.S. agency with the expertise, assets, flexibility, and law enforcement authority to meet the nation's offshore needs for the protection of living marine resources. The Coast Guard believes that the Magnuson-Stevens Fishery Conservation and Management Act contains the elements and authorities necessary for effective enforcement. The Coast Guard's fisheries enforcement mission, more than any other, crosses several critical national policy concerns: economic, environmental, and sovereignty. We remain challenged to respond to a growing number of maritime threats and national policy demands, including fisheries protection. Finally, our recently developed strategic plan, OCEAN GUARDIAN, lays out the framework for us to meet national goals for living marine resource conservation and management for the next 5 to 10 years.

Thank you for your continued leadership and support of the Coast Guard, and for providing the opportunity to discuss these important fisheries issues with you today. I will be happy to answer any questions you may have.

Senator SNOWE. Thank you. All of your statements will be included in the record.

Thank you all very much for your testimony here this morning. Let us start off with the IFQ's, because obviously that is going to be one of the areas that we will be focusing on in the Subcommittee. I heard the same in the testimony that was received in Louisiana, in the hearing that was held in December.

Ms. Dalton, I would like to hear from you in terms of the IFQ's. Now, the National Academy of Science did a study examining all the issues relating to IFQ's. The National Research Council recommended lifting the moratorium on the IFQ's and giving the regional councils the flexibility to tailor a program on a fishery-by-fishery basis. What would your recommendation be with respect to the IFQ's, especially because the National Research Council did do an analysis. Obviously, you talked about the numerous advantages and said that there are some issues that should be addressed in the event that we do lift the moratorium, sort of what Mr. Benton was talking about. It may be more complex than just lifting the moratorium.

Should we establish standards for conservation monitoring? Eliminate the accumulation rights in terms of excessive shares. What about taxing issues because it is a public resource? There are a number of recommendations made by the council in conjunction with lifting the moratorium.

Ms. DALTON. I believe we would like to work on a process to get answers to the problems. What happened in 1996 was that we had a great deal of information coming in. We could not quite work out what the ground rules for IFQ's should be as a matter of legislation.

We certainly have supported IFQ's as a tool. The issue now is, we have this large academy report that has a great deal of information in it. The question is, what needs to go into the statute in terms of guidance, what can be done as a matter of national policy, and what should be done at that council level, and one of the things that we have talked about internally is doing some sort of an announcement or proposed rulemaking, or beginning some sort of public hearing process to try to go through and begin to sort out those issues. What we would like to do is work with you to develop them in conjunction with the reauthorization process.

Other than feeling that IFQ's should be a tool that is in the fishery, we have not taken a position on exactly how they should be implemented.

Senator SNOWE. Do you think they have been effective?

Ms. DALTON. Yes. I think they have been implemented with greater and less ease in different fisheries, and there are different issues that you have in them. A fishery like the rec fish fishery in the Southeast was very, very easy to do. Halibut and sable fish is very complicated. There also are issues of funding, consolidation issues, ownership limitation issues, the role of the processors in this, that we really have not addressed to this point, and the councils have struggled with it to greater and lesser success in developing them.

Senator SNOWE. Mr. Lauber.

Mr. LAUBER. Yes. I was a member of the North Pacific Council when we labored through the halibut/sable fish IFQ program, and I have a button that I wear occasionally that irritates a number of people and, of course, other people cheer, and it says, Don't blame me, I voted no on IFQ's. It is probably the vote I lost but the vote I am most proud of on the council, certainly one of those I am most proud of.

The reason for that—well, I do not deny that IFQ's have been beneficial in some areas, and in some ways have made management easier, some ways more difficult, and the law of unintended consequences, of course, is alive and well, but the thing that I objected to was, not the management of the resource so much as the harm that it did to people, and it was significant harm.

We hear a lot about windfall profits. I was disappointed in the fact that IFQ's oftentimes went to people who had not been in the fishery for years, but the way it was set up in qualifying years they got quota shares, yet people who had been fishing for 6 or 7 years received far less than what they had normally caught in previous years.

The people out of the fishery living in Maui opened an envelope and found that they had 50,000 pounds of halibut quota shares, while a person that was currently fishing likewise found that he had 50,000 pounds of quota shares, while a person that was recently fishing was catching 100,000 pounds.

Now, the person that has the 50,000 pound quota, that they need 100,000, had to go out and buy the additional 50,000 pounds. That cost them upwards or close to a $½ million, $500,000 in some cases, yet the person in Maui can sell that. That was wrong. We hurt a lot of people in the way we did it.

I think that Mr. Benton's comments are very appropriate. Before we open this up, I suggest that there be some guidelines for the councils that are laid down so that these types of things are minimized. Note in my experiment—I mean, in my testimony, that I use the term experiment. And by the way, that I almost choked before I said IFQ's, that really did not have anything to do with my opposition. It just—my throat was dry.

Senator SNOWE. Just for emphasis?

[Laughter.]

Mr. LAUBER. But it truly is an experiment, and I would hope that Congress would take our experiment, the benefit as well as the wrongs and the harms that we did, into consideration.

I do not know that under the current Magnuson-Stevens Act, the requirement that coastal communities be taken into consideration,

that we could have passed, or what we had passed been approved by NOAA and the Department of Commerce. That would be—I think we did a tremendous amount of harm to some coastal communities as well as individuals, obviously, living in those communities.

So I think you should take a look. As a member of the council chairman's group, the group suggested lifting the moratorium. I was representing the council, and I felt at the time it probably—the balance would be people wanting the moratorium lifted. Had it been my own personal opinion, I would not say that it should be lifted until there are some guidelines established by Congress that would prevent other councils from making the same mistakes that we made.

Senator SNOWE. Do you think the fear of consolidation of this industry into the hands of a few large companies is a real possibility?

Mr. LAUBER. Well, certainly it is a possibility. The whole idea of IFQ's, those proponents, particularly those with any kind of an economist background, that is the ideal for them. If you recall, in one of our fisheries they wanted to go in place of the ideal would be from—going from, I do not know, hundreds, if not a thousand vessels, down to 55, so you are obviously going to have consolidation.

Now, the economists have the luxury of efficiency without taking into consideration the harm that is done. A person that supports IFQ's reminds me of a friend of mine who had a beautiful Cape Hatteras boat, with twin 671 diesel engines in it, and he asked me and my wife to go out one evening to roast some hamburgers in a cove, and so we did, and this boat would send up a wake that made the Alaska ferry system look like it was a row boat, and he was merrily, on a beautiful evening on a flying bridge, sailing along and passing by fishing boats and small craft and so forth, looking straight ahead and having a wonderful time, and meanwhile I am looking back and people are hanging on and banging around, and he is swamping boats and so forth.

I liken that to IFQ's. As long as you just look ahead and say, look, this is making our management easier, and it is wonderful and so forth—IFQ's are wonderful, but if you ever look back at the people that you have ruined, you are not proud of that.

Senator SNOWE. Thank you.

Mr. Benton.

Mr. BENTON. Well now, that is a hard act to follow, isn't it?

[Laughter.]

Mr. BENTON. It is always the case, though. Well, Madam Chair, I highlighted a number of the matters that I think have to be dealt with. When the council was considering IFQ's, first the council did the halibut and sable fish program and, as I said, that is a complex program, but it was relatively simple in that you had two species and one gear type, and a fairly designed cast of players.

After that, the council was moving in a direction to put IFQ's on all the rest of the fisheries in the North Pacific, and that is an extraordinarily complex task.

Currently, we are as a matter of the American Fisheries Act we are trying to establish and implement the side board provisions in that act that are designed to sort of protect all the players and the

other fisheries from the economic benefits that are going to come out of the co-op structures for the pollack fishery, and that requires a level of management and precision that I think the National Marine Fisheries Service is finding difficult, and believe me, I think implementing a multi-species, multi-gear type IFQ program in Alaska is going to be even more difficult, because there, under the AFA, it is basically an aggregate cap. You have a group of vessels and you say, OK, you can only catch up to so much, and you monitor that on an aggregate, and that is a tough job, but when you are also monitoring a catch vessel by vessel, and it has contractual and financial implications on a vessel-by-vessel basis, that is going to be a very complicated and costly program, and I think we need to think about how that unfolds.

The kinds of issues that we were dealing with then, were issues of foreign ownership, consolidation, the impacts on coastal communities, and I note that in testimony I think you may get in Seattle from someone who was involved with helping put together the IFQ program for halibut and sable fish, that person cites the CDQ program as being the way that coastal communities were addressed, and I would just point out that the CDQ program met a lot of opposition from a lot of those folks during the creation of the IFQ program and before that, when the CDQ program was initially put together on pollack, in that even though it was implemented, it only covers one part of our State, and there are a lot of communities in the gulf that the halibut and sable fish program had a big impact on.

You do not hear from a lot of those people now that back then were very upset about that IFQ program. They have moved on in life. They have had to. The crew that were displaced, and skippers that did not have any employment any longer, they are gone. They are off doing other things, and that is the way that program was supposed to work.

But it is just—the only point being that allowing the moratorium to lift without addressing these kinds of issues I think is going to cause a lot of problems, and really I think it is not making the best use of the period of time that Congress afforded us to look at the nature of IFQ's and to pick up on a lot of the suggestions in the NRC report. They said lift it. They also had a lot of issues in there that needed to be addressed, and I think we should take the time to do that.

One other thing I want to point out, and you mentioned it, is the issue of taxes and rents. It is a public resource, and it is worth a lot of money. It is going to cost a lot of money to implement a program to manage an IFQ regime. In halibut and sable fish we are just now getting around to implementing, I think, the fee program, even though it was put into statute in the 1996 amendments.

I recall—and I was sitting in the audience at the time. I was not sitting at the counsel table. Mr. Lauber was, and he may have a better memory about this than I do, but I recall a lot of statements being made about how the IFQ fishermen were going to pay their own way, and pay for the program, and there would be no extra burden on the U.S. Treasury and the taxpayer, and the fact of the matter is, we have not implemented a fee program. It is just now coming about. I think it will go into place, I think this year, and

it is not projected to cover all the costs, so it is something that I think, again, that will require legislation, and the Congress really needs to deal with.

Is it a useful tool? It can be. It is not the only tool, and it is certainly not a panacea for all the problems facing our fisheries.

Senator SNOWE. Thank you.

Admiral Barrett, you mentioned in your statement that you intend to reduce some routine operations because of limited funding. Could you elaborate on that reduction and how it will affect your enforcement ability, especially as illegal encroachments have skyrocketed over this last year?

Admiral BARRETT. Yes, ma'am. I think that is an issue we constantly face, measuring the risk and allocating our resources against the highest perceived threats that we face. For example, this past year, to meet the situation on the maritime boundary we dropped our domestic enforcement boarding efforts substantially, because we moved the platforms out to the Bering, and I would see that type of allocation and emphasis continuing if we have to confront that type of situation, so we are going to always move against what we perceive is the highest threat with the assets we have.

Senator SNOWE. Can you explain why foreign fishing encroachment has increased significantly this last year?

Admiral BARRETT. I think Chairman Lauber alluded to that, too. I think the Russian fishing is poor. They have had closures on their side. The catch rates that we were seeing on the Russian side were as low as one-tenth the rates in the U.S. areas, so I think they are moving as close as they can to where the fish are, and that is going to continue pressure on that boundary because of the nature of the stocks.

Senator SNOWE. You have mentioned that the foreign vessels have been far more aggressive—in and around that boundary?

Admiral Barrett: Yes. And I think it is because of the fish.

Senator SNOWE. Is that comparatively speaking? Is it worse now than in the past? How would you compare it to previous years?

Admiral BARRETT. Certainly historically we have seen more vessels up there more aggressively pushing the boundary. We had a situation this past summer with one of our cutters, the HAMILTON, the fishing vessel GISSAR, and some Russian factory trawlers, which was really unprecedented, and so I think we are going to see continued pressure there, but it is clearly a level of activity and a level of aggressiveness that we had not encountered before up there.

Senator SNOWE. Are these increased demands one of the reasons you are reducing routine operations?

Admiral BARRETT. Yes, ma'am. We are shifting the effort to areas such as the maritime boundary.

Senator SNOWE. Senator Stevens.

Senator STEVENS. Well, thank you very much. I am going to limit my questions in the hopes that we will be able to hear more people here, and I do hope I will be able to submit some questions to get answers in writing for the record on some specifics that I would like to deal with.

But Ms. Dalton, as I indicated in the opening, I think the essential fish habitat problem is one that worries me most. Could you

tell me, do you think that the act that created that program is specific enough to limit the scope of that activity to those areas that are actually threatened, as opposed to being just a broad coverage of all of the marine areas of the United States?

Ms. DALTON. I think this is another evolutionary process. The definition in the act is very broad, and it has been interpreted by the agency fairly broadly, too, so we do have large areas identified.

There are two things that are going on, though, that I think mitigates that. One is that we are identifying habitat areas of particular concern in many fisheries, and those are where the attention is being focused in terms of comments and consultations. So I think as we work through this, there is no way that we can deal with it from an agency standpoint if we are talking about the entire coastline of the United States. As we learn more and get better information, then we are focusing more on the areas that I think we expected to be identified when we did the law.

Senator STEVENS. I should not repeat history, because I would not like to see it repeated, because on the Endangered Species Act, I worked with Senator Jackson on that act, and we fully intended that the action required of the Federal decisionmakers would be based upon advice that was received from other entities. The courts subsequently held, you know, that it was an absolute condition, and imposed severe restrictions upon the policymakers' decision-making capability.

It seems to me that this broad coverage of the essential fish habitat statute by the agency so far is inviting the courts to come into that area and make the determination in the first instance that there is something that has to be protected. I think there should be a trigger in there somehow, as I indicated, for action under the essential fish habitat legislation, and that the broad coverage of that act, as interpreted by your regulations, means that the protection that we intended is going to be diluted by having the agency everywhere looking for problems, rather than addressing the specifics, where there are problems.

Now, I do not know how we are going to work that out, but I do not believe we should have another situation where the courts of the United States are getting involved in every single possible claim of danger. It has to be triggered by some specific finding of danger, or requirement for protection, as far as the agency is concerned.

How that is going to be worked out, I do not know, but I do not believe it is—for a series of industries that are so oppressed, as they are right now, to have these industries face another series of hurdles that get ever and ever higher based upon court interpretations and misinterpretations of the statute, I think would be wrong.

Ms. DALTON. But if you look at the clear face of the law, the section 7 process is very, very different from the essential fish habitat provisions. There you have a jeopardy finding that is binding on the Federal agencies. What we have in the Magnuson-Stevens Act is a consultation requirement, and there is no further obligation on the part of the Federal agency than to try to work with us whenever there is problem.

Senator STEVENS. I invite you to look at the original Endangered Species Act. That is what was in there, too. There was no require-

ment for absolute control by that process over the decisionmaking. Today, it is absolute. Once there is an indication, as interpreted by the courts, that there is a species that is endangered, that is it, and the courts make those determinations much more than the agencies do.

I do not think this is the time to debate it, but I do think we ought to make that statute specific, and not allow a court decision to come along and turn it into an Endangered Species Act concept.

Ms. DALTON. Just to let you know, we have done about 400 consultations in Alaska now, and have not had any problems, at least that I have been told about or am aware of. We have done about 2,500 Nation-wide.

So the process right now does not seem to be creating major problems, and it is done as part of other consultation requirements under the Fish & Wildlife Coordination Act, under the Endangered Species Act, under NEPA. So what we have tried very hard to do is to not increase the burden on the entities that are required to have permits by these Federal acts.

Senator STEVENS. Do not misunderstand me, I think the fish habitat that is essential should be protected. That is the basis of our statute. But to have the courts deciding what area requires protection, in my judgment, is wrong. For an area that has 80 percent of the outer continental shelf, and the off-shore mining activities that we have going on right now, I think it is not the fisheries that in jeopardy right now, I think it is the off-shore mining that is in jeopardy, and if there is a conflict between fish habitat and that off-shore mining, I believe the agency should protect the fish habitat, but I do not think we should see off-shore mining put in suspension while the courts determine whether that is the case, so I hope we can work together.

Ms. DALTON. We will be happy to work with you.

Senator STEVENS. On the IFQ's, I really believe the difficulty is, if that expires there is going to be a period of a race to IFQ's that we just cannot countenance. We have got to find some way, if IFQ's—the moratorium is to be terminated, to put in place some mechanism whereby we restore the power of the councils to determine what types of organizations, whatever you want to say, whether co-operatives or IFQ's, or whether there's really areas where the old Derby system should be allowed to function.

I believe that the councils should have that discretion, but under the situation if that moratorium expires, I do not think it would be fair to councils, who have already so many burdens, to be forced to turn and look at the merit of IFQ's that they are going to face.

I do hope that you will help us by coming up with some suggestions, and I think our State has that responsibility, particularly in our area, since we have such a vast portion of this coastline, as to how you would like to see that come into effect, and Rick, I think your council should give us some guidance how much time it should take before that authority of the council should be suspended in the period after the moratorium expires, and whether or not the council does have the discretion to use other tactics and decide not to put into effect IFQ's in any particular fishery.

So I hope that you can give us some guidance. Would you do that?

Mr. LAUBER. Yes, sir.

Senator Stevens: And Admiral, I am disturbed that we do have this reduction in effort on the domestic side because of the pressures from the international side, and I do not know that we have got an answer to that specifically.

I know that one Member of Congress told me once that the person opposed Federal expenditures to protect the fisheries, other than from foreign intrusion, so you have both a domestic law enforcement area, and you have really a protection under the essential fish habitat concept now, and you have, of course, the law enforcement activities beyond that.

I think somehow or other we have to get some understanding of, if there are to be fees that come along from the IFQ's and other such activities, how that money is funneled into the area that has—your service that has the greatest burden from the laws we passed, so I would like to work with you to see if we can do that.

We have been earmarking other funds as they come in lately, and although chairmen of Appropriations Committees do not like to see funds earmarked and set up in funds, I think in this instance, when they are coming from the ocean activities, they should at least have the priority of being expended for the type of activities that you handle. I think you ought to help us on that one, too, and see what we can work out.

Admiral BARRETT. Thank you, Senator. Certainly, we will. The other comment which you are certainly familiar with, and Senator Snowe is, too, what makes it a little more difficult here is simply the distances. In order to operate successfully out there we have got to have the large platforms, we have got to have the capable aircraft. Getting out there can take us 3 or 4 days sometimes, just to move the asset from one place to another, so the resource, the fact that we are stretched thin everywhere in the Pacific is even more of a problem than it is in some other areas because of the distances involved.

Senator STEVENS. Lastly, Mr. Chairman, can you give us anything—I am not asking for it right now—that would document this looking back theory of yours? I think the trouble is we do listen to the economists, who tell us how great it is going to be if we have IFQ's, and no one is really looking at the impact upon the people and the communities involved.

I am particularly worried, as I stated once before in hearings, about future generations' ability to enter these fisheries once the IFQ goes into effect, because they have to get a permit, they have to get a boat, and now they would also have to buy a portion of the IFQ, so there is an additional capital requirement for the coming generations to get involved in fisheries that did not exist back in the Derby days.

Now, I understand the economists say that that is no problem, but I do think some of the things you indicated ought to be in the record so that people here can see what really did happen in those areas where the IFQ's went into effect.

Mr. LAUBER. Senator Stevens, the State of Alaska soon after the implementation—the first year, I believe—did a study. However, it was somewhat limited, particularly in the area I believe you are specifically talking about, where it impacts on individuals, but it

did verify the information, for instance, that I mentioned regarding fishermen who received quota shares who had not been recent participants in the fishery, receiving windfalls, and in fact some cases I recall it was upwards in some areas close to, or about 50 percent.

But most of the information that we have received as to the harm and so forth quite frankly has either come from private conversations, and much of it has come to the council through public testimony, maybe even on other subject matters, where people have indicated that they are in distress, and why they need some relief and so forth, because of IFQ's and the impacts that it had. It had significant impacts in coastal areas, coastal communities. There is a group in the Gulf of Alaska that one of the main problems was created by that.

I know of no overall study that was done. I personally and the council collectively have received information through public testimony, but the most that we really have done was that early study. After, I believe, the first year, the State did a study, and we could make that available to the committee, but we have no plans to do any.

The thing that this, like so many things, and why I think it is important that we move throughout the United States as well as Alaska cautiously with IFQ's, once they are there, they are there forever, for all practical matters, because, as Mr. Benton mentioned, the people that were displaced have moved on.

I mean, you are not going to ever hear from them. They may be in other fisheries, but they may be working in a tire plant in Dayton, Ohio, or tending bar in Phoenix, Arizona, or whatever. They are gone, and they are no longer in organizations, and now you have IFQ's. We are hard at work trying to make our IFQ program work. It is the will of the council, it is in law, and we are trying to make it work, and it currently is working very well. I am saying—I am looking ahead, and we are doing a very good job. Looking back, I can see the havoc that we wreaked on people.

Senator STEVENS. Well, that is true, but I joined others on putting a moratorium on it so you could not create any new ones, and I thought that the study that we mandated would cover both the effects of the IFQ on those that were harmed and the beneficial effects on the fisheries, or on the management plans. I think the council, research council's report covers the latter but did not touch the former, and we really do not know what the impact was.

Penny, do you disagree?

Ms. DALTON. I think the NRC report does cover some of it. We also have some information that we would be happy to work with you on, to look at it retrospectively as well.

Senator STEVENS. Well, I will go back and look again. I did not think the council had really covered the impact of these two that we had in effect here in terms of what happened to the people that did not get any ability to participate in the fishery after the IFQ went into effect.

Steve, do you disagree?

Mr. PENNOYER. Mr. Chairman, no, not completely, because as Chairman Lauber said, there is a difficulty in knowing exactly what happened to people who did not get IFQ's. We, I think, know who was fishing, we know who is now fishing, and we know what

the changes have been over the years. We actually had funded a study to at least track the data on what has happened in the fishery, the amount of consolidation.

Senator STEVENS. Is there one undergoing now? Have you got one going now?

Mr. PENNOYER. Yes, we do.

Senator STEVENS. When will that be finished?

Mr. PENNOYER. Well, it has been an annual process of reporting the data. It is not consolidated anywhere, and the analysis part that the chairman is referring to has not actually been undertaken. We have not done an overall analysis of it, but we have been monitoring the data annually. It is available, and we will try to bring together what we can for you for your consideration.

Senator STEVENS. Well, as much—I am from the school that sort of agrees with the chairman here, Mr. Lauber, about IFQ's, but they are here now, and they are coming more, and I think the pressure is going to be great on us to allow them to come into effect in some areas and with some conditions at least.

I do believe we ought to have the advantage of some analysis of that so that by the time we do permit the councils to start using this as a management tool, but at their discretion, we have some standards for how that authority can be used, or at least some—I like that word hurdle, hurdle that they have to go over to show that it is justified to use this tactic, the IFQ approach, in spite of what the impact would be upon those who might be harmed by the process, but I do not see that, unless we take some action.

Mr. PENNOYER. Mr. Chairman, I guess I agree with that. I think the IFQ system unfortunately has been viewed as a monolith, and I do not think it is. I think the word has generated what Chairman Lauber envisioned as the economist's nirvana, which I do not think anybody really is trying to get to, ultimate consolidation, the ultimate whatever it happens to be.

There are social concerns that have to be taken into account, and right now in your area we are doing everything from co-ops to the IFQ system, so there is a broad range of things that could be looked at and used, and I believe that most of us probably do hopefully learn from the mistakes we made, and the halibut-sable fish IFQ I think was, in comparison to the system that was in place at the time, a vast improvement, but there are obviously ways we could have chosen initial participants differently, cash history credits, a lot of things that could have been done.

We will help the National Marine Fisheries Service put together what we have on this fishery and present that for your use. We have tried to update the data annually, and I think we do have a pretty good feeling for how the permits have flowed, consolidation, whether they have left communities, small communities going to large communities—for example, most of them, a far greater proportion has remained in Alaska that went outside.

Alaska has benefited overall, but the benefits have actually migrated somewhat to larger communities from smaller communities, and those are the type of things I think we can give you the examples of, and we would be pleased to do that.

Senator STEVENS. Well, it is just a statement. I do not know whether under the Constitution we could do it, but I think the IFQ

ownership should be limited to those who are actually participating in the fishery, and not end up on Wall Street, and the investor-owned concept without any connection with the fishery I think, in the long run, would be very harmful for the fishery.

People have to have some knowledge of their impact on, if nothing else, on the reproductive capability of the fish they are involved in, in terms of making decisions as to utilization of the IFQ's, and it is going to be a very difficult thing to do constitutionally, or even getting approval, even if it is constitutional, to put limits on investor activities, but I clearly think this is one of the areas where the national interest is in assuring the reproductive capability of these fisheries ahead of assuring of the full transferability of investment in a portion of the IFQ.

Now, somewhere there is an answer that will give us the ability to use the management tools at the discretion of the councils, but with some restrictions from Congress as to when those tools can be used in a particular fishery by setting some conditions, not the least of which is the protection for the traditional fishery community.

You mentioned that, and I think that protection has got to be in the forefront, because, as the chairman has mentioned, in terms of the two IFQ's that we put into effect, damage to some communities can occur. I feel the net result of the IFQ's, unless there are conditions and hurdles, will just be the consolidation of IFQ's through the investor activity. As a result, the council's ability to regulate those fisheries will be diluted to a great extent.

So a key provision to me is the essential habitat problem as far as the reauthorization of this bill.

Ms. DALTON. Rick characterized the halibut-sable fish IFQ as an experiment. We are doing another experiment right now, and that is with the implementation of the American Fisheries Act, and I guess part of the thing that we are discovering from that is that there are alternatives to IFQ's, and if we look at it as one in a series of alternatives rather than the ultimate goal of every fishery in the United States, I think it may be easier to meet your goal of trying to come up with criteria to select which particular way of managing the fisheries is appropriate.

Senator STEVENS. Well, I agree with you, but respectfully I say that decision ought to be made by the councils, and not be made in Washington.

The utilization of these tools ought to be done by the people who are most familiar with the area, and are going to have the continued oversight responsibility on a day-to-day basis.

You have one thing left. I had better quiet down here.

Mr. BENTON. Thank you, Senator.

The relationship between the moratorium on IFQ's and the implementation of the American Fisheries Act is something we really have not touched on here, but I think it is something that does need to be highlighted a bit, and that is that if the moratorium on IFQ's were to expire absent guidance from Congress on how to implement IFQ's and deal with some of the issues we are discussing, that would happen right at the time that the American Fisheries Act co-ops are just really getting up and running.

And I, for one, think that—and it's oftentimes difficult and certainly not wise to make predictions, but I have some concerns that what would happen is that attention would immediately shift from trying to make the co-op structures work, which, as has been pointed out here, may be a good alternative to a full-blown IFQ program.

Attention would shift from that to, how can I ensure that I am going to get my IFQ, in terms of the individual involved in the fishery, and a lot of effort and a lot of energy that has been put toward making the co-ops work will then be diverted off into pursuing the possibilities of getting individual quota, and that could have some unpleasant and unintended consequences as well, and it is something I think we need to think about. That is why I think that allowing the IFQ moratorium to expire or go away without some guidance from the Congress would be an error in our part of the world, at least.

Senator STEVENS. Well, I do not know. My last comment would be, I am not sure I would like to see the co-operative management tool be transitioned into IFQ's without some real requirement of a substantial, overwhelming consensus among those who are participating in the co-operative, and vice versa, but that is going to be up to the councils to figure out how to do that.

But I do not think we ought to be able to shift from one generation of IFQ's to another generation of co-operatives and then shift back. That is sort of like going from apartments to condos and then going back to apartments again. There is a lot of tax consequences to that, and that again would come to the point where the fishery would be driven by tax consequences, rather than being driven by what is in the best interest of fisheries.

Thank you very much.

Senator SNOWE. Thank you, Senator Stevens. It is clear that we are racing against the clock on this moratorium, which expires in October. Either we do it by default, or we take a proactive stance in trying to define an approach with respect to IFQ's. Clearly we have our work cut out for us, and Mr. Lauber, you make a very good point. We need to address those who have been left in the wake of the IFQ decisionmaking process.

The National Research Council took a couple of years to respond to Senator Stevens' request for a study of IFQ's. We now have a short period of time in which to address the implications and the impact of this whole process, before we make any final decision.

In Louisiana we heard testimony in favor of lifting the moratorium. The red snapper industry, for example, would like to have an IFQ. They designed one prior to the moratorium and are anxious to have one. So we have a lot of competing interests around the country, and this is going to be a major issue.

Ms. Dalton, essential fish habitat is a critical issue which Senator Stevens raised. As you know, after attending all the hearings, the concerns we hear are either too broad or too narrow. In your testimony last month, you said the three regional councils—the Gulf, South Atlantic, and Caribbean—did an excellent job using available scientific information to identify areas that proved to be extremely important habitat or represent resources that are unique to or critical to sustaining the production of fisheries.

Aren't those words—"unique, critical, and important"—the words that should have been used to describe essential fish habitat? Yet you used those words to describe habitat areas of particular concern. That is why I think we have a problem here with overly broad implementation.

It is questionable whether or not nonfishing interests should have been involved in this whole effort, and whether or not they are affected by the essential fish habitat decisionmaking and consultation processes triggered by your agency. Nevertheless, if it is having an impact, then we are getting into the Endangered Species Act spiral once again. Our State is facing this situation due to a listing of the Atlantic salmon on the Endangered Species List, and we are facing that whole catastrophic process over the next few months.

So, I am concerned that you are looking at this issue in very broad terms when the original intent was to have a more narrow and precise implementation of what is "essential habitat".

Ms. DALTON. And we are very happy to work with you to look at that issue.

Senator SNOWE. Well, OK, we will. Thank you all very much.

We would like to welcome our next panel: Ms. Chris Blackburn, Alaska Groundfish Data Bank; Mr. Kevin O'Leary, member of the North Pacific Council; Ms. Beth Stewart, National Resources Director of the Aleutians East Borough; Mike Hyde, president of American Seafoods; and Mr. John Iani, who will be the final witness on this panel. Ms. Blackburn, we will start with you.

STATEMENT OF CHRIS BLACKBURN, ALASKA GROUNDFISH DATA BANK

Ms. BLACKBURN. Thank you, Senator Snowe and Senator Stevens. I appreciate the invitation to testify here. I have been in business as a consultant for trawl vessels in the Gulf of Alaska and Bering Sea and also processors for the last 15 years.

For this presentation, I am representing what we call now the Greater Kodiak Area of Alaska, and it takes in the areas that are fished by Kodiak fishermen in the gulf, and I want to point out that Kodiak fishermen fish not only in the gulf, live in the gulf, many of them also have a history in the Bering Sea, and ever since the American Fisheries Act I have been working with some of the vessels in the Bering Sea helping them get their catch history ready for this year, and in the gulf everybody is very anxious to have some equal consideration.

It seems to us so very simple that the Gulf of Alaska fishermen should also have the same right, or ability, as the Bering Sea fishermen to co-op.

Coops, we have been informed by NMFS, are like IFQ's, so that we have to wait for a moratorium, but in our mind they are much better than IFQ's. They do not give away their resource. They let you use it each year on your history based on how the co-op decides to work. There is not this huge, who-gets-what. Once you qualify for a co-op, you have your history, and the co-op decides within itself how people will fish, and where they will fish.

The council has done a wonderful job with our fish. NMFS has done a wonderful job helping us with our fish. I cannot praise them

enough for what they have done. But we are doing a lousy job managing our industry itself. The processors, I think they could process 10 times the fish that we have, just because they have to get bigger, faster, in order to get their share. The boats are rushing harder to get their share, and it is an endless cycle.

I think we are at the point where we really do not just say we think that we are going to have bankruptcies. I think we are seeing them, just simply because the smaller you are, the less you can compete, and the independent fishermen, the resident fishermen is the one who is in trouble.

I would like to see us have the ability to co-op. You get to use it for a year, your history. It does not lock you in. You do not sell it. You might lease it for that year, and it allows you to rationalize the fishery.

There are many things that we want to do with our fisheries, and are trying to do. Reduce bycatch. How can you reduce bycatch if you have got a 4-day season and you are racing against 50 boats, and I can remember times when boats have called me and said, can we not have NMFS delay this opening? The halibut have not moved out yet. The answer is no, they cannot delay the opening, and the boats cannot stop fishing because they will lose their share.

We have been very happy to hear that in the Bering Sea, the factory trawlers actually had a 20-percent increase in their recovery because they could slow down.

I will stop there. I see my time is up, but I hope that you look to the co-op arrangement and to letting the gulf have the same abilities to co-op that the Bering Sea has, the same ability to limit processors, because too many processors are just as bad as too many boats.

[The prepared statement of Ms. Blackburn follows:]

PREPARED STATEMENT OF CHRIS BLACKBURN, ALASKA GROUNDFISH DATA BANK

I appreciate the opportunity to testify to this committee. I am Chris Blackburn, sole proprietor of the consulting firm Alaska Groundfish Data Bank which represents trawl vessels and processing plants in the Gulf of Alaska and Bering Sea.

In this presentation I am representing the portion of the Greater Kodiak Area of Alaska east of 157 degrees longitude west to 140 longitude degrees west as shown on the map in your packet. For simplicity's sake I refer to this area as the Greater Kodiak Area. Beth Stewart who is also speaking today represents the East Aleutian Borough which is west of the Greater Kodiak Area. We support the East Aleutians Borough's proposal. It meets their unique circumstances which are different from the Greater Kodiak Area.

During the fifteen years Alaska Groundfish Data Bank has been in business the harvesting of Alaska's marine resources has constantly changed. I remember when the foreign fleets caught Alaska's pollock and cod and flatfish, when U.S. vessels caught Alaska's marine resources and sold the fish to foreign processors, and the jubilation when all of Alaska's fisheries were harvested by U.S. vessels and processed within Alaska. Senator Ted Stevens helped with, if not initiated, each step in the evolution of Alaska's fisheries.

Alaska is blessed with tremendous marine resources which have been well managed by the North Pacific Fishery Management Council. Alaska's fishing industry, as most fisheries in the U.S., is, with a few exceptions, an open access fishery. Open access is a polite name for "race for fish". Alaska's fisherman take to heart need for sustainable fisheries, need to protect habitat, reduce bycatch, protect sea lions and bring to the dock or the deck of a factory trawler or mothership quality product.

Fishing open access is totally at odds with sustainable fishing, with reducing bycatch, and producing quality products. Open access results in an ever tightening spiral in the race for fish and the evaporation of profits. For example, processors have

had to freeze whole Pacific cod and send it to Asian markets for processing, simply because more cod was delivered than the processor could handle. Less than optimal fish may be delivered because the race for fish does not allow waiting until the fish school up or recover from spawning.

As the race for fish intensifies, the fishing seasons shorten and small vessels, considered the most ecologically sound, are left waiting weather and perhaps losing the entire season for a species.

The best science possible is used in managing Alaska's fish, but the management of the fishing fleet effort has remained Neolithic. The American Fisheries Act was a brilliant solution for rationalizing the Alaska pollock fishery. It allows the Bering Sea pollock fishermen to opt out of the race for pollock. The At Sea trawlers who fished as a pollock co-op in 1999 increased recovery (the amount of the fish used) by 20%.

The benefits of co-ops are obvious. Unlike IFQ's co-ops do not privatize a national resource nor is a fisherman who wants to continue fishing open access have to co-op. Those who do choose to co-op receive the benefit of having their own quota as contractually arranged in the co-op so that they may fish at the times that are most suitable for the vessel and the processor.

GULF EXCLUDED FROM THE AMERICAN FISHERIES ACT

The Greater Kodiak Area pollock fishery was not included in the final draft of the American Fisheries Act. The Greater Kodiak Area processors and fisherman request that this oversight be remedied.

We ask that the Greater Kodiak Area pollock processors be limited as they were in the Bering Sea. This requires a Congressional Bill. Currently there are seven processors in Kodiak—Alaska Fresh Seafoods, Alaska Pacific Seafoods, Western Alaska Seafoods, Trident Seafoods, Ocean Beauty (aka Kodiak King Crab), International Seafoods, and Cook Inlet Seafoods. Outside of Kodiak the Cook Inlet Seafoods plant in Seward and the North Pacific Processors Cordova plant also process pollock.

We also ask that the bill allow that co-ops be formed if 80% of a processors fleet (the vessels which fished for that processor in 1999) vote to co-op as was done in the Bering Sea.

Because of the great diversity in vessel size and fishing patterns in the Greater Kodiak Area we ask that the qualifying years for vessels be 1995 thru 1999. To qualify as a Greater Kodiak Area co-op vessel, the vessel must have made at least one landing in each of two years. Catch history for the eligible vessels is proposed as the average of the three best years within 1995 thru 1999. Pollock discarded at sea or sent whole to a meal plant cannot be counted in a vessel's catch history. There are no tonnage or landing criteria.

Vessels that are Bering Sea American Fisheries Act vessels may also qualify to co-op in the Greater Kodiak Area of Alaska.

Processors need to be part of the co-op structure. This need was recognized in the American Fisheries Act which named the Bering Sea shorebased plants, motherships and factory trawlers eligible for co-ops. If the processors are not limited they will continue to be overcapitalized which means less profit for the plant and for the vessels. The inevitable outcome will be fewer processors due to mergers or bankruptcy. Hardest hurt will be the small companies and family owned businesses.

If diversity of processors, vessels and product forms are to be maintained in the Alaska coastal communities pollock co-ops must be available for all pollock processors and vessels. If the ability to develop co-ops in the Greater Kodiak Area is granted as we propose the coastal communities will have the economic stability necessary to survive.

Senator SNOWE. Thank you, Ms. Blackburn.

Mr. O'Leary.

STATEMENT OF KEVIN B. O'LEARY, MEMBER, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Mr. O'LEARY. Yes. Madam Chair, Senator Stevens, my name is Kevin O'Leary, and I would like to thank the Commerce Committee for inviting me to present testimony today. I am a commercial fisherman from Kodiak, Alaska, and I have resided in Kodiak for over 25 years. I came here in the summer of 1975.

I began as a crew member, a captain of a vessel, and now I am a multiple vessel owner in Kodiak. I currently am a member of the North Pacific Fishing Management Council and am beginning my fifth year of service on the council.

I have been asked to focus my testimony on two issues related to the Magnuson-Stevens Act. Both issues I have been asked to address have a fisheries rationalization at the core, and I would like to tell you of my evolution of my thoughts in regard to rationalization of the fisheries. I was an opponent of attempts to rationalize the fisheries in the 1980's for halibut and sable fish. I believed, as many believed and still do in Kodiak, that as long as the fisheries are managed with the best scientific data available in a TAC-setting process for each year's harvest and the fish are prosecuted within those limits, that the health of our fisheries would be adequately ensured.

The fundamental fears with rationalization, I guses the fear of the unknown, concerns over the equity of initial allocations, the effect of large-scale consolidation on fishery-dependent communities, and the efficacy and cost of management enforcement, are some of the important reasons why I was initially opposed and very skeptical of IFQ's in particular.

Since the implementation of the halibut and sable fish program, the program is working for the participants in the fishery and working quite well. We have seen a significant drop in loss of life and injury at sea in those fisheries. We have seen a substantial rise in the ex-vessel value of the product, we have seen product quality substantially improved, and now there is nearly year-round availability of fresh halibut in the marketplace.

The key element of the program—and I cannot stress this enough. The key element of the program, of any rationalization program, is the end of the race for fish between users. Stakeholders, once that takes place, can then refocus their efforts on safety, on conservation of the resource, and on product quality. With fishermen having spent millions of dollars since the implementation of the program to basically pay for their particular share of the fishery, they have a real incentive to be concerned with the long-term health of the resource.

No longer competing for a share of the resource, while prosecuting the fishery, allows the Government the kind of flexibility they need to avoid nontarget species, avoid high bycatch. They also have the time and the flexibility to alter their fishing practices and their gear type so that they can minimize their impact, say, on the benthic community without fears of losing their particular share of the resource in the process.

This refocusing of effort and concern is really the key to the future of our being able to meet the demands of things like the Endangered Species Act and habitat issues. If we do not, if we do not move in this sort of direction, our hands are essentially tied because we are competing with each other and all those other concerns that really we are getting hit over the head with as an industry by—and legitimate concerns by people with regard to public resource, and wise use of public resource. We are not going to have the tools we need.

The North Pacific Council continues to have substantial challenge in managing our fisheries in the North Pacific, reducing impacts of commercial fishing on benthic habitat, bycatch reduction, and as our scientific knowledge grows, movement toward an ecosystem-based approach to fisheries management, these are goals we are currently working toward.

If we are to achieve them, we will need the management regimes that provide flexibility for the managers and fishermen to respond to the challenges we face. Our experience in the halibut-sable fish IFQ program provides an empirical example of how this form of rationalization can make a significant contribution to management goals.

The next iteration of Magnuson as you work toward reauthorization, I would urge you to provide your managers in the North Pacific Council and National Management Fisheries Service all the management tools that could be available to them. Certainly there are social and economic concerns, and we in the previous panel heard those voiced, and I, certainly as a former opponent, am appreciative of the wake that these kinds of programs create, but I feel we need to move forward.

I will skip here and just say with regard to, our current circumstances in the crab fisheries in the Bering Sea are dire, and the future of most crab fisheries are in doubt. Bristol Bay Red King crab fishery, which in the 1970's and eighties was healthy, and the most lucrative crab fishery in the North Pacific, crashed, and the stocks have never recovered to the historical highs of that period. The Bairdi Tanner crab fishery has also been on a continual downward trend, with only modest periods of recovery in the early nineties.

The North Pacific Council has worked to develop rebuilding plans for Bairdi and Tanner crab resource. In the mid-1980's, with large declines in King and Tanner crab fisheries, and the robust state of the Opilio stocks, the Bering Sea crab fleet became increasingly dependent on the Opilio fishery. Opilio Tanner crab became the mainstay that underpinned the economic viability of the crab fleet.

Current projections indicate a severely curtailed fishery with the Opilio crab because of recent stock assessments that indicate severe declines. Causes of the decline in the fisheries are complex and commercial fishing is a component, although oceanographic conditions are the likely main reason, and we are going to face continued low abundance in crabs until we get some kind of a regime shift in the ocean with regard to the status of oceanographic conditions. These circumstances have prompted the crab industry to come forward and ask the North Pacific Council for help in facilitating discussions to develop co-op arrangements similar to those provided by the American Fisheries Act. Dr. Dave Fluharty and myself have been involved in this effort. Dr. Fluharty is a member of the North Pacific Council from Washington State.

The current prohibition on the implementation of IFQ programs or quota-like share programs prevents the council from directly developing the kind of solution many members of the crab industry want. The very fact that the industry members are calling for this sort of solution is an indication that fishermen are coming to grips

with the reality of overcapitalization and are seeking meaningful solutions to their problems.

The formation of co-ops similar to those developed as a result of the American Fisheries Act is another valuable form of fisheries rationalization and capital reduction. Currently, formation of such co-ops are restricted by the Fisherman's Act of 1934, and the crab industry would need the direct help of Congress in order to act expeditiously and move forward to resolve its problems. Moreover, the excess of capital in the crab industry is so great that a direct reduction of capital through a buyback is likely necessary to facilitate the formation of co-ops.

As you move forward in the process of reorganization I would ask that you provide the councils with the ability to consider and implement a variety of management options in order to fully rationalize the crab and ground fisheries of the North Pacific. Thank you.

[The prepared statement of Mr. O'Leary follows:]

PREPARED STATEMENT OF KEVIN B. O'LEARY, MEMBER, NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Madam Chair, My name is Kevin B. O'Leary. I would like to thank the committee for inviting me to present testimony today. I am a commercial fisherman from Kodiak, Alaska. I have resided in Kodiak for over twenty-five years working in the commercial fisheries as a crewmember, captain, and vessel owner. I currently am a member of the North Pacific Fishery Management Council and am beginning my fifth year of service on the Council. I have been asked to focus my testimony on two issues related to the Magnuson-Stevens Act; my experience in the halibut and sablefish IFQ program and the need for prompt rationalization of the Bering Sea crab fisheries by the formation of co-ops using the American Fisheries Act as a model.

Both issues I have been asked to address are related because they have fishery rationalization at their core. I would like to tell you of the evolution of my thoughts on fishery rationalization. I was an opponent of the attempts to rationalize the halibut and sablefish fisheries in the 1980's. I believed as many did and still do in Kodiak that as long as the fisheries are managed with the best available scientific data in setting Total Allowable Catch (TAC), for each year's harvest and fisheries are prosecuted within those limits, that the health of our fisheries would be adequately insured. Fears of the unknown, concerns over the equity of initial allocations, the effect of large scale consolidation on fishery dependant communities, the efficacy and cost of management and enforcement are some of the most important reasons for my initial skepticism and opposition to IFQ's. Since the implementation of the halibut and sablefish IFQ program, the program is working and working well. Loss of life and injury at sea are down significantly, ex-vessel value of product is up substantially, product quality is much improved, and there is now nearly year-round availability of fresh product.

The key element of the program that allows for all these improvements is the end of the race for fish between users. Stake holders can now refocus their efforts on safety, conservation of the resource, and product quality. With fishermen having spent millions of dollars paying for their particular share of the resource since the implementation of IFQ's, there is a tremendous economic incentive for them to be very concerned with sustainable resource management. No longer competing for a share of the resource while prosecuting the fishery allows them the time to move from areas of high by-catch of non-target species. They also now have the flexibility to alter fishing practices and modify gear to address conservation concerns without fear of losing their share of the fishery.

The North Pacific Council continues to have substantial challenges in responsibly managing all of our fishery resources in the North Pacific. Reducing the impacts of commercial fishing on benthic habitat, by-catch reduction of non-target species, and as our scientific knowledge grows, movement toward a more ecosystem based approach to fishery management are three goals we are currently working toward in the North Pacific. If we are to achieve them we will need to have management regimes that provide flexibility for both the managers and fisherman to respond to the challenges we face. Ending the race for fish is fundamental to providing the needed flexibility. Our experience in the halibut and sablefish IFQ program provides a em-

pirical example of how this form of rationalization can make a significant contribution to achieving our fishery management goals.

In the next iteration of the Magnuson-Stevens Act as you work toward reauthorization, I urge you to provide your managers at the North Pacific Council and at the National Marine Fisheries Service all the management tools that could be available to them. Certainly there are social and economic issues with regard to IFQ programs that are difficult to resolve. The current halibut and sablefish program is a good and successful first attempt at addressing them. What has been learned by all the participants in the public process through the development and implementation of the halibut and sablefish IfQ program is invaluable in the development of any future programs for other fisheries. The Council forum created by the Magnuson-Stevens Act is the best place to resolve these issues.

There was more than just over-capitalization and the problems created by the race for fish that led the pollock industry to seek a legislative solution for their problems. To the extent that the North Pacific Council did not have all the rationalization tools at its' disposal, the industry had to have a legislative solution to solve the capitalization portion of it's problems. It is the timely rationalization of the pollock fishery through the formation of at- sea processor and shore based delivery co-ops as provided for in the American Fisheries Act, that has given both the management and fishery flexibility necessary to have a pollock fishery in the Bering Sea in 2000 in the face of the Stellar sea lion situation and the exigencies of the Endangered Species Act. The lack of both management and fishery flexibility that rationalization could provide in the Gulf of Alaska makes responding to the Stellar sea lion situation much more difficult and the impact of the management measures potentially devastating to the Gulf communities.

The current circumstances of the crab fisheries in the Bering Sea are dire and the future of most crab fisheries is in doubt. The Bristol Bay red king crab fishery, which through the 1970's and early 1980's was both healthy and the most lucrative crab fishery in the North Pacific, crashed and the stocks have never recovered to their historical norms for that period. The bairdi tanner crab fishery has also been on a continual downward stock trend with only a modest and brief period of recovery in the early 1990's. The North Pacific Council has worked to develop rebuilding plans for the bairdi tanner crab resource. In the mid 1980's with the large declines in king and bairdi tanner crab fisheries and the robust state of opilio tanner crab stocks, the Bering Sea crab fleet became increasingly dependant on opilio tanner crab as it's most lucrative fishery. Opilio tanner crab became the mainstay that underpinned the economic viability of the crab fleet and crab processors from the mid 1980's until now. This summer's survey work confirmed a tremendous decline in the biomass of opilio crab and that resource has now been declared overfished. Current projections indicate a severely curtailed fishery this year with the fishery likely being closed to commercial fishing in the year 2001. The causes of the decline of the crab fisheries are complex and commercial fishing is a component of the decline, although oceanographic conditions appear be the fundamental reason for crab stock declines. Until we get an oceanographic regime shift to conditions more conducive for crab we are likely facing continued low levels of crab abundance. Given the current status of the stocks in the crab fisheries we are at disastrously high levels of over-capitalization in both crab fleet and crab processing industry. This level of capitalization exacerbates the effort to manage the crab fleet effectively and promote recovery of the crab resource. These circumstances have prompted the crab industry to come forward and ask the North Pacific Council to help facilitate industry discussions to develop co-op arrangements which are similar to those provided by the American Fisheries Act. Dr. Dave Fluharty, a North Pacific Council member from Washington State and myself, have been involved in this effort.

The current prohibition on implementation of IFQ programs or quota share-like programs prevents the North Pacific Council from directly developing the kind of solution many crab industry members want. The very fact that it is industry members calling for this sort of solution is an indication fishermen are coming to grips with the reality of over-capitalization and are seeking meaningful solutions to their problems. The formation of co-ops similar to those developed as a result of the American Fisheries Act is another viable form of fishery rationalization and capital reduction. Currently formation of such co-ops is restricted by the Fisherman's Act of 1934 and the crab industry would need the direct help of Congress to act expeditiously to move forward to solve its' problems. Moreover the excess of capital in the crab industry is so great that a direct reduction of capital through a buyback is likely necessary to facilitate the formation of co-ops.

As you move forward in the process of the Magnuson-Stevens Act reauthorization, I would ask that you provide the Councils with the ability to consider and imple-

ment a variety of management options in order to fully rationalize the crab and groundfish fisheries of the North Pacific.

Let me thank you again for allowing me the opportunity to present my views.

Senator SNOWE. Thank you, Mr. O'Leary.

Ms. Stewart.

STATEMENT OF BETH STEWART, DIRECTOR, NATURAL RESOURCES DEPARTMENT, ALEUTIANS EAST BOROUGH

Ms. STEWART. Madam Chairman, Senator Stevens, I would like to thank you for the opportunity to testify today. My name is Beth Stewart, and I am Director of the Natural Resources Department for the Aleutians East Borough. The Aleutians East Borough includes the communities of Akotan, Cold Bay, Falls Pass, King Cove, Nelson Lagoon, and Sand Point.

With the exception of Cold Bay, all of these communities are Eastern Aleut villages that depend entirely on commercial fishing to maintain local communities. Falls Pass, Akotan and Nelson Lagoon are on the Bering Sea side and participate in the CDQ program. Sand Point and King Cover fishermen are on the gulf side and have extensive histories of both State and Federal groundfish fisheries.

The vessels owned and operated by local fishermen are almost all under 60 feet in length, and are built to participate in salmon, herring, halibut, crab, cod, and pollack fisheries. Local residents learned long ago that they must be able to remain diversified in order to maintain their families and their homes in this remote region.

Although a few local fishermen did receive enough halibut IFQ to maintain their participation in the halibut fishery, most did not. Although halibut remains an important component of most fishermen's slate of possible fisheries, local people are now being forced to purchase quota to retain needed flexibility.

The vast majority of local residents oppose IFQ's, sometimes referred to as ITQ's. They view IFQ's as a management tool that encourages single fishery dependency by rewarding those who have focused on a single fishery and making it more expensive, sometimes prohibitively expensive, to maintain a full suite of fishing options which will allow the vessel owner and crew to shift fisheries as stocks and markets fluctuate.

Residents are also deeply concerned that IFQ's and the co-op structure provided for under the AFA will result in the consolidation of quota on fewer and fewer vessels. Such consolidation has extremely negative impacts on crew employment. Crew jobs are a critical source of income, particularly during winter months. This is a fear expressed by the vessel owners who would be involved in receiving either IFQ or AFA benefit. It would be unwise for them to continue to fish all the vessels, and if they did that, they know they would be giving up jobs in the local communities.

The recent formation of co-operatives under the AFA has created additional challenges for the small boat, diversified fishery-dependent locals. Aleutians East Borough is home to two shore-based processors, with plants in Akutan, King Cove, and Sand Point. From time to time, floaters have come into the area and our market competition has improved so that prices automatically went up.

Local fishermen also desired the ability to establish additional markets for species for which the shore-based plants may not be able to provide a market. The idea of limiting entry for processors within the Aleutians East Borough is adamantly opposed by the local fleet. As mentioned above, the co-op model developed for the Bering Sea Aleutian Islands pollack fishery is viewed as unworkable by the local fleet.

However, in the course of facing the reconstruction of the pollock fishery, in response to the current situation with Stellar sea lions, Aleutians East Borough proposed that NMFS set aside that portion of the pollack TAC taken by vessels under 60 feet in the Western Gulf of Alaska, area 610, and in that portion of area 620 in the Central Gulf east of 157, so that the small boat fleet could continue to fish in the haul-outs around Sea Lion Rocks and Mitrofania Spitz Island. These are the only safe areas for the small boat fleet to fish during the extremely dangerous weather that occurs during the pollack fishery.

We propose that NMFS establish a fishing schedule that would slow down the harvest and ensure that localized depletion of pollack was avoided in these areas. The Service is interested in pursuing this idea, and has come to think of it as a type of co-op.

Aleutians East Borough views this type of management tool as being more like territorial user rights fishery Turf than a co-op. Individual vessel allocations are not made. Instead, the small boat fishery is managed in a way that does not require these vessels to participate in the race for fish against larger vessels. It stabilizes the amount of quota available to local fishermen and provides the necessary flexibility to maintain a diversified fishery portfolio and to find local solutions to local problems and retains a healthy environment for local employment.

We realize that our situation is in many respects unique. Unlike Kodiak and some other gulf communities, we do not have access to a wide variety of processors. We are on the path between the Gulf of Alaska and the Bering Sea Aleutian Islands. We must maintain healthy local fisheries for the small vessels that are the most suitable vessels for our region and our economy. While we have no desire to dictate solutions for other components of the fishery, we believe that solutions developed for other areas are not necessarily suitable for our area.

I had an interesting experience just after Christmas. I acquired a border collie. Now, this is a fine dog if you actually have cattle, but I have no cattle, and instead I am being forced to accommodate my life to create a job for this border collie so that he does not become destructive. We think that IFQ's may be the border collie for some fisheries, but we do not need a border collie in the Aleutians East Borough.

Although most residents do not like any form of limited entry, the need to maintain a local fishing economy must accommodate its inevitability. Giving the North Pacific Fishery Management Council the tools to establish turf fisheries in the Western and that portion of the Central Gulf East of 157 would provide the most desirable alternative for these Native fishermen. Therefore, the Aleutians East Borough ask that this authority be established for the North Pacific Fishery Management Council.

[The prepared statement of Ms. Stewart follows:]

PREPARED STATEMENT OF BETH STEWART, DIRECTOR, NATURAL RESOURCES DEPARTMENT, ALEUTIANS EAST BOROUGH

The Aleutians East Borough includes the communities of Akutan, Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point. With the exception of Cold Bay all of the communities are Eastern Aleut villages that depend entirely on commercial fishing to maintain local economies.False Pass, Akutan and Nelson Lagoon participate in the CDQ program. Sand Point and King Cove fishermen have extensive histories in both the state and federal groundfish fisheries. The vessels owned and operated by local fishermen are almost all under 60′ in length, and are built to participate in salmon, herring, halibut, crab, cod and pollock fisheries. Local residents know that they must be able to remain diversified in order to maintain their families and homes in this remote region.

Although a few local fishermen did receive enough halibut IFQ to maintain their participation in the halibut fishery, most did not. Although halibut remains an important component of most fishermen's slate of possible fisheries, local people are now forced to purchase quota to retain the needed flexibility.

The vast majority of local residents oppose Individual Fishing Quotas (IFQ's), sometimes referred to as Individual Transferable Quotas (ITQ's). They view IFQ's as a management tool that encourages single fishery dependency by rewarding those who focus on a single fishery and making it more expensive, sometimes prohibitively expensive, to maintain a full suite of fishing options which allow the vessel owner and crew to shift fisheries as stocks and markets fluctuate.

Residents are also deeply concerned that IFQ's and the co-operative structure provided for under the American Fisheries Act (AFA) will result in the consolidation of quota on fewer and fewer vessels. Such consolidation has extremely negative on crew employment. Crew jobs are a critical source of income, particularly during the winter months.

The recent formation of co-operatives under the AFA has created additional challenges for small boat diversified fishery dependent locals. Aleutians East Borough is home to two shore-based processors with plants in Akutan, King Cove, and Sand Point. From time to time floaters come into the area and the market competition improves prices for local fishermen. Local fishermen also desire the ability to establish additional markets for species for which the shore-based plants may not be able to provide a market.

The idea of limiting entry for processors within the Aleutians East Borough is adamantly opposed by the local fleet. As mentioned above, the co-op model developed for the Bering Sea/Aleutian Islands pollock fishery is viewed as unworkable by the local fleet.

However, in the course of facing the reconstruction of the pollock fishery in response to the current situation with Stellar sea lions, Aleutians East Borough proposed that NMFS set aside that portion of the pollock TAC taken by vessels under 60′ in the Western Gulf of Alaska (area 610) and in that portion of the Central Gulf east of 157 degrees, so that the small boat fleet can continue to fish in the haulouts around Sea Lion Rocks and Mitrofania/Spitz Island. These are the only safe areas for the small boat fleet to fish during the extremely dangerous weather that occurs during the pollock fishery.

We proposed that NMFS establish a fishing schedule that would slow down the harvest and insure that localized depletion of pollock was avoided in these areas. The service is interested in pursuing this idea, and has come to think of it as a type of co-op.

Aleutians East Borough views this type of management tool as being more like a Territorial User Rights Fishery (TURF) than a co-op. Individual vessel allocations are not made. Instead the small boat fishery is managed in a way that does not require these vessels to participate in the race for fish against larger vessels. It stabilizes the amount of quota available to local fishermen, and provides the necessary flexibility to maintain a diversified fishery portofolio and to find local solutions to local problems, and retains a healthy environment for local employment.

We realize that our situation is, in many respects, unique. Unlike Kodiak and other Gulf communities, we do not have access to a wide variety of processors. We are on the path between the Gulf of Alaska and the Bering Sea/Aleutian Islands. We must maintain healthy local fisheries for the small vessels that are the most suitable vessels for our region and economy. While we have no desire to dictate solutions for other components of the fishery, we believe that solutions developed for other areas are not suitable in our area.

Although most residents do not like any form of limited entry, the need to maintain a local fishing economy must accommodate its inevitability. Giving the North Pacific Fishery Management Council the tools to establish TURF fisheries in the Western and Central Gulf (east of 157 degrees) would provide the most desirable alternative for these native fishermen.

Therefore, the Aleutians East Borough asks that this authority be established for the North Pacific Fishery Management Council.

Senator SNOWE. Thank you very much.

Mr. Iani.

STATEMENT OF JOHN IANI, VICE PRESIDENT, UNISEA, INC.

Mr. IANI. Thank you, Senator Snowe and Senator Stevens. For the record, my name is John Iani, and I am a vice president with UniSea, Inc. We are a seafood processing company that has been operating in Alaska for over 25 years. We operate a plant, Senator Snowe, about 800 miles west of here out at the Aleutian chain, and we certainly hope that on your next trip to Alaska you can get out there. In fact, I think if you found yourself out there a while, you cannot get to Maine from there, but on a clear day I think you can see Maine from there.

I want to thank both you and Senator Stevens for giving us an opportunity to testify before you, and I would like to limit my testimony, or narrow my testimony to explain the dilemma that Mr. O'Leary touched upon regarding the Alaska crab industry.

UniSea, like many other companies, in 1973 began as one of the pioneer crab processors operating in the Bering Sea and Aleutian Islands, and in partnership with some very courageous independent crab fishermen from Alaska, Washington, and Oregon, one of them being Senator Stevens' youngest son, we have been part of the development of the Bering Sea crab fishery into a dynamic and vibrant sector of the North Pacific seafood industry.

Heretofore, the crab industry has been sort of the silent minority operating out in the Bering Sea, quietly sustaining storms and economic downturns, and always remaining viable. Crab products from Alaska, the Bering Sea, are sold and consumed in all 50 States, and virtually every corner of the globe. Unfortunately, our ability to continue quietly is seriously threatened by natural, ecological shifts in the Bering Sea that nobody was able to foresee.

The backbone of our industry has been the Opilio or Snow crab fishery. This fishery developed as the mainstay of our fisheries on the sudden collapse of the King crab fishery 20 years ago. The crab fleet, processors, coastal communities, have become dependent upon this winter fishery. The crab fishery employs thousands of fishermen, thousands of processing employees, and contributes an important component to the tax base of many Alaskan communities.

Unfortunately for us, though, the new millennium has proven disastrous. Attached to my testimony and for the record is an announcement from the Alaska Department of Fish & Game stating that the Opilio quota had to be slashed in the year 2000 by 85 percent, and putting the industry on notice that for the year 2001 the chances of a fishery are very doubtful.

Not only is that quote 85 percent reduction from the year before, but it represents almost a 93-percent reduction from its recent historical high. The reasons that the ADF&G had to cut the quota was

not a case of overharvesting. It was simply that they were following the regulations promulgated by the National Marine Fisheries Service under the Magnuson-Stevens Act to protect stocks in a situation where their optimum yield had dropped below a certain level.

NMFS interpreted the new congressional language extremely conservatively, as they should have, and in the final rules promulgated by NMFS the term, overfish, came out with two meanings. First, the common meaning of any stock that has been subjected to a defined rate of fishing mortality, or simply if we have overfished it, but second, as in the case of our Opilio fishery, the term is used to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required. That is the case of what happened. When they surveyed the Opilio stocks they found the stocks to be at a certain level, that they had to act conservatively, and so they have decided to take the prudent course, and that is to cut the fishery down to nothing in a year from now.

Unfortunately, many of us in the crab industry, harvesters or processors and communities, are facing extremely difficult economic decisions. Our own company had to shut down a processing operation for the foreseeable future, and will require the elimination of hundreds of jobs. You do not have to look any further than today's paper, Senator Snowe, to find out that one of our communities in Alaska is already facing emergency decisions regarding their budget, the city of St. Paul, out in the Bering Sea, because of the loss of revenue from the Opilio crab fishery.

Because we are reeling from these recent events, we find ourselves on a dangerous death spiral. The crab stocks are simply not sufficient enough to provide an economic basis for the industry to rationalize itself through buyback. There is simply too much capital in the fishery for the economics to support the current number of participants.

But the size of the crab harvest now and to be projected is so small that there is insufficient income to finance any sort of effective fleet reduction program as envisioned by the Magnuson-Stevens Act, so the Fishery Management Council system is the proper forum to design and maintain the rationalization plan, and the Alaskan crab fishery is no exception. The council system, however, lacks the ability to provide the necessary financial resources to reduce capacity. That help can only be provided by you and your colleagues in Congress.

As was seen in the American Fisheries Act, the vision that was provided by the Senate and the House in allowing for a direct appropriation and a long-term loan has helped that fishery rationalize itself, and the council is now overseeing the co-operative structure and making sure that any unintended consequences are taken care of.

So we believe that with your assistance in providing capital, coupled with the long-term industry obligation, we can help provide the stabilization the industry needs.

Senator Snowe, since your long service in the House, and Senator Stevens, you have time and time again come to the aid of the fishing industry, and without your support, there is no question we

would be truly lost. Like the farmers in the Nation's heartland, we in the fishing industry take pride in our role in providing food for our Nation's consumers. We are asking for your support once again.

We are grateful for the opportunity to testify and look forward to working with this Subcommittee to solve this critical problem. I would be happy to answer any questions. Thank you.

[The prepared statement of Mr. Iani follows:]

PREPARED STATEMENT OF JOHN IANI, VICE PRESIDENT, UNISEA, INC.

Senator Snowe, Senator Stevens, and members of the Subcommittee, my name is John Iani. I am a vice-president for UniSea, Inc. We are a Seattle-based seafood processing company that has been purchasing and processing Alaska fish products for over 25 years. We are a component of the most dynamic fisheries in the United States. UniSea purchases a wide variety of fish species harvested by fishing vessels of every size and gear type.

First, I want to thank you for giving me the opportunity to appear before you today. We have many important issues facing us as we begin the year 2000, but the one which I would like to focus on today involves the commercial crab fisheries of Alaska. My main purpose in today's testimony will be to explain the dilemma confronting this sector of Alaska's seafood industry, and to seek whatever help Congress and the Administration might be able to offer.

UniSea began, in 1973, as one of the pioneer crab processors operating in the Bering Sea and Aleutian Islands. In partnership with some very courageous and independent crab fishermen from Alaska, Washington, and Oregon, UniSea has been part of the development of the Bering Sea crab fishery into a dynamic and vibrant sector of the overall North Pacific seafood industry.

The crab industry has weathered many extreme challenges during its history, but has always managed to survive economic downturns to continue as a profitable fishery. Crab products from Alaska's Bering Sea are sold and consumed in all 50 states and virtually every corner of the globe. Unfortunately, our ability to continue to supply the huge market we have developed is now threatened by natural ecological changes that no one was able to foresee.

The backbone of the crab industry since the early 1980's has been the opilio or snow crab fishery. This fishery developed as a mainstay of Alaskan fisheries after the sudden collapse of the king crab fishery twenty years ago. The crab fleet, processors, and coastal communities have become highly dependent on this winter fishery. The opilio crab fishery each year employs thousands of fishermen, thousands of processing employees and contributes an important component of the tax base of many Alaskan communities.

Unfortunately, the new millennium is proving to be disastrous to the crab industry. Attached to my testimony is an announcement by the Alaska Department of Fish and Game announcing that the opilio quota for the year 2000 season is being slashed by 85 percent. In addition, the Department has put the industry and dependent communities on notice that in the year 2001 no commercial opilio fishery is likely to be allowed.

The announced quota for 2000 represents a 92 percent reduction from its recent historical high and the projection for the year 2001 speaks for itself.

The reasons that the Alaska Department of Fish and Game, in conjunction with the National Marine Fisheries Service, took such drastic actions are complex and necessary to understand.

This is not a case of the industry overharvesting the resource to the point where fishery managers had to act. The managers and biologists agree that this downturn results from natural causes that the current state of ocean science was simply unable to predict.

The Magnuson-Stevens Act has always stated that fishery management plans must prevent overfishing. National Standard 1 states that "conservation and management measures shall prevent overfishing while achieving on a continuing basis the optimum yield from each fishery for the United States fishing industry." The balance between overfishing and optimum yield contained in that National Standard was altered with the passage of the Sustainable Fisheries Act when language was added to require that all fishery management plans contain measures to immediately end any overfishing which is occurring and to rebuild overfished fisheries as quickly as possible, but in not more than ten years.

NMFS has interpreted the new congressional language extremely conservatively. In the final rules promulgated by NMFS the term "overfished" has two meanings.

First, the term describes any stock that is subjected to a defined rate or level of fishing mortality.

Second, as is the case in the opilio fishery, the term is used to describe any stock or stock complex whose size is sufficiently small that a change in management practices is required in order to achieve an appropriate level and rate of rebuilding. The second description really has nothing to do with harvesting at all. Any number of causes, such as regime shifts, environmental changes, or others will trigger conservative management measures.

Faced with these new federal regulations and with the extreme uncertainty regarding the opilio stocks based on the best available survey information, the Alaska Department of Fish and Game really had no choice but to be extremely cautious in setting opilio quotas for the foreseeable future.

The crab industry is reeling from these recent events and we now find ourselves on the brink of a dangerous death spiral. The crab stocks are not sufficient to provide an economic base for the industry to rationalize itself through buybacks and co-operative efforts.

There is simply too much capital in the fishery for the economics to support the current number of participants, but the size of the crab harvest is now so small that there is insufficient income to finance any sort of effective fleet reduction program. In short, we need help.

There are two major phases necessary to bring the crab industry in line with these new restrictive management measures. The first, and most important, is a capacity reduction effort. The Magnuson-Stevens Act contains specific language to create a Fishing Capacity Reduction Program in section 312(b). That section establishes a system for an industry funded buyback of capacity in the industry. The problem with utilizing this helpful tool is that the future of the opilio fishery will not allow the industry to underwrite such a buyback.

Unfortunately, many of us in the crab industry; harvesters, processors, and communities are facing extremely difficult economic decisions as a result of this opilio disaster. Our own company must shut down a processing operation for the foreseeable future that will force the elimination of hundreds of jobs.

Many of the crab vessels will have major difficulties meeting their financial obligations and their futures are extremely uncertain. The communities of St. Paul and Unalaska are heavily dependent on the revenue provided by the opilio fishery and are faced with very difficult questions and decisions regarding their future city budgets and their ability to maintain their infrastructure. Simply put, the industry is in no position to fund the amount necessary to effectively reduce capacity.

The fishery management council system that you have created is the proper forum to design and maintain the rationalization plans for each of the nation's unique fisheries. The Alaskan crab fishery is no exception. The Council system, however, lacks the ability to provide the necessary financial resources to reduce capacity. You and your colleagues in Congress can only provide that succor.

We believe that your assistance in providing seed capital, coupled with a long-term industry loan obligation, can provide the help the industry needs to move to a more stable and rational crab industry. This committee and its members have long been strong supporters of this nation's fishing industry and for that support we are extremely grateful. Like the farmers of the nation's heartland, we in the fishing industry take pride of our role in providing food for our nation's consumers. Senator Snowe and Senator Stevens, you have time and again come to the aid of our fishing industry and without your support we would truly be lost. We are asking for that support once again.

As we have seen in other fisheries, Congressional assistance in capacity reduction has literally saved the participants from the brink of ruin. As a result, those fisheries are on the road to rationalization and long term stability. We in the crab industry are certain that the same result can be achieved in the North Pacific.

We are grateful for the opportunity to testify and look forward to working with the Subcommittee to solve this critical problem. At this point I would be pleased to answer any questions you may have.

Senator SNOWE. Thank you very much.

Mr. Hyde.

STATEMENT OF MICHAEL HYDE, PRESIDENT, POLLOCK CONSERVATION COOPERATIVE

Mr. HYDE. Thank you, Senator Snowe, Senator Stevens, for the opportunity to be here today. My name is Mike Hyde, and I am the

president of American Seafoods Company. I am testifying today on behalf of the Pollock Conservation Cooperative, a fish harvesting co-operative that was established as a result of the American Fisheries Act in the catcher-processor sector of the Bering Sea pollock fishery.

The PCC, which was created in December 1998, complements many of the policies and objectives of the Sustainable Fisheries Act, particularly those sections relating to reducing fishing capacity, improving management of marine resources, and providing economic and social stability for fishing communities.

In light of the promising results to date of the PCC and the anticipated benefits of the newly formed in-shore pollock co-operatives, Congress should consider what legislative action, if any, is needed to expand co-op opportunities in other fisheries.

What I would like to do today is provide a little bit of background on the Pollock Conservation Cooperative, and then highlight some of the benefits that we saw in the first year of operation.

Eight companies operating 19 U.S. flag pollock catcher-processor vessels comprise the PCC. The PCC was formed to end the "race for fish" which had resulted in overcapitalization and a failure to optimize utilization of the Bering Sea pollock resource. Like the catcher-processor co-operative in the West Coast Pacific whiting fishery, the purpose of the PCC is simply to apportion shares of the Bering Sea catcher-processor pollock quota among the eligible participants in the fishery. By agreeing among themselves to limit their individual catches to a specific percentage of the annual TAC, the fishery can be conducted at a more deliberate, rational pace. The PCC is not involved in matters relating to pricing or marketing of products.

Participation in the co-operative is absolutely voluntary. However, it is unlikely that it could succeed without 100 percent participation by the eligible participants in the catcher-processor sector. If a single, qualified entrant continued to engage in a race for fish, it would likely undermine collective efforts by the remaining fishing companies to rationalize their fishing practices.

While the American Fisheries Act did not provide statutory authority for formation of a catcher-processor co-operative, the AFA made two key changes to the Bering Sea pollock management structure that facilitated formation of a co-operative. First, the AFA created a three-sector allocation of the Bering Sea pollock fishery, providing a certain percentage of the overall directed pollock catch to the catcher-processors, the mother ships, and the inshore processing sector.

Second, the AFA specified eligible participants in the catcher-processor sector. A co-op of current participants in a fully subscribed fishery would not be viable if nonpollock fishermen were free to enter or leave the fishery at will.

We now have 1 year of operations under our belt, and we have provided a draft report to the North Pacific council on the success of those operations. That document highlights some of the benefits that can be achieved in a co-operative, and I would like to touch just briefly on a few of those benefits. In large part you will see that they are very consistent with the goals that were enunciated in the Sustainable Fisheries Act.

The first was the goal of reducing overcapitalization in the fishery. The American Fisheries Act as a first step removed nine of the 29 vessels that had been participating in the pollock fishery, reducing the number of vessels that are allowed to participate to 20. Once we formed the co-op, we were able to further reduce the overcapitalization of the fishery by taking out excess capacity in each of our companies.

If you look back at 1999 you will see that in the spring season, only 16 of the 20 eligible vessels fished, and by the fall season there were only 14 of the 20 eligible vessels that fished.

Maybe more dramatically than that simple statistic is, if you look at what each of the companies has done in the past we were constantly pouring more money into each of our vessels to make ourselves more competitive in the ability to catch and process fish as fast as we can. Nobody makes those investments any more. Every investment that the companies make now, are investments to diversify our processing ability, to increase the recovery that we get from the fish, and to make a better quality product. We now have a means to extract a higher amount of value from each pound of fish that we catch.

In addition, the co-operative did a variety of things that are very helpful from a management perspective. The first thing it did was spread out our fishery. Something that we have heard over and over again today, is how compressed our fisheries have become in the olympic fishery. That creates a variety of problems, from safety problems, to lack of utilization, to inability to avoid bycatch, and other things.

If you look at the simple statistics of how our fishery was conducted last year, you will see that we lengthened our fishery by more than double for the relative amount of pollock that we were catching. This provided benefits for sea lions, it provided management benefits to the National Marine Fisheries Service and its ability to monitor our catch, and it also provided a variety of other benefits such as reduction of bycatch, increased utilization of our product, and stability for our vessel crews.

I see the red light is on. I will hurry quickly to the last topic that I wanted to mention, which is the social stability that is brought about by the co-operatives. We have had a lot of focus today on some of the initial adverse impacts any time you limit entry to a fishery, and I think the comments that were talked about today are particularly true in an IFQ fishery, but they probably are true in any fishery in which you limit access. If you have a program like we have now got, a license limitation program, if you do not have a license, you have got to buy a license to buy in. There is no difference in an IFQ fishery as far as I am concerned.

But what limiting entry has done is to greatly stabilize the life of the people that remain in the fishery. We had to reduce the size of our crews and our company substantially when nine of our vessels were taken out of the fishery, but if you talk to any of our crew members that are left in the fishery, the ability to predict what their lifestyle is going to be, the type of wages they can make each year, when they are going to be fishing, when they are not going to be fishing, has added a tremendous amount of predictability to their lives.

We are now able to recruit in Alaskan villages, tell the people when they can fish, the kind of money they can make, provide good job opportunities for them, at a wage that will make this a lifestyle choice for a lot of the people here, so I think there is no doubt there are significant challenges to deciding how we can rationalize this fishery and move toward IFQ's or adopt more co-ops. There are tremendous allocation issues to be addressed, but there is no question that the system itself, once it is in place, is a benefit to management of the fishery as a whole.

Thank you for listening today.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF MICHAEL HYDE, PRESIDENT, POLLOCK CONSERVATION COOPERATIVE

Thank you, Madam Chairman and Members of the Oceans and Fisheries Subcommittee for the opportunity to testify on the effect of the Sustainable Fisheries Act (SFA) on the Bering Sea pollock fishery and on reauthorization of the Magnuson/Stevens Fishery Conservation and Management Act.

My name is Mike Hyde and I am the president of American Seafoods Company. I am testifying today on behalf of the Pollock Conservation Cooperative (PCC), a fish harvesting co-operative. The PCC, which was created in December 1998, complements many of the policies and objectives of the SFA, particularly sections relating to reducing fishing capacity, improving management of marine resources, and providing economic and social stability for fishing communities. In light of the promising results to date of the PCC and the anticipated benefits of the newly formed inshore pollock co-operatives, Congress should consider what legislative action, if any, is needed to encourage expanding co-op opportunities in other fisheries.

1. Background on the Pollock Conservation Cooperative (PCC).

Eight companies, operating 19 U.S.-flag catcher/processor vessels, comprise the PCC. The PCC was formed to end the "race for fish," which resulted in overcapitalization and a failure to optimize utilization of the Bering Sea pollock resource. Like the catcher/processor co-operative in the West Coast Pacific whiting fishery, the purpose of the PCC is simply to apportion shares of the Bering Sea catcher/processor pollock quota among eligible participants in the fishery. By agreeing among themselves to limit their individual catches to a specific percentage of the annual quota, or total allowable catch (TAC), that is allocated to their sector, the fishery can be conducted at a more deliberate, rational pace. Once the apportionment is set, the PCC does allow for transfers of pollock quota among member companies. The PCC is not involved in matters relating to pricing or marketing of pollock products.

Participation in the PCC is voluntary; however, it is unlikely that it could succeed without 100 percent participation by eligible participants in the catcher/processor sector. If a single, qualified entrant continued to engage in a race for fish, it would likely undermine collective efforts by the remaining fishing companies to rationalize fishing practices. It is instructive that the eight PCC members, which include both large and small companies, recognize that it is in their individual and collective best interests to eliminate the race for fish.

While the PCC was not formed under any specific legislative authority, there is a strong precedent for formation of the co-operative. In 1997, four catcher/processor companies requested a business review letter from the Department of Justice's Antitrust Division prior to forming the Pacific Whiting Conservation Cooperative (PWCC). In its business review letter, the Department of Justice noted that fish harvesting co-operatives could be expected to benefit consumers. The Antitrust Division's letter of May 20, 1997 to the PWCC stated, "To the extent that the proposed agreement allows for more efficient processing that increases the usable yield (output) of the processed Pacific Whiting and/or reduces the inadvertent catching of other fish species whose preservation is also a matter of regulatory concern, it could have pro-competitive effects." The PCC has also requested a business review letter from the Justice Department and a response is expected soon.

While the American Fisheries Act (AFA) did not provide statutory authority for formation of a catcher/processor co-operative, the AFA made two key changes to the Bering Sea pollock management structure that facilitated formation of a co-operative. First, the AFA created a three-sector allocation in the Bering Sea pollock fishery, providing a certain percentage of the overall quota to the catcher/processor,

mothership and inshore sectors. The 1997 Justice Department opinion cited above made clear that existing law allowed a sector composed of vertically integrated harvesting and processing components to form a harvest co-operative. Second, the AFA specified eligible participants in the catcher/processor sector. A co-op of current participants in a fully subscribed fishery would not be viable if non-pollock fishermen were free to enter the fishery. The new participants would either race to catch fish, undermining efforts by co-op members to rationalize the fishery, or demand catch allowances in a fishery in which they had not previously participated.

2. The PCC—Reducing Fishing Capacity and Fishing Effort.

Recognizing the chronic problem of over capacity in the Nation's fisheries, the SFA included a provision designed to "achieve the maximum sustained reduction in fishing capacity...in a minimum amount of time." Patterned after the SFA provision on capacity reduction, the American Fisheries Act took the first meaningful step to addressing chronic overcapitalization in the pollock fishery. The AFA, which reallocated a substantial portion of the pollock quota away from the catcher/processor sector and to the inshore sector, established a fee on the inshore pollock sector to pay most of the cost of retiring nine catcher/processors from the fishery. (Consistent with U.S. government policies to promote sustainable fisheries by addressing the root problem of overcapitalization in many world fisheries, the AFA required the scrapping of eight of the nine catcher/processors being bought out.)

Implementation of the co-operative was a vital next step for achieving further reductions in harvesting and processing capacity. By ending the race for fish, the co-op eliminates the incentive to employ fishing and processing capacity beyond what is needed to take the available harvest. As a result, in the winter/spring pollock seasons, 16 of the 20 eligible catcher/processors fished. In the summer/fall fishing seasons, only 14 of the 20 pollock catcher/processors participated in the fishery. By and large, the idle vessels are owned and operated by multi-vessel companies that can catch their assigned quota without fishing all of their vessels. It is difficult for multi-vessel companies to permanently retire the idled vessels since the allocation regime expires in 2004 and there is no assurance that a race for fish will not return. However, one of the 20 AFA-eligible catcher/processors is being permanently retired from U.S. fisheries. Alaska Trawl Fisheries, which operates the F/T Endurance, recently announced that the vessel is leaving the fisheries and under the AFA is not permitted to regain its fishery endorsement. The vessel's assigned quota is being purchased, and will be distributed on a pro rata basis among the remaining PCC members.

In addition to helping reduce the number of vessels actively fishing, formation of the PCC resulted in operational changes by participating vessels to slow fishing effort on a daily basis. A head-to-head comparison of the daily catch rates of the 16 PCC vessels that fished the 1999 winter/spring pollock fishery with the same vessels' daily catch rates under the open access system from 1995-1998 shows a 60 percent reduction in daily catch rates for the 16 PCC vessels. The 16 PCC vessels made fewer tows per day and harvested fewer fish per tow than they did under the race for fish. Slowing the pace of the pollock fishery doubled the length of the catcher/processors' season from 75 days in 1998 to 151 days in 1999.

According to NMFS, slowing down harvesting activity by co-operative fishing provides an important conservation benefit. In 1999, the agency promulgated regulations to spread the pollock fishery out over a longer period of time to avoid any potential competition between pollock fishers and populations of Stellar sea lions foraging for pollock. A recent NMFS report summarizing the agency's actions to protect sea lions credits the PCC for significantly reducing fishing effort and furthering the agency's objective of temporally dispersing the pollock fishery.

3. The PCC—Improving Fisheries Management, Reducing Bycatch, Increasing Utilization and Conserving Marine Resources.

The SFA included a section titled, "North Pacific Fisheries Conservation," that directed regional fishery managers to take certain actions to improve catch measurement, reduce bycatch, and increase utilization of fishery resources. The North Pacific Fishery Management Council (the Council) and NMFS responded to Congress' mandate by developing and implementing regulations requiring certain vessels, including all pollock catcher/processors, to be equipped with flow scales to weigh all harvested fish. To reduce the incidental harvest of non-target species, the Council passed and NMFS approved a prohibition on bottom trawling for pollock. Vessels in the directed pollock fishery now use only mid-water trawl fishing gear. Finally, fishers must retain all pollock and cod harvested regardless of the target fishery in which they are participating. Historically, large amounts of pollock and cod were discarded by fishers who were targeting other groundfish species.

It is important to point out that, notwithstanding specific SFA provisions intended to enhance conservation of the North Pacific groundfish fishery, it is a widely held view that the North Pacific groundfish fisheries are well managed. In particular, the Bering Sea pollock stock is healthy and abundant. Scientists estimate the Bering Sea pollock biomass at 7.7 million metric tons. Harvests of pollock, and other groundfish species, are strictly regulated by a system of quotas, and fisheries scientists and managers are conservative in determining the annual catch limits. A NMFS report recently stated that, "Over the past 20 years, harvest rates could have been 20% or more higher if Alaska pollock stocks were managed using less conservative but acceptable harvest rates comparable to those currently used to manage similar gadid stocks elsewhere in the world." A comprehensive federal fishery observer program that includes 100% coverage on all vessels 125 feet in length and larger enhances in-season management capabilities. (PCC member vessels carry two federal fishery observers at all times. In 1999, federal fishery observers sampled 4,704 of 4,797 pollock catcher/processor hauls, or 98% of all hauls.)

a. Improving Fisheries Management.

Monitoring and enforcement is a critical element of the PCC program. NMFS, of course, continues to tally total harvests by catcher/processors in order to ensure fleet-wide compliance with sector allocations. However, the PCC contracts with a private sector firm, SeaState, to track daily NMFS' observer catch data to ensure that each PCC member stays within its agreed upon harvest limits. The PCC imposes significant financial penalties on any company that exceeds its assigned quota. In 1999, there were no enforcement actions taken against any PCC members. As noted above, catch measurement is precise because vessels are equipped with flow scales, which weigh the fish as it moves along conveyor belts in the factory. Another important facet of co-operative fishing is that SeaState also monitors NMFS' observer data on incidental catch. SeaState identifies for all PCC members fishing areas to be avoided, if vessel reports indicate that high levels of non-target species catch are being encountered.

b. Reducing Bycatch/Economic and Regulatory Discards.

The SFA defines bycatch as fish that are caught but not kept, including economic and regulatory discards. Because pollock swim in enormous, dense schools and generally congregate off the ocean floor, there is little incidental catch of non-pollock species in the fishery. In 1999, approximately 99% of the PCC members' catch in the pollock fishery were pollock. With the new increased retention requirements for pollock and cod and the advent of a co-operative that allows fishers to fish more carefully, we estimate that in 1999 our fleet's economic discard rate was less than three-quarters of one percent. In contrast, the United Nations Food and Agricultural Organization estimates that worldwide fishing fleet discard over 25% of their harvested catch. The overall discard rate in the Bering Sea groundfish fishery is just under 10%.

c. Increasing Utilization of Fishery Resources.

Preliminary data comparing catcher/processors operating in both 1998 and 1999 indicate that the amount of product made by PCC members from a given amount of pollock increased by more than 20 percent in 1999. By ending the race for fish, the co-operative allows fishers to make smaller tow sizes that reduce bruising and damage to harvested fish, fostering increased utilization. The rational pace of fishing also allows vessel captains additional time to locate schools of larger-sized fish and fishers can use fishing nets with larger meshes that enable more, smaller-sized fish to escape. From a fish processing standpoint, the co-operative allows for more exacting processing techniques. The slower pace in the fish processing factory can help ensure more precise cuts and provide for other, more labor-intensive activities that increase utilization.

In 1999, the rational pace of fishing also enhanced opportunities to make higher-value products and higher-grade products. PCC members significantly increased the proportion of high-valued "deep-skin" pollock fillets produced and there was a proportional decline of lower-valued mince and fillet-block products. The fleet's ability to produce the high-grade fillet products for the domestic market, as well as *surimi* and roe products for export, boosts the U.S. industry's competitiveness in the world commodity market for whitefish products.

d. Conserving Marine Resources.

The PCC agreement includes a commitment to develop and fund research programs to promote conservation and management of marine resources. The PCC expects to spend $300,000 per year on marine research, including contributing

$100,000 annually in 1999-2001 to the North Pacific Universities Marine Mammal Research Consortium. The Consortium conducts scientific research that seeks to determine the cause of the decline of Stellar sea lion populations and to discern what measures, if any, can be taken to aid in the recovery of the species. Furthermore, the PCC has contributed $25,000 to support marine mammal research projects at the Alaska Sealife Center in Seward, Alaska and has funded a project to catalogue research findings on the impacts of trawl fishing.

4. The PCC Provides Economic Stability in Fishing Communities, including the Western Alaska Community Development Quota (CDQ) Groups.

Since the Bering Sea pollock fishery was fully Americanized in 1989, the race for fish among domestic harvesters and processors spurred continued investments in capacity. By 1998, there existed three times more capacity than was needed to catch the available quota. Overcapitalization, and the attendant economic pressures of increased costs without increased benefits, sparked allocation disputes among sectors. Economic problems were exacerbated when the pollock biomass, which peaked in the late 1980's and early 1990's, declined and the TAC was lowered accordingly to ensure sustainable fishing levels. Revenue declined because production dropped and because a nearly decade-long recession in Japan resulted in steep price declines for *surimi.* Between 1994 and 1998, half of the pollock catcher/processor vessels experienced financial difficulties that either resulted in bankruptcy or forced the sale of the vessel.

The SFA emphasizes the importance of providing economic and social stability for fishing communities in the management of fishery resources. The PCC is helping achieve the SFA's goals by playing a key role in restoring economic opportunity for fishing companies as well as the 3,000 men and women employed in the pollock catcher/processor sector. Prior to 1999, employment opportunities were limited as the industry struggled with chronic overcapitalization, other economic inefficiencies caused by the race for fish, and low commodity prices. As a result of rationalizing the fishery under the co-op, crewmember compensation, often computed as a percentage of the value of the vessel's catch, has stabilized, if not increased. Increased utilization, combined with the flexibility to respond better to market demands, adds value to fish products and those gains are reflected in crewmember wages.

The economic stability offered by co-operative fishing extends to Western Alaska Community Development Quota (CDQ) groups. The CDQ program, which was created in 1992, was established as a permanent program in the SFA. The co-op has enhanced Western Alaska CDQ groups' investments in PCC member companies and vessels. Presently, the Norton Sound Economic Development Corporation owns 50% of Glacier Fish Co., which operates two pollock catcher/processors. The Bristol Bay Economic Development Corporation and the Aleutian Pribilof Island Community Development Association own 20% of the F/T Arctic Fjord and the F/T Starbound, respectively. CDQ groups are also considering investing in American Seafoods Company, which operates seven catcher/processors.

In summary, the PCC is proving to be an innovative and successful private sector initiative that is consistent with, and complementary to, many of the important goals and objectives of the Sustainable Fisheries Act. As the Oceans and Fisheries Subcommittee moves ahead in reauthorizing the Magnuson/Stevens Act, we are pleased to work with Members and staff to share our experiences and to promote the development of fish harvesting co-operatives in other fisheries.

That concludes my testimony, Madam Chairman. I am pleased to answer any questions that Members might have.

Senator SNOWE. Thank you all very much.

It is obvious that you have diverse views on these issues concerning IFQ's and co-operatives. I would like to ask each of you to give your perspective on exactly what we should focus on when we consider changes to the management options that are currently available.

I know, Mr. O'Leary, you are saying that Congress should provide an array of management options to enhance the flexibility of the councils. I would agree. What kind of guidance should be provided?

We have heard diverse views here on co-ops, for example. Ms. Blackburn, you were saying you favor co-ops because it means you do not have to race for the fish. Ms. Stewart, you were mentioning

you do not really like co-ops because it pits smaller boats against larger boats in a fight for fish. So how do we approach this? Do we give the options to the councils to make these kinds of decisions?

We have seen the effectiveness of the co-operatives with respect to the pollock industry. Some would like similar treatment for the crab industry. Can they have a co-op, which works effectively without a buyback program?

I would like to have you address that, Mr. Iani, if you think you can answer that question, and then I would like to have each of you address your various perspectives on what we should do to focus on these issues. It is a question of whether or not we lift the moratorium, take additional action on co-ops in other fisheries, or give that tool to the councils to make that decision.

Mr. IANI. Thank you, Senator Snowe. To answer your initial question, in our particular Alaska crab fishery I do not think co-ops will work without some sort of decapitalization of the fishery. There are simply too many boats and processing entities around to allow for, given the small stocks that are available to us, to make a co-operative work, so that is why I think we need some help from Congress to get that initial cut made, and the councils certainly do not have the tools to do that in terms of appropriations or loan programs.

But to answer your second question, I join Senator Stevens in feeling very cautious about future ITQ's, because the ITQ system is a permanent one, and once the toothpaste is out of the tube it is very difficult to get it back. However, allowing the councils to put together, I guess experiments are the words I would use, and these co-operatives, as Mr. Hyde has described to you, is an experiment, and so far the results have been good. But they are not permanent. The councils have a lot of say as to how these co-operatives are operating.

In the shoreside sector, where we participate, the councils literally are going to be setting up a regulatory framework to make sure that, for example, in the pollock fishery that our boats participate in do not step on the toes of the cod fishery or the flatfish fishery, or the crab fishery, and literally, on a meeting-by-meeting basis, they are getting new and different information so that they can make changes.

If an ITQ program had been put in place in pollack, the chances of making changes would be very difficult because of the amount of money that had changed hands, and the permanent nature of these rights, so my guess is that the Congress ought to be conservative and, as they allow the councils to rationalize fisheries, they need to be careful about the tools that they allow them to have, but I think the co-operative system, or like it, is an experiment that the councils can work with and, at least in the North Pacific's case, they are becoming rapidly familiar with how they work.

Senator SNOWE. Ms. Stewart.

Ms. STEWART. Yes, Madam Chairman. I chaired the West Coast IFQ Advisory Panel and then chaired our joint meetings with the East Coast panel so got a lot of information from a lot of people around the country about IFQ's, and I think—it occurs to me that in some situations IFQ's may be the perfect situation, the right so-

lution, and there is no reason why those folks should not be able to implement the solution that works for them.

I think our concerns about IFQ's started several years ago, when under a previous administration National Marine Fisheries Service was actively campaigning to implement IFQ's as some kind of overall solution to everybody's problems, and hence by border collie analogy.

Now, the Humane Society of America, not just the part that runs the shelters, has a little test for you to take before you get a dog, you know. Is this the right dog for you? Do you have small children, do you live in an apartment, do you have cattle for this dog to work with. These are the kinds of questions I think Congress needs to ask NMFS to use when they decide what kind of a tool they are going to adopt.

IFQ's are not a perfect solution for every fishery. In Alaska, our fishery has multiple components. We have an industrial off-shore fishing fleet, and what works for them is probably different than what is going to work for Native village fishermen in King Cove and Sand Point, and we have no interest in dictating what is good for that side of the table. We do not want them to dictate likewise what is good for us.

I think what we are very concerned about is the steamroller effect that any of these new tools seems to have. You know, it comes in, and all of a sudden the thinking changes, and OK, well, I had better start behaving this way because that is what they are going to do next, and we have a lot of people who fish for regulations at this point, people who are not fishing in an economically rational way any more because they are anticipating what the next regulatory regime might be.

The halibut example is a good one for our area. People used to fish halibut and salmon. It was a good combination. But as halibut stocks decreased and the number of halibut fishermen increased, one of the first steps the Halibut Commission made was to make seasons simultaneous with salmon and halibut, so you had to choose.

Well, in our area, if you were smart, you chose salmon because the price was better, but you knew that it would not always be that way, and you felt like at least you had halibut to go back to when salmon went down.

Well, then IFQ's for halibut came in, and your earlier history did not count, and your most recent history, because you had had this problem with salmon and you had started fishing halibut again, which was economically the way you should behave, locked you out of doing that again, and now people are starting to think, OK, I had better go fishing for cod, and I had better go fishing for this, and I had better go fishing for that, even if I am not going to make a dime, even if it is a stupid thing to do, because I know, as a small boat fisherman in the Aleutians East Borough, I have to preserve my ability to be involved in any fishery for which there is a market, and for which I have the vessel I can use to fish for it.

This is our current dilemma. We are behaving in foolish ways in anticipation of whatever regulatory system comes down the pike, but it is important for us to be able to maintain a stake in any fishery for which a market develops.

I mean, there was a time when I was a kid that people used Tanner crab for bait. It was not something that you ate. It was not something that you sold to somebody. We would not have guessed back in the sixties that anybody was going to be interested in Tanner crab. Hell, now it is a big deal, and people are going bankrupt because it is running on down.

Well, the Aleuts have been out in this region long enough to know that that happens all the time. The Eastern Aleut word for cod is roughly translated into the fish that are not there. They have been through this before.

I guess we are asking that whatever you do, you insist that NMFS take a look at multiple solutions that address respectfully and appropriately the multiple layers of participants in these fisheries. We do not believe there is a one-size-fits-all formula that should be applied to everybody, because that is where you see people get hurt.

Senator SNOWE. Thank you.

Mr. O'Leary and Ms. Blackburn, does anyone care to comment?

Mr. O'LEARY. Yes. I would just say, respectful of Beth's comments, that we are facing some tremendous challenges in terms of fisheries and fisheries management, and we have overcapitalization, and we have got to address it, and we need all the tools that we can possibly muster in doing that.

I will come out and say to you that I believe that once the next iteration of Magnuson is passed by Congress, that there should be a lifting of the ban, of the moratorium on IFQ's. That having been said, I am not—I am mindful of the comments of Chairman Lauber and Mr. Benton.

I think as you go through this process we need very sort of specific integration in the next iteration of Magnuson that specifically identifies, when these programs are considered and move forward, what criteria you use to address these social and economic consequences.

I do not want to waste your time going into why certain people were hurt in certain ways, but we have learned an awful lot with the implementation of the halibut and sable fish program in the North Pacific. There are many aspects of it that are very, very beneficial, and certainly it is beneficial to the people, as Mike Hyde would point out, in his current program, or beneficial to those that remain.

The fact is that we do have an overcapitalization problem. Reducing capital means that certain numbers of people are going to leave a fishery. How we do that in a way that is mindful of the impacts on them I think is very, very appropriate, but we also have issues in terms of fisheries management that we are not going to adequately address unless we further move down this road, because we are not going to get to the issues of habitat impacts and being able to mitigate habitat impacts and being able to mitigate problems with bycatch unless we have a more rational fisheries program.

Senator SNOWE. And you were previously opposed to IFQ's, is that correct?

Mr. O'LEARY. I was, yes.

Senator SNOWE. OK. Ms. Blackburn.

Ms. BLACKBURN. Yes. Because I do not fish, I just help do our regulatory things, I watched the IFQ program go together, and frankly I could see it was hurting lots of people—it would hurt a lot of people. I do not think a lot of them recognized it when it happened.

Our community really was split, and there were a lot of problems socially. We made it through that. It is done. It is gone. But—and it may not be a method that many people would want to use, or at least in our area. The co-op idea is terrific for them, particularly if it concludes the plans.

Senator STEVENS. Turn the mike around, Chris.

Ms. BLACKBURN. I am sorry. The co-op idea, in the way we see it working in the Bering Sea, is very appealing. It does not say you have to buy this. This is your history, you can fish it, and it is just for the year, and next year everybody could say we do not want a co-op. It does not even force people to co-op, and if there is enough of them who want to fish open acces, they can fish open access on their share of the quota.

The problem today is that there is no ability to do anything except open access, unless you have an IFQ, or unless you are in the Bering Sea, and for everybody else it is the dumping ground, for everybody who missed the Bering Sea, and we have already had overcapitalization problems, to the point, as I have testified earlier, that our small boats are really in danger of survival because they are small and because the seasons are short, and because the weather is bad, and I know how their shares have gone down over these years, and yet there is nothing they can do.

If you have salmon come in through our area, and this has happened, we look at the National Marine Fisheries Service, can we close the season right now? We have got salmon running through on their migration, wherever. No, you cannot do that because it is in the regulation. With a co-op kind of thing, you could do that. You could agree.

And so for all the reasons and things that we have worked for, for taking care of our fish, for taking care of our fishermen, all apply to having some way that they have some control over when they fish, where they fish, and how they fish, and no longer be lumped in like some mad long distance runners, and the last one standing wins.

Senator SNOWE. Thank you. Mr. Hyde.

Mr. HYDE. I think I agree with what everybody on this panel has said, and what everyone on the panel before me said.

There is no doubt that co-ops and IFQ's are probably variants of a similar animal that provide an ability to do things that you just can never do in an open access fishery, but it is tough to get there, and it is interesting hearing this discussion today. I hear certain words being used, and the words describe to some extent the same thing, but when one word is used it is in a negative context, when another word is used, it is in a positive context.

One example of that is the phrase, reduction of overcapitalization. We think that is a good thing. The flipside, though, is, we use the word consolidation. Well, you simply cannot reduce overcapitalization without some degree of consolidation, so what that highlights to me is that we have got some real difficult issues in how

we get to achieve some of the things that we think are positive without achieving the things that are probably negative in a lot of people's minds.

What is important from my perspective is to make sure that the councils have the tools to do that, because if we are going to do the things like bycatch reduction, increase utilization of the fish, things like that, any fishery that is a race for fish is not going to be as effective as a co-op or an ITQ type fishery. What we need to do is make sure that whatever the tools are that the council needs within the framework that Congress thinks is important to make sure that they do not step so far out of line that they get these negative things that everybody agrees are concerns, that is the type of legislation I think we have got to look for going forward in the next session.

Senator SNOWE. Thank you. Senator Stevens.

Senator STEVENS. You know, my mind was going back to the times -- I see Trevor McCabe back there, and some of you were in our Appropriations Committee conference room when the overall agreement on the co-operative was worked out. My memory is, it took about 150 hours in that room to work out that agreement.

Now, if we get to the point where we are going to use co-operatives through council action, how is that going to come about? The IFQ's, as questionable as they are in my opinion, they are a mathematical formula that comes about. You set a series of criteria, and then you divide what the limit is going to be, and it is a fact.

I like the co-oprative, but you guys tell me, how are you going to bring about what all of that hard negotiation brought about as to who was going to remain in the fishery, and what were going to be the basic terms that you would have to agree to if you became a member of the co-op? How is that going to happen on these individual fisheries that—cod, or whatever it might be, in the future.

Go ahead, Chris.

Ms. BLACKBURN. Well, I think a great deal of the negotiations back in D.C. had to do with the different sectors of pollock and how much they were going to get, how much did the mother ships get, how much did the factory trawlers——

Senator STEVENS. Yes, that was very complicated.

Ms. BLACKBURN. Right. When we look at the gulf, (1) we had inshore, off-shore, and the off-shore is off-shore, it is not in our area, so we do not have but one group of fishermen, which our shore-based fishermen, fishing our pollock, fishing cod, fishing flatfish, and we have two groups of rockfish. We have always worked together well.

Senator STEVENS. Yes, but if I can interrupt you, that means you are going to imply that the council could decide what the limits of on-shore, off-shore are, and what the allocation is between—if there is any overlap in terms of the species, right?

Ms. BLACKBURN. Right. The council could do this, right, but I do not think—it cannot do a co-op now. It cannot do—unless there is 100 percent of the fishermen agree, and that will never happen in Alaska.

Senator SNOWE. Or any place, for that matter.

Ms. BLACKBURN. Yes. But we can do it through the council. Our group in Kodiak has sat down for the last year and actually come up with a proposal, dates, the criteria dates. They really consider everyone.

We are just about ready to launch it for everybody else's criticism who is involved, and I think that we can do this, and this is what—which vessel got how much in the Bering Sea, it was the vessel's history, and it was within the co-ops. The co-op did the who got how much within that co-op and within that co-op's history. I do not see it as a big—as a problem, probably easier in a co-op than IFQ's.

Senator STEVENS. Do you all agree with that? Go ahead.

Ms. STEWART. Mr. Chairman, I think what took us 150 hours, and it seemed longer to me sometimes, in Appropriations was not specifically co-ops. It was the bigger issues that were being dealt with, limited entry for shoreside processors or not, how many of the American Seafood boats were going, what could happen to them when they left. There were huge, huge issues there.

The nice thing, and Chris pointed this out about co-ops, is the council does not have to make the internal rules for the co-op. They have to make very few rules compared to the kinds of things they have to do with IFQ's. They do not have to spell out who gets what in the co-op, or how the co-op decides to pass things out, and in the co-op we are talking about, we are not even going to the individual level.

We are just saying, here is the block of fish, these are the eligible fishermen, which to some extent has already been decided by the LLP program and some, perhaps, past participation criteria. The council could say, well, you would have had to have fished sometime in the most recent 4 years or 3 years or something, but after that, it really is the co-op's job.

And I think that is kind of nice for the council. They do not have to sit down with Mike Hyde and the eight boats he has. He has to do that, and they work out whatever it is they are going to do, and they provide that information to the council, and that is it, which I think appeals to the fishermen in our area because it provides the opportunity for local control for local problems. It does not try to fit a one-size-fits-all mass solution to everybody.

Senator STEVENS. Kevin.

Mr. O'Leary: There are a couple of issues I would like to address. Obviously, the Fisherman's Act of 1934 would have to be superseded by what you do in Magnuson in order to allow for formation of subgroups. Right now, as I understand that—and I am not an attorney, but the 1934 law, 100 percent of the participants in the fishery have to agree to join a co-op in order for the co-op to be formed, and that is not realistic, and it is one of the things you addressed in your actions with regard to the American Fisheries Act, so that is one specific issue.

Senator STEVENS. We can deal with that, too, in this one fairly easy, giving the council some ability to determine, as an amendment to the 1934 act.

Mr. O'LEARY. Also, one of the other issues with regard to the American Fisheries Act that I think is starting to get more rounded discussion at the council level, and yet as I recall the council proc-

ess and hearing the discussion about it I have heard a comment that it really was not provided for in the current—well, with the moratorium it is a moot issue, but in the previous iteration of Magnuson-Stevens, what do you do about processors, you know, the two-pie system discussion.

I think we probably need some—you, certainly, in the American Fisheries Act, recognized shore-based industry. I think we need some direction from you in the next iteration of Magnuson-Stevens how we are going to address that issue. You know, you did it, you handled it specifically in a way, under the American Fisheries Act. That is something that I think in this list of things, the criteria for developing this kind of rationalization, probably ought to be addressed head-on by you to give us some direction as to how we should proceed.

Other issues, the social and economic impacts to local communities, I had not heard Beth's particular proposal before in terms of co-op formation, and when I say rationalization, I am—when I say lifting the ban on ITQ's, I mean lifting the ban on ITQ-like programs. I also think the co-operatives may be a more appropriate or elegant solution in some cases, so I am speaking generically about that form of rationalization program.

Specifically, with dealing with the wake that is created by these things, direction in terms of how to mitigate those impacts and how to look after long-term interest of fishermen. One of the other potential solutions I see in terms of entry level fishermen would be some modification to the capital construction fund program, specifically with an eye toward allowing the use of capital construction fund moneys for entry-level people. I think that could have some help.

That does not mean—you know, we have got a capital construction fund program where quite honestly people that are successful in industry have tax-deferred, or taken tax benefits on moneys and have built up these great war chests. It is not going to do the little guy any good to allow these guys with huge capital construction funds to then go in and buy up the rest of ITQ's, or buy up the rest of another boat's co-operative rights. However, that program might be tweaked in such a way that smaller individual operators could build funds and use those funds for entry-level participation in some kind of rationalized fishery.

I mean, if you are asking for specific ideas as to things, approaches we need to take, that would be another one that I would suggest, but those are the things that occur to me right now.

Senator STEVENS. Good. I hope others have some suggestions. That is a good idea about capital construction funds. John.

Mr. IANI. Yes.

Senator STEVENS. Let me put on the other hat. How much money do you need?

[Laughter.]

Mr. IANI. Well, I am not sure, Senator Stevens. I think that in the American Fisheries Act you and the committee provided for a loan program that the industry could access up to $100 million, in a pure loan program to be paid by the industry.

I think that total figure would be the number that would help the crab industry rationalize itself down to a point where it could

form a co-operative or a subset of co-operatives, but the industry itself is in no position to fund that much of a loan program without some sort of appropriation from Congress to kick-start it, and that was I think what helped the American Fisheries Act get off the ground, was that the catcher-processors that Mike described were literally bought out by the remainders of the industry, in part through an appropriation from the Congress, and in part from a long-term loan obligation which we will start to pay back this year.

So I think that number is probably the right number you put in the act for the crab industry, but I do not think that the industry is in a position to fund it themselves.

Senator STEVENS. It is not quite the same industry, though, because that was a situation with enormous vessels and enormous processing plants. You are dealing with a great many more boats.

Mr. IANI. Correct.

Senator STEVENS. And you are dealing with fewer processors.

Mr. IANI. Correct.

Senator STEVENS. So that you—I do not know how you are going to have the standing to really qualify for that kind of a loan.

Mr. IANI. Well, the number of vessels that need to be purchased, or bought out, are substantially higher, but the vessels themselves are not as capital-intensive as a large factory trawler.

Senator STEVENS. What I am saying is, the remaining fleet, if you have got that kind of reduction, will not have the capacity to pay off a loan to take 80 percent of the fleet out of existence.

Mr. IANI. That is correct. I do not think you need to take 80 percent out, but I think that the remaining industry, if we are able to rationalize ourselves, should be able to finance that kind of loan package if there is enough in the front end to get the boats to leave, and that is going to be the real trick, and the difficult task for you in Congress to do, I think.

Senator STEVENS. Well, my memory is, when we had the crash in crab before we found out that for some reason they had gone way out off the end of the shelf and stayed there for a while, predators, whatever it might be.

Now, we do not know what has caused this Opilio crash.

Mr. IANI. No, we do not.

Senator STEVENS. Or near crash. We are trying to prevent it, and I do not have any real—from what you said, I guess you do not have any real criticism either, of what Penny and Steve have done.

Mr. IANI. I think they have to act conservatively.

Senator STEVENS.But beyond that, the problem here is whether there is an future for the Opilio, and I hate to mention it, Madam Chairman, but it sounds to me like what you are really suggesting in part is that we go back to the concept we used to have in agriculture and we would pay some people not to fish for a while.I

Mr. IANI. Well, I did not say it, Senator, but yes, I think that is probably the case.

Senator STEVENS. Some people would have to be bought out, and some people would have to be paid not to fish for a while. That is a program that would be harder than hell to get through Congress right now.

Mr. IANI. Right, I understand that, and the difference between what is happening now and what happened when the King crab

fishery crashed was, the boats did not go away, Senator. They simply went into bankruptcy and the banks sort of sold them for 5 cents on the dollar. There used to be a joke around Seattle that, you know, with your new checking account you could get a crab boat instead of a toaster, and I think that is what happened, and what would happen here is, if a vessel gets bought out, that vessel leaves the fisheries for good and forever, and does not come back in.

Senator STEVENS. Well, that is the two things we put in the American Fisheries Act.

Mr. IANI. Correct.

Senator STEVENS. But you have not suggested it.

Mr. IANI. Correct.

Senator STEVENS. But as a practical matter, having bankruptcies does not solve the capitalization. It just reduces the cost of getting in.

Mr. IANI. That is right.

Senator STEVENS. I have to explore that. I have got one last question. I have got to retire my side here. But Mike, what has happened to those boats that came out? Were they really retired? Did the equipment come off those boats and get used in other boats? I wonder sometimes, we ought to have a little oversight what happened to those boats.

[Laughter.]

Mr. HYDE. Senator, if you remember, early on in the discussions, the Government was going to buy those boats and take responsibility for them. We then said that was a great idea if the government pays the right price. The government changed its mind and said no, we want you to keep those boats, you have got to scrap the hold and the superstructure, but anything you want to do with the equipment you can do to help mitigate the loss that you are taking here.

All those boats that need to be scrapped—there are eight of them—are in the process. They are under contract to be scrapped. Seven of them, I believe, are in Hunter's Point, I think it is called, a naval shipyard down in Oakland. The other one is on its way to Portland right now under contract with a different party.

The only thing we removed from those vessels before we sold them to the scrappers was the core processing equipment, the Baader machinery, and that is back in the industry somewhere. About half of it we kept for ourselves. Several of the machines, I think three of the machines are in John Iani's plant.

One of the concerns of the American Fisheries Act was that with this much more fish going on-shore, that we would lose a lot of fillet production, so the shore plants were very interested in getting our fillet machines to be able to put into their operations.

Three of them are on other pollock co-operative member vessels.

So I think that is—they are spread around into the industry somewhere.

Senator STEVENS. OK. That answers me. I think that we anticipated some of that would happen, but if we looked at these other smaller boats, when we start taking them out of the fleet, it is going to be pretty hard to prevent them not become a pressure on the fisheries somewhere else in the United States. That is what we

have got to find a way to deal with, and I do not know how to deal with that yet, and we constantly face requests for special acts to allow boats to come back in the fisheries. We are going to have to find some way to really put down a block against any that are bought out ever being used for fishing anywhere.

Mr. IANI. I think the industry would agree to that.

Senator STEVENS. I just do not know how we can do that. The Constitution, again, there may be some barrier there. I will have to work that out.

Senator SNOWE. Mr. Chairman.

Senator STEVENS. Yes. I appreciate that, and I am through.

Senator SNOWE. In the New England groundfish industry we had a small vessel buyback program. It included a prohibition that they could not use the equipment to go into another fishery.

Senator STEVENS. Yes. Thank you very much.

Mr. IANI. Thank you.

Senator SNOWE. Thank you.

We are going to take a 10-minute break and begin the next panel at 11:50. Thank you.

[Recess.]

Senator SNOWE. All right. Our first witness will be Mr. Larry Cotter, the CEO of APICDA Joint Ventures. Our next witness will be Mr. Jeff Bush, Deputy Commissioner, Alaska Department of Commerce and Economic Development. Our final witness for this panel will be Mr. Freddie Christianson, chairman of the Gulf of Alaska Community Coalition.

Mr. Cotter, we will begin with you.

STATEMENT OF LARRY COTTER, CEO, ALEUTIAN PRIBILOF ISLAND COMMUNITY DEVELOPMENT ASSOCIATION

Mr. COTTER. Thank you, Madam Chair. I would like to thank you and the members of your committee for inviting me to testify today. I would also like to thank the six CDQ organizations for allowing me to represent them in this hearing. It is an honor and a privilege.

During the past decade, I have been fortunate to witness and participate in the community development quota program from its inception as a concept in the 1980's to its present state. When the program was first articulated, I was a member of the North Pacific Fishery Management Council. I was present during the deliberations and subsequent adoption of the program. After concluding my tenure on the council, I assisted several Aleut villages in forming a CDQ organization and establishing their program, and ultimately I became the CEO of the Aleutian and Pribilof Island Community Development Corporation, a position I hold today.

The premise of the CDQ program is that communities and their residents should have a reasonable opportunity to benefit from the use of common property resources adjacent to their geographic location. In the Bering Sea Aleutian Islands, this was not the case prior to the establishment of the program in 1992.

Of the 65 eligible CDQ communities immediately adjacent to the Bering Sea in 1991 only two derived any measurable social or economic benefit from the utilization of our fishery resources in the EEZ. In the remaining villages and communities, unemployment

was chronic, and social problems, including substance abuse and suicide, were rampant.

A decade ago, the villages and their residents lacked the capital to invest in the industry. It is different today. The CDQ program has enabled Western Alaska villages and their residents to directly participate in the commercial fishing industry. On an annual basis, the CDQ program provides approximately 1,000 jobs for local residents. Over $30 million in wages have been generated, and millions more have been spent providing training and scholarships for vocational and higher education. Both the number of annual jobs and accompanying payroll are increasing each year.

The six CDQ organizations have in excess of $100 million in assets. They serve as owners or joint venture partners in shore-side seafood processing facilities, at-sea catcher-processing vessels, large and small, shoreside catcher vessels, seafood marketing companies, and a host of other businesses directly related to the commercial fishing industry. In many instances, these investments are located at the village level, where they generate local employment and wages and stimulate the local economy.

The CDQ program is highly regulated. Each CDQ corporation must develop a comprehensive community development plan that outlines its entire program for the next several years. Detailed annual budgets must be submitted, proposed investments must conform to investment policies and procedures, quarterly reports must be submitted, comprehensive annual audits of each CDQ corporation are required.

The CDQ corporations are prohibited from making investments outside the fishing industry, or ones that do not provide a measurable return to the CDQ communities. Virtually all activities of the CDQ corporations must be approved in one form or another by the State of Alaska and the Secretary of Commerce acting through the NMFS Regional Director. Any deviation of significance from the CDP or the annual budget must be approved in advance.

The regulations can be troublesome, and they have generated some friction and concern in the past. A frequent complaint to the CDQ corporations is that we are hampered by the bureaucracy from acting as normal private sector companies. For example, if a CDQ corporation identifies an excellent business opportunity, and that business opportunity was not foreseen in advance and contained in the CDP, we have to go through an amendment process before we can take advantage of the opportunity. The amendment process may take as long as 30 days or longer, by which time the opportunity may have disappeared.

Another example is limitation on our budgets. If we are going to deviate from our budget by $100,000 or more we have to do a substantial amendment, again taking 30 days or longer. This gets to be a problem, particularly when a CDQ group has invested in another company, where we own 50 percent or more of that company, and at that point in time we have to go through that amendment process before we can spend the money, which may make it impossible for the company to move forward and carry out its business functions as it needs to in order to remain competitive.

The regulations all relate to the oversight of the CDQ program, which reflects the North Pacific Fishery Management Council's

original intent that the program be closely monitored to ensure compliance.

An issue of significance to at least one of the six CDQ groups involves so-called CDQ dollars. When, if ever, does a dollar of CDQ royalty stop being a CDQ dollar?

The red light—Madam Chair, if the——

Senator SNOWE. That is all right. You can finish your statement.

Mr. COTTER. Thank you.

Senator SNOWE. Go right ahead.

Mr. COTTER. Clearly, when a CDQ dollar is derived from a royalty, it falls within the scope of the program. If the CDQ dollar is used to invest in a business, and the business generates a profit, is that dollar a CDQ dollar? If it is, and the CDQ Corporation owns 50 percent or more of that company, then all actions by that company are subject to the dictate of the CDQ program, which begins to generate some difficulty for that company, potentially.

The six CDQ corporations compete against each other for allocations of the CDQ species. The allocation process generates controversy between the six organizations because the amount of the allocation will largely determine the amount of revenue available to each CDQ group. Making allocations, the State oversight team applies comprehensive list of criteria. Some of the criteria is objective, some of it is subjective.

The allocation process is difficult for all involved. Some CDQ groups feel that they have been unfairly treated in the allocation process, and/or that the allocation process is used as a threat if they fail to adhere to State desires. A few alternatives have been suggested, but none have garnered significant support.

To the extent that there is controversy between the CDQ corporations themselves, or the CDQ corporations in the State, they are really limited to the scope of the regulations, the allocation process, and State oversight. There has been a suggestion that the Federal Government take over the oversight and allocation responsibilities of the program. This is opposed by five of the six CDQ organizations.

On issues of significance to the Magnuson-Stevens Act, all six organizations have the following comments. The last reauthorization contained a provision allowing a fee of up to 3 percent of the value of CDQ allocations to be levied against the CDQ corporations to recover the oversight cost of State and Federal Government. The six CDQ groups have recently reached conceptual agreement with the State of Alaska to support legislation assessing a fee on our corporations to pay for State oversight expenses. We have approached NMFS with the same concept, and hope the Magnuson-Stevens Act will be amended to reflect our proposal.

American Fishery Act ownership side boards. We have some concerns regarding the proposal that any company that owns 10 percent or more of an AFA processor be limited in terms of their scope of operation. Three of the CDQ groups currently are invested in AFA processors. The other three are contemplating that. If that rule moves forward and includes CDQ's, it would have a significant adverse impact on our other investments.

Federal loan funds. The AFA set aside $25 million for loans in fiscal year 1999 to assist CDQ corporations to acquire AFA vessels

and processors. We would like to see this loan program extended and expanded to include other fisheries. This would be of great benefit to us.

A couple of other issues of concern, and I will conclude. We have had fairly continuous problems with the observer requirements for CDQ fisheries. The current rules require that there be two observers on all catcher-processor vessels, regardless of size. These observers need to be specially trained. The same rules now apply to all the FAA vessels.

There simply are not enough observers trained today to meet our individual CDQ or collective CDQ and AFA needs. This past summer, many of our CDQ organizations experienced a lot of trouble finding observers. In fact, one company went 45 days without finding an observer. As a result, they could not fish during that 45 days.

Madam Chair, I think that I will conclude my comments by saying that despite touching on some of the problems that we have with the program, the program overall has worked wonderfully. In 7 years, the CDQ groups have evolved and grown from nothing to fairly significant corporations. There has been a very significant return to the villages and the residents. They have ownership in the industry now, and they participate in the industry, and they have a future.

I would like to thank you for allowing me to testify——

Senator SNOWE. Thank you.

Mr. COTTER. —and I am sorry I went over.

[The prepared statement of Mr. Cotter follows:]

PREPARED STATEMENT OF LARRY COTTER, CEO, ALEUTIAN PRIBILOF ISLAND COMMUNITY DEVELOPMENT ASSOCIATION

Madam Chair:

I would like to thank you and the members of your committee for inviting me to testify today. I would also like to thank the six CDQ organizations for allowing me to represent them in this hearing. It is an honor and a privilege.

During the past decade, I have been fortunate to witness and participate in the community development quota program from its inception as a concept in the 1980s to its present state. When the program was first articulated, I was a member of the North Pacific Fishery Management Council. I was present during the deliberations and subsequent adoption of the program. After concluding my tenure on the Council, I assisted several Aleut villages in forming their CDQ organization and establishing their program. Ultimately, I became the Chief Executive Officer of the Aleutian Pribilof Island Community Development Association (APICDA), a position I hold today.

The premise of the CDQ program is that communities and their residents should have a reasonable opportunity to benefit from the use of common property resources adjacent to their geographic location. In the Bering Sea/Aleutian Islands, this was not the case prior to establishment of the program in 1992. Of the 65 eligible CDQ communities immediately adjacent to the Bering Sea and Aleutian Islands in 1991, only two derived any measurable social or economic benefit from the utilization of our fishery resources within our North Pacific EEZ. In the remaining villages and communities, unemployment was chronic and social problems—including substance abuse and suicide—were rampant. The federal and state governments provided a variety of grants and other funding mechanisms to combat these problems, but they could not bridge the gap between the imposition of opportunity and the actual ownership of opportunity. That is a huge difference.

A decade ago, the BSAI villages and their residents lacked the capital to invest in the industry. In many cases, the commercial fishing vessels were easily visible operating just offshore: harvesting, processing, and reaping the economic benefits of our world class groundfish, halibut and crab fisheries. It is different today.

The CDQ program has enabled western Alaska villages and their residents to directly participate in the commercial fishing industry, either individually or through their CDQ organization. On an annual basis, the CDQ program provides approximately 1,000 jobs for local residents. Over $30 million in wages have been generated, and millions more have been spent providing training and scholarships for vocational and higher education. Both the number of annual jobs and accompanying payroll are increasing each year.

The six CDQ organizations have in excess of $100 million in assets. They serve as owners or joint venture partners in shoreside seafood processing facilities, at-sea catcher processor vessels, large and small shoreside catcher vessels, seafood marketing companies, and a host of other businesses directly related to the commercial fishing industry. In many instances, these investments are located at the village level, where they generate local employment and wages, and stimulate the local economy. To the extent that investments are outside of the village, they generate revenue to the CDQ company for overall use within the program, serve to stabilize the CDQ corporation by diversifying investments, and are a key component in reaching long term self-sufficiency. They also provide significant employment and career path opportunities for local residents.

The CDQ program is not race based. The program includes all residents of the eligible villages and communities, regardless of race. This is an important distinction.

The CDQ program is highly regulated. Each CDQ corporation must develop a comprehensive community development plan (CDP) that outlines its entire program for the next several years. Detailed annual budgets must be submitted. Proposed investments must conform to each corporation's investment policies and procedures. Quarterly reports from each corporation, including a progress report on each project and milestone, must be submitted. Comprehensive, annual audits of each CDQ corporation are required. The CDQ corporations are prohibited from making investments outside the fishing industry, or ones that do not provide a measurable return to the CDQ communities. Virtually all activities of the CDQ corporations must be approved in one form or another by the state of Alaska and the Secretary of Commerce (acting through the NMFS Regional Director). Any deviation of significance from the CDP or the annual budget must be approved in advance.

The regulations can be troublesome, and have generated friction and concern. A frequent complaint is that the CDQ corporations are hampered by the bureaucracy from acting as normal private sector companies. For example, if a CDQ corporation identifies an excellent investment opportunity at bargain basement prices, it must go through a substantial amendment process requiring approval from both the state and NMFS before it can take advantage of the opportunity—if the proposed investment was not foreseen in advance and included in the community development plan. The amendment process, including the time necessary to develop the accompanying paperwork, frequently requires thirty or more days. By that time, the opportunity may have disappeared because a CDQ corporation cannot commit to the opportunity without prior approval.

Another example is the requirement that any deviation in a budget by more than $100,000 must be approved in advance by the state and NMFS. If, as is the current state definition, a CDQ "project" includes any investment in which a CDQ corporation owns a controlling interest (50% or more), a major corporation in which a CDQ corporation is an equal owner must foresee in advance all of their budget needs for the next year, or wait for approval from the state and NMFS before spending $100,000 in excess of their approved budget. This presents a major problem since companies cannot see with crystal clarity into the future and must, by competitive necessity, have the ability to operate their business.

The state CDQ team and the six groups have been working this past year to address these and other similar issues. Most of the CDQ organizations believe these problems can and will be resolved without federal government intervention.

The regulations all relate to oversight of the CDQ program, which reflects the North Pacific Fishery Management Council's original intent that the program be closely monitored to ensure compliance. Unfortunately, the laudable goal of oversight and compliance can conflict with the reality of the business world. A happy medium needs to be identified. Failure to positively address these issues will have a long term negative impact upon the CDQ corporations. Most potential partner companies will not accept CDQ corporations as equal investors because of the impact of the regulations on their ability to be flexible, thereby relegating CDQ corporations to minority owner status. In those cases where a CDQ group, or a combination of CDQ groups, own a controlling interest in a business, the business will operate at a competitive disadvantage until these issues are resolved.

An issue of great significance to at least one of the six groups involves so called "CDQ dollars." When, if ever, does a dollar of CDQ royalty stop being a CDQ dollar? For example, a royalty dollar generated from the lease of pollock CDQ is spent on a business investment within the scope of the program. Clearly, the royalty dollar was subject to the oversight provisions of the program. But what about the dollar in earnings generated by the business investment, the so called "second generation" dollars? If the dollar is returned to the CDQ group as profit sharing, is it a CDQ dollar again and subject to the program? If the dollar is spent by the business on a new investment instead of returned as profit sharing, is the dollar spent a CDQ dollar? If so, the new investment may be subject to the rules and regulations of the CDQ program. The current definition maintains that second generation dollars are CDQ dollars and subject to the scope of the program.

This issue is particularly important when a CDQ corporation or corporations have a controlling interest in a business investment. If the dollar generated by the business is a CDQ dollar, the business would not be allowed to invest in any entity outside the scope of the CDQ program. The concern by the particular CDQ corporation is that their business investment(s) is not allowed to diversify and strengthen the corporation. In the meantime, the corporation remains subject to the scrutiny and potentially stifling regulations of the program.

The contrary concern is that revenues generated by the CDQ program must be used to the maximum extent possible for the development of stable local economies in the CDQ communities: if second generation CDQ revenues fall outside the scope of the program, several CDQ groups fear that they may be spent on investments that provide little or no return at the village level. In such a case, these groups fear the program itself may be threatened.

Four of the six CDQ corporations support the current definition regarding the use of second generation dollars. One corporation appears undecided. One corporation strongly supports a definition that limits the scope of the program to first generation dollars only.

The six CDQ corporations compete against each other for allocations of the CDQ species. The allocation process generates controversy between the six organizations because the amount of the allocation will largely determine (absent returns from investments) the amount of revenue available to each CDQ corporation. Currently, approximately $30 million a year in royalties are generated from the lease of CDQ allocations. The allocation process is managed by the state of Alaska. For the past several years, there has been at least one major allocation each year. Each allocation requires submission of a comprehensive community development program by each CDQ organization, and requires a substantial amount of work. We understand we are now moving to a longer allocation cycle.

In making allocations, the state CDQ oversight team applies a comprehensive list of criteria when evaluating each CDQ corporation and their allocation request. The criteria—in no order of priority—includes the proposed program, past performance, management expertise, contractual relationships with partners, population, compliance with CDQ rules and regulations, co-operation with other CDQ corporations, the extent to which proposed fishing plans conform with conservation objectives, and other factors. Some of the criteria is based on fact, while some is subjective.

The allocation process is difficult for all involved. Obviously the allocation decisions themselves are subject to praise or ridicule, depending upon what a corporation receives. I do not think anyone is really happy with the process. Some CDQ groups believe they have been unfairly treated in the allocation process, and/or that the allocation process is used as a threat if they fail to adhere to state desires. A few alternatives have been suggested, but none have garnered significant support. It is interesting to note that the North Pacific Fishery Management Council consciously delegated the primary allocation responsibility to the state after contemplating the potential political nightmare associated with making allocations.

To the extent that there is controversy between the CDQ corporations themselves, or the CDQ corporations and the state, they are limited to the scope of regulations, the allocation process, and state oversight. There has been a suggestion that the federal government take over the oversight and allocation responsibilities. This is opposed by five of the CDQ organizations. Despite intimations to the contrary, the majority of the CDQ corporations are generally pleased with the job being done by the state and believe the problems that do exist can and will be positively addressed in the near future.

On issues of significance to the Magnuson-Stevens Act, all six organizations have the following comments:

Fees: The last reauthorization of the Magnuson-Stevens Act contained a provision allowing a fee of up to three percent of the value of CDQ allocations to be levied against the CDQ corporation to recover the oversight costs of the state and federal

governments. The six organizations have recently reached conceptual agreement with the state of Alaska to support state legislation assessing a tax on our corporations to pay for state oversight expenses. We have approached NMFS with the same concept, and hope the Magnuson-Stevens Act will be amended to reflect our proposals.

American Fisheries Act Ownership Side Boards: The North Pacific Fishery Management Council is currently developing regulations that define which business entities will be subject to AFA side boards. One of the alternatives would include any company, and their affiliates, who own ten percent of more of an AFA processor. Three of the CDQ groups currently own ten percent of more of AFA processors, and the other three are contemplating such an investment. Inclusion of the CDQ corporations in this rule would have a significant adverse impact on the other investments made by the groups since those investments would then be limited in their harvesting and processing activities by AFA side boards. This appears contrary to the intent of the program (CDQ corporations are intended to invest and diversify their investments in the industry) and the intent of Congress in providing for $25 million in federal loans (American Fisheries Act) to CDQ corporations to invest in pollock vessels and processors.

We hope that the North Pacific Fishery Management Council will exempt CDQ corporations from these provisions. If not, we would ask that the Magnuson-Stevens Act be amended to address our concerns.

Federal Loan Funds: As mentioned above, the American Fisheries Act set aside $25 million for loans in FY 1999 to assist CDQ corporations to acquire ownership in AFA vessels and processors. We would like the loan program extended and expanded to include other fisheries. This would be of great benefit to us.

On other issues of importance, we have encountered continuous difficulty with the National Marine Fisheries Service regarding observer requirements for CDQ fisheries. The NMFS requires that there be two observers on all catcher processor vessels, regardless of size. The observers must be specially trained. The same rules have now been extended to all AFA vessels participating in co-ops. There are simply not enough trained observers to meet our individual CDQ or collective CDQ and AFA needs. This past summer many of the CDQ corporations experienced significant problems locating observers so they could harvest their CDQ. One CDQ group went 45 days without locating the necessary observers. Without the required observers we are not allowed to fish. To the extent that the NMFS has indicated flexibility in this rule, the flexibility they offered limited the fishing time to the extent that the commercial fishing effort would not be economically viable.

The NMFS has not been responsive to our problems in this area. It is a major problem.

Another concern with observers is the variance between the observed catch as defined by the observer and the back calculated catch as defined by the products produced on board the vessel using NMFS product recovery rates. The variance in Pacific cod CDQ fishing, for example, has ranged as high as twenty percent or more, with the observer nearly always showing a higher number. We strongly support accurate accounting of catch, but we are not convinced that the current approach accomplishes the goal given the variance. For Pacific cod, the six CDQ groups jointly proposed to the NMFS that we implement an alternate system that would include using the observer to count fish that drop off before coming aboard and using product recovery rates (constantly monitored to ensure they are accurate) to determine the landed weight.

Although the NMFS regulations allow for an alternate method of catch accounting, the resistance to the change, or possibly time restraints, have resulted in an unwillingness by NMFS to move forward to address this problem. In the meantime, we do not know if we are over harvesting or under harvesting. This has both biological and economic ramifications. The problem is not limited to cod. It needs to be resolved.

A final issue that concerns us is the exactness required by the regulations in terms of harvesting our CDQ allocations. We are prohibited from exceeding any allocation for any species, a regulation that is not imposed on any other fishery. In some cases, our allocations are several thousand tons, in other cases only four tons. Fishing is not an exact science. There will be tows or sets where the catch is greater or less than desired or sought. This regulation greatly inhibits our ability to successfully harvest our allocations since we are extremely concerned with the ramifications of any excess harvest. All of the groups have excellent records of harvesting within the specified allocations, but the threat of violations is constantly hanging over our heads, particularly for species with extremely small allocations.

The CDQ groups have proposed that the collective allocations from all groups combined serve as the cap, and that an individual group who exceeds their alloca-

tion for a particular species will not be penalized if they can secure additional fish from another CDQ organization before the end of the year to cover their overage. Again, due to time restraints this issue has not been resolved.

Despite the problems identified in this testimony, the CDQ program has worked wonderfully. In seven years, the CDQ corporations have evolved and grown from nothing to fairly significant corporations. There has been a great return to the villages and their residents. They have ownership in the industry and they participate in the industry. They have a future in the industry, and they have goals and objectives as individuals and communities relative to the industry. None of this would have been possible without the CDQ program.

Thank you again for providing me with the opportunity to testify today. I note that several of the CDQ organizations will be submitting their own written testimony, and hope you will give them the same attention that you have given me.

Senator SNOWE. No, that is fine, Mr. Cotter. Thank you.

Mr. COTTER. Thank you.

Senator SNOWE. Mr. Bush.

STATEMENT OF JEFF BUSH, DEPUTY COMMISSIONER, DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT, ALASKA

Mr. BUSH. Thank you, Madam Chair, and Senator Stevens. Thank you for the opportunity to testify here today. I am currently the Deputy Commissioner of the Department of Community & Economic Development, which is the lead State agency with respect to the CDQ program. We jointly manage the program with the Department of Fish & Game, but the staff is located, based upon a recent reorganization of the State government, within my department.

Sixty five communities currently in Western Alaska participate in the program, which began in 1992. Those 65 communities have approximately 27,000 residents. They participate through six CDQ groups, and these groups vary in size from one to 20 communities, and from approximately 550 people up to about 8,750 people.

The northern boundary of the program stretches as far as the Bering Straits, and it stretches south toward the Aleutian communities of Atka and Nikolski.

The State's role in the oversight of a CDQ program is to ensure that the program is held accountable to its original mission of promoting fisheries-related economic development and providing ongoing opportunities for Western Alaska residents. This is done by working with the CDQ groups in the development of their plans and programs, monitoring their performance to ensure that they comply with the program, and to reward successful performance through the allocation process. We also as a State frequently represent the CDQ program and advocate on its behalf in both State and Federal arenas.

The CDQ program is still relatively new, but by most measures, as stated by Mr. Cotter, it has been quite successful. It provides approximately 1,000 jobs annually for Western Alaska residents. It pays total wages, or has paid total wages of approximately $30 million, it has annual royalty returns to the various CDQ groups of approximately $30 million, and the six groups now have assets totaling approximately $100 million.

The goal of the program, as I stated, is to provide fisheries-related economic opportunities for Western Alaska residents. As the program has grown, we have seen increasing numbers of jobs pro-

vided. We have seen increasing numbers of opportunities, economic opportunities to the region as a result of the program. We are seeing more and more educational funding programs, and more and more training opportunities as a result of the program.

We also are seeing, particularly in recent years, more and more interest in investment by the groups directly into the fisheries themselves, into the capital investment of the fisheries. Right now, according to our estimates, the CDQ groups own approximately 2 percent of the capital, the processing capital in the Bering Sea fisheries.

I would like to next comment briefly on a few provisions of the Magnuson-Stevens Act. Under the Magnuson-Stevens Act reauthorization in 1996, it was provided that the CDQ program would -- that the Secretary of Commerce would institute a fee program up to a maximum of 3 percent of the ex-vessel value of the fish harvested by the groups, and this fee program would help support the program.

To date, that particular fee program has not been instituted. Because of State funding issues, the State and the groups have worked together, and I am pleased to say have reached an agreement recently to attempt to implement a State CDQ fee system. We are introducing legislation in the current legislature to have this fee system instituted at the State level to cover the State management for the program, and that will hopefully remove the program from the vagaries of the State budgeting system, which have been a constant problem.

The other thing that I would like to comment on regarding the act is that the act required the National Academy of Sciences to do a report on the CDQ program, which was released in 1998, and I would like to talk briefly about a few of the comments made in that report.

The report found that the program is generally effective in accomplishing the goals of providing the communities with ongoing economic fishing activities and opportunities. They create employment, they attract capital, develop infrastructure, and generally promote social and economic conditions in the region.

There were a few criticisms or recommendations out of the report. The report identified a problem relating to a lack of open and consistent communication between the groups and the communities. The State is very sensitive to this particular issue, and has responded through a regulations redraft just this past year that now requires the groups to actively work with their communities and to report back to us, and they are accountable to the State on that.

I will be very brief, Madam Chair. Another issue related to the State's communication directly with the groups in the communities, and the State has also adopted a change in its internal structure to consolidate all of the CDQ staff members into one office, and now we are trying to implement more outreach from that office, because with more efficiencies we now have more time for staff to do that.

One comment of the National Academy of Science report that has generated some interest and I know is of concern to the groups, and Mr. Cotter commented upon it, is relating to the flexibility of

investments to be allowed by the CDQ groups, and to permit more flexibility in allowing them to make nonfisheries-related investments.

The State is working very closely with the groups to try to work in that direction. We are very sensitive to that concern. We are also sensitive to the concern that oftentimes a particular group's interest in making a profit may not necessarily be consistent with the program's purpose of benefiting the region's residents, and so it is a tough balance for the State in looking at the investment flexibility issue.

With that, Madam Chair, I would like to just say thank you again for coming to Alaska and for giving me the opportunity to testify.

Senator SNOWE. Thank you very much, Mr. Bush.

Mr. Christiansen.

STATEMENT OF FREDDIE CHRISTIANSEN, CHAIRMAN, GULF OF ALASKA COASTAL COMMUNITIES COALITION

Mr. CHRISTIANSEN. Thank you. I would like to thank both of you for allowing, Senator Stevens and Senator Snowe, for us to participate in this testimony.

Senator STEVENS. Would you pull that mike up close to you, please?

Mr. CHRISTIANSEN. My name is Freddie Christiansen. I am the chairman of the Gulf of Alaska Coastal Community Coalition.

The Gulf of Alaska Coastal Community Coalition is an alliance of more than 30 communities stretching from Metlakatla in Southeast Alaska, around Prince William Sound, Cook Inlet and Kodiak and out to False Pass and the Eastern side of Aleutian Islands.

Our purpose is to create fair and sustainable marine resource harvesting opportunities for smaller communities in the Gulf of Alaska. Our core values include the necessity of sustainable marine resource management. These are the same values that have been championed by you, Senator Stevens, and others, in the passage of the Sustainable Fisheries Act.

In order to explain why many people in the Gulf of Alaska formed this coalition, I would like to tell you a little bit about my personal experience. I have lived in Old Harbor all my life, have been a commercial fisherman since I was 9 years old. From the implementation of State limited entry programs for salmon in 1973, I had observed a continual decline in my community's opportunities to participate in fisheries. Our crab and shrimp fisheries were lost because of resource problems, and individual fishing quota systems restricted access to halibut and black cod.

As fishing jobs disappeared, Old Harbor experienced social problems, alcohol and substance abuse, population declines, and a sense of being cutoff from the roots as a fishing community.

Section 301(a)(8) of the Magnuson-Stevens Fishery Conservation Management Act states that conservation and management measures shall take into account the importance of fishery resources to fishing communities in order to a) provide, to sustain participation of such communities, and b) to the extent practical, minimize the adverse economic impacts of such communities.

Based on a letter of January 6, 2000, Subcommittee Chair Snowe, committee chairman McCain expressed their interest in views on community development quotas and other management alternatives. The CDQ program which has been employed in the Bering Sea Aleutian Islands may not be easily transferable to the Gulf of Alaska. However, some form of community-based access to fisheries is imperative if the small coastal communities are to remain viable.

Last August, the coalition submitted a proposal to the North Pacific Fishery Management Council to modify the IFQ program to permit communities to purchase retention and fishing of halibut and sable fish IFQ's. The concept developed from the recommendations of the Ocean Studies Board of the National Academy of Sciences and the National Research Council in their 1999 report to Congress called Sharing the Fish: Toward a National Policy on Individual Fishing Quotas.

The NRC congressionally mandated report, consistent with the Magnuson-Stevens language, indicated that it had been an oversight not to allocate IFQ's to communities when the program was started, and recommended that regional councils, when designing IFQ programs, should be allowed to allocate quota shares to communities. Most importantly, the report stated that for existing IFQ programs councils should be permitted to authorize purchase-holding management and sale of IFQ's by communities.

Some have suggested that the anticipated increased funding for the Federal IFQ loan program through the 3 percent program fee assessment could help meet the needs in our communities. While this approach may be beneficial to some individuals in our communities, it does not address the larger community need to have access and economic benefit from marine resources.

Individual owners can easily come and go from a community, or simply sell their shares. In fact, the National Marine Fisheries Service reports that in the first 4 years of the IFQ program, individuals living in rural Alaska have mostly sold their IFQ shares.

The Gulf of Alaska Coastal Community Coalition is very concerned about the continuing high levels of bycatch discards in several Gulf of Alaska fisheries, and the habitat alterations occurring from hard-on-bottom trawling. This is especially true with the recent substantial decreases in the halibut biomass estimates from the International Pacific Halibut Commission for the Gulf of Alaska and projected long-term negative trends, yet relatively long-term constant levels of halibut wastes or bycatch continue to be authorized by the North Pacific Fishery Management Council.

The GOACCC strongly urges the North Pacific Fishery Management Council to aggressively implement the existing provisions under Sustainable Fisheries Act to regulate fisheries by requiring fishing methods that substantially reduce bycatch and habitat alteration.

In addition, the coalition remains deeply concerned about the gulf of Alaska crab stocks. As you know, there has not been a Red King crab season in the Gulf of Alaska since 1982, and no Tanner crab season since 1994. Despite elimination of fishing and even a reduction in allowable subsistence harvest, Gulf of Alaska crab stocks remain severely depressed.

Finally, we want to raise with the Subcommittee some perhaps unintended but nevertheless detrimental impacts of the National Marine Fisheries Services newly instituted license limitation program, LLP, for cod, pollock, and flatfish fisheries in the Gulf of Alaska.

The program assured fishing permits for a significant number of larger vessels, particularly in the Western Gulf, that had marginal fishing histories while at the same time limiting new participation in these fisheries by coastal community residents. Moreover, the program limits the vessel size of participation, thus permanently vests the larger vessels with a competitive edge, while prohibiting the natural evolution of improving fishing equipment for small boat fishermen. The LLP program is yet another barrier between residents, rural communities, and the marine resources in proximity to where they live.

In addition, the North Pacific Fishery Management Council recently awarded a species allocation of Pacific cod fish in the Bering Sea to a single gear type and is considering a parallel proposal for trawl fishermen in the Gulf. If the proposal is approved, and a single gear type given a percentage of Gulf of Alaska Pacific cod fish quota, it will generate a frenzied scramble for all gear types to obtain specific allocations for all remaining fisheries. This accomplishes much of the same result as IFQ's program, despite the current constraints against new IFQ programs in Magnuson-Stevens, and despite the protective language for communities in the Magnuson-Stevens.

The LLP and species allocation do not provide for sustained participation of our communities, and do not minimize adverse economic impacts on these communities.

Thank you for the opportunity to testify about some of our concerns for the sustainability of the fisheries-dependent rural communities in the Gulf of Alaska. In summary, we believe that community ownership of IFQ's is consistent with the intent of the Magnuson-Stevens Act, and an excellent idea. We are concerned about bycatch fishery waste. Substantial regulatory changes need to be implemented to protect and rebuild crab stocks. And finally, the recently implemented LLP program possible quota allocations creates further access barriers for the Gulf of Alaska coastal communities.

We are committed to working with your Subcommittee to find sensible and feasible remedies to challenges we face, some of which we have outlined in our testimony. The members of the Gulf of Alaska Coastal Community Coalition and the men, women, and children, both Native and non-Native, whose lives and future way of life are linked to your work here today are grateful to you for your commitment of time and energy to address these matters.

Thank you.

[The prepared statement of Mr. Christiansen follows:]

PREPARED STATEMENT OF FREDDIE CHRISTIANSEN, CHAIRMAN, GULF OF ALASKA COASTAL COMMUNITIES COALITION

Chairwomen Snowe, Senator Stevens and members of the Subcommittee. Thank you for holding your hearing in Alaska and providing a forum for our views on the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

My name is Freddie Christiansen and I am the Chairman of the Gulf of Alaska Coastal Communities Coalition (GOACCC). The GOACCC is an alliance of more than thirty-five (35) communities stretching from Metlakatla in Southeast Alaska around Prince William Sound, Cook Inlet and Kodiak out to False Pass in the Aleutian Islands. Our purpose is to create fair and sustainable marine resource harvesting opportunities for smaller communities in the Gulf of Alaska. Our core values include the necessity of sustainable marine resource management. These are the same values that have been championed by you, Senator Stevens and others, in the passage of the Sustainable Fisheries Act.

In order to explain why many people in the Gulf of Alaska formed this coalition, I'd like to tell you a little about my personal experience. I have lived in Old Harbor all of my life and have been a commercial fisherman since I was (8) years old. From the implementation of the State's limited entry program for salmon in 1973, I have observed a continual decline in my community's opportunities to participate in fisheries. Our crab and shrimp fisheries were lost because of resource problems and the Individual Fishing Quota system restricted access to halibut and blackcod. As fishing jobs disappeared, Old Harbor experienced increased social problems, substance abuse, population declines and a sense of being cut off from our roots as a fishing community. Declining population impacts our schools and the opportunities for my children—fewer and fewer high school students remain in our village for high school or return to the village after attending high school elsewhere. As I traveled and talked with residents from other communities I discovered that their experiences paralleled mine. In fact, many communities have been almost entirely disconnected from fishing and resource related jobs. A number of residents of the Gulf formed the GOACCC to reconnect coastal communities with marine resources and to encourage better and more equitable management of these resources.

Section 301(a)(8) of the Magnuson-Stevens Fishery Conservation Management Act states that "Conservation and management measures shall ... take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." The Coalition's first initiative was founded on this directive.

Based on the letter of January 6, 2000, Subcommittee Chair Snowe and Committee Chairman McCain expressed their interest in views on community development quotas and other management alternatives. Although CDQs as they have been employed in the Bering Sea are not easily or practically transferred to the Gulf of Alaska, some form of community-based access to fisheries is an imperative if the small coastal communities are to remain viable into the future.

Last August, the Coalition submitted a proposal to the North Pacific Fisheries Management Council to modify the IFQ program to permit community purchase, retention and fishing of halibut and sablefish IFQs. The concept was developed from the recommendations of the Ocean Studies Board of the National Academy of Sciences and National Research Council in their 1999 report to Congress called, "Sharing the Fish...Toward a National Policy on Individual Fishing Quotas." The NRC Congressionally mandated report, consistent with the Magnuson- Stevens language, indicated that it had been an oversight not to allocate IFQs to communities when the program was started and recommended that regional councils, when designing IFQ programs, "should be allowed to allocate quota shares to communities ..." Most importantly, the report stated that "for existing IFQ programs, councils should be permitted to authorize the purchase, holding, management, and sale of IFQs by communities."

We envision that nonprofit entities, such as community development foundations, would be formed to purchase, hold and manage quota share. These shares would be held in perpetuity as a community endowment and provide fishing access to halibut and sablefish for successive generations of community residents. We anticipate that there would be limits on the total amount of shares purchased by communities and the amount of shares held by any single community. In addition there may be limitations on how many community quota shares any one individual will be able to fish.

Some have suggested that the anticipated increased funding for the Federal IFQ loan program through the 3% program fee assessment could help meet the needs in our communities. While this approach may be beneficial to some individuals in our communities, it does not address the larger community need to **permanently** have access to, and economic benefit from, marine resources. Individual owners can easily come and go from a community or simply sell their shares. In fact, the National Marine Fisheries Service reports that, in the first 4 years of the IFQ program, individuals living in rural Alaska have mostly sold their IFQ shares and, if the trend continues, coastal communities will eventually lose access to economic benefit

from these resources. When a village skipper sells his IFQ shares, two or three additional families in the community lose income opportunities as crewmen. Community ownership of the IFQs would guarantee that the quota shares remain available to the community and that fishing jobs would remain available to community residents.

The Coalition's IFQ proposal is the first step along a path toward increased community benefit from marine resources. We seek your and your Subcommittee's assistance, Senator Stowe, and your assistance, Senator Stevens, in the reauthorization of the Magnuson/Stevens Act to provide additional regulatory support for smaller, fisheries dependent, Gulf of Alaska communities.

Gulf of Alaska Coastal Communities are very concerned about the continuing high levels of bycatch and discards in several Gulf of Alaska fisheries and the habitat alterations occurring from "hard-on-bottom" trawling. This is especially true with the recent, substantial, decreases in halibut biomass estimates from the International Pacific Halibut Commission for the Gulf of Alaska and projected long term negative trends. Yet, relatively constant levels of halibut waste through bycatch continue to be authorized by the NPFMC. The GOACCC strongly urges the North Pacific Fisheries Management Council to aggressively implement the existing provisions of the Sustainable Fisheries Act to regulate applicable fisheries by requiring fishing methods that substantially reduce bycatch and habitat alteration.

In addition, the Coalition remains deeply concerned about Gulf of Alaska crab stocks. As you know, there hasn't been a red king crab season in the Gulf since 1982 and no tanner crab season since 1994. Despite elimination of fishing—and even a reduction in the allowable subsistence harvest—Gulf of Alaska crab stocks remain severely depressed. More aggressive implementation of the 1996 amendments to Magnuson-Stevens and an increase in "essential" habitat protection in federal waters for our crab along with vigorous efforts at minimization of impacts on the essential habitat are called for.

Finally, we want to raise with the Subcommittee some perhaps unintended, but nevertheless detrimental, impacts of the National Marine Fisheries Service's newly instituted license limitation program (LLP) for the cod, pollock and flatfish fisheries in the Gulf of Alaska. The program assured a significant number of larger vessels, particularly in the Western Gulf, that had marginal fishing histories while, at the same time, limiting new participation in these fisheries by coastal community residents. Moreover, the program limits the vessel size of participation and thus permanently vests the larger vessels with a competitive edge while prohibiting the natural evolution of improving fishing equipment for small boat fishermen. The LLP program is yet another barrier between residents of rural communities and the marine resources in proximity to where they live that is in need of attention.

In addition, the NPFMC recently awarded a species allocation of pacific codfish in the Bering Sea to a single gear type and is considering a parallel proposal for trawl fishermen in the Gulf. If the proposal is approved and a single gear type given a percentage of the Gulf of Alaska's pacific codfish quota, it will generate a frenzied scramble for all gear type to obtain specific allocations for all fisheries. This accomplishes much of the same result as an IFQ program—despite the current prohibitions against new IFQ programs in Magnuson- Stevens—and, despite the protective language for communities in Magnuson-Stevens. The LLP and the species allocations **do not** provide for the sustained participation of our communities and do not minimize adverse economic impacts on these communities.

Thank you for this opportunity to testify about some of our concerns for the sustainability of fisheries dependent rural communities in the Gulf of Alaska and our desire to access the marine resources upon which they depend.

Every month, every year that passes without the overriding problem of access to fisheries adequately addressed moves some Gulf of Alaska coastal communities closer to extinction. Without a viable rural Alaska, something absolutely unique in the world will be lost, aside from the economic stimulus a vibrant rural Alaska means to the urban areas of Anchorage, Juneau, and Fairbanks. Once lost, it is not likely to ever be restored. Therefore, we seek your help and intervention in developing a lifeline to the future.

We are committed to working with your Subcommittee and anyone else to find sensible and feasible remedies to the challenges we face, some of which we have outlined in this testimony. The members of the GOACCC and the men, women and children (both Native and non-Native) whose lives and future way of life are linked to your work here today, will be deeply grateful to you for your commitment of time, energy and ingenuity to addressing the matters we have touched on in our testimony.

Senator SNOWE. Thank you very much. Thank you. How many communities does your coalition represent?

Mr. CHRISTIANSEN. 30.

Senator SNOWE. 30?

Mr. CHRISTIANSEN. 30.

Senator SNOWE. And so they want the ability to have CDQ's or IFQ's?

Mr. CHRISTIANSEN. Well, at this time it would be—I think that with the current regulations in place that that excludes the gulf, to the best of my knowledge. However, there would need to be something in place like that that would be able to help us accomplish that if at all possible, and the IFQ's is something, our proposal is something that we are trying to put forward before the North Pacific Fishery Management Council, and that will be the beginning of some of the solutions.

Senator SNOWE. I see. Mr. Bush, you referred to the National Research Council's report on CDQ's, and you addressed some of the issues that they had raised in their 1998 report. Did you address all four of them? Have you addressed some of the problems that they raised?

Mr. BUSH. Yes, we have addressed both of those. We are working still to this day on trying to address all of the concerns raised in the report.

Senator SNOWE. Did you agree with the concerns that they had raised?

Mr. BUSH. Yes, I think we did.

Senator SNOWE. You did?

Mr. BUSH. Generally speaking we agreed with them.

Senator SNOWE. Mr. Cotter, are you familiar with these concerns?

Mr. COTTER. Yes, ma'am, I am, and generally I would concur with what Mr. Bush said.

Senator SNOWE. Have you made changes to improve the communication between the CDQ groups and their communities?

Mr. BUSH. Madam Chair, we have made some changes because we now use that as a criterion, in essence, in evaluating the performance of a group. The actual communication is something that obviously the groups have to implement at their level.

Senator SNOWE. So there is still more work to be done in that area.

Mr. BUSH. I would think there is always work to be done on the communication level.

Senator SNOWE. Which also goes to the issue of outreach.

Mr. BUSH. Correct.

Senator SNOWE. Now, has something been put in place for outreach?

Mr. COTTER. Well, Madam Chair, the report was done a few years ago, and you know, things have really changed in the past few years. All of the groups have quarterly newsletters. Our group, for example, we have an annual meeting of all of the leaders from each of the villages.

Each of the groups has some sort of contact person inside each village who is responsible for communicating with the residents to make them aware of employment and other type of opportunities.

I think we have—as I said in my testimony, I think we have matured substantially since December 1992, and I think if they were to do their report again today they would not find the same concerns.

Senator SNOWE. How do you feel about allowing flexibility in CDQ investments in nonfisheries industries?

Mr. COTTER. Madam Chair, I think that is very important. You know, what we are dealing with is a group of very small villages in very remote areas, and our charge in essence is to try and develop a stable local economy in those villages, and that is not an easy thing to accomplish, and by definition a stable economy is going to mean an economy that is diversified, and if the only thing that we pin our hat on is the fishing industry, that leaves us vulnerable.

The other part of it is, as you start to develop a stable local economy—and I will give you an example in our region. The Village of Nikolski, we cannot put a harbor in there or a port because of the reef that is around the village, so in terms of helping the people go out and participate in commercial fishing, serious commercial fishing is just not an option, so we have looked at building a sport fishing lodge, and if we do a sport fishing lodge, then there is also ducks to hunt and, you know, anthropological sites to visit, and birds to watch.

So by necessity, for the sport fishing lodge to be economically viable, it has to include these other type of activities, but then the next problem we face is, how do we get people to and from the sport fishing lodge, and you know, air travel is unreliable, and if people are going to spend a lot of money to travel to Nikolski, we need to try and provide them with some reasonable opportunity that they can get there.

So then you begin to think, well, we need to buy a boat that we can move people from Analaska to Nikolski and back on a weekly basis, but if we buy a boat, to do that on a weekly basis, we cannot amortize the boat just by running back and forth. We also need to deploy the boat into some other field of economic endeavor in order to help pay for the boat, which leads us to the possibility of operating a ferry service.

So in a way, rather quickly, if you do try and build a stable local economy in a community, in order to accomplish your goal you may be forced to diversify, otherwise your core investment is not going to be viable, and I would really like to see us given the opportunity in the region to be able to diversify beyond investments strictly in the fishing business.

Senator SNOWE. So you are obviously looking at that.

Mr. COTTER. Yes, ma'am, we are, and frankly, in a community like Nikolski, it is the oldest continuously occupied community in the Western Hemisphere. It goes back 10,000 years of documented people living in the village, and now there is about 32 people left, and they are getting old, and unless we can stimulate some local economy, it is going to die.

Senator SNOWE. One of the other issues the report raised was the fact that CDQ's are focused on economic and not environmental considerations. How would you address this?

Mr. COTTER. Well, I would say that was probably an unfortunate comment. The CDQ groups partner up with the private sector to harvest our allocations, and increasingly the CDQ groups have invested in those operations, so we are directly participating.

Whenever a CDQ group contemplates developing a relationship with another company, they pay very close attention to the catch history of that company—Are they clean? Do they have good bycatch rates?—and by and large I would say that the companies that the CDQ groups have invested in are the cream of the crop. By regulation, we are limited to catching no more than our specific allocation of each species, and that is unlike any of the other fishing entities in the North Pacific.

What that means is, if we run out of halibut, then any fishery that we want to prosecute that requires halibut as bycatch, we cannot prosecute that fishery, because we do not have any more halibut to go with it, so we lose all that revenue.

So the end result is that we have developed very complex and comprehensive systems to track our bycatch and manage our quotas so that they are as absolutely clean as they could possibly be, simply because otherwise we will not be able to catch our allocation, and that has become part of our creed, and not just for economic reasons, but I think for personal reasons. We like to brag about it.

Senator SNOWE. Mr. Christiansen, what kind of benefits would your gulf communities receive if you were a part of an IFQ halibut program?

Mr. CHRISTIANSEN. I guess I would have to respond with, benefits would be that——

Senator STEVENS. I am sorry, I cannot hear you. Can you pull that up?

Mr. CHRISTIANSEN. Well, first of all, you know, the number 1 benefit would be that our communities would continue to exist. Without having access to the fisheries and being part of the harvest and the management of the resources our—you know, there is a continual decline in the coastal communities, and specifically in my region, and as well as the rest of the regions in the gulf.

But I can speak from first-hand experience that Kodiak Island villages, there are a few of them that are on their way out, and to have communities so close to the resources and not having access to them is, you know, part of the reason why communities are going to become non-existent, and so that would be one of the benefits.

The other benefit I believe would be that participation, a reason for the people to—a reason to wake up tomorrow and go to work, and also being able to give a future for our children and our kids that are continuing wanting to be involved in the fishing industry.

The Kodiak Island villages are seafaring people, have always been. We have been totally dependant on the ocean for survival for thousands of years, and we need to continue to be able to be involved in that for thousands of years to come, and I think that is a major benefit, for the communities to be participating in the management of it as well. We have a lot of input that could help reduce bycatch per se, or you know, just things in that nature, and

you know, we need—there is educational opportunities not only just in the fishing industry.

So we have a lot of things relative to the ocean that can keep our people in our communities and keep our villages existing for generations to come, and as I stated, it is difficult for me to continue to reside in my village and watch the opportunities for the young people just being taken away from them, and that was one of the reasons why I have gotten involved. I have a heart for those kids, as my elders did for me when I was a child.

Senator SNOWE. Thank you very much. I appreciate it.

Senator STEVENS. I do not quite understand how the IFQ program could be modified. How would you propose to get part of the IFQ of, say, halibut? How would you propose that?

Mr. CHRISTIANSEN. Well, Senator Stevens, I will answer that question to the best of my ability. I guess the IFQ, the way that I would view the IFQ program, Senator, would be that it would be owned by the community.

Senator STEVENS. But currently the IFQ has already been allocated.

Mr. CHRISTIANSEN. Right.

Senator STEVENS. So we would have to take it away from somebody to give the community some of it.

Mr. CHRISTIANSEN. Senator Stevens, I would have to respond in a sense that I do not think that our proposal is asking for a handout at this time. I think that we——

Senator STEVENS. I am not accusing you of that. I am just—it sounds like you are asking for a CDQ program to be imposed on the IFQ. Is that what you are really saying, you want a portion of that reserve for community use, for each community?

Mr. CHRISTIANSEN. Senator Stevens, at this time I would probably like to refer that to part of the technical team that I have behind here if at all——

Senator STEVENS. Well, I would appreciate it if you could let us know how you and your advisors believe this could work, because—Mr. Bush, have you looked into this, you or Larry?

Mr. BUSH. I will go ahead first, Senator Stevens. I think the answer would be that you are correct that what we are looking at potentially is sort of a—or what is being proposed would be imposing a CDQ program onto the IFQ program. The only way that I could see that could happen would be through some sort of a buyback system, where some of the IFQ that is currently out there would be purchased on behalf of the communities. My concern is that——

Senator STEVENS. But do you use those fees for that? Where are you going to get the money?

Mr. BUSH. I have not looked at that particular proposal at all. I am speculating here on how it would work. But I could see that that kind of a system could work. My concern would be that if you did impose such a system, I would hope that the IFQ's that are purchased by communities are nontransferable in the same way that the CDQ allocations are.

Senator STEVENS. Mr. Cotter.

Mr. COTTER. Mr. Chairman, my understanding of the proposal is essentially that, that a system would be implemented through which designated communities that qualify in the Gulf of Alaska

would be allowed to buy IFQ's on the open market, and pull them into the community, and they would then be able to use them as a CDQ for local residents to use and fish, so they would be buying in, and where they would get the money I do not know, but that is my understanding of the concept.

Senator STEVENS. Mr. Christiansen, I suggest that you get together and give us some context to what your proposal would be with regard to how this would be funded and really how you would manage it if a CDQ was imposed on the IFQ concept, OK.

Mr. CHRISTIANSEN. We would be more than willing to furnish that.

Senator STEVENS. Thank you.

Senator SNOWE. Thank you. We thank you very much.

We will now proceed with our fourth and final panel of witnesses: Mr. Jack Phelps, executive director of the Alaska Forests Association; Mr. Paul Seaton, Director of the Alaska Marine Conservation Council; and Mr. Al Burch, executive director of the Alaska Draggers Association.

Welcome, gentlemen. Mr. Phelps, we will begin with you.

STATEMENT OF JACK E. PHELPS, EXECUTIVE DIRECTOR, ALASKA FOREST ASSOCIATION

Mr. PHELPS. Thank you, Madam Chairwoman. For the record, my name is Jack Phelps, executive director of the Alaska Forest Association, which is the Alaska State-wide trade association for the forest products industry.

I appear before you today both as a representative of my own association, which in turn represents nearly 300 member companies, but also as a representative of the Nation-wide Essential Fish Habitat Coalition.

My written testimony has been submitted to you previously, and I ask that it be incorporated into the record of the hearing, and with the permission of the chair I would also submit my proposed oral comments for the record and would just try to summarize a couple of key salient points at this time.

Senator SNOWE. Yes. Without objection, it is so ordered. All of your testimony will be included in the record.

Mr. PHELPS. Thank you. The organizations participating in the Essential Fish Habitat Coalition share a common commitment to protecting habitat areas that are important to fish. Indeed, our activities routinely undergo extensive review under other laws, both State and Federal, to ensure such protection.

For that reason, we are deeply troubled by and opposed to the attempt being made by the National Marine Fisheries Service to take a simple information-gathering tool enacted by Congress in 1996 and turn it into a massive, extensive, expensive, inefficient, and prescriptive regulatory program. My remarks today will reflect our view that it is necessary for Congress to put strict limits on the essential fish habitat program.

The interim final rule, as written by NMFS, has led every commentator who has reviewed those regulations to conclude that NMFS has created an extremely broad and inclusive program. Both the industry and environmental community see a developing regulatory program fashioned after section 7 of the Endangered Species

Act. This program has been used by the agency to influence if not exert its control over a vast array of Federal agency decisions involving not only fishing but land use and nonmarine resource utilization.

I want to mention just a couple of points that are of particular concern. First of all, the essential fish habitat definition, which has been discussed earlier today. As we commented to NMFS at the outset of its rulemaking process, the agency's definition is too broad. All waters where a Magnuson-Stevens Act managed species could be, is now, or ever has been, would be designated EFH.

I brought a couple of charts, which I will give to your staff and submit for the record, that demonstrate the extensive nature of the essential fish habitat designations around the State of Alaska. As you can see, all the red area represents what is now deemed to be essential fish habitat. Now, this clearly completely eliminates the meaning of the word essential fish habitat. We might as well rename the program fish habitat.

We do not take any comfort from the assurances you received earlier from Ms. Dalton that they are going to now somehow narrow this by creating a subcategory of it, habitat of particular concern. I agree with the implications of your comments that habitat of particular concern seems to be what we were originally trying to say about EFH.

Our second concern has to do with the complexity of the program. In its final rule, NMFS uses five pages of small type, three columns to a page, to describe its consultation process. Furthermore, NMFS often states that the EFH program is a voluntary information-gathering tool, yet it is a promulgated regulation that requires action agencies to prepare EFH assessments and undertake other mandatory measures under mandatory time lines. These are prescriptive provisions, and we fully expect they will be used in court by opponents of various resource development projects to try to stop agency action.

In the announcement of the reopening of the comment period NMFS announced that there had been 2,000 consultations that had taken place up till now. When we saw that claim, we were astounded. It validated our worst fears about the program. EFH designations have not been in place for even 1 year, and yet more than twice the number of consultations have taken place under EFH than took place during the same period under the Endangered Species Act.

When we read that, we sought to obtain copies or documentation of these 2,000 consultations. We filed a FOIA request over 2 months ago, in fact, 2 months ago today, asking for all documents relating to EFH consultations. We still do not have the information, and NMFS has not been forthcoming with that information. Indeed, even though this is the information NMFS claims to be using in developing its final rule, it appears the agency has not yet compiled those documents, based on its response to our FOIA request, and they have been told that it will cost us $32,000 just to get a hold of these documents.

We think that that is unreasonable, and we think it indicates that the full range of activities operated under these consultations has not thoroughly been considered by the rulemaking process, and

we ask that Congress insist that NMFS make this information available before finalizing its final rule, and in a format that can be understood by the general public.

I will very briefly mention the other two concerns we have, which are in my testimony that will be submitted. We believe that extending it to nonfishing interests who not only do not particularly have an interest in being involved in ocean fishery management, such as timber—you know, it is not our inclination to be involved in fisheries issues directly—but to include us in these provisions, who have no representation on the councils, is extremely problematic for us as well.

And finally, with regard to overlap with other laws, the EFH program simply does not fit. As noted previously, our activities are already subject to a myriad of other laws that generate the desired information and provide a consultation or comment opportunity for NMFS. Laws such as NEPA, the ESA, Coastal Zone Management, and so forth, all provide NMFS an opportunity to comment. Thus, we believe that EFH consultation should be preempted by law from applying to any activity subject to a preexisting interagency consultation or comment process.

In conclusion, it is necessary for Congress to intervene now on the EFH program. EFH consultation requirements should be repealed, or at least made nonapplicable to nonfishing interests. In short, wholesale changes are needed. NMFS has shown no inclination to make those changes. It is therefore necessary for Congress to provide some direction to the EFH program.

Thank you very much for the opportunity to testify.

[The prepared statement of Mr. Phelps follows:]

PREPARED STATEMENT OF JACK E. PHELPS, EXECUTIVE DIRECTOR, ALASKA FOREST ASSOCIATION

Madame Chairwoman, members of the Committee:

My name is Jack Phelps, and I am the Executive Director of the Alaska Forest Association. The Alaska Forest Association is the statewide trade association for the forest products industry in Alaska, and it is a member of the Essential Fish Habitat Coalition. The Essential Fish Habitat Coalition consists of diverse non-fishing resource and business interests, including the American Forest and Paper Association, the Bay-Delta Urban Coalition, the Edison Electric Institute, the National Association of Homebuilders and the Association of California Water Agencies. As a coalition, we are concerned about a new and expanding federal program that we fear will lead to unnecessary, burdensome and costly federal controls over land use, and an inappropriate intrusion into the rights of private property owners across the country. That federal program is the "Essential Fish Habitat" program, or EFH.

In August of 1998, Ronald Baird, director of NOAA's National Sea Grant Program, made NMFS's plans for EFH clear when he said that EFH was, ". . . the most significant piece of environmental legislation since the Clean Water Act of 1972. The full implications of essential fish habitat are not widely appreciated by the public. They will be shortly." It is the position of the EFH Coalition that there is no justification for such a sweeping new program. It is also our position that the EFH program, as described by Mr. Baird and implemented to date by NMFS, is fundamentally at odds with the intent of Congress as reflected in the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (hereafter, Magnuson-Stevens Act).

We are concerned that the EFH program, as described in the interim final regulations released by NMFS, already has grown into yet another regulatory impediment imposed on businesses by the federal government as a condition to receiving a federal permit. A large variety of permits could be affected. The EFH regulations could delay or stop a timber harvest project on the Chugach or a water diversion in California to irrigate a field.

Getting a permit approved by a federal agency is not a pleasant experience. But, if a property owner has property that is in, near or might affect EFH, as it is very broadly defined by the NMFS, it will enter a regulatory morass that could be the equal of Section 7 of the Endangered Species Act.

How did NMFS get this authority? They were not given it by Congress - they assumed it on their own.

Improper and Unfair Inclusion of Non-fishing Interests in the Fishery Management Council Process

The term essential fish habitat or "EFH" comes from the 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act. This was a law designed primarily to address offshore commercial fisheries. The Magnuson-Stevens Act is administered by NMFS, an agency within the Department of Commerce. NMFS also regulates endangered species in the marine environment, and marine mammals like whales and dolphins. All of these share something in common: oceans and marine resources. NMFS enforces the Fisheries Act, but eight regional Fishery Management Councils guide it.

As you know, the Councils are composed of appointed members from the fishing industry, state agencies dealing with fish, Indian tribes and, in some cases, representatives of environmental organizations. The Council memberships do not reflect representation of any land use or development interests. There is virtually no representation of interests not directly involved in fishing.

The Council system is very procedural and very administrative. Councils meet frequently. They set up technical committees on issues like fishing gear, quotas, and habitat. These committees often meet for days and make recommendations regarding those issues to the Councils, which themselves meet for days. The Councils then make recommendations to NMFS, which conducts rulemaking on the proposals. Those rules, when final, become part of Fishery Management Plans. These Plans govern the behavior of participants in the fishery; the very interests whose representatives made the recommendations.

Plans cover many marine fish species—including anadromous species like salmon—that are fished for commercial or sport purposes. A species does not have to be rare, endangered, threatened, or even subject to any particular risk. There are over 400 species of fish subject to these Plans, ranging from salmon, halibut and swordfish to spiny dogfish, shellfish and corals, etc.

Before the 1996 Magnuson-Stevens Act amendments, this process was relatively self-contained. The interest groups involved in fishing activities interacted with each other, fought and compromised with each other, sued each other, and generally went on about their business. Now, thanks to the EFH program being developed by NMFS, a wide range of non-fishing activities, including real estate development, forest practices, mining, hydro-power, water supply, and agriculture are going to be affected by this process. All of these businesses and industries are being confronted with the prospect of getting pulled into a Fisheries Management Council system that does not represent, reflect, or generally consider their interests.

The Magnuson-Stevens Act administrative regime should have no say over how the non-fishing sector conducts its business. That has never been the intent of this law. Indeed, it is notable that when the EFH concept was being developed during the 1996 Magnuson-Stevens Act re-authorization process, the views of the non-fishing sector were never solicited. This is because, quite obviously, Congress did not intend that our sectors be pulled into the Magnuson-Stevens Act program. But NMFS has now expanded the EFH program so extensively that non-fishing interests are forced to become involved.

It is necessary for Congress to fix this situation now. The Councils should be expressly denied any jurisdiction over non-fishing activities. All Council recommendations for, and NMFS actions on, EFH designations involving habitat subject to non-fishing activities should be rescinded. And it should be made clear that any recommendations or comments issued by the Councils concerning impacts of non-fishing activities on EFH will not be accorded special deference. Failure to take these steps will subject non-fishing entities to a fundamentally and irreparably unfair position in a administrative process that by design, intent, and practice concerns only the fishing industry.

The NMFS Definition of EFH is Too Broad and All-Inclusive

The interim final regulations, as written by NMFS, lead every commentator who has reviewed them to conclude that the agency has created an extremely broad and complicated program. Why have the regulations creating this program been written in this way?

EFH was intended to be an information gathering process. It was designed to identify how the *highest* priority fish habitat was being harmed. It was, as its name implies, designed to cover habitat that is "essential," or especially important, to the subject fish species. Congress defined EFH as, "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity."

I agree with Joseph M. Brancaleone, Chairman of the New England Fishery Management Council who alerted this Committee to the dangers of an overly broad EFH definition. "If everything is designated as essential then nothing is essential, was a common theme throughout the EFH designation process, on a national and regional scale. Either the EFH definition should be modified, or the guidance on how to use different types of data should be more specific," he said.

NMFS and the Councils, however, have taken this concept and greatly extended it by regulation. There are four issues that are especially noteworthy in the way that NMFS has defined, and the Councils have designated, EFH:

First, NMFS interpreted EFH in its regulations to cover not only the critically important habitat one would expect to be considered "essential," but instead concluded the designation should cover all habitat necessary to a "healthy ecosystem."

Second, NMFS concluded that the term should not be limited to the marine environment—the traditional realm of the Magnuson-Stevens Act—but should be extended to cover inland waters as well.

Third, having taken the step of pushing inland, NMFS announced the need for "watershed" planning. Not only would rivers, estuaries, and wetlands be covered, but also all areas that *could* affect those waters, including terrestrial habitat, would be included.

Finally, NMFS determined that it was not enough to cover waters where fish currently are found, but also that EFH should cover areas where fish historically were found.

The Fishery Management Councils used this NMFS approach in developing EFH. In many cases, the results are indicative of a program that seems destined to grow beyond the claims of NMFS. Here are some examples:

The Pacific Fishery Management Council, governing fish species off the coasts of California, Oregon, Washington and Idaho, has proposed extensive inland habitat as EFH for salmon.

The North Pacific Fishery Management Council is proposing to designate virtually every river that eventually touches the ocean as EFH for salmon in Alaska.

The Mid-Atlantic Council, with the New England and South Atlantic Councils, is proposing to designate the entire inland coast from North Carolina to Florida for bluefish. This is just the southern bluefish range.

The New England, Mid-Atlantic and South Atlantic Councils have actually listed all of the estuaries and most of the major bays and river basins on the east coast, areas like the Connecticut River and Chesapeake Bay, for bluefish.

The Gulf Coast Council has effectively listed every bit of the Gulf Coast, its wetlands, estuaries and rivers from the tip of Florida to the border with Texas as habitat for brown shrimp.

These designations are extraordinarily broad. Essential fish habitat has become *all* fish habitat. Remember that there are over 400 fish species for which such designations must be made. The end result can only be that EFH will be all waters everywhere a Magnuson-Stevens Act managed species is now, or previously has been, found.

When asked why the EFH definition is so broad that it now includes almost the entire coastline of the United States, and substantial upland riverine habitats, NMFS points to the lack of definition it received from Congress. The 1996 Amendments, NMFS asserts, established a broad and vague definition of the term. NMFS claims that with more funding from Congress would come better scientific information. Without that scientific information they "over include" habitat that may not necessarily be essential. This "over inclusion" of habitat expands the jurisdiction of the agency and obligates it to consult on an ever-increasing number of federal actions that "may adversely affect" habitat. How much money is enough money for NMFS to exercise restraint? Who will judge when sufficient funds are made available? Apparently, in NMFS view, not the Congress. NMFS has created a program that can have an influence over even non-existent effects on terrestrial, riverine, estuarial and coastal habitats on a nationwide basis. Will any federal agency ever receive enough money from Congress or gather enough scientific information to convince it to elect to reduce its own power and influence over other Federal agencies?

This is another aspect of the EFH program that should be placed on hold until a more reasonable approach to designation is developed. In addition, it is clear that Congress will need to be very specific in defining the term. The existing definition must be replaced with one that spells out in detail precisely the kind of habitat that should be subject to this information sharing process.

The NMFS Consultation Process Is Far Too Complex and Burdensome

The 1996 amendment requires federal action agencies—those that decide whether to issue a permit or carry out a program—to "consult" with NMFS to determine what the impacts on EFH will be. NMFS, in turn, takes into account the views of the Councils. NMFS and the Councils submit recommendations to the action agencies. If the action agencies don't follow those recommendations, they must explain why, in writing. In short, a straightforward information process was envisioned. The term "consultation," however, is a term of art. As will be described, NMFS has turned it into a complex, time-consuming, expensive process.

As described in, and envisioned by, the 1996 Magnuson-Stevens Act amendments, this consultation process would be accomplished by a simple exchange of information. It could readily be undertaken through administrative agreements between NMFS and the principal action agencies. Instead, the process described in the EFH consultation regulations will be very similar to the cumbersome, detailed consultation procedure of the Endangered Species Act. NMFS and other supporters of the EFH program often proclaim that the 1996 amendments did not create a new consultation duty. Instead, they argue, this duty already existed and was simply never followed through on. They further argue that the intent is to develop an information sharing program, similar to what exists under the Fish and Wildlife Coordination Act.

These statements could be accepted as the basis for a reasonable EFH program if NMFS was acting in a manner consistent with that intent. To the contrary, the program that has emerged from the NMFS rulemaking process bears little resemblance to the Fish and Wildlife Coordination Act or other procedures through which agencies share information. As noted above, it is modeled after the very burdensome and complex Endangered Species Act program.

One need only make quick reference to the EFH regulations to understand this concern. The regulations consist of eight pages of Federal Register text. Of these, five pages are devoted to defining the consultation process. How can any program that is intended to be streamlined, efficient, and coordinated with existing consultation procedures require five pages of Federal Register text to describe?

The severity of these problems becomes even more apparent when the content of the regulations is considered. NMFS has taken a simple statutory consultation process that could be satisfied through an exchange of letters and turned it into a cumbersome, expensive, time consuming process consisting of all of the following elements: Memoranda of Agreement between NMFS and every Fishery Management Council; Memorandum of Agreement between NMFS and every action agency; programmatic consultations; project-specific consultations; abbreviated consultations; expanded consultations; general concurrence for no further consultation; notification of further consultation; periodic review of general concurrence findings; mandatory preparation of written assessments; consulting agency recommendations; action agency responses; requests to elevate action agency decisions; reinitiation of consultation at Fishery Management Council requests; Memoranda of Agreement with agencies on dispute resolution; and supplemental consultation. Needless to say, any program which contains so many elements is extremely complex and is not likely to be efficient.

In this testimony, we do not intend to delve into the intricacies of the EFH consultation regulations. Let it suffice to say, there is so much room for confusion, delay, inefficiency and needless expense that we are skeptical there is any way to work with the existing framework. What is needed is a far-reaching revision of the regulations to develop a more effective procedure. Our coalition of non-fishing interests has offered on numerous occasions to work with NMFS to achieve these results. We are pleased to report that NMFS has agreed to undertake such discussions. We are hopeful that they will be beneficial. However, even this prospect does not eliminate the need for additional guidance from Congress. Unfortunately, the EFH program is so far down the road at this point that we believe it is necessary for Congress to interject itself in the process and get the program back on track.

The EFH Program Needlessly Duplicates Other Information Gathering Programs

This process will be a new regulatory layer on top of those that already exist, such as NEPA's environmental impact review, Coastal Zone Management Act compliance,

Endangered Species Act reviews, Federal Power Act licensing, Fish and Wildlife Coordination Act consultation, etc. Highlights include:

- The duty of the action agency to prepare a detailed "EFH Impact Assessment." When a private applicant is involved, as when a federal Clean Water Act Section 404 wetlands permit is required, this duty will be probably be passed to the private party who will be required to pay for this analysis and ensure it is complete. In creating this requirement, NMFS is seeking to transfer its EFH assessment duties to other agencies and private parties.
- Time deadlines exist, but, as with the timelines associated with the ESA, the agencies can easily get around them. As a result, the process can greatly extend the time needed to complete federal permitting.
- The recommendations of NMFS and the Councils will become litigation fodder. Opponents of project development will be able to sue based on these recommendations. This will discourage action agencies from following any course other than what is recommended by NMFS or the Councils, thus effectively giving NMFS veto authority over the decisions of the action agencies. Furthermore, we fear that NMFS and the Councils will most likely recommend restrictions to protect habitat without weighing the benefits against the economic consequences.
- NMFS often states that the EFH program is a voluntary information gathering tool, yet it has promulgated a regulation that requires action agencies to prepare EFH assessments and undertake other mandatory measures and meet mandatory deadlines. Congress did not vest NMFS with the power to impose these duties on other agencies and, if the program is to be co-operative and voluntary as NMFS asserts, these requirements must be deleted and replaced with co-operative mechanisms. For example, NMFS should recast the program so NMFS will provide helpful information about truly essential habitat for fish species of concern, allowing other agencies to consider that information in their own reviews of projects without formal requirements for EFH assessments and consultations.
- Almost certainly, this procedure will result in delays in getting permits. The cost of getting permits will increase—due to delays, due to the need to undertake consultation and prepare EFH assessments, due to the inevitable slippage in deadlines that cover the federal agencies, and due to the cost of complying with EFH restrictions. Permits are likely to be subject to new restrictions. In some cases, permits for activities are likely to be denied. And, it is important to remember, these are not restrictions to protect species in danger of extinction, they are restrictions to protect the habitat of *all* managed fish species, *no matter how plentiful.*

The bottom line is that NMFS has not taken the steps necessary to coordinate its EFH review efficiently and effectively with the many environmental reviews nonfishing activities must already undertake. Although lip service is paid to this principle, we need to see evidence that it is being carried out. Accordingly, we believe Congress should step in and make clear that NMFS cannot impose mandatory duties and time frames on action agencies. It also should prescribe that EFH consultation will be satisfied by any other preexisting environmental review applicable to the agency action. EFH should be required to operate within, rather than reside on top of, such other procedures.

Non-fishing Interests and the General Public Need More Information about the EFH Program

The EFH program is growing into an enormously expensive and, to a large extent, redundant program. The NMFS FY2000 budget request was for $13.85 million dollars for EFH consultations. This amount does not include the expense borne by other federal agencies to submit projects to NMFS, to respond to NMFS's recommendations, and to implement those recommendations. This amount also does not include the increased project costs resulting from either the delays inherent in the NMFS recommendation process or the cost of implementing the recommendations. This Committee has already received testimony about project delays and costs as a result of the EFH definition and there will be more to come as we learn about the 1999 consultations. When all these costs are taken together and combined with problems and costs associated with the expansive and overbroad definition of EFH detailed above, it become evident that the EFH program is entirely too expensive, cumbersome and burdensome.

EFH could also be a new litigation tool for parties opposed to development in all coastal regions of the country. For reference, take a look at what has happened with the ESA and NEPA. Even if a party gets a permit it can live with, there is no guar-

antee a lawsuit will not be brought to protect EFH, especially if a NMFS/Council recommendation was not adopted.

The announcement of the reopening of the comment period in development of the final rule for EFH, published by NMFS on November 8, 1999, stated that: "[s]ince the promulgation of the interim final rule, EFH provisions for 39 fishery management plans have been developed by the Councils and approved or partially approved by the Secretary. Additionally, NMFS and Federal Agencies have begun consulting on actions that may adversely affect EFH. Approximately 2000 EFH consultations have been completed to date."

When we saw that claim, we were astounded. This claim provided graphic validation of our fears about the program. We had claimed that the overly broad "ecosystem" based definition of EFH would lead to a massive influx of EFH consultations. This may explain why 2000 consultations have been required in the first 10 months of the new program.

To get a sense of how disproportionate this program is compared to the issues subject to review, one need only compare this level of consultation with that under the ESA. In response to Congressional questioning in March of 1999, the National Oceanic and Atmospheric Administration responded in writing that: "[a]pproximately 229 formal and 981 informal [ESA] consultations are completed each year". The number of EFH consultations exceeds by a substantial number the formal and informal consultations completed annually under the ESA, and yet the EFH program is only in its earliest stages of implementation. NMFS has 55 full time employees dedicated to section 7 consultations under the ESA. What will it cost to staff a program that in less than a year has grown to nearly twice the size of section 7 consultations under ESA? Penelope Dalton, Assistant Administrator for the National Marine Fisheries Service, has stated on numerous occasions before this Committee that she only expects the number of EFH consultations to grow as NMFS's reach over other Federal agencies continues. Clearly, Congress did not intend to create a consultation program under the Magnuson-Stevens Act that so far exceeded the ESA in complexity and size.

When we saw the claim that NMFS had completed 2000 consultations, we were astounded because NMFS had not made any of the information from those consultations public. How could they expect informed comment from the public when they had not released information about those consultations? NMFS claims to want to know about problems with the consultation process, but, they seem unwilling or unable to disclose information about the process. Most of the consultations are with federal agencies on federal projects and therefore the ability of the public to have first hand knowledge about the consultation process and its results are certainly limited.

When we read the claim in the Federal Register that NMFS had completed 2000 consultations, we filed a FOIA request (dated November 18, 1999) asking for all documents related to EFH consultations. We are still awaiting a substantive response.

This Committee and the public must be given sufficient information about these consultations to evaluate the implementation of the EFH program to date. The following is the kind of information that NMFS should provide the people and the Congress to enable some level of meaningful review of the EFH consultations it has been conducting:

1. The number of consultations completed, by NMFS Region;
2. The average time taken to complete a consultation, and the range and distribution of time taken for each consultation around that average;
3. The average cost of each consultation, in dollars and man-hours or full time equivalents (FTEs), and the range and distribution of the costs of each consultation around that average;
4. The distribution and amount of that cost among NMFS, action agencies, third party applicants for federal authorizations, and others;
5. The number of consultations in each category described under the IFR: national general concurrences, regional general concurrences, abbreviated, expanded, extended, and supplemental consultations, and, separately, the number of programmatic versus project-specific consultations;
6. The number of documented "no effect" determinations by action agencies, the number of these with which NMFS concurred/did not concur, and the number of these for which an EFH consultation was nevertheless completed;
7. The number of consultations involving federal actions for which ESA consultation was also completed, and the number of these which involved ESA consultation with NMFS;

8. The number of consultations involving federal actions for which NEPA documentation was also completed, and the category of NEPA documentation completed (e.g., EA or EIS);
9. The number of consultations involving other environmental analysis documentation besides an EFH assessment, and the number of these for which the environmental documentation prepared for other purposes also served as the EFH assessment, without modification to meet EFH consultation requirements;
10. Other information about how EFH consultation was consolidated or integrated with procedures such as NEPA, ESA, Federal Power Act licensing procedures, and Coastal Zone Management Act regulations for individual or collective actions;
11. Categories of activities for which EFH consultations were completed, including the basic categories of fishing and non-fishing, more specific federal action categories such as Clean Water Act Section 404 permits and FERC power facility licensing or relicensing, and more specific types of activities, such as timber sales, road projects, marina developments, oil and gas drilling, hardrock mineral extraction, housing subdivisions, agricultural water diversions, and so on;
12. The number of EFH consultations which were initiated but are not yet completed, and how long they have been pending; and
13. The categories and representative examples of recommendations made by NMFS in consultations, action agency disagreements with such recommendations, and how these differences were resolved.

We ask for this Committee to request that NMFS compile this kind of information into a format that promotes understanding of the EFH consultations that have occurred so far, and that facilitates constructive comment. We also ask this Committee to assist the American people by halting implementation of the EFH program until more guidance can be provided in the Act itself.

Conclusion

The non-fishing sector does not oppose the EFH concept. Indeed, we address these concerns regularly. We are willing to engage with NMFS in a discussion on how this program should work and where we might help. We are pleased to report that we will be meeting with NMFS in the near future to discuss these concerns. We hope to learn more about their goals and plans, but we also will convey the need for fundamental changes in the program. Congress can greatly facilitate this process by letting NMFS know it is on the wrong track, and by developing more specific guidance to address the concerns discussed in this testimony. Moreover, we ask that Congress amend the Magnuson-Stevens Act to address the problems highlighted in this testimony if NMFS does not respond. Thank you.

Attachment: AFA's 12/23/99 letter to NMFS re: EFH Interim Final Rule

Alaska Forest Association, Inc.
EFH Coordinator
Office of Habitat Conservation
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910-3282

VIA FAX AND FIRST CLASS MAIL

Re: Essential Fish Habitat Interim Final Rule

Dear EFH Coordinator:

This letter constitutes the response of the Alaska Forest Association (AFA) to the National Marine Fisheries Service (NMFS) request for comments regarding the essential fish habitat (EFH) interim final rule (IFR) and program, published in the November 8. 1999 Federal Register, Volume 64, pages 60731-32. The AFA represents non-fishing interests in Alaska who are affected by the EFH program under the control and influence of NMFS. AFA members are engaged in forestry activities, including road building, timber harvest, second growth management, transportation of logs and chips and forest products manufacturing. All of these activities could he affected by the EFH program.

In a December 3, 1999 letter to the Assistant Administrator of NMFS from our counsel, Perkins Coie, we have requested an extension or reopening of the comment period on EFH. which has not yet been granted. This extension is necessary to ensure that we obtain and review information needed for meaningful comment on the four issues concerning implementation of the IFR that were identified in the November 8. 1999 notice. This information has not yet been made available. We are actively seeking pertinent information from NMFS through Freedom of Information Act (FOIA) requests submitted to your office on November 18, 1999, and to NMFS

regional field offices on November 29, 1999. However, NMFS has not yet provided any documents in response to these requests. Office of Habitat Conservation staff has indicated that it may be early January before we receive even a cost estimate for providing the information we are seeking through the FOIA. It appears that NMFS still has not assembled much, if any, useful information about the approximately 2000 EFH consultations which NMFS represents have taken place over the past year, or other basic information that would provide NMFS and the public a basis to start evaluating the early implementation of the EFH program.

The following are brief comments regarding the four issues identified in the November 8, 1999 Federal Register notice. based on the very incomplete information available to us at this time. While we have attempted to give some response on the requested subjects, these comments to not constituteany waiver of our continued objection to NMFS closing the comment period today. In the absence of NMFS's response to the FOIAs mentioned above, we are simply not in possession of sufficientinformation to adequately respond to the IFR.

Issue 1: Suggestions for improving the regulatory guidance regarding the description and identification of EFH, including the breadth of EFH designations, in §§ 600.815(a)(1) and (2) of the interim final rule.

NMFS must dramatically narrow the interpretation of the definition of EFH and other direction in the IFR to conform to the scope identified in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens). The 1996 amendments to Magnuson-Stevens do not authorize the promulgation of standards and regulations that affect non-fishing entities. By its terms, the EFH provision is limited to "the description and identification of essential fish habitat in fishery management plans." 16 U.S.C. 1 855(b)(1)(A)(emphasis added). This limitation makes it clear that NMFS and Council authority applies only to "fisheries." As it is, the language in the IFR and other guidance provided by NMFS has resulted in almost all areas used by Council- or NMFS-managed species, currently or in the past. being identified in FMCs as EFH (see, for example. the North Pacific Plan and AFA's letter of December 21, 1998 to Sue Salveson of NMFS's Juneau office regarding it). This approach fails to distinguish "essential" from other habitat and otherwise renders the concept of EFH meaningless. NMFS must abandon its vague and overly broad "ecosystem" and unduly risk-averse approach to designating EFH and begin focusing on present marine habitat within the jurisdiction of the various Councils that is genuinely critical to the viability of managed species. NMFS must require that acknowledged scientific standards be used in making these determinations.

The overly broad approach to EFH designation adopted in the IFR may largely explain why, according to NMFS, so many EFH consultations have been completed in the first year of the program. In the Federal Register notice, NMFS says that it has completed "approximately 2000" EFH consultations. In response to Congressional questioning in March of 1999, the National Oceanic and Atmospheric Administration (NOAA) responded in writing that. "(A)pproximately 229 formal and 981 informal [Endangered Species Act, Section 7] consultations are completed each year."

Thus the number of first year EFH consultations is about twice the number of consultations completed annually under Section 7 of the Endangered Species Act (ESA), and yet the EFH program is only in its infancy. Despite the breadth of this program. NMFS has not made the record of these consultations available to the public.

Issue 2: What additional guidance, if any, should the final rule contain on how Councils should document their efforts to minimize the effects of fishing on EFH, to the extent practicable?

As a non-fishing entity, AFA is not in a good position to answer this questions. However, this points up the crucial problem with the EFH program as a whole. So far as AFA can ascertain, the recently revised FMCs have not addressed fishing impacts on EFH in any detail, or required any further measures to reduce impacts from fishing. At the same time. the FMCs have layered many stringent "conservation" measures on non-fishing interests (including. but not limited to, costly and delay-producing consultations) which will have significant adverse affects on their future operations. The IFR should focus on fishing impacts to EFH, including overfishing and other chronic regulatory problems which Magnuson-Stevens was designed to address.

Issue 3: Has the use of existing environmental review procedures as described in § 600.920(e) of the interim rule been an effective way to handle EFH consultations? What additional guidance, if any, should the final rule

provide on how to use existing environmental reviews to satisfy EFH consultation requirements?

Once again, the absence of specific information regarding the completed EFH consultations makes it difficult for AFA to comment on this issue. NMFS apparently has not assembled and certainly has not made available to us any information on the use of the procedures described in § 600.920(e) to complete EFH consultations. AFA members have had no first hand experience so far with EFH consultations. Therefore, we presently have no idea how effective or ineffective the use of existing review procedures has been, or whether NMFS and other agencies are even adhering to the regulations in conducting consultations. We would assert, however, that a more cost-effective approach would be to exclude activities from the EFH consultation requirement if other environmental procedures applying to them provide NMFS an opportunity for review and comment. Requiring EFH consultation in these instances is mere duplication of effort and simply adds costs to each project without producing a commensurate advantage to the environment or the public.

Issue 4: How, if at all, should the EFH Assessment requirement be revised in the final rule?

Requiring these EFH assessments in circumstances where NEPA documentation or any Alaska Coastal Zone Consistency review is already being prepared only generates extra costs, delay and confusion, whether or not the EFH assessment is "consolidated" with other analyses of the project. The rigid and formal consultation process set out in the IFR, which is based on pervasive and cumbersome regulatory models such as the Endangered Species Act and Clean Water Act, must be replaced with a simple and straightforward exchange of information that may be documented in an informal memorandum or letter. Magnuson-Stevens requires no more.

Summary

As asserted previously, it is AFA's position that NMFS has provided insufficient information for the public to comment meaningfully on the IFR. For NMFS to receive an objective and useful evaluation of the EFH program from the affected public, the agency must compile and share pertinent information for review and evaluation by all interested parties. At a minimum, we request that the following information be provided and the public be afforded an opportunity to comment upon it before the agency finalizes the IFR:

(1) The number of consultations completed, by NMFS Region;
(2) The average time taken to complete a consultation, and the range and distribution of time taken for each consultation around that average;
(3) The average cost of each consultation. in dollars and man-hours or full time equivalents (FTEs), and the range and distribution of the costs of each consultation around that average;
(4) The distribution and amount of average consultation costs as distributed among NMFS, action agencies, third-party applicants for federal authorizations, and others;
(5) The number of consultations in each category described under the IFR: national general concurrences, regional general concurrences, abbreviated, expanded, extended, and supplemental;
(6) The number of documented "no effect" determinations by action agencies, the number of these with which NMFS concurred or did not concur, and the number of these for which an EFH consultation was nevertheless completed;
(7) The number of consultations involving federal actions for which ESA consultation was also completed, and the number of these which involved ESA consultation with NMFS;
(8) The number of consultations involving federal actions for which NEPA documentation was also completed, and the category of NEPA documentation completed (e.g. EA or EIS);
(9) The number of consultations involving other environmental analysis documentation besides an EFH assessment, and the number of these for which the environmental documentation prepared for other purposes also served as the EFH assessment, without modification to meet EFH consultation requirements;
(10) Other information about how EFH consultation was consolidated or integrated with procedures such as (inter alia) NEPA, ESA, or Coastal Zone Management Act regulations for individual or collective actions;
(11) Categories of activities for which EFH consultations were completed, including the basic categories of fishing and non-fishing, more specific federal action categories such as Clean Water Act Section 404 permits and FERC power facility licensing or re-licensing, and more specific types of activities, such as timber sales,

road projects, marina developments, oil and gas drilling, hardrock mineral extraction, housing subdivisions, agricultural water diversions, etc.;
(12) The number of EFH consultations that have been initiated but not yet completed, and how long they have been pending;
13) The categories and representative examples of recommendations made by NMFS in consultations, action agency disagreement with such recommendations, and how these differences were resolved.

It is reasonable to expect NMFS to compile this kind of information into a format that facilitates understanding of the EFH consultations that have occurred so far and that enables constructive comment on the IFR, before proceeding to a final rule. We hereby formally request that NMFS do so.

Thank you for the opportunity to comment on the EFH program, and the Interim Final Rule. Please contact me if you have any questions concerning these comments.

Senator SNOWE. Thank you, Mr. Phelps.

Mr. Seaton.

STATEMENT OF PAUL SEATON, MEMBER OF THE BOARD DIRECTORS, ALASKA MARINE CONSERVATION COUNCIL

Mr. SEATON. Thank you for the opportunity to testify today. For the record, my name is Paul Seaton. I am a commercial fisherman, and a board member of the Alaska Marine Conservation Council, known as AMCC. AMCC is a regional member-based community-oriented organization. Most of the 500 members are Alaskans who live in coastal communities and are a mixture of commercial, subsistence, and sport fishermen. I have given you a map of Alaska which shows where our board members come from and the fisheries in which they participate.

I will be making three points in my testimony. First, the 1996 act contains critical mandates to minimize bycatch, protect fish habitat, and prevent overfishing. Unfortunately, implementation by National Marine Fisheries Service has been slow and inadequate.

Second, we urge Congress to strengthen the protections for essential fish habitat, and third, any limited access program, including IFQ's or fishing co-operatives, needs to incorporate conservation standards.

AMCC thanks the committee, and especially Senator Stevens, for the precedent-setting conservation reforms of the Act in its North Pacific section. Implementation of the law, however, has been very slow, and the job is not yet done. The October 1998 implementation deadline for the law came and went, but we have seen only incremental improvements. One reason for the law's conservation provisions being put on the back burner is that NMFS has been devoting substantial resources to allocation issues.

An example of this delay is the bottom trawl ban to achieve bycatch reduction in the Bering Sea pollock fishery. In 1997, AMCC proposed allowing the use of only off-bottom trawls in this fishery. In June of 1998, the North Pacific Fishery Management Council approved. The draft regulations were not published by NMFS for public comment until this last month. We are very lucky the Council was able to put this into effect despite the slow response of NMFS rulemaking.

Another example of slow implementation of the conservation provisions of the law is a requirement to set a minimum stock size threshold for each managed fishery. NMFS Alaska region refused to recognize the necessity to follow the mandate of the law even in the face of legal opinions and public pressure. Finally, the region

was told by Washington, D.C., that it must comply. NMFS is just now starting to set MSSTs for each stock.

One of the important additions made to the 1996 Act was a mandate for the identification and protection of essential fish habitat. The broad support of Alaskans for habitat protection is shown by the actions of the Board of Fisheries, which manages all State fisheries.

The Board voted unanimously in March 1999 to protect crab habitat by closing waters around Kodiak Island to bottom trawls. The closure areas are shown on the Kodiak Island map attached to my testimony. We hope NMFS will begin to take the same kind of leadership in protecting marine habitat in Federal waters.

The North Pacific Council is currently analyzing AMCC proposals for additional habitat types and specific places as habitat areas of particular concern. We hope the identification of the HAPCs proceeds, and the managers get on with the job.

AMCC considers benthic habitat protection from destructive fishing practices the highest priority in Federal fisheries management in the North Pacific. A key feature to the 1996 reauthorization was a moratorium on IFQ programs. AMCC strongly urges Congress to adopt conservation standards for any limited access program before the moratorium is lifted and before any new privatization programs are allowed to be developed by the regional councils.

Some conservation improvement may come from limiting access by virtue of slowing down the race for fish and improving opportunities for more careful fishing practices. However, you should make conservation achievements a required element of the limited access fisheries. There should be deliberate mechanisms that will ensure conservation goals are met, and we strongly urge Congress to stipulate that if access is limited, viable community-based opportunities to participate in fisheries are included.

In summary, I want to thank the Subcommittee, and especially Senator Stevens, for your attention to the Magnuson act implementation reauthorization. What we need now from Congress is to push NMFS to turn the conservation goals of the law into action. Thank you.

[The prepared statement of Mr. Seaton follows:]

PREPARED STATEMENT OF PAUL SEATON, MEMBER OF THE BOARD OF DIRECTORS, ALASKA MARINE CONSERVATION COUNCIL

I. INTRODUCTION

Thank you for the opportunity to testify today. For the record, my name is Paul Seaton. I am a commercial fisherman and board member of the Alaska Marine Conservation Council (AMCC). AMCC is a membership-based community organization comprised of Alaskans, many of whom live and work in small communities along Alaska's coastline and draw their living and culture from the sea.

AMCC's members include commercial and sport fishermen, biologists, subsistence harvesters, small business owners and conservationists dedicated to protecting the health and diversity of Alaska's ocean and coastal resources. We work collaboratively with local people and community organizations to reduce bycatch, protect habitat, and prevent overfishing to sustain Alaska's fisheries and a healthy marine ecosystem into the future.

Today, I will be talking about three major points:

1. The 1996 conservation mandates in the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) are excellent, but implementation has been slow and inadequate. The National Marine Fisheries

Service (NMFS) must begin to aggressively implement the law. AMCC recommends clarification and strengthening of the Act in the next reauthorization.
2. Congress must maintain and increase strong protection for the essential fish habitat provisions in the law.
3. The intent of the Magnuson-Stevens Act to enable progress in the conservation of the nation's fisheries is being slowed, and in some cases circumvented, by allocation decisions.

II. OVERVIEW

On behalf of the Alaska Marine Conservation Council, I want to thank the committee and especially Alaska's Senator Ted Stevens, for the precedent-setting conservation language that Congress made law through passage in 1996 of the Magnuson-Stevens Fishery Management and Conservation Act. Our members have seen some isolated, but positive changes in management of the North Pacific fisheries as a result of the new law. Examples of progress include the North Pacific Fishery Management Council's (North Pacific Council) actions to eliminate bottom trawl gear for Bering Sea pollock, establish rebuilding plans for overfished Bering Sea crab stocks, and reduce Chinook salmon bycatch in specific areas in the Bering Sea.

AMCC is proud to have played a role in these positive conservation actions, but we recognize that they represent only the beginning of what the Magnuson-Stevens Act was designed to achieve. Unfortunately, implementation of the law has been hindered by the failure of NMFS to prioritize work on it. Three years after its passage, what has changed in fisheries management as compared to before the reauthorization? The law called for a different way of doing business, yet fishery managers have only incremental changes to show for it.

The most important work ahead for NMFS and the North Pacific Council is the identification and protection of essential fish habitat from adverse impacts caused by fishing practices. The Magnuson-Stevens Act language on essential fish habitat provides strong direction and the requirements are well-reasoned and sound. As described above, the problem is not in the language of the law, but in its implementation. We urge Congress to maintain the current habitat provisions and to ensure fishery managers act aggressively to protect the diversity and productivity of sensitive marine habitats.

The North Pacific is home to some of the largest fisheries remaining in the world, and 50% of our nation's domestic fishery landings. (Fisheries of the United States, National Marine Fisheries Service, 1998.) The North Pacific region appears prosperous compared to other parts of the U.S., such as the North Atlantic, where overfishing problems have reached crisis proportions. However, our region is not free of overfishing examples. In addition, the North Pacific has excessively high bycatch as a consequence of industrial scale operations and scientists are beginning to document habitat alteration occurring on our fishing grounds. The North Pacific ecosystem is also experiencing dramatic ecological changes: scientists and local people have witnessed accelerated declines in regional populations of fish, shellfish, marine mammals and seabird species. In light of these changes, the National Research Council stated, "It seems extremely unlikely that the productivity of the Bering Sea ecosystem can sustain current rates of human exploitation . . . ." (National Research Council, Bering Sea Ecosystem, 1996, p 4.)

To make our fisheries truly sustainable, the 1996 conservation provisions to minimize bycatch, protect habitat and prevent overfishing must be fully implemented. It is time to activate a new precautionary approach to fisheries management that accounts for the effects of fisheries on the ecosystem and reduces the risk that fisheries are contributing to a reduction in productivity, biological diversity or sensitive habitat. Such an approach is needed to guide fishery managers when there is inadequate scientific data on which to base decisions. (Paul Dayton, Reversal of the Burden of Proof in Fisheries Management, *Science,* Feb. 6, 1998, p. 821-822.)

Since the Magnuson-Stevens Act passed, NMFS has been largely focused on allocation issues and regulations, often at the expense of conservation issues. Congress specifically gave NMFS the deadline of October, 1998 to implement the conservation requirements. The deadline came and went with only part of the job done. Then, with the passage of the American Fisheries Act in 1998, NMFS began devoting substantial resources to its implementation. NMFS has put the marine conservation provisions of the Magnuson-Stevens Act on the back burner. Only in the last month has NMFS published proposed rules for bycatch measures that were approved by the North Pacific Council one or more years ago. AMCC has been extremely frustrated by the pace of implementation.

AMCC recognizes that a pivotal issue in this upcoming reauthorization of the Magnuson-Stevens Act is whether to lift the moratorium on Individual Fishing Quotas (IFQs). In light of efforts to address the problem of overcapitalization in the

fisheries since the Act's passage in 1996, AMCC believes a broader discussion needs to take place. We agree overcapitalization is a serious problem, but we argue that any restructuring of the management system must equally address conservation goals. AMCC strongly urges Congress to adopt conservation standards that will apply to any limited access program, whether the program takes the form of IFQs, fishing co-operatives or another management structure. The standards should achieve clear and explicit conservation goals and support continued participation in the fisheries by independent, community-based fishermen. The standards should be defined before any new limited access programs are created and before the IFQ moratorium is lifted.

AMCC members and Board of Directors have a vision of Alaska's fisheries being a place where a young person can enter a fishery and make a living through hard work and sweat equity. Our vision includes the opportunity for a long career in the fishery, which rewards clean fishing and habitat-friendly practices, and is managed for conservation so as to sustain the fishery and the ecosystem needed to support productive fisheries. Economic efficiency will be defined as managing fisheries to provide an economic base for coastal communities, and favoring a large number of fishermen who harvest fish slowly, rather than favoring a few vessels that harvest as quickly as possible. Alaska Native villages, where people harvest fish and marine resources for subsistence, will thrive from an abundant supply of traditional foods from the sea. This vision depends upon a healthy marine ecosystem and precautionary management of the fisheries. The language of the Magnuson-Stevens Act and how the law is implemented play a tremendously important role in the realization of this vision.

A. EXAMPLES OF FAILED IMPLEMENTATION

1. Bycatch

Although improvements have been made in selected fisheries, bycatch remains a major problem in the North Pacific. At least 1,000 different species of fish and other sea life are hauled aboard and thrown back dead or dying because they are the wrong species, the wrong sex or the wrong size. Each year between 1993 and 1997—the most recent data available—this bycatch averaged approximately 680 million pounds of groundfish, 15,700,000 pounds of halibut, over 2,000,000 pounds of herring, 61,500 Chinook salmon, 135,000 other salmon, and millions of crabs. (Pacific Associates, 1995 & 1998.)

There are no estimates for those fish and seafloor species of non-commercial value that are wasted as bycatch, and there is no measure of the impact of the total bycatch on the ecosystem. There are also sectors of the fishing industry that are not observed, which compromises the reliability of data.

One tool to fix this problem is the North Pacific observer program, the only one of its kind in the country. Although the observer program has been of great assistance in gathering data to quantify the bycatch in the North Pacific, this program is in need of improvement. The current program and the integrity of data it generates are at risk because of an inequitable funding mechanism and the limitations in how observers are distributed across the fisheries. In order to function as it should, AMCC recommends a mandatory fee-based system in which all fishermen would pay according to the average value of the fish they catch, including both target species and bycatch. This approach would build in a bycatch reduction incentive by encouraging fishermen to retain a greater proportion of the fish caught, process it into the highest value product possible and thereby generate value from more of the total catch. Waste would truly become a "cost of doing business" under this system. AMCC recommends that Congress institute a nationwide observer program that is supported through a fee-based system. In any observer program, AMCC recommends that managers be given the flexibility to assign observers where they are most needed to collect the data for conservation objectives.

In 1998, NMFS activated a program requiring all fisheries to retain cod and pollock bycatch. A large portion of these discards were juvenile fish, too small for processing machinery. The stated purpose of the program (known as Improved Retention/Improved Utilization or IR/IU) was to "provide an incentive for fishermen to avoid unwanted catch, increase utilization of fish that are taken, and thus, reduce discards of whole fish." (62 Fed. Reg. 34430, 1997.) Bycatch data shows a significant reduction in the amount of economic discards compared to previous years as a result of this program. However, AMCC urges Congress to look more closely at the results to see if vessels are actually avoiding the catch of unwanted fish, or retaining them for production of fishmeal and other new products. While some vessels are employing methods to move away from schools of small fish, other vessels most likely are

not. There has been no method to validate whether avoidance is occurring, casting doubt on the program's effectiveness as a true bycatch reduction measure.

One method being used to reduce catch of small fish is large mesh nets that allow small fish to escape. Recent scientific research has shown that the fish escaping through these nets suffer a 46-84% mortality rate from injury during escapement. (Alaska Fisheries Development Foundation, Surviving the Great Escape, Lodestar, April 1999.) This new information is of major concern. While the statistics show improvement in bycatch, the problem may just be masked and there may, in fact, be a sizable amount of indirect mortality that is now going uncounted. From a conservation standpoint, this situation would be worse than discarding a known quantity of fish. A careful monitoring program to measure the effects of the IR/IU program is the only way to determine the level of actual bycatch avoidance. Congress, the North Pacific Council and NMFS need to address this with open eyes and careful scrutiny to make bycatch reduction efforts meaningful.

> The Magnuson-Stevens Act states that it is the policy of Congress to assure that the national fishery conservation and management program...*considers the effects of fishing on immature fish* and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish . . . . (§§ 2 (c)(3))

The IR/IU program is the primary bycatch reduction measure instituted by the North Pacific Council to address economic discards. AMCC does not consider this to be a true reduction of bycatch unless it is clear that fishing vessels are successfully avoiding the catch of juvenile fish and minimizing mortality of fish that are not retained, as stipulated in the Magnuson-Stevens Act.

2. Overfishing

Since the Magnuson-Stevens Act passed in 1996, the number of species considered to be overfished has steadily increased nationwide. NMFS reported that 98 species are overfished, an increase from 90 overfished species in 1998. (Report to Congress: Status of Fisheries of the United States, National Marine Fisheries Service, October 1999.)

In the North Pacific, no groundfish stocks are currently declared overfished. However, NMFS has failed to implement a key element in the overfishing regulations: the establishment of minimum stock size thresholds for each stock. For this reason, fishery managers do not know whether or not the North Pacific has any overfished stocks as defined in the 1996 Magnuson-Stevens Act overfishing provisions. Although the North Pacific overfishing definition started out being far better than other regions of the country, adding minimum stock size thresholds is an important conservation addition.

Fish populations rise and fall in natural ranges of abundance but the minimum stock size threshold mechanism prevents a fishery from driving a stock below a productive level, or exacerbating a natural downward trend. The Aleutian Islands pollock fishery, for example, has undergone serial overfishing: each year the fleet has to travel farther west to find enough pollock. (Ecosystem-Based Management in the Bering Sea: Proceedings, Center for Marine Conservation, 1998, p 46-47.) Fortunately, NMFS closed this fishery in 1999 and 2000 in an effort to allow the stock to recover. Minimum stock size thresholds would help prevent fishery closures by guiding management toward conservation measures before dire action is needed.

Over the last several years, the North Pacific Council and the State of Alaska *did* assign minimum stock size thresholds to Bering Sea crab stocks. As a result, major crab fisheries (Bairdi Tanner, opilio or snow crab and St. Matthew blue king crab) were found to be overfished. So far, only the Bairdi Tanner crab rebuilding plan has been developed and approved by the North Pacific Council. AMCC is concerned that, despite the rebuilding plan's conservative harvest strategy, the plan is insufficient because (1) it does not include measures to reduce crab bycatch in groundfish fisheries, and (2) it does not include new habitat conservation measures beyond what has been in place prior to the stock's overfished status. AMCC believes more aggressive action is needed to improve the likelihood that rebuilding can occur within a 10-year timeframe.

3. Managers are Operating with a Dangerous Lack of Information

Scientists and the public are increasingly concerned with the great lack of information about the effect of large-scale fisheries on the ecosystem. Indeed current methods used to set annual catch limits do not take into account these effects and, in the North Pacific, there is little data on the habitat requirements of any of the managed fish species, not to mention those species in the food web that are not monitored or studied. (Ecosystem Considerations for 1999 and 2000, NPFMC.)

Nationwide scientists do not know if the majority of fish stocks are healthy, increasing, declining or overfished. According to NMFS the status of 649 stocks)—75% of those assessed—is "unknown." In the North Pacific, 70% are of unknown status. (Report to Congress: Status of Fisheries of the United States, National Marine Fisheries Service, October 1999.)

Fishery managers know little about recruitment and population dynamics, basic biology of both non-commercial and commercially valuable species, ecology of marine life communities, the habitat needs of living marine resources, predator-prey relationships, and year-to-year variability in ocean conditions. Fishery managers do not know how high volume fisheries affect declining stocks during periods of natural downward fluctuation.

The combination of all of these sources of missing information and uncertainty makes it even more difficult to measure the effect of fisheries on the ecosystem as a whole. Despite these gaps in information, management decisions are being made routinely. While scientists and managers will probably never have complete, quantifiable knowledge of how the fisheries operate in an ecosystem context, managers do have the responsibility to account for uncertainty and lack of knowledge in their decision-making.

In their 1998 report to Congress, the Ecosystem Principles Advisory Panel described the importance of considering ecosystem effects when making fisheries management decisions.

> This issue (overfishing and lack of knowledge) is urgent because the current harvest levels are high and because new fisheries will rise, be fully capitalized and reach unsustainable levels of catch before the management process can establish effective constraints . . . In many cases, the ecological correlates of changing fish populations could have served as evidence of intensified exploitation effects. Frequently, the advent of a fishery and implementation of catch restrictions have unknown ecological consequences. Too often, we learn about ecological consequences after the fact, because we do not consider them in our decision-making, nor do we monitor ecosystem changes due to increased exploitation. (Ecosystem-Based Fishery Management, A Report to Congress by the Ecosystem Principles Advisory Panel, November 1998, p. 9.)

The Panel went on to recommend that Congress enact legislation in the next reauthorization of the Magnuson-Stevens Act to require Fisheries Ecosystem Plans, a proposal which AMCC fully supports.

Use of the Precautionary Principle is an internationally accepted strategy for coming to terms with scientific uncertainty in a resource management.. Elements of the Precautionary Principle include:

> 1. Uncertainty is unavoidable in sustainability issues;
>
> 2. Uncertainty as to the severity of the environmental impacts resulting from a development decision or an ongoing human activity should not be an excuse to avoid or delay environmental protection measures;
>
> 3. The principle recommends an anticipatory or preventative approach, rather than a defensive one which simply reacts to the environmental damage when it becomes apparent; and
>
> 4. The onus of proof shifts away from the environment or those advocating its protection, towards those proposing an action that might harm it. (Dovers, S.R. and J.W. Handmer, Ignorance, the precautionary principle, and sustainability, Royal Swedish Academy of Sciences, 1995, Ambion 24 (2):92-97.)

Considering the lack of information about the majority of species and ecosystem relationships in the North Pacific, employing the Precautionary Principle in an ecosystem context is a wise and necessary approach to management.

B. KEEP THE STRONG PROTECTION OF ESSENTIAL FISH HABITAT IN THE LAW.

Alaska Marine Conservation Council recommends that Congress maintain the Magnuson-Stevens Act provisions to identify and protect essential fish habitat, and to strengthen them further to ensure effective and timely action is taken.

In the North Pacific, essential fish habitat implementation should focus on protecting Alaska's ocean habitat from the adverse effects of fishing practices. The North Pacific Council is beginning a process to define, identify and consider protection for habitat areas of particular concern (HAPC). HAPC designation is critical to attaining the intent of the essential fish habitat requirements in the law. AMCC is confident that such an approach focuses fishery management actions on key geographic areas. A successful outcome for conservation would encompass protection of

an adequate representation and suitable portions of sensitive or rare habitats in Alaskan waters. By establishing a mosaic of habitat areas protected from the adverse effects of fishing, managers can have greater confidence that the functions of those habitats in fisheries production will be sustained.

In 1998 AMCC submitted several proposals to the North Pacific Council to identify and protect habitat areas of particular concern. The Council will consider them in 2000. In order to craft an effective habitat conservation regime, fishery managers must commit to focused and expeditious action on these and other proposals. The alternative is a potential unraveling of ecosystem components created and supported by important habitats and risking the well-being of diverse fisheries, their productivity and other species in the marine food web. The risk of losing habitat and creating barren areas in Alaska's marine waters due to sluggish management response is unacceptable. While the North Pacific region contains certain habitat protection measures, there is still a lot of work to be done to fulfill the Magnuson-Stevens Act mandate.

We appreciate the 1996 essential fish habitat requirements as a good conservation tool and we recommend some additions to strengthen the law. AMCC urges Congress to require the councils and NMFS to evaluate the effectiveness of habitat protection measures and report back to Congress.

The failure of NMFS and the North Pacific Council to move more quickly to identify and protect essential fish habitat is made even more apparent in comparison with recent actions at the state level in Alaska. For example, the Alaska Board of Fisheries is providing leadership in habitat protection in state waters. In March of 1999, the Board voted to close nearshore waters around Kodiak to bottom trawling. Their action was in response to the failure of the overfished Kodiak red king crab population to recover after closure of the fishery in 1984. Even after sixteen years of no fishing, the Kodiak red king crab population is estimated to be at 200,000 animals today, compared to an estimated population of 30 million in the 1960s. The Board recognized that habitat protection is a critical component of rebuilding the crab population. As Board of Fish member Larry Engel stated during the deliberations, "Without habitat, we have no fish." The State of Alaska is leading the way in marine habitat protection. AMCC urges NMFS and the North Pacific Council to follow suit by advancing a thorough habitat conservation regime in federal waters, as required by the Magnuson Stevens Act.

C. IFQS AND OTHER LIMITED ACCESS PROGRAMS

A key feature of the 1996 reauthorization was the moratorium on new IFQ programs. When Congress deliberates over whether or not to lift the moratorium in the upcoming reauthorization we recommend looking broadly at all limited access strategies. AMCC strongly urges Congress to adopt conservation standards for any limited access program before the moratorium is lifted and before any other new programs are allowed to be developed by regional councils. Some conservation improvement may come from limited access by virtue of slowing down the race for fish and improving opportunities for more careful fishing practices. However, Congress should make conservation achievements a required element of limited access fisheries and there should be deliberate mechanisms that will ensure conservation goals are met. We also strongly urge Congress to stipulate that, if access is limited, viable community-based opportunities to participate in fisheries are included.

Standards for limited access programs, whether they are IFQs, fishing cooperatives or some other management structure should:

Achieve clear and explicit conservation goals including:

- No rewards that institutionalize past bycatch-intensive fishing practices;
- Compliance with congressional mandates to minimize bycatch, identify and protect habitat, and prevent or end overfishing;
- Application of the Precautionary Principle for ecosystem-based fishery management.

2. Ensure community-based participation by independent fishermen in fisheries through measures such as:

- Prohibiting access to fisheries from becoming a compensable property right;
- Setting aside portions of the fishery for small vessel or entry level fishermen;
- Prohibiting consolidation of access to fisheries that reduces participation by independent fishermen.

III. MORE IMPROVEMENTS TO THE LAW ARE NEEDED: RECOMMENDED CHANGES

Despite the many positive changes to the law in 1996, more improvement is needed. Even with the strong language of the Magnuson-Stevens Act, the management of our nation's fisheries has not shifted to a new and focused priority on sustainability. Fishery managers continue to place short-term economic considerations before long-term conservation goals. Instead of a flood of rebuilding plans, a reversal in the decline of fish stocks, and plans to protect habitat for continued productive and diverse fisheries, we are seeing a continued downward spiral of fish populations across the country and fisheries and fishing communities pushed to the brink of ruin.

AMCC asks Congress to continue providing strong leadership in fisheries management, and to clearly establish conservation as the top priority of the Act. An economically sound fishery must be built around long-term sustainable goals. Congress must give unmistakable direction to NMFS and the regional councils to carry out the intent and spirit of the law. To that end, we ask that Congress amend the Magnuson-Stevens Act in the following areas.

A. REQUIRE FISHERY MANAGERS TO ACT CONSERVATIVELY IN THE FACE OF UNCERTAINTY, AND TO CONSIDER THE EFFECTS OF FISHING ON THE ECOSYSTEM.

1. Require councils to develop a Fisheries Ecosystem Plan for the major ecosystems under their jurisdictions, as recommended by the National Research Council.

§ 305. OTHER REQUIREMENTS AND AUTHORITY
(J) *FISHERIES ECOSYSTEM PLANS.*

(1) *Each council shall, within 18 months from the date of enactment of this Act, prepare and submit to the Secretary a Fisheries Ecosystem Plan (FEP) for the major marine ecosystem or ecosystems within its jurisdiction. In the case where significant portions of ecosystems are found in the jurisdictions of adjacent councils, joint FEPs shall be prepared. The process for preparing and developing FEPs shall be consistent with the fishery management plan process outlined in Section 302.*

(2) *Each fisheries ecosystem plan shall*

(A) *contain information on the structure and function of the ecosystem in which fishing activities occur, including the geographic extent of the ecosystem and its biological, physical and chemical dynamics, a description of the significant food web including key predator-prey relationships, and the habitat needs of different life stages of species that make up the significant food web;*

(B) *establish indices of ecosystem health and integrity;*

(C) *describe how the information on ecosystem structure and function is to be incorporated into the context of fishery-specific management plans;*

(D) *include specific recommendations for implementing ecosystem protections in fishery management plans; and,*

(E) *outline a long-term monitoring program to evaluate fishery-dependent and fishery-independent changes in the ecosystem.*

(3) *No later than 6 months from the date of enactment, the Secretary shall prepare guidelines for FEP development, in conjunction with the councils and other scientific, fisheries and conservation interests as appropriate, and provide them to the councils to facilitate development and implementation of the required FEPs within the prescribed time period.*

(4) *The Secretary shall review each fisheries ecosystem plan according to the guidelines prepared pursuant to paragraph (3) and approve or disapprove FEPs, in whole or in part, according to the process described in section 304. If the Secretary disapproves or partially approves a plan, the council shall revise and re-submit the plan within 9 months of its disapproval.*

(5) *If, within the 18 month period beginning on the date of enactment of this Act, a council fails to develop and submit to the Secretary a Fisheries Ecosystem Plan as required under this section, the Secretary shall prepare a plan for that ecosystem within 9 months.*

(6) *Within no more than 24 months after approval of a FEP, each council shall submit to the Secretary fishery management plans or plan amendments required to make all FMPs under its jurisdiction consistent with the principles, goals, policies and recommendations of the relevant FEP.*

(7) *If, within the 24 month period after approval of a FEP, a council fails to submit adequate amendments, the Secretary shall prepare such amendments within 9 months.*

2. Require councils to consider the ecosystem impacts of amendments to Fishery Management Plans.

§ 303. CONTENTS OF FISHERY MANAGEMENT PLANS

(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 vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery *and the ecosystem within which the fishery functions;*

* * * * * * *

(15) include a fishery impact statement for the plan or amendment which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on other species, including key predator-prey interactions, in the ecosystem, such assessment to be used to determine consistency with the relevant Fisheries Ecosystem Plan as required under Section 305 (-)(-).

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3. Replace purpose and mission of the Act with conservation oriented goals.

§ 2. FINDINGS, PURPOSES, AND POLICY

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in the Act—

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner;

(6) *to ensure that U.S. fisheries management takes into consideration the ecosystem needs of target species and the impacts of fishing on other species in the ecosystem;*

* * * * * * *

(8) *to promote management decisions incorporating the precautionary approach, especially when the effects of fishing are unknown or uncertain, in order to maintain ecosystem health and sustainability.*

(c) POLICY.—It is further declared the policy of the Congress in this Act—

* * * * * * *

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected states and citizens; *incorporates and applies ecosystem principles;* considers *how fishing affects predator-prey and other important ecological relationships within marine ecosystems;* **efficiency;** draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

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4. Add a national standard requiring the precautionary approach.

§ 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management.

(11) Conservation and management measures shall (A) when information is uncertain, unreliable or inadequate, reduce risks by setting precautionary reference points for each stock of fish and the action to be taken should those thresholds be approached or exceeded; (B) take into account the direct and indirect impacts of fishing on other species and their habitats and the conservation of those species as important components of the ecosystem; and (C) allow the expansion of existing fisheries or the development of new fisheries only after measures are in place to prevent adverse impacts on the stocks, associated species or the ecosystem.

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5. Change the definition of optimum yield (OY) and overfishing in the Act to include ecosystem impacts.

§ 3. DEFINITIONS

* * * * * * *

(28) The term "optimum," with respect to the yield from a fishery, means the amount of fish which—

(A) will provide the greatest overall benefit to the Nation, particularly with respect to *protection of marine ecosystems,* food production, and recreational opportunities **and taking into account the protection of marine ecosystems;**

(B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factors*, including predator-prey and other important ecological relationships within marine ecosystems.*

(29) The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis*, or, through direct or indirect impacts on other species, jeopardizes the ecological integrity and sustainability of marine ecosystems;*

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6. Appropriate funds for application of ecosystem principles to fisheries research and management.

No specific language recommendations.

B. HOLD FISHERY MANAGERS ACCOUNTABLE FOR REDUCING BYCATCH, AND ENSURE THAT BYCATCH IS NOT INSTITUTIONALIZED.

1. Congress should require Fishery Management Plans to include a timeline and specific goals for bycatch reduction and incentives for fishing practices that avoid bycatch or result in lower levels of bycatch mortality.

§ 303. CONTENTS OF FISHERY MANAGEMENT PLANS

* * * * * * *

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

* * * * * * *

(11) establish *and implement an accurate and reliable* a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery *within one year of the date of enactment of this Act, specify objective and measurable bycatch targets that minimize bycatch,* and *specify a timetable, not to exceed five years, for achieving those targets through* **include** conservation and management measures that, **to the extent practicable, and** in the following priority—

(A) **minimize** *avoid* bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

* * * * * * *

(16) include conservation and management measures that provide catch incentives for participants within and among gear categories to employ fishing practices that avoid bycatch or result in lower levels of the mortality of bycatch which cannot be avoided;

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2. The current language regarding Individual Bycatch Quotas (IBQs) may allow the institutionalization of bycatch unless the law is changed to prohibit the transfer of IBQs.

§ 303. CONTENTS OF FISHERY MANAGEMENT PLANS

* * * * * * *

(b) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

* * * * * * *

(17) in the case of an FMP or FMP amendment that allocates bycatch to individual fishing vessels, or to groups of fishing vessels within the fishery, specify that such allocations shall not be transferable, shall be made on an annual basis only, shall include measurable and objective bycatch minimization goals, targets and schedules, and shall be reviewed periodically.

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3. Change the North Pacific section of the law to require the North Pacific Council to submit a plan to lower the total amount of bycatch, not just economic discards.

§ 313. NORTH PACIFIC FISHERIES CONSERVATION

(f) BYCATCH REDUCTION.—In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of *bycatch* **economic discards** occurring in the fisheries under its jurisdiction.

C. IMPROVE THE EFFECTIVENESS OF THE OBSERVER PROGRAM.

• ***Fund the North Pacific observer program with a user fee based on value and applied to all fish landed and sold in the U.S.***

§ 313. NORTH PACIFIC FISHERIES CONSERVATION

(a) IN GENERAL.—The North Pacific Council **may** *shall* prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the North Pacific halibut industry, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

D. CLARIFY AND STRENGTHEN THE LAW REGARDING ESSENTIAL FISH HABITAT IDENTIFICATION AND PROTECTION

§ 3. DEFINITIONS

* * * * * * *

The term "essential fish habitat" means those waters and substrate necessary to fish*, whether managed or not,* for spawning, breeding, feeding or growth to maturing.

§ 303. CONTENTS OF FISHERY MANAGEMENT PLANS
(a) REQUIRED PROVISIONS

* * * * * * *

(7) describe and identify essential fish habitat **for the** *, giving priority to those fish species that are subject to the* fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), **minimize to the extent practicable adverse effects on such habitat caused by fishing, and—**

(A) *analyze the impacts of fishing on essential fish habitat;*

(B) *minimize any adverse impacts on essential fish habitat from fishing;*

(C) *close an area to a fishing gear or practice if such fishing gear or practice may adversely affect essential fish habitat unless the Council determines, based on the best scientific information available, that a closure is not necessary to protect such habitat; and*

(D) *identify other actions to encourage the conservation and enhancement of such habitats;*

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§ 304. ACTION BY THE SECRETARY

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(i) FINDING OF MINIMAL ADVERSE IMPACT.—No person or vessel may employ fishing gear or engage in a fishery;

(1) *in an area closed to that fishing gear or fishery unless the Secretary, after notice and opportunity for public comment, finds that the fishing gear or fishery will have a minimal adverse impact on essential fish habitat and minimal bycatch of non-target species; or*

(2) *not currently used in the prosecution of the fishery, or included on the list published pursuant to section 305(a)(1), unless the Secretary, after notice and opportunity for public comment, finds that the fishing gear or fishery will have a minimal adverse impact on essential fish habitat and minimal bycatch of non-target species.*

Senator STEVENS. Thank you, Mr. Seaton.

Mr. Burch.

STATEMENT OF AL BURCH, EXECUTIVE DIRECTOR, ALASKA DRAGGERS ASSOCIATION

Mr. BURCH. Thank you, Madam Chairman, Senator Stevens. I appreciate the opportunity to speak before this committee. I am Al Burch, executive director of the Alaska Draggers Association, located in Kodiak.

Most of the boats I represent, including my own two trawlers, the DAWN and the DUSK, are less than 100 feet and are owned by Kodiak residents. I have been a fisherman since 1959 and owned or co-owned all the vessels I have been on. I have survived many catastrophes during those 41 years, the collapse of the King and Tanner crab and shrimp, the 1964 earthquake, the sea lion closures of 1992, the roe-stripping vessel raid of 1989, and market problems that affected canners and boats alike.

During this time we always had new fisheries to develop, so we survived. We are now legislated into smaller and smaller areas of opportunity. We can no longer diversify. With the collapse of crab and shrimp in the late seventies, Senator Stevens introduced legislation both in 1978 and 1979 to help Alaskans Americanize the bottom fisheries. I would like to quote from the Kadiak Times of February 1, 1979, his introduction of his bill, and I quote:

The development of the bottom fish industry has been one of my highest priorities, and the enactment of the 200-mile limit, which I cosponsored with Senator Magnuson, laid the foundations. Alaskans must now build a bottom fish fleet, and the legislation introduced will help that develop by substantially reducing the cost of loans to Alaska fishermen.

A number of us seized the opportunity and converted our vessels. In a very short time, we did Americanize the fisheries. The Gulf of Alaska communities led this effort with help from grants from the Saltonstall-Kennedy funds through the Alaska Fisheries Development Foundation. These grants created the first full production of a shore-based surini plant at the Alaska Pacific Seafoods in Kodiak.

We also supported the development of codfish fisheries with the development of a cod and pollock fillet plant with Trident Fisheries in Akatan. Then we concentrated on protecting the fish. A status of stock document is presented every year. The council very conservatively created quotas for each species. Pollock in the gulf has

gone from 400,000 metric tons in the early eighties down to around 90,000 for the year 2000. The cod in the gulf went from 81,000 down to 58,700.

With the co-operation of the canneries, we are developing a flatfish and Pacific Ocean perch fisheries, but with the tremendous increase of the halibut biomass and the fixed cap, we are only allowed to catch a very small percentage of the quota.

We offered 10 percent of the gray cod for a small boat pot fishery to take place inside the State's 3-mile zone. The State ended up taking 25 percent. The draconian sea lion restrictions of 1999 and 2000 have pushed us further off-shore, a very dangerous situation for our small trawlers, forcing us into areas of potential higher bycatch, shorter seasons, and rougher weather. We are forced into a disastrous race for fish. An influx in the Bering Sea is also shortening our seasons.

This means less work for our resident cannery workers and less income flowing through town. When shore cannery workers leave town, new people must be trained each opening. Costs go up, and recovery goes down.

Forming co-ops will allow fuller compliance with the intent of improved retention and improved utilization. They would also limit the number of plants and boats. This would give us a known situation to work with. The vessels and plants are already overcapitalized. More plants would mean more boats, therefore shortening our limited season and income even more.

I wanted to thank Senator Stevens for his help in providing $5 million for sea lion research in the year 2000. Beyond 2000 we need to continue the research on the availability and use of prey by the Stellar sea lion in the Kodiak area. Wynne, Narcross, Hills and Buck are the principal investigators. To make this research meaningful, we need National Marine Fisheries Service to open Barnabus and Gull Point, as outlined in the University of Alaska research plan.

This program was only funded at a reduced level for 1 year. We need multiyear funding in the future. This research is critical to the long-term survival of Kodiak, Sand Point, Seward, Cordova, and other communities.

And just in closing, Senator, I am very worried at essential fish habitat also.

[The prepared statement of Mr. Burch follow:]

PREPARED STATEMENT OF AL BURCH, EXECUTIVE DIRECTOR, ALASKA DRAGGERS ASSOCIATION

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A status of stock document is presented every year. The Council very conservatively created the quota for each species. The Pollock in the Gulf has gone from 400,000mt in the early 80's down to around 90,000mt for 2000. The Cod in the Gulf went from 81,000mt down to 58,715mt. With the co-operation of the canneries we are developing a flat fish and pacific ocean perch fishery. But with the tremendous increase of the halibut biomass and a fixed by-catch cap, we are only allowed to catch a very small percent of the quota.

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The draconian sea lion restrictions of 1999 & 2000 have pushed us further off shore (very dangerous for our smaller trawlers) forcing us into areas of potential higher by-catch. Shorter seasons and rougher weather, we are forced into a disastrous race for fish. An influx of boats from the Bering Sea is also shortening our season. This means less work for our resident cannery workers and less income flowing through town. With short openings, cannery workers leave town. New people must be trained each opening, costs go up and recovery goes down.

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This program was only funded at a reduced level for 1 year. We need multi year funding in the future. This research is critical to the long-term survival of Kodiak, Sandpoint, Seward, Cordova and other Gulf communities.

Senator SNOWE. Thank you very much, Mr. Burch.

Mr. Phelps, on the question of essential fish habitat, you said in your testimony that you did not believe that nonfishing interests were meant to be included in this process, is that correct?

Mr. PHELPS. That is correct, Senator. It was my understanding that the Magnuson act focused on ocean fisheries, and we are being drawn in by the application of this to streams and any activity that could possibly affect a stream.

Senator SNOWE. And you believe that the 1996 amendments never intended to have the nonfishing interests directly affected by this process?

Mr. PHELPS. That is correct. I believe that for a couple of reasons. One is the law itself, and second is the fact that there is no representation for those interests on the councils that are making these determinations.

Senator SNOWE. Do you have specific examples where there have been permitting delays as a result of the consultation process that NMFS has engaged in with other agencies? Where it has actually held up specific permits?

Mr. PHELPS. Actually, that is one of the reasons that I would like to get a response from NMFS with respect to the consultations that have been held. It appears to me, without having that information, that some of the consultations that have ben held in Alaska, and I heard Ms. Dalton say this morning there were 400 of them, may have been -- because it focuses on consultations with Federal action agencies, and what I have seen showing up in some forest service EIS's would indicate to me that some of those consultations may have taken place in the context of timber projects proposed by the forest service, and it would be interesting to see what the dynamic is there. We suspect there are delays. We also suspect, however, that like with the ESA these consultations are starting out as being fairly benign, but as time goes along could become increasingly draconian.

Senator SNOWE. More than a consultative process.

Mr. PHELPS. That is correct, and more than an information-sharing process as well.

Senator SNOWE. Now, have you been turned down in your request for consultations?

Mr. PHELPS. We have not been turned down. It is just taken them a long time to get it together, and then what they have said is, they do not have the information compiled yet, and it will cost us in excess of $30,000 to get the information sent to us.

Senator SNOWE. And when was that request made?

Mr. PHELPS. We filed the request on November 18 of last year, 2 months ago today.

Senator SNOWE. Are you talking about the 2,000 that they have done?

Mr. PHELPS. That is correct. The FOIA focused on the statement in the NOI that there have been 2,000 done.

Senator SNOWE. Now, Mr. Seaton, you have taken the opposite point of view on this matter. Can you tell us why you think that nonfishing activities should be incorporated in this process? Could you also explain how you think the essential fish habitat should be implemented, in a way that does not represent a very complicated regulatory process? As we have even seen on the Endangered Species Act, the intent may be right, but the process becomes so complicated and expensive that it undermines the ultimate goal.

I know you are suggesting very specific language to further address essential fish habitat, but do you think that is going to create more problems?

Mr. SEATON. Senator, the Alaska Marine Conservation Council has addressed essential fish habitat from the very beginning. We helped work with Senator Stevens and others to get this into law, because it is so very important for the fish habitat protection.

Alaska Marine Conservation Council has concentrated on benthic—that is, bottom-of-ocean—habitat as our primary goal and our focus in the North Pacific. We think that the reason it was so broadly interpreted is because NMFS just does not have very much information on a single-species basis on what the essential fish habitat is. We think that the habitat areas, HAPCs, are where the rubber meets the road, and that is where things get done for essential fish habitat, and so as you will notice our specific language is dealing with protection of habitat, especially benthic habitat, from

destructive fishing practices, and that is where our concentration is.

Senator SNOWE. Would you agree with a further clarification on the essential fish habitat definitions? Do you see this as problematic at all?

Mr. SEATON. Yes, Senator, we do see that there are some problems with that, and we also suggested some specific language and some specific ways to pinpoint this down, requirements to actually get to some studies that are investigating the effects of fishing gear on habitat.

You know, what we have in most of these areas is not a wealth of knowledge. We have a problem in that we have a deficiency of knowledge, and so we are operating in the dark on many of these things, but the habitat area as a particular concern is a way in which National Marine Fisheries Service has set up a matrix of not only areas, but of what the concerns are, high and low impacts, and that seems to work for the areas that we have talked about.

Senator SNOWE. Mr. Phelps showed this map showing the designation. Would you agree that this may be an overly broad interpretation of essential fish habitat? This is similar to what we are dealing with in other areas. We have had a problem in the Gulf of Maine and the Gulf of Mexico. The same sort of issues have been raised time and again. We are using broader designations as opposed to trying to narrow the designations. Would you agree that that may be overly broad?

Mr. SEATON. Yes, Senator. I think that what we need to do is—and I think the habitat area is of particular concern, to get to that point of identifying the habitats that we need to worry about, and especially, you know, like I said in our testimony, we need to worry about the effects of destructive fishing practices on that habitat.

Senator SNOWE. Do you think it is possible that we can do it? Is it possible to narrow the designations, while achieving the goal?

Mr. SEATON. I think so, yes.

Senator SNOWE. You do?

Mr. SEATON. Yes.

Senator SNOWE. Mr. Burch, what changes have you seen in your own community since the race to fishing has ended?

Mr. BURCH. Our seasons are shorter and shorter. When we were in shrimp, I fished 10 months out of the year. Due to a regime shift, the shrimp and the crab disappeared. There are studies done that show that that was not fishing pressure, especially in the shrimp.

With Senator Stevens' help we converted into, at that time, joint ventures. Our ultimate goal was Americanization. We did do that. We had fairly extended seasons on cod and pollock. As we developed our shore-based infrastructure, as we got more sophisticated with our gear, we caught our quotas in shorter and shorter time. We expanded into other fisheries to take up that slack. Again, you know, the learning curve as we became more efficient, better marketing, again our seasons got shorter.

With the legislation forcing us out of certain areas into different areas our bycatch patterns have changed, sometimes for the good, sometimes not.

I had to do a count for my insurance company. I am down now to about 120 days of actual fishing time per year, where I used to fish 10 months, and that affects the production in town. With the way our seasons our chopped up now, we cannot keep cannery workers. We had a very large ethnic community in Kodiak, Filipino, Spanish, Mexican workers. We are starting to lose that trained work force now. This year for the first time our canneries are flying people in from outside, putting them up in bunkhouses.

Just, we need the opportunity to rationalize the fisheries. We need to have the tools to work with the council to create the seasons that will allow us to take the fish at the best biological time for the fish, and also the best economical time for us.

Senator SNOWE. You mentioned that small boat owners are taking greater risks. Do you believe that the fishing regulations have forced small boat owners to go farther out to sea and to take more risks in order to go where the fish are?

Mr. BURCH. Well, no, not to go where the fish are. Sea lion measures are closing us out of areas where the fish are. We are being forced out of some pretty good areas, and that puts us out off-shore looking for fish, and that is where you get into that area of when you are looking for fish your bycatch generally goes up.

If we were allowed in those in-shore areas, we would be closer to protection, there is a higher concentration of fish, and shorter fishing trips.

Senator SNOWE. Thank you.

Senator Stevens.

Senator STEVENS. You want, Al, to really have a council to have authority to have co-ops or other management techniques such as IFQ in all the fisheries, don't you?

Mr. BURCH. Right. Our position is the right to co-op all of the federally managed fisheries under the council system.

Senator STEVENS. I sort of think they have got that authority already.

Mr. BURCH. We do not have the—if I understand the lawyers right, not in the gulf. We cannot co-op in the gulf. You know, we met before you in March. We thought we had an avenue to follow. The attorneys at that time thought we could do something. Evidently we cannot. You know, I am not a lawyer, I do not fully understand the situation.

Senator STEVENS. Is that because of legal restraints, or because of the problem of financing the co-ops?

Mr. BURCH. Legal restraints on co-ops in the gulf. Under the 1937 act fishermen can co-op, but you need something like 90 percent of the fishermen to agree to it, then actually you do not get anything when you co-op. You do not get the opportunity to work with your canneries.

Senator STEVENS. I see. It is the interrelationship between facets of the industry, fishing and processing.

Mr. BURCH. Right. It is going to need a joint venture type operation in order to work, and right now we do not have that opportunity in the gulf.

Senator STEVENS. OK. Paul, you had an interesting suggestion about observers. Do you want to go into that a little bit? I do not think you did that here. You suggested, did you not, that fishery

managers assign observers to where they are most needed and not have this requirement of 100 percent on all boats?

Mr. SEATON. Yes, Senator. One of the problems of the observer program has been the way it is financed and the way it is designated, not by fishery, where you are needing to look at bycatch rates and verify things, but just by vessel length, and this is a problem.

AMCC has supported a fee-based system where everybody that has harvested fish is going to paying based on the amount of fish they are taking, and then National Marine Fisheries Service should apply and designate where the observers are based on the need for management and regulation.

Senator STEVENS. The regional council, or the National Marine Fisheries Service?

Mr. SEATON. Well, the regional council, the National Marine Fisheries Service actually I think implements the plan that the council comes up with, so what we want to do, what we think is necessary is to get the most value out of the observers, you know, the money that is being spent, then the managers know where they need the data from, and that is where the observers should be placed.

Senator STEVENS. OK. Now, Jack, on your point, for the nonfishing interests that are impacted by the essential habitat concept, for those that are already subject to EIS and endangered species action, I can understand you, but there are some that are not involved in that. It seems to me we have to work out something whereby the redundancy factor is eliminated. Have you thought about that?

Mr. PHELPS. We have, Senator, and I am not sure I disagree with you, but I think the number of actions where there is not some regulatory process in place through which NMFS could get information and provide commentary are pretty small, because if it is operated within the coastal zone there is the CZM process, and I think I would go one step farther than what you summarized my thoughts to be, and that is that to the degree that we are subject to regulation and restrictions, say, through the Alaska State Forest Practices Act, with its best management practices mandated and so forth, to the extent that the issues concerning our effect on fish habitat are addressed under some other regulatory process, then it seems that other than an information-sharing relationship, that NMFS should not be accorded jurisdiction in those areas, if the issues are addressed properly and thoroughly by other agency regulations and other laws.

We believe that the ground is fairly well-covered at this point with respect to that, and so what we would urge is that that be clearly looked at, and that perhaps some exception with respect to NMFS would have some jurisdiction if they can demonstrate that the issue is not being appropriately addressed by some other State or Federal regulation.

Senator STEVENS. I am really concerned with the increasing costs to the Federal agencies by the redundancy in these applications.

Mr. PHELPS. And well you should be, sir.

Senator STEVENS. We are financing all of these agencies to conduct their activities under the Endangered Species Act, and to

some extent that is redundant to the need for process itself, and then beyond that, we are financing consultations between those agencies as one comments upon activities in the jurisdiction of the other, and it seems that if you add to that, then, the extreme cost of litigation when it is brought by one Federal agency against another, or a State agency against a Federal agency, or a private entity against both, this thing is pyramiding now to be excessive costs that reduces the amount of money we have for research, really for application to programs to enhance the reproductive capability of fisheries.

Somehow or other I think we have got to find a way to eliminate this redundancy and get down to assigning co-responsibilities to individual Federal agencies or the State, and not allow this conflict between their authority to lead to this excessive litigation. I do not know how to do that, but you have got your finger on a portion of it that is applied to the nonfishing, nonocean areas which are going to be impacted because of the upland and particularly the river and stream—I have not even mentioned wetlands. On top of that, there is wetlands.

In this State it pays the price, because the money goes to the Federal agencies, and particularly to the activities they must conduct in the courts, and we are losing the money, the research base to get the funding for the actions we need, and the gear reduction and other things. Somehow we have to work together to find a process to work in this.

And Paul, I think your area may be the key to finding solutions, because I hear you. You are saying, let us concentrate on the seabed first, right?

Mr. SEATON. Right.

Senator STEVENS. And that is what we intended to do, I think. That is the dichotomy I see here, Madam Chairman.

Mr. PHELPS. Senator Stevens, if I might, I could not help but wonder today as I was listening to some of the needs under the provisions of the Magnuson act for funding and so forth, the almost $14 million that NMFS requested for fiscal year 2000 to do EFH consultations could probably be used better elsewhere, within the context of the Magnuson act.

Senator STEVENS. I think they would probably agree, but they feel they are mandated right now by the terms of the act to do that. I think we have got to review that act, and I think it is going to have to be something that is worked out with the agencies to delineate their responsibilities, to give them back some of their authority and limit the access to the courts for so much. Every one of these Federal agencies faces increased participation in court activities that challenge their authority before they even make the decisions, which is to me wrong.

Thank you very much, Madam Chairman.

Senator SNOWE. Well, thank you, Senator Stevens, and thank all of you. Mr. Seaton, we will look at your recommendations for specific language as we review this entire process.

One question I did want to ask, on individual fishing quotas: do you believe that Congress should lift the moratorium? It is going to expire in October, but do you think we should allow it to hap-

pen? Or should we have some conditions under which IFQ's could exist?

Mr. SEATON. The position of AMCC is that we should definitely have some conditions concerning standards, and we are worried about the conservation implications that occur here in the moratorium, and like I said, also with the other things that are going on, like the co-ops. There are big problems, potential problems with the conservation implications of the co-ops.

I mean, we have all these applications for co-ops going forth now for people to lock in practices in fisheries that have a high bycatch rate, so we have competing gears right now, and gears that have high bycatch rates and that have been losing harvest share are seeking to quickly move to co-ops so that they can lock in that, and that will lock in those high bycatch rates. We also see the co-ops as coming back to you saying, well now, we should have credit for our past bycatch, and we should be rewarded for our dirty fishing in the past, and so there are a number of issues in co-ops, with the side boards and those kinds of things, that are very important, and we would like to send you some other comments on those.

Senator SNOWE. Yes, please do. OK, thank you very much. Thank you all very much.

The final portion of our hearing this morning is an open microphone session for any individuals who may care to make a comment. We will allow everyone 2 minutes. You may have the opportunity to express your views to this committee, and Senator Stevens' staff, Jim Egan, will introduce the speakers for this part of the session.

Senator STEVENS. Madam Chairman, as I understand, there was a requirement to sign up, so that these people who wanted to come have already signed up, right?

Mr. EGAN. That is correct.

Senator SNOWE. Begin.

Mr. EGAN. Hazel Nelson, vice president of Bristol Bay Economic Development Corp.

Senator STEVENS. Who will be next?

Mr. EGAN. Following her will be Arni Thomson, executive director of Alaska Crab Coalition.

STATEMENT OF HAZEL NELSON, VICE PRESIDENT, BRISTOL BAY ECONOMIC DEVELOPMENT CORPORATION

Ms. NELSON. Thank you, Senators. I appreciate the opportunity come here and share my concerns for Bristol Bay Economic Development Corporation with you. We are one of the CDQ groups, and I am Hazel Nelson, the vice president of BBEDC.

There are 17 communities in our CDQ region, and we have about 6,000 residents in those communities, and in many respects all of the CDQ communities have the same problems and opportunities. However, each of our regions are very different. In Bristol Bay, for instance, we have the salmon fishery in the State waters, which is a constant boom and bust economy for our villages.

BBEDC has invested in the Bering Sea pollock, crab, and in long-lining operations. We have concentrated on maximizing our returns on CDQ royalties while focusing on protecting the resources. We have also focused on human resource development by funding

training, employment, and scholarships, and this is for all of our residents, regardless of race. Sometimes the CDQ program has been called a Native program. It is not. It is for everybody who is in a CDQ community.

We are aware of the importance of both State and Federal oversight in fisheries. We have been unanimously supportive of oversight of the CDQ program to ensure that the benefits of the program are being brought to each of our communities.

Finally, we do not want to lose our opportunity to continue this program because of mismanagement of how the CDQ is brought to those communities. The CDQ program has made the biggest difference in each of our villages since the inception of the Alaska Native Claim Settlement Act, and we urge you to continue support of this program in the reauthorization of the Magnuson-Stevens Act, and if I knew I had 2 minutes I would have said a lot more.

Senator SNOWE. Thank you very much. We appreciate it.

Ms. NELSON. Thank you.

Mr. EGAN. Thank you. Arni Thomson, executive director of the Alaska Crab Coalition. Following Arni is going to be John Gauvin, director of the Groundfish Forum.

STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR, ALASKA CRAB COALITION

Mr. THOMSON. Thank you, Senator Snowe and Senator Stevens for the opportunity to make a few brief comments. My name is Arni Thomson. I am executive director of the Alaska Crab Coalition, a trade association representing the owners of 55 Bering Sea crab vessels from Washington, Oregon, and Alaska. The ACC submitted extensive written comments to the Subcommittee for its Washington, D.C. hearing.

I would first of all like to reference the excellent technical remarks of Penny Dalton, head of the National Marine Fisheries Service. In addition, I appreciate John Iani and Kevin O'Leary for having brought attention to the plight of the Bering Sea crab fisheries, and having made some suggestions about the direction in which we need to move.

The ACC definitely supports moving ahead with crab cooperatives for Bering Sea crab fisheries. We feel that it is vital, if many of the independent vessel owners are going to survive in the near future.

I would also like to take the opportunity to compliment the U.S. Senate for its leadership in adoption of the 1996 amendments to the Magnuson-Stevens Act to improve safety and conservation, including control of wasteful bycatch and initiation of habitat protection measures.

The ACC applauds the U.S. Senate initiative for the enactment of the American Fisheries Act in 1998, which frameworked an innovative harvester and processor catch history-based quota share program for the Bering Sea pollock fishery. The negotiated framework contained in the act had the inherent resource life-saving and economic benefits of an ITQ program.

Having said that, I would like to just divert for a minute at Senator Stevens' suggestion for some input on some ideas in terms of John Iani's suggestion for a direct appropriation. He was searching

for an amount. I would like to just sort of briefly respond and suggest somewhere in the neighborhood of $30 to $40 million in a direct appropriation.

The source of that, the Alaska Crab Coalition and another nonprofit group called the Crab Group worked very intensively on a business plan for a crab buy-back program under section 312 of the act, and at that time the industry was asking for $60 million in an industry-funded buy-back, so the industry cannot afford that now. We are suggesting maybe a $30 million appropriation.

Also, another suggestion, to open up title 11 to allow individual vessel owners on a vessel-by-vessel basis to access title 11 loan money for the sole purpose of purchasing vessels to retire the vessels on an individual basis, but allow the transfer of the catch history to be used in a council-authorized co-op program. This would enable down-sizing of the fleet, but provide an incentive for individual vessel owners to purchase the vessels out of the fishery. This is kind of a spin-off from the AFA.

Thank you very much for the opportunity.

[The prepared statement of Mr. Thomson follows:]

PREPARED STATEMENT OF ARNI THOMSON, EXECUTIVE DIRECTOR, ALASKA CRAB COALITION

The Alaska Crab Coalition (ACC). is a trade association which represents the owners of 55 Bering Sea crab vessels and a similar number of service and supply companies. The ACC submitted extensive written comments to the Subcommittee for its Washington D.C. Hearing on July 22, 1999. Reiterated below are key points from that statement.

- The ACC compliments the U.S. Senate for its leadership in adoption of the 1996 amendments to the MSFCMA for improved safety and conservation, including control of wasteful bycatch and initiation of habitat protection measures. The 1996 safety, bycatch and habitat protection provisions had their origins in the proposals of the ACC, FVOA and DSFU.
- The ACC applauds the U.S. Senate initiative for the enactment of the American Fisheries Act in 1998. which frameworked an innovative harvester and processor, catch-history-based quota share program for the Bering Sea pollock fishery. The negotiated framework contained in the Act has the inherent resource, life-saving and economic benefits of an ITQ program, otherwise barred from implementation by the 1996 moratorium on new ITQ programs.
- Since 1996, three of the five major Bering Sea crab fisheries available to the fleet have been closed for low abundance, with the major one, opilio crab, scheduled for likely closure in 2001, and the Bristol Bay king crab fishery in a low and questionable stock status.
- Although many in the commercial fishing industry today are promoting the need for research as the key to sustainability in fisheries, ACC members' experience over the last twenty-five years with research into crab life cycle issues leaves them pessimistic about the productivity of science. New scientific research in crab, unless it is incorporated within a revitalized management structure—ITQs or co-operatives, will contribute little towards rebuilding and sustainability.
- ITQs or co-operatives can provide the single most effective means of promoting safety, resource conservation, and habitat protection through reduction of what is now excessive capacity to sustainable levels. The widely publicized hazardous race for crab could be brought decisively to a close. As recently as 1999, 7 lives were lost in the Bering Sea crab fisheries.
- Longer soak times for pots would allow juvenile and non-legal female crabs to "sort out" on the ocean bottom through escape mechanisms in the gear In a slower-paced fishery, there would be fewer potlifts, thus reducing bycatch mortality due to exposure of juvenile and female crabs to multiple captures, on-deck handling, changes in water temperature and to predation in a weakened condition.

- Under the existing regime, managers are restricted to reducing pot limits, to counteract overcapacity and to slow the pace of the crab fisheries. However, this exacerbates directed fishing mortalities and precludes the likelihood for rebuilding stocks that might be presented by changing climatic and oceanographic conditions.
- In conclusion, the ACC is encouraged that, at the July 22nd 1999 Senate hearing, in written testimony, the chairmen of all eight of the regional councils called for termination of the ITQ moratorium.

Senator SNOWE. Thank you. We appreciate it.

Mr. EGAN. John Gauvin, and then Morgan Crow.

STATEMENT OF JOHN GAUVIN, DIRECTOR, GROUNDFISH FORUM

Mr. GAUVIN. Tank you, Senators Snowe and Stevens, for the opportunity to make a few comments.

I am John Gauvin, and I am the director of the Groundfish Forum. We are flatfish fishing boats in the Bering Sea, and our group is principally involved with development of bycatch reduction methods for our fisheries.

I would like to talk a little bit about essential fish habitat and the existing mandate in the act. I do agree with earlier comments that their mandate is too broad. They should focus it on the essential part of essential fish habitat. That has been covered, but a couple of other things that I thought were worth mentioning, there is a body of information about the impacts of fishing gears. It is mostly about trawls and dredges. It is inadequate, and most of it was developed at a time before side scan sonar was widely available and the techniques were really there that exist today.

I think one of the things Congress could do is put some money toward development of empirical research, because I think that is what is going to help further our understanding and make the intelligent decisions on the effects of fishing gear on fish habitat, which is very important to the future of this industry.

I will tell you that our group is involved in funding some of this research. It is incredibly complex. The experimental designs to be able to control for natural disturbance are overwhelming, but this is what has to happen if we are going to understand what fishing gears are doing, and I believe that to put this mandate in without funding is not going to result in a good debate over the effects of fishing gears, so I encourage you to do that.

Second, I would like to see the act include language that would take out the allocation agenda aspects of essential fish habitat that I think is sort of playing out as this mandate gets implemented. What I mean by that is, a competing gear group, if there is available information on one gear group that suggests there may be some implications of the gear on habitat, to use essential fish habitat to further that aim, rather than really getting at the goal of essential fish habitat, which is to protect the habitat.

I think that some standards should be put in for peer-reviewed science to be used. I think it should say up-front that if there are problems with a gear type, that it does not necessarily follow that that gear loses its allocation of fish. There should be an opportunity to modify that gear to address the issues with the gear, or suggest where that gear can be fished, or the type of habitat that would be appropriate for that gear.

Thank you very much for your time.

Senator SNOWE. Thank you very much.

Mr. EGAN. Morgan Crow, and then Thorn Smith.

STATEMENT OF MORGAN CROW, COASTAL VILLAGES

Mr. CROW. Good afternoon, Madam Chairman. My name is Morgan Crow. I work for Coastal Villages. We had intended to have our president deliver this speech. He called this morning from the village and they are having rains there and planes cannot land. Therefore I am going to read his message.

Our president's name is Fred K. Phillips from Guidamuk. This is his thing that he faxed in to me this morning.

It is my firm belief that the CDQ program is working, and working well.

Senator SNOWE. Could you speak into the microphone?

Senator STEVENS. Pull the mike toward you.

Senator SNOWE. We cannot hear you.

Mr. CROW. HOW IS THAT?

Senator SNOWE. That is great.

Mr. CROW. It is my firm belief that the CDQ program is working, and is working well. It is succeeding in achieving the goals that were set out at its inception by the North Pacific Fisheries Management Council in 1991, and it was placed into Federal law as part of the Magnuson-Stevens Act in 1997.

On behalf of our member communities, I want to thank you for your leadership in supporting this program, and look forward to its continued development in the future. Coastal Villages is providing many of the tangible benefits from the program directly to the residents of its member communities, employment opportunities, training, scholarship programs, and the development of operating fishing businesses in our communities.

In addition, I would like to highlight some of the programs that we believe are unique to CVRF that will soon be seen as some of the extraordinary benefits to come from this program. These include the CVRF leadership team, the Yukon-Kusokwin Delta Employers Council, and numerous partnerships with Federal, State, private, tribal, and regional entities that create and expand village-based services in the area of literacy, business education, drug and alcohol dependency and prevention, youth mentoring, home support programs, development of information technology skills and infrastructure, and community development strategic planning.

CVRF is implementing these services in collaboration with Alaska Human Resource Investment Council, the State-wide Private Industry Council work force, investment board, the Cholista Corporation, the Yukon-Kusokwin Health Corporation, Junior Achievement of Alaska, United National Indian Tribal Youth Unity, the Distance Delivery Consortium, School-to-Work Business Consortium, the University of Alaska Rural Development program, the U.S. Army Corps of Engineers, the State Departments of Transportation, Energy, and Trade and Development, the U.S. Department of Agriculture, Rural Development, and the U.S. Department of Commerce and Economic Development Administration.

Thank you for your support of the CDQ program.

Senator SNOWE. Thank you very much.

Mr. EGAN. Thorn Smith, and then Charles McGee.

STATEMENT OF THORN SMITH, NORTH PACIFIC LONGLINE ASSOCIATION

Mr. SMITH. Good afternoon, Senators. Thank you for your patience. I will try to talk fast here.

I am with the North Pacific Longline Association, and represent freezer and longliners fishing process off Alaska. Freezer longliners are owned and operated by Alaskans, Alaska Native groups, and Washingtonians. Most of the folks in our association have come up the hard way, from the back deck. We are now a group of small, independent competitive companies. We would like to stay that way. Sometimes Federal legislation aimed at stabilizing other sectors of the industry tend to destabilize ours, and I will try to explain.

There were two events in recent years that have posed serious threats to our continued existence. First is fishery interaction with the short-tailed albatross, a seriously endangered sea bird. Second is an unintended consequence of the passage of the American Fisheries Act.

With regard to the first issue, the general issue is agency responsibility in endangered species interactions. It relates to Senator Stevens' statements on research. In 1995, we were shocked to find that we had taken the short-tailed albatross on the endangered species. We had never heard of one. Our industry response was to develop regulations that are now in effect to try to prevent us from doing that.

The Fish & Wildlife Service wrote a biological opinion saying that NMFS was required in 1999 to commence research to figure out whether these methods worked. I was shocked to find later on, talking to NMFS staff, that NMFS had not budgeted any money for this research. I was concerned that that would give rise to a cause of action and litigation that could have dire consequences for our industry, so I joined with Ed Melville of the Washington Sea Grant, later with Ed Alverson, and we flew together a program by getting a bunch of small grants out of NMFS and Fish & Wildlife.

We now have a program which we hope is meeting the obligation of the biological opinion, but it is a very difficult process. We are still dazed and confused as to why no Federal agency had undertaken this work a long time ago.

The Endangered Species Act is a drop-dead act. There is no consideration, as you know, of the impacts on human activities. Given that, it is reasonable to expect the industry to participate in mitigative activities with respect to endangered species, but somebody in the Federal Government has got to shoulder the burden of figuring out how this gets done.

We think in the course of Magnuson act reauthorization, since the Endangered Species Act is not going to be amended in the near term, as near as we can tell, that usually require that NMFS as steward of the fisheries identify potential commercial fisheries endangered species interactions, and perform the basic hands-on at-sea research necessary to discover what fishing techniques and equipment will mitigate those interactions with minimal impact on

the fisheries, long before we get to the point where lawsuits are filed.

We note that NMFS has spent millions of dollars trying to mitigate trawl bycatch. We think they should be doing the same thing for longliners.

As far as co-ops are concerned, which is our second concern, the co-ops that were created in the American Fisheries Act have created a new race for fish in our fishery, people trying to get into our fishery because it is basically an open access fishery. There is a license limitation program, but it does not protect us.

We tried to get protection in the act because we knew the co-ops were going to cause this. The Senate told us to go to the council to get side boards. We did that. The council twice voted emergency rules to protect us. The Secretary of Commerce has twice refused to implement those rules.

A week ago, the council voted 9 to 1 to reaffirm its intention that these protections be implemented by emergency rule, and we are now waiting, still, to find out whether the Secretary of Commerce will do it.

With respect to co-ops, there is one thing we are concerned about, and that is that within a fairly uniform group like ours, that you do not allow cherry-picking, or you do not change the law so that we can have cherry-picking or what Kevin O'Leary calls highliner co-ops. We do not want small subgroups within a fishery to be able to go out because they have got more catch within a certain period, or whatever. Small, little co-ops form a little co-op and basically screw the rest of the guys.

If you allow that to happen, if you change the law, you are going to end up with that same rear view mirror effect that Rick Lauber was talking about. You are going to end up with a lot of people who get crunched. Better to require that everybody get in that room for 150 hours and negotiate on a level playing field, and at least the weaker players will have some chance of coming out with something, whether it is a long-term buy-out, or whatever.

Thank you very much.

Senator SNOWE. Thank you.

Mr. EGAN. Charles McGee. After Charles will be Mark Lloyd, and then Tammy Schrader.

[The prepared statement of Mr. Smith follow:]

PREPARED STATEMENT OF THORN SMITH, NORTH PACIFIC LONGLINE ASSOCIATION

Mr Chairman, members of the Senate, thank you for the opportunity to speak with you today. The North Pacific Longline Association represents freezer-longliners that harvest groundfish in the waters off Alaska, processing and freezing their catch at sea. Most of our owners and operators have worked their way up from the back deck in the traditional manner—we are now a group of small, independent and competitive companies—and we want to stay that way.

In recent years two events have posed serious threats to our continued existence: fishery interaction with the short-tailed albatross, and passage of the American Fisheries Act. We are hopeful that you will be mindful of these occurrences as you proceed with reauthorization.

AGENCY RESPONSIBILITY IN ENDANGERED SPECIES INTERACTIONS

In 1995 our industry was shocked when we found we had taken a short-tailed albatross, an endangered species. Neither the United States Fish and Wildlife Service (USFWS) nor the National Marine Fisheries Service (NMFS), responsible for

seabirds and for regulating fisheries respectively, had given us warning. Our response was to develop a set of regulations to minimize seabird bycatch, that are now in effect. USFWS then wrote a biological opinion which required NFMS to commence research to test the effectiveness of these regulations during 1999. In 1998 I discovered to my surprise that NMFS had not budgeted funds for the research.

There followed a dizzying chain if events in which a researcher from Washington Sea Grant, another longline representative and myself developed a modest research program by obtaining an inadequate Saltonstall/Kennedy grant, exempted fishing permits, small grants from USFWS and NMFS. We are now meeting the obligation of the biological opinion, but would like to be testing many more applications. In my view a NMFS failure to undertake the research might well have provided a legal cause of action with dire potential consequences for our fishery.

The Endangered Species Act provides no balancing test between the interests of the species involved and the impact of regulation on human activity—it is a drop-dead statute, and amendment in the near future seems unlikely. While it is reasonable to expect industry to participate in discovering ways to mitigate endangerd species interactions it is entirely unreasonable to expect a tiny fleet like ours to do basic research on a worldwide problem. So long as our environmental statutes maintain their current posture (we have no problem with the protection of endangered species), the Magnuson/Stevens Act should require that NMFS, as steward of the fisheries, identify potential commercial fisheries/endangered species interactions and perform the basic hands-on at-sea research necessary to discover what fishing techniques and equipment will mitigate those interactions with minimal impact on the fisheries—long before lawsuits are filed. Alternatively (or perhaps better), NMFS should be required to provide adequate funding for those willing to take the initiative—undoubtedly this would require additional NMFS funding. NMFS has spent millions trying to mitigate trawl bycatch. Why not expend equal sums when longliners have a problem with an endangered species?

THE AMERICAN FISHERIES ACT—NO CHERRY-PICKING CO-OPS

Among the unintended consequences of the American Fisheries Act is a race to establish catch history in the BSAI fixed gear fishery for cod, by those who have no real dependence on the fishery (exacerbated now by a crab stock crash). The theory is that a "co-op" may be established in the future, based on catch history, and everyone needs to race to get one. We were not allowed to participate in the development of the Act, and when we realized that it posed a threat to us, we asked that language be included in the Act to protect us from just this threat. We were told to go to the North Pacific Fishery Management Council. We did, and twice the Council recommended emergency rules to freeze the BSAI fixed gear cod fisheries at historic levels. Twice the Secretary of Commerce disapproved those rules. We are now awaiting with bated breath the secretary's response to a recent Council reaffirmation of its earlier intent.

The sudden race for "co-op" catch history has placed us in serious jeopardy, and makes us ask what other legislative changes might have such unanticipated consequences. One which occurs to us is this: the NOAA Office of General Counsel has offered the opinion that absent a chance in legislation, NMFS cannot allocate "catch history" to sub-groups within fisheries. This is exactly as it should be. "Cherry-picking co-ops" raise the specter of groups of fishermen gathering in smoke-filled rooms calculating what qualifying years might be selected so that they can form a small co-op claiming the lion's share of their fishery's quota. Twenty per cent of the vessels could quite possibly walk away with forty percent of the quota, leaving the rest of the vessels to wither on the vine. Good continuing public policy would provide a level plyaing field so that all vessels in a fishery must be included in a co-op. In that manner those whose recent catch histories have suffered because of mechanical failure or for many other reasons will have some bargaining power and a chance to survive.

In summary, we hope that in the course of reauthorization you will impose a specific requirement that NMFS identify potential endangerd species interactions in the fisheries it regulates, and undertake hands-on at-sea research to ameliorate the problems; and that you prevent the development of "cherry-picking co-ops."

Thank you again for your attention.

STATEMENT OF CHARLES McGEE, ANCHORAGE, ALASKA 99524

Mr. MCGEE. My name is Charles McGee, for the record. On there is my post office box address, Anchorage, Alaska, 99524, and what you are looking at is a mathematical description of what a star

looks like when it goes through Kodiak. Now, that was copyrighted in 1992, and I called it on my sign-up, In the Wake of IFQ's.

Now, I was commercial fishing out of Kodiak. I have been in commercial fishing for many years prior to the IFQ's. In fact, I recorded in the State of Alaska, Juneau, incorporated an independent commercial fishing association in 1979, and I took my proposal, my business plan to Lydia Silcraig, professor of program planning and business development, University of Alaska, and she gave me an A plus. I was the only one who received any kind of grade, bothered to take a grant rating course to begin with, and then submitted that underneath Stevens' support through that foundation that was run by Mrs. Henpeel down in Juneau under that foundation structure.

So from 1979, that fell flat because the proposal was essentially too good, and so then I went and got on-the-deck support for commercial fishing with salmon, prior to IFQ's there, limited entry permits, and then I went into Grey cod and halibut, and that was prior to IFQ's at that point.

Then I went beyond that, once I got out of that industry because of the injuries sustained on the boat, wanting to get back to it, because then I realized there was much more draconian measures going on with the insurance industry, and so I went into investigating that aspect of it because of my sustained injury.

I present all this to you because this is a Senate Committee on Commerce, Science, and Transportation, and I have not yet received a notice of consideration for a Nobel peace prize, and I cannot submit my own nomination. It has to be a professor or a Senator, any Senator, and of course that would give me the notoriety of achieving something that they have been trying to do for, oh, 100 years, to figure out the theory of everything. This is how all carbon-based life form came into being.

I present this as a matter of record to Senator Snowe, and I will make a copy for Senator Stevens, and I also gave a copy to a commissioner representing the Securities and Exchange Commission, indicating to him, and giving him some background information that the State of Alaska, or its collective manipulative attitude in controlling resource development has been very bad to me.

Senator SNOWE. Well, thank you very much.

Mr. EGAN. Mark Lloyd, and then Tammy Schrader, followed by Jack Stern.

STATEMENT OF DR. MARK LLOYD, EXECUTIVE DIRECTOR, ALASKA SEA LIFE CENTER

Dr. LLOYD. I am Dr. Mark Lloyd. I am the executive director of the Alaska Sea Life Center, and I certainly want to thank Madam Chair, Senator Snowe, Senator Stevens and the committee for allowing me to say a few words. I will try to make my comments very brief.

I am no fisheries expert. I am a relatively new Alaskan resident, but I did spend about 6 years as a conservation management individual in New England, and at that time there were numerous fisheries issues, including the management of George's Bank, which indirectly and directly affected the management of the entire

region, and so I feel like I am kind of back in that arena again, even though I had no plans to be here at that time.

Many individuals and organizations represented right here today have supported the institution where I work now, but the single key issue I think here today is information. We need more information on the marine ecosystem. For example, obviously the EFH designation, what are the essential habitats, and the direct impacts and social issues that go along with it.

I simply want to encourage broadbased support from all of you on marine research, not only at the Alaska Sea Life Center, but also institutes of marine sciences, various governmental entities, and others, both public and private, to collect that data in order to minimize redundancy of people reinventing the wheel in different places.

Our institution collaborates with the parks department, with NMFS, NOAA, with universities, and to disseminate data throughout those organizations as well as to the general public.

I am sort of glad to say that the Sea Life Center is actually turning away research projects because of the physical facility limitations and the fiscal constraints upon our institution. The demand is overwhelming. It is really a good thing to see that that many people are looking into the marine ecosystem and what is going on there. We need that information.

But we are now challenged to accept new projects on halibut, on cod, on invertebrates such as crabs, and we have to balance those physical limitations and those fiscal restraints in order to achieve those goals, but I simply want to encourage support of all scientific research to evaluate the ecosystem management and the social implications thereof.

Thank you very much.

Senator SNOWE. Thank you.

Mr. EGAN. Tammy Schrader, and then Jack Stern, followed by Michael O'Callahan.

STATEMENT OF TAMMY SCHRADER, SMALL BOAT HALIBUT FISHERMAN

Ms. SCHRADER. My name is Tammy Schrader, and I am a small boat halibut fisherman from Homer. I have purchased every halibut IFQ that I own. My partner was given an initial allocation, and he has since purchased additional quota through loans. We fish from Homer to Dutch Harbor for halibut.

We feel that the current IFQ program is a better system of management than the previous scheme for the following reasons. Number 1, it is better for the resource. Gear conflict and gear loss, with resultant wastage of halibut, is a nonissue.

Number 2, the market for halibut has given a resounding yes. Our buyer did not buy halibut pre-IFQ. Fresh fish is now the cornerstone of his business, and he actively seeks halibut throughout the entire season. His company is one of the 500 fastest-growing companies, according to Inc Magazine, November 1999.

Number 3, each fisherman and processor has equal opportunity to participate. For fishermen, both entrants and long-time participants, loans are available due in large part to a stable system of management if you would like to buy more quota.

Number 4, safety was increased immensely by eliminating the Derby-style fishery and the race for the fish. This benefit is a measure that cannot be quantified.

Number 5, the current form of the program affords both fishermen and processors much opportunity to deliver a better product for a better price.

In conclusion, I feel that the system may be refined, but I feel very strongly that it would not be good to do a wholesale revamping of the program. We are small boat fishermen who have made this work for us through loan purchases. Keep the current equal assess through all participants, and do not create special classes of IFQ holders.

Thank you.

Senator SNOWE. Thank you.

Mr. EGAN. Jack Stern, and then Michael O'Callahan.

STATEMENT OF JACK STERN, ATTORNEY, TRUSTEES FOR ALASKA

Mr. STERN. Thank you, Senator Snowe and Senator Stevens. My name is Jack Stern. I am an attorney with the environmental law firm, Trustees for Alaska. We, along with Earth Justice Legal Defense Fund, represent Greenpeace, American Oceans Campaign, and the Sierra Club in the Stellar sea lion litigation. I am here today on behalf of Greenpeace, and I would like to say it is a privilege to be here.

I would like to emphasize today our view that there have been serious problems with the Magnuson-Stevens Act, particularly the Sustainable Fisheries Act implementation by NMFS and the North Pacific Council.

If I may, I would like to introduce into the record a letter which was sent by our clients to NMFS last week that details these problems, particularly with respect to overfishing. As the letter points out, NMFS has failed to implement minimum stock size thresholds and appropriate harvest control rules, as required by the Sustainable Fisheries Act amendments. Furthermore, NMFS has failed to identify maximum sustainable yield and optimum sustainable yield, MSY and OSY, for individual fish stocks although this is a basic tenet of MSY management.

While we have serious reservations about whether MSY management adequately takes into account the protection of marine ecosystems, the fact remains that NMFS is not even complying with the system that the law mandates now. As a result, we think that serious problems of overfishing are being overlooked here in the North Pacific.

Under the current overfishing definition, for instance, for groundfish, a stock would not be declared overfished until it reached 5 percent of MSY, which is roughly 2 percent of virgin biomass. This is a frighteningly low biomass level, one that would probably justify an ESA listing.

By not having MSST's, the North Pacific avoids having to declare a fish species as overfished, and we have seen what has happened with MSST's in the crab fisheries, and we think that there would be similar results for other groundfish species should appropriate MSST's be put into place here.

As to EFH, we would echo what Paul Seaton of AMCC said and note that NMFS made a deliberate decision not to attempt to comply with EFH mandates during the statutory time period.

Finally, with respect to bycatch I would note that we have pointed out numerous times that NMFS and the council have failed to take adequate measures to avoid bycatch. NMFS relies on the IRIU full retention program, forgetting to note that this program was put into place prior to the SFA amendments, at least in the Bering Sea, and therefore is not sufficient to meet the more stringent standards of SFA.

To summarize, we see serious problems with each of the three main areas of the SFA amendments, and we urge you to strengthen those mandates during reauthorization.

I have 20 copies of the letter. Should I——

Senator SNOWE. Yes, you can give the letters to us and we will include them in the record.*

Mr. EGAN. Michael O'Callahan. Is Michael O'Callahan here? That concludes the list.

Senator SNOWE. Thank you. Senator Stevens, I want to thank you again for your hospitality in extending this invitation to the Subcommittee. I want to thank all of you in the audience, the witnesses, and those who have testified at the open microphone session. Your insights and views will be very helpful as we undertake the reauthorization of the Magnuson-Stevens Act in this session of Congress.

This process does not stop here. Please do not hesitate to submit information to the Subcommittee. In fact, I will ask unanimous consent to hold the record open for the next 10 legislative days so that people can submit information and statements for the Subcommittee record.

[The prepared statement of Mr. Asicksik follows:]

PREPARED STATEMENT OF EUGENE ASICKSIK, PRESIDENT AND EXECUTIVE DIRECTOR, OF THE NORTON SOUND ECONOMIC DEVELOPMENMT CORPORATION

Madame Chair and members of the Subcommittee, I am Eugene Asicksik, the president and executive director of the Norton Sound Economic Development Corporation (NSEDC).

In 1976 when Congress enacted the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the fishery resources of the Bering Sea were being harvested nearly exclusively by foreign fishermen. The MSFCMA instructed the North Pacific Fishery Management Council (NPFMC) and the Secretary of Commerce (Secretary) to regulate the Bering Sea fishery in a manner that would reduce, and eventually eliminate, foreign fishing by encouraging fishing by United States fishermen.

In accomplishing that objective, MSFCMA national standard no. 4 directed the NPFMC and the Secretary to allocate fishing privileges in the Bering Sea fishery among United States fishermen in a manner that would be "fair and equitable" to *all* such fishermen. However, by 1991 the NPFMC realized that it and the Secretary's regulation of the Bering Sea fishery had not afforded fishermen who reside in small western Alaska communities "fair and equitable" fishing opportunities. To conform its regulation of the Bering Sea fishery to the nondiscretionary "fair and equitable allocation of fishing privileges" national standard no. 4 requirement, in 1991 the NPFMC established, and in 1992 the Secretary by regulation began implementing, the western Alaska community development quota program (CDQ program).

The NPFMC and the Secretary initially allocated 7.5 percent of the total allowable catch (TAC) of Bering Sea pollock to the CDQ program. In 1991 and 1996 the

* The information referred to was not available at time of printing.

NPFMC and the Secretary expanded the CDQ program to include a percentage of the TACs and guideline harvest levels, first of halibut and sablefish, and then of crab and other groundfish species. In 1996, Congress amended the MSFCMA to mandate the Secretary to establish the CDQ program and to allocate a percentage of the TAC of each Bering Sea fishery to the program. In 1998 Congress enacted the American Fisheries Act, which increased the percentage of the TAC of Bering Sea pollock allocated to the CDQ program from 7.5 percent to 10 percent.

In 1992 the 56 communities that initially were eligible to participate in the CDQ program organized six CDQ groups. In northwestern Alaska, fifteen communities on the Seward Peninsula and surrounding Norton Sound (which collectively have a population of more than 7,000 residents) organized NSEDC. NSEDC then applied to the Secretary for a percentage of the 7.5 percent of the TAC of Bering Sea pollock that had been allocated to the CDQ program, and was awarded 20 percent of the 7.5 percent. Today, NSEDC annually harvests 22 percent of the 10 percent of the pollock TAC that has been allocated to the CDQ program.

The opportunities arising from NSEDC's ability to harvest a share of the percentage of the TACs of pollock and other Bering Sea fisheries that have been allocated to the CDQ program are of significant economic value. NSEDC has used the revenue it has derived from those harvest opportunities to fund a variety of activities that benefit residents of NSEDC's member communities, including employment and job training and placement. NSEDC has funded near-shore salmon and other fish processing and marketing, as well as salmon restoration projects and other fisheries development activities. NSEDC also has created, and is constantly enlarging, an education, training, and scholarship endowment, which reflects NSEDC's recognition that investing in the people who reside in its member communities, and particularly the communities' teenagers and young adults, is key to improving the long term economic future of the Seward Peninsula and Norton Sound region.

NSEDC also has invested in income-producing assets outside its member communities that generate revenue which NSEDC then expends in its member communities. NSEDC has purchased a fifty percent ownership interest in Glacier Fish Company, a fishing company that owns two midwater catcher-processor vessels and a freezer longline vessel, which the company operates primarily in the Bering Sea. NSEDC's ownership interest in Glacier Fish Company annually brings capital that would not otherwise be available into the Seward Peninsula and Norton Sound region. NSEDC believes that, in the years ahead, that annual in-flow of capital will be another key component of regional economic self-sufficiency. To accelerate that process, NSEDC intends to purchase additional equity interests in the Bering Sea fishing industry.

As the CDQ program was conceived, and as it today continues to operate, each CDQ group periodically prepares a community development plan (CDP) that requests that the Secretary award the group a share of the percentage of the TAC of a Bering Sea fishery that has been allocated to the CDQ program. A CDP describes how the CDQ group that submits it will harvest the requested share and how the group will use the revenue earned from the harvesting to provide economic development and social benefits to the western Alaska community or communities that organized the company.

As the CDQ program was conceived, the Secretary evaluates the six CDQ companies' CDPs, after which he, as an exercise of his administrative discretion, apportions the percentage of the TAC of a Bering Sea fishery that has been allocated to the CDQ program among the six companies however he deems appropriate. But the Secretary's regulations require the companies to first submit their CDPs to the Governor of Alaska. The regulations then require the Governor to transmit the CDPs and his recommendations regarding their approval to the Secretary. *See* 50 C.F.R. 679.30(d).

The Secretary routinely accepts and implements the Governor's recommendations.[1] The practical consequence of the Secretary doing so has been to delegate the

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[1] The National Academy of Sciences' report on the CDQ program describes the Governor's *de facto* control over the apportionment of CDQ allocations among the six CDQ groups as follows:

The CDPs are] submitted [by the groups] to the State of Alaska, which reviews the plans for compliance with federal and state guidelines and may return a plan for revision if pertinent information is missing. The state [i.e., the Governor's staff] recommends allocation to the governor, who has the option of changing it. Once the state has decided on an allocation, the [NPFMC] is consulted. Although the National Marine Fisheries Service is required to perform a final review of the plans prior to their approval and authorization, this has been basically a pro forma step to date.

Report, at 63-64.

Governor *de facto* authority to exercise the Secretary's administrative discretion in the Secretary's stead.

Because the right to harvest a share of the TAC of a Bering Sea fishery—and particularly the Bering Sea pollock fishery-is of significant economic value, the CDP application process through which CDQ groups are awarded shares of the TACs is highly competitive. The competition has created a strong inducement for the groups to conform the content of their CDP applications to satisfy the perceived desires of the members of the Governor's staff who recommend to the Governor the percentage share of the TACs that the Governor recommends to the Secretary that each CDQ group should receive. Since the same members of the Governor's staff also closely monitor the ongoing business decisions and activities of the CDQ groups, the constant need for each group to satisfy the discretionary requirements of State oversight intensifies the competition between the groups and motivates the groups to engage in business activities of which they hope State regulators will approve. Conversely, it also motivates the groups not to engage in business activities of which State regulators do not approve, even if the decision to engage in a particular activity makes good business sense.

During the early years of the CDQ program the CDQ groups for the most part contracted with established fishing companies to harvest their respective shares of the TACs. Each CDQ group used its harvest contract to negotiate employment opportunities on board fishing company vessels, and used the revenue derived from the harvest to provide local economic development-related activities for the benefit of their western Alaska communities.

Because negotiating a contract with an established fishing company is a relatively simple and straightforward activity, the discretionary award of shares of the TACs to the competing CDQ groups initially did not hinder the groups' ability to operate in the time-sensitive and highly competitive international business world of which the Bering Sea fisheries are a part. However, as the size, scope, and sophistication of the business activities in which CDQ groups are involved have increased as the CDQ program has matured, policy issues relating to state and federal government involvement in the business activities of the CDQ groups have grown more complex. To provide this Congress information about both those and other CDQ program-related issues for use during its consideration of the reauthorization of the MSFCMA, in 1996 the 104th Congress directed the National Academy of Sciences to prepare and to deliver to this Congress a "comprehensive report on the performance and effectiveness of the [CDQ program]." *See* section 108(h) of the Sustainable Fisheries Act, Pub. L. No. 104-297. In 1999 the Academy delivered its report to this Subcommittee. *See* National Research Council, *The Community Development Quota Program in Alaska*, National Academy Press (1999).

After evaluating the information and conclusions in the Academy's report and reviewing the lessons learned from its eight years of participation in the CDQ program, NSEDC has identified the following CDQ program-related subject areas that it requests the Subcommittee to investigate and address.

1. Authority of the Governor of Alaska to Approve and Control Business Activities of Subsidiary Companies in Which CDQ Companies Own Equity Interests.

As the CDQ program has matured, CDQ groups have purchased varying percentages of equity interests in fishing companies. Most of those companies are the companies with whom the CDQ groups initially had contracted to harvest their respective shares of the percentages of the TACs of Bering Sea fisheries that have been allocated to the CDQ program.

For example, NSEDC has purchased a fifty percent equity interest in Glacier Fish Company. The Bristol Bay Economic Development Corporation and Aleutian Pribilof Community Development Association have purchased equity interests in the Arctic Storm and Starbound companies. And the Central Bering Sea Fishermen's Association and the Coastal Villages Regional Fund are in the process of purchasing equity interests in the American Seafoods Company.

The Secretary's CDQ regulations require the CDQ groups to include a "detailed description of all proposed CDQ projects" in the CDPs that the groups submit to the Governor, and the Governor then submits to the Secretary. *See* 50 CFR 679.30(a). The Secretary's regulations define the term "CDQ project" to mean

> any program that is funded by a CDQ group's assets for the economic or social development of a community or group of communities that are participating in a CDQ group, including, but not limited to, infrastructure development, CDQ investments, employment and training programs, and CDP administration.

See 50 CFR 679.2

The fishing companies in which CDQ groups own equity interests are entities that are separate and distinct from the CDQ groups[2]. The business activities of the fishing companies in which CDQ groups own equity interests are funded by the assets of the fishing companies, rather than by the assets of the CDQ groups. Nor are those activities "program[s] . . . for the economic or social development of a community or group of communities that are participating in a CDQ group."

For those reasons, the business activities of the fishing companies are not "CDQ projects" over which, through control of the CDP approval process and the discretion to apportion fishing opportunities among the CDQ groups, either the Governor or the Secretary lawfully may assert jurisdiction under the Secretary's CDQ regulations.

The Secretary has correctly held that, as a matter of federal law, the Governor may not impose requirements on the administration of the CDQ program that "conflict with the Federal requirements." *See* 63 Fed. Reg. 30383 (1998). Nevertheless, for the past several years the Governor has asserted that the business activities of Glacier Fish Company and other fishing companies in which NSEDC and the other CDQ groups own equity interests are "CDQ projects" as that term has been defined by the Secretary.

NSEDC believes that the Governor's assertion is inconsistent with the plain meaning of the text of the Secretary's "CDQ project" definition. Because NSEDC and the Governor's disagreement regarding the meaning of the text of the Secretary's "CDQ project" definition is legal in nature, NSEDC requested the National Marine Fisheries Service (NMFS) to ask its attorney, the Office of NOAA General Counsel, to issue a legal opinion regarding the subject. NMFS made the request, and the legal opinion is being prepared.

Whatever the opinion's conclusion, it is appropriate during its reauthorization of the MSFCMA for the Subcommittee to consider, and to then reach its own view regarding, the policy implications for the CDQ program of treating the business activities of fishing companies in which CDQ companies own equity interests as "CDQ projects" that are subject to the Governor's oversight and control. After considering those implications, NSEDC recommends that, as a matter of national fisheries policy, the fishing companies in which CDQ groups own equity interests should be allowed to compete in the Bering Sea fishing industry without having to subject their business decisions and activities to prior review and approval by the Secretary or the Governor through the CDQ program.

2. Issues Relating to Congress' Native American Self-Determination Policy.

The CDQ program affords all residents of eligible western Alaska communities an equal opportunity to participate in, and to derive benefits from, the CDQ program. However, as Senators Inouye and Stevens in 1996 explained to the Senate during its consideration of the Sustainable Fisheries Act, Congress amended the MSFCMA to direct the Secretary to establish the CDQ program because a majority of residents of the eligible communities are Alaska Natives for whose economic and social well-being Congress, under established principles of federal Indian law, has a special fiduciary responsibility. *See generally* 142 Cong. Rec. S10820-24 (daily ed. Sept. 18, 1996).[3]

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[2] It is a blackletter rule of law that:

A corporation is a legal entity, separate and distinct from its shareholders, officers, and directors, *and, generally, from all other corporations with which it may be affiliated.* It possesses a legal entity separate and distinct from its owners, regardless of whether such owner is another corporation, a group of individuals, or a single individual. (emphasis added).

18 CJS Corporations, section 8 at 273. *Accord, State, Dept. of Rev.* v. *Alaska Pulp America,* 674 P.2d 268, 275 (Alaska 1983) (Alaska Supreme Court holding that "courts refuse to look through the corporate veil and consider separate corporations a single unit even when inter-corporation transactions are mere bookkeeping entries" and "even if commonly owned and managed"); *Croxtion* v. *Crowley Maritime Corp.,* 817 P.2d 460, 466 (Alaska 1991) (holding that "The entire point of the corporate veil doctrine . . . is that form *does* prevail over substance") (emphasis in original).

[3] In pertinent part, Senator Stevens informed the Senate that the provisions for the community development quotas are based in part on the authority of Congress to regulate the commerce of the Indian tribes. The communities of the west coast of Alaska are predominately Alaska native people. They were there and fishing a long time before anyone else came on the fishing scene . . . We are allocating a portion of the fisheries to the communities involved that are historic native communities along our coast.

142 Cong. Rec. S10824 (daily ed. Sept. 18, 1996). *See also Alliance Against IFOs* v. *Brown,* U. S. District Court for the District of Alaska, No. A93-480 CIV, Transcript of Order Granting Motion for Summary Judgment (Dec. 19, 1994) (holding that Secretary was authorized to create the CDQ program by regulation because the Secretary "has substantial authority, without vio-

Continued

Since 1970 the hallmark of Congress's Native American policy has been a commitment to Native American self-determination and to affording Native Americans maximum participation in the administration of federal programs that have been implemented for their benefit. But for reasons more of happenstance than design, the Governor has been *de facto* authorized to exercise oversight authority over the activities of CDQ groups that contravenes Congress's Native American self-determination policy.

Still, NSEDC believes that the exercise of oversight authority may be appropriate if it reasonably and practicably furthers an appropriate governmental interest. In the past, two governmental interests have been advanced. The first is the interest that CDQ groups make informed and financially prudent business decisions regarding the use of their CDQ allocations. The second is the interest that the business decisions of CDQ groups advance achievement of community economic development and social objectives.

With respect to the first interest, the Governor's staff does not necessarily have business and financial technical expertise that the staffs of the CDQ groups do not. With respect to the second interest, oversight which has the effect of allowing the Governor's staff to substitute its judgment for the judgment of members of the boards of directors of the CDQ companies regarding how best to provide economic development and social benefits derived from the CDQ program to the residents of western Alaska communities is an approach that Congress abandoned when it established its Native American self-determination policy.

For those reasons, NSEDC believes that Congress should revisit the manner in which the Secretary and the Governor oversee the business and other activities of CDQ groups.

3. The Need for an Identifiable and Judicially Enforceable Standard for Apportioning the Percentage of the TAC of a Bering Sea Fishery That Has Been Allocated to the CDQ Program Among the CDQ Groups.

The Secretary's regulations delegate the Secretary administrative discretion to apportion shares of the 7.5 or 10 percent of the TAC of a Bering Sea fishery that has been allocated to the CDQ program among the six CDQ groups. The Secretary's regulations also delegate the Governor administrative discretion to fashion the recommendations regarding the apportionments that he submits to the Secretary.

Since the Secretary in practice accepts the Governor's recommendations, the Governor's exercise of his administrative discretion is determinative, and there is no timely opportunity to appeal the Governor's recommendations.

The Governor has adopted regulations that describe the procedure that governs the participation by the Governor and his staff in the administration of the CDQ program. *See generally* 6 A.A.C. 93.010 *et seq*. In August 1999 the Governor amended his regulations. Section 93.040 of the amended regulations identify twenty factors the Governor and his staff may consider in deciding the Governor's recommendation to the Secretary regarding the division of CDQ quota among the CDQ groups.

In actual practice, an administrative structure that allows a decisionmaker to make decisions by applying multi-decisionmaking criteria actually allows the decisionmaker to make decisions pursuant to no legal standard other than his or her unfettered discretion. As the National Academy of Sciences has explained regarding the CDQ program:

> Multi-criteria decision-making is difficult. As Arrow and Raymond (1986) have shown for the general case, such decision-making is troubled by two tendencies: either one criterion appears to take over as the single criterion, or decisions appear to be inconsistent. These dangers exist whether or not the analyst applies a "scoring system," which implies a single unit of measure for all of the criteria. Use of a scoring system tends to increase the probability of being inconsistent. Thus, it should be no surprise that the [CDQ companies] most affected by the application of the many criteria that the State uses find the outcome somewhat difficult to fathom.

NAS Study, at 88.

> [CDQ groups] fear that their particular allocation of a share of the total CDQ quota is highly uncertain. This uncertainty arises from a sense that the criteria used by the State of Alaska to allocate individual shares of the total quota are unclear. There is a concern that if a group is perceived by the State as receiving "too much" income their share of the total allocation may be reduced and given

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lating MSFCMA national standard four, to specifically, intentionally, and voluntarily benefit Alaska Natives if [the Secretary] spells out the fact that that is what she is doing").

> to another group with greater needs. Conversely, if a group is not performing well it may lose its share of the total allocation in the future. The committee [that conducted the NAS study] finds these various forms of uncertainty to have undesirable effects on the development strategies chosen by the various boards of directors [of CDQ companies].

Id. 74.

To remedy the problem, the National Academy of Sciences has recommended to the Subcommittee "that changes be made to simplify the criteria, in consultation with the CDQ groups." Id. 95.

NSEDC supports that recommendation.

> 4. The Advisability of Authorizing CDQ Groups to Expend Revenues Derived From the CDQ Program for Non-Fisheries-Related Economic Development Activities in Western Alaska Communities.

Although the limitation does not appear either in the section of the MSFCMA that directs him to establish the CDQ program or in his regulations, the Secretary generally has required CDQ groups to restrict the "CDQ projects" described in their CDPs to fisheries-related economic development activities. NSEDC understands that the Secretary's implementation of the restriction relies on language in the text of the *preamble* to the Secretary's regulations (which has no force of law), rather than on the text of the regulations themselves.

After investigating the result that the fisheries-related development restriction has produced, the committee that conducted the National Academy of Sciences study concluded that the restriction means that although the CDQ program has two objectives—community development and fishery development—"community development" is defined as "fishery development." The committee finds this strict requirement to be of dubious merit. Thee are, to be sure, advantages to a fisheries program that encourages continued investment in, and improvement of, fishery resources and fishing capacity. To the extent that there are viable fishery-related investments in the coastal villages that promise reasonable returns on investment, they should be pursued. However, we can foresee a time when this restriction on investment opportunities will force the CDQ [company] boards [of directors] to make investments that may not promote economic diversity and sustainability at the village level. it is also possible that the available sound fisheries investments in many villages will ultimately be exploited, in which case the restriction will force some CDQ boards to undertake less than ideal investments. A more compelling argument is that "community development" should be seen as broader than just fisheries development.

Id 75–76.

To remedy those problems, the National Academy of Sciences has recommended that

> the restriction that CDQ revenues [are] to be invested only in fishery-related activities should be removed, at least for some portion of the revenues. Many of the communities will find that fishery investments are still the ones they wish to undertake. However, since community development is broader than fishery development, funds should also be available for other activities that will enhance community infrastructure or land-based economic activity. This broadening of the allowed investments would also remove uncertainty about whether particular investments are indeed "fishery related" and thus allowable under current rules.

Id. 76–77.

NSEDC supports that recommendation.

I would like to conclude my remarks by on behalf of the NSEDC board of directors emphasizing that NSEDC very much appreciates the CDQ program and the commitment Congress made in 1996 when it amended the MSFCMA to codify the Secretary's establishment of the program to improving the lives of all residents of the Seward Peninsula and Norton Sound region. Over the past seven years the CDQ program has accomplished much. And if during the years ahead the program is allowed to fulfill its potential, it will continue to grow as one of western Alaska's most important economic development programs.

Thank you.

Senator STEVENS. With that, the hearing is adjourned.

[Whereupon, at 1:46 p.m., the Subcommittee adjourned.]

APPENDIX

PREPARED STATEMENT OF KRIS POULSEN, OWNER AND MANAGER OF THREE CRAB VESSELS

I have been a participant in the Bering Sea crab fisheries for over 30 years. I currently own and manage three crab vessels. The current crisis in the Bering Sea crab industry can only be compared to the resource collapse in the early 1980's. However, in the early 1980's, crab vessels had the opportunity to enter the emerging joint venture groundfish fisheries. Today, with the recent collapse in all the major Bering Sea crab fisheries and the beginning of limited entry in all the EEZ fisheries off the coast of Alaska, there are no new alternative fisheries for crab vessels.

The Bering Sea crab industry is grossly overcapitalized for the size of the resource. There are more than 250 vessels which have historically fished crab, and have been granted licenses. It is estimated that total revenue for vessels during 2000 will be about $75 million. That equates to about $300,000 per vessel during 2000. Unfortunately, the average vessel has historically required $650,000 per year to break-even. Obviously, many vessels are going to go bankrupt, and the stability of the most dangerous industry in the United States will be upset even more. Immediate relief is necessary in the form of a direct financial assistance from the federal government to buyout excess fishing effort in order to alleviate this disaster.

The Magnuson-Stevens Fishery Conservation and Management Act of 1996 took steps in the right direction, especially with implementation of National Standards 9 (bycatch) and National Standard 10 (safety of life at sea). However, I still find the industry to be in the same place today, in regards to both bycatch and safety of life at sea, as it was in 1996.

Bycatch of crab is a major problem in the crab fisheries, especially with the implementation of pot limits in 1992, which heightened the race for crab. By speeding up the fishery, crabs are unable to escape from the mandated escape mechanisms which crab traps (or pots) employ. What results is increased bycatch, as well as crab mortality, which has undoubtedly had a hand in the recent crash of the crab resources.

Safety of life at sea has improved very little since 1996. In fact, just last year 7 crewmembers were killed during the snow crab fishery. Innumerable injuries also occur, scarring peoples lives forever. Both problems of safety of life at sea, as well as bycatch can be dramatically reduced if the management regime were allowed to change. The current olympic style derby is bad for both the fishermen and the resource.

Congress should allow the moratorium on IFQ's to lapse, to authorize the regional Councils the proper tools to fix problems such as those faced by the crab industry. Some form of IFQ or co-operative is necessary for the long-term survival of this industry, comprised of a lot of independent small businessmen. An IFQ or co-operative will take away the race for fish and allow fishermen to avoid periods of dangerous conditions. In addition, by slowing down the fishery, the crab pots will be able to function as designed. Undersize crab will have time to crawl out before the pot is hauled to the surface again, minimizing bycatch and the impact on the crab resource.

In conclusion, the Bering Sea crab industry is in desperate need of relief in the form of reduction of capacity, due to severely low crab resource levels. However, it is also my belief that implementation of either an ITQ or co-operative is necessary to avoid resource collapses in the future. An ITQ or co-operative is also the only viable solution to the severe safety problem of the Bering Sea crab industry.

PREPARED STATEMENT OF BRISTOL BAY ECONOMIC DEVELOPMENT CORPORATION

Introduction:

The Bristol Bay Economic Development Corporation (BBEDC) is the third largest of the six CDQ groups participating in the Community Development Quota Program

(CDQ). BBEDC represents seventeen communities and their 6000 residents in Bristol Bay.

The CDQ Program has provided the only opportunity for the region, its communities, and residents to participate in the Bering Sea fisheries and bring the benefits of that participation back to the region for the benefit of the communities and their residents.

CDQ Program Issues:

We in the CDQ Program are just beginning to make a positive impact on our regions. Given time, the CDQ Program will be the most important and successful economic development tool to be made available to the residents of western Alaska. It is the last and only hope to move our areas toward self-sufficient economies. We in the remote geographic areas of the state encounter many roadblocks and barriers to the development of diverse and well established economies. The high cost of living and lack of year round employment in smaller communities, where as many as 50% of the residents live below the poverty level, documents the enormous problems facing the CDQ program participants. High costs of living, transportation and lack of modern communication tools along with relatively small and geographically dispersed populations compounds the problems that confront us.

Here in Bristol Bay and other CDQ regions, where salmon is our bread and butter, we have seen the dramatic down turn in prices and resources available to our local fishers. It is no longer possible to support our living costs with returns from salmon fishing and subsistence. Subsistence is a necessity of life in the "bush". The NAS study clearly points out the necessity of a cash economy to support and make possible the subsistence economy.

BBEDC has placed a great deal of emphasis on the development of the "Human Resources" of the region. Through the CDQ program, training and employment within the Bering Sea fisheries has provided well paying jobs for residents totaling many millions of dollars brought back to the region through wages.

Programmatic Issues:

The CDQ Program was organized to provide the maximum flexibility in project development to the individual CDQ groups, recognizing the many differences between the groups. Differences in geographic location, economic opportunities, number of residents served, and cultural and philosophical differences.

An important aspect of the program is the "OVERSIGHT" role assigned to the State of Alaska. BBEDC recognizes and fully supports the necessity and appropriateness of state oversight. Oversight provides a mechanism to ensure that the intent of the CDQ Program is met and the benefits of the program are delivered to the communities and residents of the region.

Oversight is critical to the CDQ program to insure and defend the integrity of the program from those who would diminish or destroy this program. The integrity of the program must be maintained at all cost to protect and move the CDQ Program forward.

The National Academy of Science, National Research Council Ocean Studies Board Report, mandated in the Magnasun Act Reauthorization, pointed out the *many* successes and suggestions for further improvements in the CDQ Program.

Conclusion:

Attached to this document is a copy of the Bristol Bay Economic Development Corporation's Executive Summary for the 1998-2000 CDP and the Annual Report for 1998 both which give more detail descriptions of the projects and programs undertaken by BBEDC during the past three years.

BBEDC appreciates the opportunity to address the committee and supply written information. We urge you to continue the CDQ Program as authorized at its current levels of allocation of the fishery resources of the Bering Sea. The people of western Alaska look forward to the coming years and the positive impacts the CDQ Program will have on their communities and their lives.

Respectfully submitted:
Judith Nelson
Bristol Bay Economic Development Corporation

COMMUNITY PURCHASE OF HALIBUT AND SABLEFISH INDIVIDUAL FISHING QUOTA SHARES DISCUSSION PAPER AND COMMUNITY "SET ASIDE" OF HALIBUT CHARTER INDIVIDUAL FISHING QUOTA SHARES DISCUSSION PAPER

NOTICE

Following are the Gulf of Alaska Coastal Communities' Discussion Papers regarding Community Purchase of Existing Commercial IFQs and Community "Set Aside" of halibut charter IFQ.

These documents, although approved in concept by the GOACCC Board of Directors, have been approved in their final form and may be edited prior to final approval at the May 31, 2000 GOACCC Board of Directors meeting.

Executive Summary

National Standard 8 of the Magnuson-Stevens Fishery Conservation Management Act directs that "Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts in such communities."

The Oceans Studies Board of the National Academy of Science's National Research Council (NRC) report on Individual Fishing Quotas, *Sharing the Fish: Toward a National Policy on IFQs,* explicitly recommends that "For existing IFQ programs, councils should be permitted to authorize the purchase, holding, management and sale of IFQ by communities."

Alaska's halibut and sablefish IFQ program, created prior to the adoption of National Standard 8, was not designed to minimize adverse economic impacts on smaller fisheries-dependant coastal communities in the Gulf of Alaska and, by all current indications, will not provide for the sustained participation of many of Alaska's smaller Gulf communities in the halibut and sablefish IFQ fisheries.

Existing loan programs or newly created community loan entities may help reverse current trends regarding quota share transfer and job loss. However, these approaches still focus on individual ownership and are subject to an individual's economic needs and decisions.

Community IFQ ownership provides an alternative model that could allow qualifying communities to obtain halibut and sablefish fishing rights and preserve those rights in perpetuity—similar to an endowment.

Eligible communities are defined by four criteria: 1. located on salt water (coastal); 2. fisheries dependant; 3. remote (no road access); and 4. less than 2,500 people as recorded by the 2000 census. These criteria qualify six communities in halibut management area 3B, twelve communities located in halibut management area 3A, and twenty-two communities located in halibut management area 2C.

A non-profit community development corporation or fisherman's association would be an appropriate ownership and management entity for community IFQs. The entity must be inclusive of all residents in qualifying coastal communities, native and non-native alike.

Communities should be restricted by the same ownership caps currently applied to individual IFQ holders. In addition, communities should be restricted to purchasing shares for areas in proximity to their communities. Additional limitations should be applied to halibut management area 2C and sablefish area "Southeast" and "West Yakatat".

Given community caps and geography limitations as well as market costs, it is improbable that a cumulative cap for the program is needed.

Once IFQs are purchased by the community ownership entity, they become "community fishing quota" (CFQ) and can be fished by community residents without block or vessel class distinction.

If blocking restrictions are imposed, they should not be limited in number nor more restrictive than the current ratio of blocked and unblocked shares.

Allocations within communities should primarily be determined by the community ownership entity—with each community developing its own criteria.

Communities are required to have some community residents involved in the fishing of community quota shares and cannot "lease" quota share for fishing by non-residents with non-resident crews.

Individuals should have use caps, probably in the range of 25,000 to 75,000# per individual—inclusive of privately held IFQs.

The community ownership entity remains the registered owner of community quota shares and annually notifies RAM division of its intent to transfer an amount of quota to an designated community member

Communities are free to resell their quota shares; however, upon resale quota retains its block and vessel size restrictions. (Some exceptions may apply for blocks in area 3B).

Codes of conduct will be established for the ownership entity, quota transferee and crewmembers. Administrative costs and dept service will be limited to 25% of ex-vessel value.

Sunset provisions would compromise the program's objective of creating endowment like fishing opportunities for residents of qualifying Gulf of Alaska coastal communities.

RAM division of the National Marine Fisheries Service would he the primary agency for administration and oversight of the program.

Community governing structures provide another approach to natural resource management that may enhancement the success of Alaska's halibut and sablefish IFQ program.

LETTERS WRITTEN TO HON. OLYMPIA J. SNOWE AND HON. TED STEVENS

JANUARY 17, 2000

Dear Senators:

My name is Gordon Ito and I am a lifelong resident of the Kotzebue region. I am currently a board member of the Bering Sea Fishermen's Association, a member of the Kotzebue Fish a Game Advisory Committee, a board member of the Arctic Marine Resource Commission and a tong time subsistence hunter and fisher of our regions resources.

The CDQ program which has been in affect since 1992 has been of enormous importance to the villages south of my region. The jobs and opportunities created for these villagers has meant the difference in particular for the young people who are struggling to enter into the 21st century's economy. When the program was adopted by the NPFMC many of the people of our region were dismayed that the council's adoption of a boundary excluding us from the program was upheld. We see no just reason that our exclusion from participating in the Bering Sea program be maintained into the future by federal regulation. The justification for the adoption into the program are as fitting in our region, as they are to the south. Our economic circumstances at this time are as compelling, as the reasons cited for the adoption of the program to benefit the regions to the south of us, also. At the present time our small salmon fishery is a ghost of its former economic importance to the region. Additionally, though there are other species that we may be able to promote, such promotions will take significant capital and at this time we lack that specific capital to go forward and attempt to market these underutilized species in our region. We believe our inclusion into the CDQ allocation program administered by the state under direction by the NFMS and the NPFMC is the vehicle to allow not only for localized job creation but as training for our young people to pursue creative economic endeavors elsewhere.

It is clear that the money available from the pollock CDQ in particular could and would be used in our region to fully develop our other marine resources.

We are asking that the Magnuson Act amendments include a new provision including us within the boundaries of the current CDQ program. The communities of Kivalina, Point Hope, Deering, Buckland, Shishmaref and Kotzebue have asked me to provide this request to you. We will be submitting more detailed information about our communities the past reliance on the marine resources of the region and information concerning the state of our regional economy.

I hope that after reviewing our situation you will see the wisdom in allowing our inclusion in the CDQ program.

Sincerely,

Gordon Ito

JANUARY 12, 2000

Dear Sirs/Madam,

The Native Village of Kotzebue, on behalf of its 2,400 members, would like to provide testimony in support of the inclusion of Point Hope, Kivalina. Kotzebue, Buckland, Deering and Shishmaref into the CDQ program.

The justification for this consideration is both sensible and biologically supported.

It is sensible because all coastal villages affected, potentially and practically, have some stake in the maintaining of present levels of resource populations, regardless if they have been delineated in some way. For example, the current qualification boundary for the existing CDQ program essentially qualifies "all villages south" of the imaginary boundary extending Russia-bound from Wales. There is no real practical reason for this boundary, as marine resources give no heed to boundaries.

Biologically, it is becoming evident that the continental shallows, which in this area constitutes all of the Kotzebue Sound connected to and including the Bering Sea, is a birthing area for marine resources, such as crab of several species, as well as a feeding ground for most marine mammals which feed off of the assorted resources. Since we do have ongoing studies that are indicating that this may be the case, then it makes sense to include the above Villages to be included in present and future CDQ scenarios.

In the event the North Pacific Management Council takes this testimony into consideration, we thank you.

Sincerely

Pete Schaeffer,
Executive Director

JANUARY 17, 2000

Dear members of the Senate:

On behalf of 10,000 residents, and the marine communities residing in this area, I am submitting testimony in support of amending and reauthorizing the Magnuson-Stevens Fisheries Conservation Act.

We ask for favorable consideration and inclusion into the Community Development Quota (CDQ) for these several communities in the Arctic/sub-Arctic region.

Kotzebue, Kivalina, Buckland, Deering, Pt. Hope, and Shishmaref are coastal cities in need of inclusion to foster a long-term economic development with resources familiar to our livlihood.

Through participation as communities within the jurisdiction of the Northwest Arctic Borough, North Slope Borough (Pt. Hope), and the Bering Straits region (Shishmaref), they have an opportunity to become members of Federal fisheries allocation plan that is necessary for them to regain some meaningful purpose in the state, and in waters that include Federal jurisdiction.

The Kotzebue Sound/Bering Sea-Arctic Ocean that these communities occupy must have some stake in the future activities that allow them to be part of an overall fisheries plan previously excluded to them in the past for unnecessary and overlooked reasons. This can now be corrected through appropriate legislative language in the reauthorization of the Magnuson-Stevens Fisheries Conservation Act.

Respectfully submitted,
Dennis J. Tiepelman
President/ CEO

JANUARY 14, 2000

Dear Senate Commerce Committee:

The Northwest Arctic Borough is aware that the northern boundary of the Bering Straits may have been misinterpreted in the Community Development Quota (CDQ) Program. Because it may have been misinterpreted, several Northwest Arctic Borough communities (Kotzebue, Kivalina, Deering, Buckland), a Northslope Borough community (Point Hope) and a Bering Straits Region community (Shishmaref) are left out of beneficial economic and long range fishery career opportunities that a CDQ Program provides.

The Northwest Arctic Region no longer has a thriving commercial salmon fishery. Since the latter part of the 1980's the price of chum has dropped from a high of .85 cents a pound to .16 cents a pound in 1999. The down hill spiral of prices for chum has had a profound economic impact for our 220 primary permit holders and 220 or so "deck-hand" permit holders. Not only do our fishermen suffer, but their families also feel the economic impacts of Kotzebue Sound's distressed fishing industry.

In reading the Magnuson-Stevens Act (as amended), which established the CDQ Program, there is no definition of where the northern boundary of the Bering Sea or Bering Strait ends. Since this act established the CDQ Program and has authority to define the northern boundary of the CDQ Program, the Northwest Arctic Borough is recommending to this Senate Committee, who has authority to propose

amendments to the act, to allow the Magnuson-Stevens Act to include the above communities to participate in the CDQ Program.

The CDQ Program has brought stability, jobs and economic development to other areas in western Alaska that have some of the highest unemployment rates. The Northwest Arctic Region has the highest unemployment rates in the state. Taking the annual averages from the years 1990 to 1998, the unemployment rate in the Northwest Arctic Borough for these nine years is 16.2% (Alaska Department of Labor) . A CDQ Program would definitely alleviate the unemployment in this region.

By allowing Point hope, Kivalina, Kotzebue, Buckland, Deering and Shishmaref to participate in the CDQ Program, it would not merely be adding them to the program, but it would be justice due to these communities.

Whether it be clarifying the northern boundary of the Bering Sea or amending the Magnuson-Stevens Act to include the above communities, because they do have a distressed fishing industry, it is important to allow these communities to participate in the economic opportunities that a CDQ Program provides.

The Northwest Arctic Borough strongly encourages this committee to consider adding these villages to the CDQ Program.

Sincerely,
Chuck Greene
Mayor

JANUARY 18, 2000

The Honorable Olympia J. Snowe, Chair
Subcommittee on Oceans and Fisheries of the Senate
Committee on Commerce, Science, and Transportation
Washington, D.C.
Re: Written Comments of Coastal Villages Region Fund on the Magnuson-Stevens Act Reauthorization

Dear Senator Snowe:

On behalf of the twenty member communities of the Coastal Villages Region Fund ("CVRF"), I would like to present our comments to the Subcommittee concerning the reauthorization of the Magnuson-Stevens Act. This Act provides the framework for how the fishery resources of the United States are to be managed throughout the exclusive economic zone. As such, the policies that are enacted into the law by the Congress are critical to those individuals, companies, and regions that rely upon those resources for their livelihood and well-being.

CVRF is one of the six community-based groups organized to participate in the Harold Sparck Western Alaska Community Development Program. In fact, in addition to being the one individual who conceived of the CDQ program as a way of bootstrapping Western Alaska residents into the commercial fisheries immediately adjacent to their communities, it also was Mr. Sparck who organized the Coastal Villages CDQ program.

As any independent observer will tell you, the CDQ program has met and surpassed everyone's expectation of what could be accomplished. As we near the end of the first decade of its existence, western Alaskan residents are now a part of the Bering Sea and North Pacific fisheries. Whether through employment on vessels, within fishing companies, or as owners of those companies, the CDQ program is meeting its goals. As to local and regional economic development, the program is beginning to put the pieces together where the benefits from the offshore fishing activity will provide the mechanism to create self-supporting economies in the communities. I am sure that each CDQ group will go about this process in a different manner, however, the bottom line is that without the CDQ program, there would be no tools or mechanisms available.

This brings me to the points that I would like for the Subcommittee to consider as it completes the reauthorization process.

1. The CDQ program has been included specifically in the Magnuson-Stevens Act and in the American Fisheries Act of 1999. It has been studied by the National Research Council, which concluded that it is a successful program and should be continued for the long term, if not permanently. We believe that the program has become even more successful and beneficial since that report was completed. We request that the Subcommittee enshrine the program as a permanent part of the Nation's fisheries policies.

2. In action by the North Pacific Fishery Management Council (the "Council") in1995 and in amendments to the Magnuson-Stevens Act in 1997, the CDQ program

was expanded to include all species for which there is a total allowable catch in the Bering Sea and Aleutian Islands area. Regulations implementing the statute require that CDQ harvests of target species be kept within the quotas for all species, no matter how small the allocation. This system has made it impossible to harvest a sizable portion of many of the target species. While the National Marine Fisheries Service ("NMFS") and the Council are dealing with this issue, it is our belief that for the issue to be addressed fully it will need Congressional action. We do not have a specific proposal at this time other that to identify this as an issue that needs further consideration through the reauthorization process.

3. In the joint CDQ groups' testimony presented by Larry Cotter, there is an extensive discussion of the observer requirements that have been added for the CDQ program. We agree with the points raised in those comments and would like for the Subcommittee to consider one additional point. During 1999, CVRF petitioned the Council to reduce the observer requirements on a sablefish and halibut catcher boat in which we own an interest. The justification for this petition was that when this same vessel is participating in the IFQ program there is a less onerous observer requirement. In addition, CVRF agreed to some additional restrictions to meet the legitimate needs of NMFS in regard to harvest of prohibited species and discard of unwanted bycatch. Upon consideration of this request, the Council twice approved the petition and twice it was denied by NMFS. We believe that the observer requirements, in some cases, are onerous given the amount of harvest on a particular vessel and the precedents set in the management of the IFQ program. We request that the Subcommittee review these requirements and reduce the burden on this aspect of the CDQ harvest.

4. CVRF has been a supporter of the concept that revenues from the CDQ program be invested in the fishing industry. While the CDQ groups have a monumental charge—creating a self-sustaining economy in their respective regions—accomplishing this solely through investment in fisheries-related projects is not feasible. In our view, investments outside the region in the fishing industry (offshore fishing boats, shoreside seafood facilities located outside the region, etc.) will provide the financial ability to create self-sustaining economies in the groups' regions that are based in part on fishery-related industries and in part on other economic activities. CDQ groups should be able to invest their fishery-related income into a wide-range of economic activities that together will provide the jobs and opportunities for residents of western Alaska communities. We are now reaching the point when the range of economic activities will begin to be identified and implemented. Consequently, flexibility to support the various choices needs to be available to the CDQ groups.

Thank you for the opportunity to present this testimony. We look forward to working with the Subcommittee as it continues its consideration of the Magnuson-Stevens Act.

Fred K. Phillip
Board President

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO REAR ADMIRAL THOMAS BARRETT

CHALLENGES IN MEETING ENFORCEMENT RESPONSIBILITIES

Question 1. In your statement, you briefly discussed the challenges you face in meeting your enforcement responsibilities under the Magnuson-Stevens Act. It has been stated that the Coast Guard is stretched thin and recruitment and retention problems are occurring throughout the service. You stated that the Coast Guard will be cutting back on routine operations to save resources for emergency situations. How are the Coast Guard's organizational problems affecting your operations in the north Pacific, including fisheries law enforcement, search and rescue, and drug and migrant interdiction? Please give examples of operations that will he reduced in the north Pacific.

Answer. Our operational reduction will require some routine patrols to he shortened or cancelled and may impact our ability to project a full-time presence along the U.S./Russia Maritime Boundary or fully monitor domestic fishing operations. There will he no planned reductions in our search and rescue response operations.

COMMERCIAL FISHING VESSEL SAFETY

Question 2. Beginning with field hearings during the 1996 reauthorization, the Subcommittee heard of the need for an increased focus on safety of life at sea. The

Sustainable Fisheries Act added National Standard 10, which promotes the safety of life at sea. It is understood that fishing in Alaska is one of the most hazardous occupations in the nation. In some fisheries, a race for fish and other conditions cause fishermen to forego needed vessel maintenance and fish in conditions that are too dangerous for their boats. Please respond to the following two questions regarding the Coast Guard's recently completed series of dockside safety boardings of crab fishing boats in preparation for the Bering Sea Snow Crab season: Did you find a significantly better or worse maintained fleet than in previous years?

Answer. The Coast Guard conducted dockside safety boardings prior to both the Red King Crab fishery in October, 1999 and the Bering Sea Snow Crab fishery from January 15, 1999 to March 23, 1999. Since this was the first operation of this type, it is difficult to compare this year's results to previous years. The information gathered during this first operation will serve as a useful data point in developing trends and conclusions about the material condition of the fleet in future years. Though not indicative of nationwide compliance trends and voluntary examination participation rates (6 percent of the total commercial fishing fleet is examined in the voluntary examination program nationally with only 3 percent of the total fleet receiving decals for compliance), the results of the operation were positive in that they indicated a large number of vessels in the targeted fisheries had current Coast Guard Commercial Fishing Industry Vessel Safety Act Decals. The Coast Guard boarded 75 out of the 250 (30 percent) vessels in the fishery and found 53 (70 percent) of those vessels had current Coast Guard Fishing Vessel Safety Exams and 73 (97 percent) had stability letters. Two vessels were found to be overloaded and three others reportedly offloaded pots when they learned of the Coast Guard's presence.

Question 3. Did you find any problems that would support the position that current fisheries regulations force fishermen to put to sea in unsafe vessels?

Answer. No. Generally, the intense competitive nature of the crab fisheries, along with the extraordinarily harsh winter conditions of the Bering Sea, dictate that only substantial, well-founded boats can economically survive in this fishery. So this is not a situation of unsafe vessels being "forced to" put to sea. Instead, the derby-type nature of the crab fisheries, or any derby fishery for that matter, creates a substantial economic penalty for those operators who chose to delay fishing or suspend operations in adverse weather. Under this system, when the quota is caught, the entire fishery is closed, leaving no reasonable way for those who choose to delay operations due to forecasted had weather to catch up. Under this situation, some fishermen may choose to operate in weather far more severe than might otherwise be prudent.

U.S.-RUSSIAN MARITIME BOUNDARY LINE: ILLEGAL FOREIGN FISHING VESSELS

Question 4. What is being done by the Coast Guard to address the significant increase in foreign fishing vessels illegally crossing the U.S.-Russia maritime boundary to fish?

Answer. In response to increased foreign fishing vessel activity, the Coast Guard dedicated additional air and surface resources to the U.S.-Russia Maritime Boundary (MB) patrol and enforcement effort in 1999. Ninety-two MB incursions were detected in 1999, a ten-fold increase over 1998. In addition to increased patrol efforts, which may not be sustainable given other mission demands, the Coast Guard is pursuing various initiatives related to the maritime boundary. Recently, the Seventeenth Coast Guard District Commander (D17), headquartered in Juneau, Alaska, met with his Russian counterpart from the Northeast Russian Federal Border Service (NRFBS) to discuss ways of improving the current situation. Discussions included possible joint patrols, formal hand-off procedures for future incursion cases, potential data sharing, and a shiprider program. The NRFBS and D17 have developed a working relationship and are actively engaged in identifying more effective means of fisheries enforcement along the MB. The Coast Guard will continue to pursue and develop this co-operative relationship. In addition, the Coast Guard continues to work closely with the Department of State to address international issues regarding the maritime boundary treaty. Finally, in an effort to increase operational effectiveness, the Coast Guard is exploring the use of non-lethal technologies as a means of stopping non-compliant foreign fishing vessels detected operating inside the U.S. Exclusive Economic Zone.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO AL BURCH

Question 1. What are your thoughts on EFJ?
Answer. It is a very dangerous piece of legislation for the harvesting and processing industry. It is so vague that the environmentalists will miss interpret and miss use it to close down large areas to trawlers first and all other fisheries later. Case in point—Marine Mammal Protection Act and Endangered Species Act lawsuits against National Marine Fisheries Service by the environmentalists because of an unproven link between sea lions and Pollock, cod herring salmon and flat fish are next.

Question 2. Has NMFS adopted an overly-broad interpretation that dilutes the original intent—that is, to protect truly essential habitat, rather than the entire ocean?
Answer. The way NMFS interprets the act is irrelevant. Anything NMFS or NPFMC does will not be acceptable to the environmentalists. The act needs to be re-written in such a manner that will protect the environment and still allow the industry to survive. Proof that an action is detrimental to the environment needs to be determined before actions are taken. The socio-economic impact studies of the proposed actions need to be in-depth and per reviewed. I am sure that any action taken now will result in more law suites than were filed under the MMPA and ISA.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JEFFREY W. BUSH

Question 1. In 1992, the North Pacific Fisheries Management Council implemented the community development quota program, or CDQ's for western Alaska. As you know, the CDQ program allocates a percentage of the annual catch of a variety of commercial fisheries directly to western Alaska villages. These villages were originally selected because of their geographic isolation and dependence on subsistence lifestyles. Therefore, the CDQ program was designed to increase limited economic opportunities through enhanced development of fishing industries, new employment opportunities, and community infrastructure. The 1999 National Research Council report, required by the Sustainable Fisheries Act, concluded that the greatest weakness of the CDQ program is a lack of open, consistent communication between the CDQ groups and the communities they represent. At approximately $20 million a year, the CDQ program ought to be providing real benefits to these communities. Certainly, the development of some villages has had a positive effect, but what can the State of Alaska do to help distribute the wealth?

Answqer. The State of Alaska (state) monitors the actions of the CDQ group participants very closely. A significant component of state oversight is determining the level of benefits reaching CDQ communities. Each CDQ group must maintain a Community Development Plan (CDP), which is a working business plan that must be kept current. A CDQ group may not engage in an activity that requires an amendment to the group's CDP until state and federal approval has been granted.

CDQ groups are required to submit quarterly reports with consolidated financial statements that clearly identify CDQ projects, revenue and expenditures, year-to-date information on education, employment and training activities, and minutes from all board meetings. An annual audit from an independent auditor is also required from each group. The state monitors and responds to quarterly reports and annual audits on a regular basis.

New state regulations for the CDQ program were incorporated in 1999. Among the revisions was the establishment of CDQ Program Standards. Included in the program standards are requirements that each CDP must include specific and measurable benefits to each community participating in the CDP, and that a proposed CDQ have the support of all participating communities. A CDQ group must also demonstrate how a proposed CDQ project will further the goals and purposes of the CDQ program set out in 50 C.F.R. 679.

Question 2. The NRC report on community development quotas recommended that the State of Alaska prohibit the permanent conveyance of CDQ's to businesses located outside of these Western Alaska communities. Clearly, the point of the program was to provide a platform for fisheries and economic development in these villages. Has there been notable interest in outside businesses to invest or otherwise become involved in the CDQ Programs in western Alaska? Answer. Yes. Recognizing the strength of this program and the potential for growth by the CDQ groups, CDQ groups have been approached by several non-Alaskan fishing businesses as potential investment partners. CDQ groups have become equity investors in various catcher processor vessels owned by non-Alaskan corporations. The passage of the American

Fisheries Act in 1998, and in particular its American ownership requirements, has created additional opportunities for CDQ groups to partner on an equity basis with industry players.

Question 3. Regarding the permanent conveyance of CDQ's, do you (the state) support this recommendation of a permanent prohibition?

Answer. The state opposes any permanent transfer of CDQ's (quota), and has adopted state regulations to prohibit the commitment or encumbrance of future quota. The CDQ program was structured to provide ongoing fisheries-related opportunities to communities in western Alaska. The state believes the best way to provide benefits to CDQ communities is through the local control and ownership of CDQ quota at the CDQ group level.

I hope this reply provides adequate responses to your questions. Please let me know if further information is required.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO PAUL SEATON

Question 1. Do you think the concern over the potential for delay in routine projects or other monetary losses by non-fishing interests as a result of essential fish habitat is valid?

Answer. It is difficult to answer this question because Alaska Marine Conservation Council (AMCC) has no knowledge of examples where the consultation process has caused delay and additional costs to non-fishing interests. Staff of the National Marine Fisheries Service have indicated that the consultation review process is not an additional review process, but is coordinated with existing review of permit applications and project plans.

Question 2. In regard to ITQs, how do you see the allocation process of halibut and sablefish affecting these stocks, and what is the potential for success in other fisheries?

Answer. The Total Allowable Catch, or TAC, was not altered when ITQs were introduced into the Alaska halibut and sablefish fisheries, so the overall level of fishing has not changed. There have been some cases of localized depletions of fish stocks because of concentrated fishing activity in near-shore areas by ITQ-holders, as well as other fishermen.

Applying the ITQ model, or other quota system, to fisheries in the Gulf of Alaska could have very different results than the halibut and sablefish ITQ program, which are two species fished by a single gear type. Fisheries in the Gulf of Alaska are multi-species and are fished using a variety of gear types, making management and monitoring of the program much more difficult and complex.

Strong conservation measures must be tied to the establishment of new programs; conservation should not be left to chance, but instead should be a required part of any allocation system. AMCC advocates that any new program to establish fishing co-operatives, ITQs or other efforts to limit access to a fishery, be explicitly designed to promote habitat-friendly and low-bycatch gear. AMCC urges Congress to require that the conservation objectives listed in "Sharing the Fish" be met before a new co-operative, ITQ, or other quota program is allowed to be established. AMCC also advocates that any new quota program should include a sunset, and not continue on in perpetuity. Sunsets give managers the option to make conservation adjustments as needed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO RICHARD LAUBER

Question 1. In which North Pacific fisheries, if any, do you think new ITQ programs should be considered?

Answer. I would recommend considering new IFQs only for the scallop fishery. We approved a license system for scallops in February 1999, and if approved by the Secretary, only nine vessels will be authorized to fish scallops. Management for the most part is delegated to the State of Alaska. Scallop IFQs would allow the fishery to proceed at a slower pace, and the fishermen to fish more cleanly and provide the highest quality product possible. In the past, the Council expressed interest in proceeding with development of an IFQ system for the pollock fisheries, but with the recent development of co-operatives for those fisheries under the American Fisheries Act, the need for further rationalization seems to have abated for the time being.

Question 2. How do you suggest bringing common sense into the Essential Fish Habitat dialogue, and do what the Sustainable Fisheries Act intended by protecting those areas that are truly essential habitat? How would you suggest refining EFH provisions to place the appropriate emphasis on unique habitat? What types of research is needed to appropriately designate Habitat Areas of Particular Concern in Alaska? Could you describe how the Council went about establishing the closed areas in the Bering Sea and Gulf of Alaska? What sort of scientific information were these closures based on?

Answer. The definition of Essential Fish Habitat (EFH) in the Magnuson-Stevens Act (the Act) and NMFS guidelines both have contributed to the very expansive treatment of EFH. I believe that most legislators probably were thinking of a much narrower focus to EFH when the SFA was being drafted. For example, the staff of the Committee on Merchant Marine and Fisheries, in an April 25, 1994 memorandum to the Council chairmen, suggested that the definition of essential habitat should include spawning areas, nursery areas, and areas of special ecological significance to those fisheries. They cautioned that the definition should not include the entire geographical area occupied by the fish stocks. Other definitions were offered as well, some more expansive than others. In the Congressional Record of October 18, 1995, when final amendments to HR 39 were being debated on the House floor, essential habitat was characterized as breeding and nursery areas. However, in the end, the following more expansive definition was placed in the Act:

> *"Essential fish habitat includes the waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity."*

NMFS guidelines then defined and expanded on almost every word in the definition:

> *Waters: aquatic areas and associated physical, chemical, and biological properties, used currently or historically.*
> *Substrate: sediments, geological features underlying the waters, and associated biological communities such as coral reefs or submerged aquatic vegetation.*
> *Necessary: habitat required to support a managed species or assemblage at a target production level reflecting conscientious stewardship.*
> *Spawning, breeding, feeding, or growth to maturity: covers a species' full life cycle.*
> *Feeding and growth to maturity: includes EFH for prey species if the managed species depends on the existence of a specific prey species.*

This is not, of course, the first time that this has ever happened. Almost any piece of legislation, regardless of how simple and straight forward it may appear at first blush, undergoes a very expansive transformation when it is reshaped into guidelines or federal rules by the Agency or the councils. The old axiom is very true: the devil really is in the details.

Nonetheless, the combined effect of the legislated definition and the interpretive guidelines is to commit the Secretary and councils to a very broad ecosystem approach to fish habitat conservation and enhancement. And to a great extent, this approach is in many respects far beyond our technical abilities and knowledge base. As much as we would like to know what the habitat needs are for each species, the reality is that our current information is very limited, even in our case off Alaska where there have been large commercial fisheries, with rigorous reporting requirements, for many years.

Instead of attempting to tinker with the definition of EFH or the guidelines, as I suggested in my original testimony, it may be more constructive to set our sights on gathering the types of detailed information that will be required to delineate those very specific ecologically significant, spawning and nursery areas that were more likely the expectation of the legislators when the SFA was developed. We need to proceed from the basic EFH amendments we now have, which are very broad brush, based mainly on level 0 (no systematic sampling), 1 (presence/absence data), and 2 (habitat-related densities, available mainly for adults) type information, to well defined focused areas that, if damaged, either by fishing or non-fishing activities, could be a critical factor in the sustainability of a particular species.

The guidelines provide such a pathway: identification of Habitat Areas of Particular Concern (HAPCs). These will provide the basis for defining habitat that is truly essential. We have started that process up here and hope to identify such special habitats at our meeting in April 2000. The second avenue, already mentioned above, is to do more research. Currently, only salmon information rates much more than a level 2 status. With more research over the next ten years, we need to elevate the level of information for our major groundfish species and species complexes to levels 3-4, which should enable us to sharply focus on those hotspots that need to be protected and given special consideration. This will take significant funding

for research by NMFS and its science centers if we truly want to identify and ultimately protect essential habitat.

In summary, I do not believe that we should tinker with the definition of EFH just yet, but should keep firmly in mind that protecting EFH will require compromise, both in addressing fishing and non-fishing impacts, because our data are so limited. Over time, as more information is garnered to identify special areas needing protection, we can apply more of a rifle, rather than shotgun, approach to addressing protection of EFH.

In answer to some of the other questions posed above, our Council has closed large areas to on-bottom trawling. In doing so we relied on distribution maps of the species we were trying to protect. For example, trawl surveys and catch information showed that what was left of the king crab populations occurred throughout Bristol Bay. We had extensive information on trawl bycatch of crab because of our comprehensive observer program that has been imposed on the fishing fleet since 1990, and before that on the foreign fleets. The crab stocks have remained low for some time now. We have closed other areas, such as around the Pribilof Islands, and near rookeries and haulouts to protect marine mammals. Much of the information comes from commercial fisheries, trawl surveys and other more archival information generated in past research. But again, our observer program plays a significant role in providing information and verifiable bycatch data. Without that program, we would have little idea of what was being caught and discarded by fishermen in the absence of observers.

Regarding further delineation of Habitat Areas of Particular Concern, we will need considerable research on the location and functions of specific bottom habitats in the overall ecosystem. Our original EFH amendments in 1999 already identified living substrates (e.g., eelgrass, kelp, sponges, and coral) and freshwater areas used by anadromous fish as HAPCs. Currently, we are considering HAPC habitat types including seamounts and pinnacles, the ice edge, the shelf break, and biologically-consolidated fine-grained sediments for HAPC status. We also are examining certain specific HAPC areas including a deep basin in Prince William Sound, the Chirikov Basin north of St. Lawrence Island, and red king crab bycatch areas around Kodiak Island.

Our goal is to identify ecologically important, sensitive, exposed, and/or rare areas that are vulnerable to fishing and non-fishing activities. In the longer run, we will need to be as specific as possible so that we can better balance protection of habitat with the needs of both fishing and non-fishing stakeholders. We need more research by NMFS, and we need stakeholders involved in locating these valuable, vulnerable habitat areas. Significant funding will be needed, as well as patience, as we try to tease out the relationships of fish species to their habitat.

Question 3. The Council and NMFS should be commended that only one stock in the North Pacific has been designated "overfished"—Bering Sea snow crab. However, the decline in snow crab populations may be largely due to environmental factors. Additionally, in the October 1999 Status of Stocks report, NMFS states fishing levels are safe, but that Snow crab is "overfished." If the decline is due to environmental factors, the agency may inaccurately be labeling the status of snow crab as being "overfished." Do you have any comments on this topic?

Answer. We actually now have two additional crab species classified as overfished—opilio and blue crab. As with bairdi, these fisheries are managed by the State of Alaska, with general oversight through the Council's crab FMP. As with bairdi, environmental factors are thought to be the primary cause of the declines, such that "overfished" may well be a misnomer. However, the specific regulations stipulate criteria for classification as overfished, and those regulations require an "overfished" designation based on the biomass level of the stock, regardless of the cause. In any case, removals by fishing remains one variable we can control, so quotas should be reduced or eliminated as necessary to achieve rebuilding goals, along with other measures including habitat protection and bycatch mortality reductions. In the spirit of fairness and public perception, however, it may be desirable to coin a new phrase to refer to specific species which are in low abundance, but for which fishing cannot be identified as the primary culprit. As I stated in my testimony on January 18th, we want to be precautionary, especially if a species is in low abundance and needs extra protection. But we do not want to be compelled to close down or significantly reduce other target fisheries on the basis of bycatch concerns, if an environmental shift will still be needed to restore the species in low abundance.

Question 4. The North Pacific Council is often identified as the region with the best fisheries conservation record, but NMFS' October 1999 Status of Fisheries Report to Congress indicated that the agency does not know the status of 219 out of

252 fish stocks in the area. In the Bering Sea groundfish fishery alone, NMFS says 14 species are not overfished and the status of 109 is unknown. Do you feel the agency needs to improve how it presents information to the public in order to restore some measure of confidence in the quality of scientific research and fishery management actions that it takes with taxpayer money?

Answer. When NMFS says it "does not know the status of 109 species", much of the time they are referring to various species of little or no commercial value. We do not really manage for those species and the commercial catch is very low. We have little or no knowledge of their relative abundance, and their importance in the overall ecosystem remains unclear to us. Unfortunately, it is unlikely that we are going to gain definitive information on these species, because the science and technology do not exist to accurately assess their numbers or their specific importance to the ecosystem.

In an ideal world, with boundless funding for fisheries research, we would know everything we need to about each species in our realm. We know, however, that NMFS has very limited research funds and must target those funds on research on fish species that are the true basis for commercial fisheries. Our scientific support from the NMFS Alaska Fisheries Science Center is outstanding. We receive annual reports on each species with a TAC and on species complexes of importance to the fisheries. I rarely hear any complaints about the research presentations and their adequacy, and I firmly believe that their scientific recommendations are highly respected.

Some species will remain unknown, and the issue raised here may be one more of opticality than real significance. The lists of species in the report to Congress seem more the result of an effort by over-eager fisheries biologists to show they know all the species in the water, rather than a cogent presentation of the species that are really managed, and how they are faring. How to couch the lack of knowledge is something which could stand improvement. These are minor species in terms of management, and somehow the message needs to be conveyed to the public, that with limited research funds, it is better policy to expend them on the species of significance to the commercial fisheries, since that is where the greatest potential damage could be done if the managers are flying blind. We are happy that we receive the types of comprehensive information that we do from NMFS, especially compared to other regions of the U.S. Our scientific resources are valued highly up here and we would not want their capacity diminished in any way.

We also have the most expensive and comprehensive observer program in the nation, if not the world, all paid for by industry. The observers count all species brought aboard and this information helps us track any emergent problem with certain species. If we were having a significant impact on a particular species that is not being tracked by the scientists at the Center, I think that it would show up in our observer collection program and set off alarms. Otherwise, we will continue to believe that the most significant impact of our fisheries is the removal of specific target species, and those are well monitored and researched.

Question 5. Under Section 303 of the Magnuson Act, the North Pacific Fishery Management Council is mandated to reduce bycatch for fisheries under its jurisdiction. How have bycatch reduction incentives worked? What have been the problems in creating these incentives? In the North Pacific region, what do you see as the costs and benefits of bycatch quotas, the sale of bycatch to support research, and the donation of unavoidable bycatch to food kitchens?

Answer. Bycatch has been a focal issue for the Council over its 23-year existence and we spend a significant amount of our time addressing bycatch management, allocation, and reduction. Since enactment of the 1996 amendments the Council has taken the following specific actions:

- Banned on-bottom trawling for pollock;
- Established an incremental chinook salmon bycatch reduction in trawl fisheries from 48,000 chinook down to 29,000 chinook by year 2003;
- In process of developing a halibut mortality avoidance program;
- Reduced the maximum retainable bycatch (MRB) amount for several species, including sablefish and rockfish; and
- Implemented an improved retention and utilization program which prohibits the discard of all pollock and Pacific cod in all North Pacific fisheries, regardless of gear type or fishery. Flatfish retention will be required for certain species beginning in 2003, which should reduce overall total discard rates in our groundfish fisheries to about 5%, well below the world average of about 25%.

Unfortunately, we do not have a viable program of bycatch reduction incentives at an *individual* vessel level. Our regulations promote reduction of bycatch on a

fleet-wide basis; however, no matter how finely we subdivide the bycatch caps, there is always opportunity for a few dirty vessels to spoil the fishery for all; i.e., there is little incentive for vessels toindividually avoid bycatch because the penalty is spread across the entire fleet. Our so-called vessel incentive program (VIP) does provide for after-the-fact monetary penalties on vessels which exceed certain bycatch *rates* of prohibited species. However, the legal burden of proof required and the level of penalties do not provide a strong incentive. In fact, very few cases have ever been successfully prosecuted under this program. It remains on the books simply because it is the only individual incentive program we have, and it may provide some deterrent.

The ability to develop a system of individual bycatch accountability has been fraught with legal issues. Primarily, again, the burden of proof required to take a vessel off the water, on a real-time basis, is too high given the level of hard data (from observers) required. The necessary levels of observer coverage and sampling protocols to very accurately measure real-time bycatch levels would be prohibitively expensive, and still may not overcome the legal burden-of-proof threshold required. Programs which might reserve quota for clean fishers suffer from the same problem - how can we precisely and accurately measure bycatch levels to determine who gets to fish and who does not? The co-operative program now in effect for Bering Sea and Aleutian Islands pollock fishermen may provide a new and effective tool for individual bycatch reduction incentives. Because they are limited in their catch of non-pollock species, the pollock co-op participants are developing inter-co-op agreements, and employing the services of real-time data monitors, to allocate bycatch of groundfish and PSC species among the participants.

Concerning the benefits and costs of bycatch quotas, sale of bycatch, donations, etc., presumably what we are referring to in this context is Prohibited Species Catch (PSC) species which are not allowed to be retained and for which there are specific, overall, fleet-wide caps in existence (and not referring, for example, to cod that may be caught while targeting pollock, but which is open for fishing and marketable and not discarded). Quotas for these species would indeed provide direct incentives for reduction of such bycatch, and allow those species to be (1) caught in their directed fisheries and brought to market instead of being discarded, or (2) in the case of juvenile, unmarketable species, would enhance the overall productivity of the stock. Benefits also would occur from a public perception standpoint. Costs are related to the discussion above, in terms of the necessary observer coverage required to monitor such quotas.

In conjunction with quotas, or all by itself, mandatory retention of PSC and surrender for sale by the government (or donation to food banks) may make sense from a public perception standpoint, but there are market competition issues to consider, particularly for halibut. There also are strong, longstanding political currents against allowing the retention and sale of trawl bycaught halibut. There is also the fact that, in the case of halibut, many are released back into the water alive. Nonetheless, some halibut that have a very low chance of surviving after being taken as bycatch, are donated to food banks. We also have a pilot program for donation of salmon which normally die when taken as bycatch in trawls. Crab bycatch is mostly small, unmarketable crab that amounts to a small percentage of the total mortality (< 2%). It must be discarded immediately.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO KEVIN B. O'LEARY

Question 1. Should Councils be able to use an ITQ system?

Answer. An individual transferable quota-like system is one of many mechanisms for managing fishery resources. If a council is to have the proper flexibility to consider management options for the specific needs of fisheries in their region, an ITQ style program is a needed tool for them to have.

Question 2. How should the issue of fees or taxes be handled?

Answer. The current Magnuson-Stevens Act provides for a 3% fee on the halibut and sablefish IFQ program in Alaska. This is not an initial allocation fee, but an annual fee based on value of landed product. This fee is designed for the management and enforcement of the IFQ program in Alaska, as well as a certain percentage to be made available for IFQ loans for first time IFQ buyers and small boat owners.

I believe it is inappropriate for an initial allocation fee to be established. The granting of IFQs in the sablefish and halibut program was based on history and this type of system can provide stability to those involved in the fishery. The amount of quota issued is directly relational to their participation and therefore, dependence

on the fishery in question. If initial allocation fees were established, some of those who are most dependent on the fishery would not be able to pay the price for continued participation.

I believe that an annual fee based on actual landed product for the management of the program is totally appropriate and I supported the implementation of fees for the sablefish and halibut program.

It is important to note that in addition to the 3% IFQ management fee, that there are federal taxes on the sale of quota, and in many areas of Alaska there are landing taxes for municipalities.

Question 3. Please provide guidance regarding the concerns about consolidation and how traditional, family run businesses are impacted under an ITQ program.

Answer. Without some sort of social engineering, the consolidation of IFQs into the hands of a few would be a natural progression that would be unacceptable. Each fishery should be evaluated to determine what type of consolidation would be appropriate based on the social and economic needs of the harvesters, processors and communities.

The small family owned fishing businesses are vital to the viability of the coastal communities. In any kind of an ITQ program you have some natural and needed consolidation. Usually when an quota share-like program is requested by industry participants, the level of over-capitalization and excess capacity have reached a level where all participants are at risk. It is important to realize that consolidation to one person is providing stability to another. Some form of consolidation is expected and desired. The councils must carefully analyze what the ownership caps for a specific fishery and/or area should be, carefully weighing the needs of all involved, but allowing for stability to develop.

Yes, you can have an ITQ program and continue to have traditional, family run businesses which thrive and prosper. A perfect example of that is the halibut IFQ program in Alaska which has provided a tremendous source of stability and security to many small, family-owned operations. In fact, there is some thought that without IFQs, many of these operations may not have survived.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO CHRIS BLACKBURN

Question 1. If excess capacity, or too many fishermen targeting particular fish, is a problem in a fishery, should the regional council be allowed to consider whether or not to use an ITQ system?

Answer: An unqualified YES. The Magnuson-Stevens Act requires the commercial fishing industry to take significant measures to assure sustainable fisheries. The Alaska fishing industry supported these measures. Our communities are dependent on well management fisheries.

Open access fisheries are not "environmentally friendly", "sustainably friendly" or "safety friendly" models for fishery management. Open access rewards those who can take the most fish in the shortest amount of time. The fishermen who take time to avoid bycatch, avoid critical habitat, deliver fish in prime condition and fish in a safe manner is a fishermen are rewarded with a steadily declining share of the catch. Not even the Magnuson-Stevens Act mandates can be fully realized when fisheries are open access. For example, there are times when halibut or salmon are mixed with trawl targets like flatfish or pollock. Waiting to fish a week or so would give time for these prohibited will move on and allow for clean fishing. However, NMFS does not have the ability to close the season until conditions change. Since many fishing seasons only last a week or two due to over-capitalization fishermen have the choice of losing a season or dealing the best they can to avoid the bycatch species.

The poster child for ITQ fisheries is the Alaska halibut fishery. For decades it was a nearly year long fishery. Then the price went up, the number of participants increased to the point that the fishery became a two day derby. In the derby skates of gear with hooked halibut were left on the bottom, fishermen worked 24 hours a day and sustained injuries as a result and usually there were several deaths. The same problems occur in the crab fishery for the same reasons.

Implementation of the halibut ITQ program allowed fishermen to take personal responsibility for their fishery. The race was over, exvessel value increased, new markets were developed, and skates of gear with hooked halibut or no longer left on the sea bottom. Even more important, the injury and death rates dropped dramatically.

It is amazing to me that the number of taxi caps are limited in many areas of the nation and that in some areas the taxi's are limited to specific areas within an area, but fisheries are open to all in most cases.

Only during the development stage of a fishery can open access work, and only for a short time.

Question 2. If Congress were to allow for some form of ITQ's, how should the issue related to fees and taxes be handled?

Answer. Under any scenario there should be a fee or tax for the management measures specific to a rights based fishery. The fee should be based on the tonnage held by the fishermen. I also believe that transfers of ITQ's should be taxed at a significant rate and the revenue used for research. A significant transfer tax used this way returns benefit to the industry and is a way of charging users for their acquisition of a national resource.I actually prefer the American Fisheries Act model since it does not give "until death" rights to a quota, but allows the co-op to annually allocate among the members. It's more like a lease arrangement. This model requires more responsibility by the co-oped fishermen than does IFQ's, and therefore relieves NMFS of micro management and some allocative decisions. In this case some annual fee based on share would be appropriate and should be assessed to the Coop itself.

Question 3. If councils were allowed to design an ITQ program with fees or taxes, would your position on IFQ*s change?

Answer. No.

Question 4. Can you in fact continue to have traditional, family run businesses in a fishery with an IFQ program?

Answer.The Alaska halibut IFQ program has actually put the family back into the fishery. Since fishermen can take their time many now employ family members on their boats.

Concerning concentration of share by large entities the North Pacific Fishery Management Council dealt with this issue in the halibut and sablefish fisheries by setting share caps and requiring owners to be on the vessel while fishing their IFQ quotas.

Also, halibut shares were divided into "blocks" of three different quota share sizes. There are limits on how many blocks a vessel may have. A vessel cannot aggregate different sized blocks. A vessel maxed out on his ability to buy more small blocks has to sell the small blocks before buying larger blocks.

Critical to an ITQ program is the qualification criteria used to initially to determine who will receive IFQ's. The criteria needs to be pretty inclusive even at the risk of substantially decreasing the allocation to large operations. It may also be useful to set aside some quota for small boats in artesianal fisheries. Alaska has exempted boats under 60-feet from a number of management regulations. I've always felt it was a shame that some halibut quota was not left in open access for fishermen to fish by hand from a skiff.

Thank you for the opportunity to expand on my comments at the Anchorage field hearing.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO PENELOPE DALTON

Please state whether or not you support Congress lifting the moratorium on ITQ' and respond to some of the concerns raised in the NAS study. For example, how could the initial allocations of quota be accomplished in a fair manner and what could be done to address the fear of a consolidated fishing industry in the hands of a few large companies?

The witness did not provide a response.

In which North Pacific fisheries, if any, do you think new ITQ programs should be considered?

The witness did not provide a response.

The Council and NMFS should be commended that only one stock in the North Pacific has been designated "overfished"—Bering Sea Snow crab. However, the decline in Snow crab populations may be largely due to environmental factors. In addition, in the October 1999 Status of Stocks report, NMFS states fishing levels are safe, but that Snow crab is "overfished." If the decline is due to environmental factors, has the agency inaccurately labeled the status of Snow crab as being "over-

fished?" Additionally, how many of the 98 species defined in NMFS's report as "overfished" suffer from a similarly inaccurate description as the Snow crab fishery?

The witness did not provide a response.

The North Pacific is often identified as the region with the best fisheries conservation record, but NMFS' October 1999 Status of Fisheries Report to Congress indicates that the agency does not know the status of 219 out of 252 fish stocks in the area. In the Bering Sea groundfish fishery alone, NMFS says 14 species are not overfished and the status of 109 is unknown. What percent of the commercial catch do these 109 Bering Sea species account for?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO DAVE BENTON

In which North Pacific fisheries, if any, do you think new ITQ programs should be considered?

The witness did not provide a response.

How do you suggest bringing common sense into the Essential Fish Habitat dialogue, and do what the Sustainable Fisheries Act intended by protecting those areas that are truly essential habitat?

The witness did not provide a response.

Is the decline in Snow crab stocks due to overfishing or are there other environmental factors to blame?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO BETH STEWART

If excess capacity, or too many fishermen targeting particular fish, is a problem in a fishery, should the regional council be allowed to consider whether or not to use an ITQ system?

The witness did not provide a response.

The 1999 National Research Council report on ITQ's recommended that Congress should permit (1) the assessment of fees on initial allocations of quota; and (2) imposition of an annual tax on quota shares. Please answer the following two questions regarding this topic:

- If Congress were to allow for some form of ITQ's, how should the issue related to fees and taxes be handled?

The witness did not provide a response.

- The NRC report indicates that such fees or taxes should be considered because an ITQ program essentially provides for the gift of a public resource to a private entity, therefore, it may be appropriate to allow the public to receive some economic benefit from the program. If councils were allowed to design an ITQ program with fees or taxes, would your positions on ITQ's change?

The witness did not provide a response.

Due to the free-market nature of ITQ's, a primary criticism is that they could result in the consolidation of quota among only a few large fishing companies. This could squeeze many traditional, small and family run fishing operations out of business. These businesses are the foundation of coastal communities all over this country. It is a concern that if the number of ITQ programs increases nation-wide, then the quota will be consolidated in a number of large fishing companies. In regards to requiring accumulation limits, one NRC report recommends that councils considering an ITQ program define limits on accumulation of quota and other measures to prevent such a consolidation. It is understood that these decisions would need to be made on a fishery-by-fishery basis, but can you offer the Subcommittee any guidance on whether you can in fact continue to have traditional, family run businesses in a fishery with an ITQ program?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JOHN IANI

If excess capacity, or too many fishermen targeting particular fish, is a problem in a fishery, should the regional council be allowed to consider whether or not to use an ITQ system?

The witness did not provide a response.

The 1999 National Research Council report on ITQ's recommended that Congress should permit (1) the assessment of fees on initial allocations of quota; and (2) imposition of an annual tax on quota shares. Please answer the following two questions regarding this topic:

- If Congress were to allow for some form of ITQ's, how should the issue related to fees and taxes be handled?

The witness did not provide a response.

- The NRC report indicates that such fees or taxes should be considered because an ITQ program essentially provides for the gift of a public resource to a private entity, therefore, it may be appropriate to allow the public to receive some economic benefit from the program. If councils were allowed to design an ITQ program with fees or taxes, would your positions on ITQ's change?

The witness did not provide a response.

Due to the free-market nature of ITQ's, a primary criticism is that they could result in the consolidation of quota among only a few large fishing companies. This could squeeze many traditional, small and family run fishing operations out of business. These businesses are the foundation of coastal communities all over this country. It is a concern that if the number of ITQ programs increases nation-wide, then the quota will be consolidated in a number of large fishing companies. In regards to requiring accumulation limits, one NRC report recommends that councils considering an ITQ program define limits on accumulation of quota and other measures to prevent such a consolidation. It is understood that these decisions would need to be made on a fishery-by-fishery basis, but can you offer the Subcommittee any guidance on whether you can in fact continue to have traditional, family run businesses in a fishery with an ITQ program?

The witness did not provide a response.

If excess capacity, or too many fishermen targeting particular fish, is a problem in a fishery, should the regional council be allowed to consider whether or not to use an ITQ system?

The witness did not provide a response.

The 1999 National Research Council report on ITQ's recommended that Congress should permit (1) the assessment of fees on initial allocations of quota; and (2) imposition of an annual tax on quota shares. Please answer the following two questions regarding this topic:

- If Congress were to allow for some form of ITQ's, how should the issue related to fees and taxes be handled?

The witness did not provide a response.

- The NRC report indicates that such fees or taxes should be considered because an ITQ program essentially provides for the gift of a public resource to a private entity, therefore, it may be appropriate to allow the public to receive some economic benefit from the program. If councils were allowed to design an ITQ program with fees or taxes, would your positions on ITQ's change?

The witness did not provide a response.

Due to the free-market nature of ITQ's, a primary criticism is that they could result in the consolidation of quota among only a few large fishing companies. This could squeeze many traditional, small and family run fishing operations out of business. These businesses are the foundation of coastal communities all over this country. It is a concern that if the number of ITQ programs increases nation-wide, then the quota will be consolidated in a number of large fishing companies. In regards to requiring accumulation limits, one NRC report recommends that councils considering an ITQ program define limits on accumulation of quota and other measures to prevent such a consolidation. It is understood that these decisions would need to be made on a fishery-by-fishery basis, but can you offer the Subcommittee any guid-

ance on whether you can in fact continue to have traditional, family run businesses in a fishery with an ITQ program?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO LARRY COTTER

In 1992, the North Pacific Council implemented the community development quota program, or CDQ's for Western Alaska. As you know, the CDQ program allocates a percentage of the annual catch of a variety of commercial fisheries directly to Western Alaskan villages. These villages were originally selected because of their geographic isolation and dependence on subsistence lifestyles. Therefore, the CDQ program was designed to increase limited economic opportunities through enhanced development of fishing industries, new employment opportunities, and community infrastructure. The 1999 National Research Council report, required by the Sustainable Fisheries Act, concluded that the greatest weakness of the CDQ program in Western Alaska is a lack of open, consistent communication between the CDQ groups and the communities they represent. Since CDQ's were designed to benefit entire communities, not just a select few who have financial investments in a CDQ business interest, how do you respond to the criticism raised in the NRC report?

The witness did not provide a response.

The NRC report on CDQ's also criticizes the State of Alaska for not providing enough outreach to the communities. The report goes so far as to say that the State needs to help ensure that the communities and their residents are aware of the program and how to participate. Do you have any comments on this subject?

The witness did not provide a response.

The NRC report on community development quotas recommended that the State of Alaska prohibit the permanent conveyance of CDQ's to businesses located outside of these Western Alaska communities. Clearly, the point of the program was to provide a platform for fisheries and economic development in these villages.

- Has there been notable interest in outside businesses to invest or otherwise become involved in the CDQ programs in Western Alaska?

The witness did not provide a response.

Do you support this recommendation of a permanent prohibition?

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JACK PHELPS

During the Subcommittee's hearings on Magnuson, we have heard a fairly extensive debate on the essential fish habitat provisions in the Sustainable Fisheries Act. In short, many fishing interests support the concept, but believe that the interpretation and implementation have been too broad. On the other hand, the environmental community believes that NMFS and the Councils should be more aggressive in identifying and protecting EFH. And, finally, many non-fishing interests are extremely concerned about the effect that EFH may have on businesses, especially routine permitting procedures. It is possible that some of these non-fishing interests may be afraid of having to deal with a new federal agency and its bureaucracy. As a representative of the Alaska Forest Association, could you please tell us if any of your member companies experienced actual business losses or delays as a result of the EFH provisions? Please explain.

The witness did not provide a response.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO FREDDIE CHRISTENSEN

In 1992, the North Pacific Council implemented the community development quota program, or CDQ's for Western Alaska. As you know, the CDQ program allocates a percentage of the annual catch of a variety of commercial fisheries directly to Western Alaskan villages. These villages were originally selected because of their geographic isolation and dependence on subsistence lifestyles. Therefore, the CDQ

program was designed to increase limited economic opportunities through enhanced development of fishing industries, new employment opportunities, and community infrastructure. The 1999 National Research Council report, required by the Sustainable Fisheries Act, concluded that the greatest weakness of the CDQ program in Western Alaska is a lack of open, consistent communication between the CDQ groups and the communities they represent. Since CDQ's were designed to benefit entire communities, not just a select few who have financial investments in a CDQ business interest, how do you respond to the criticism raised in the NRC report?

The NRC report on CDQ's also criticizes the State of Alaska for not providing enough outreach to the communities. The report goes so far as to say that the State needs to help ensure that the communities and their residents are aware of the program and how to participate. Can you please comment on this subject?

The NRC report on community development quotas recommended that the State of Alaska prohibit the permanent conveyance of CDQ's to businesses located outside of these Western Alaska communities. Clearly, the point of the program was to provide a platform for fisheries and economic development in these villages.

- Has there been notable interest in outside businesses to invest or otherwise become involved in the CDQ programs in Western Alaska?
- Do you support this recommendation of a permanent prohibition?

Pertaining to the "Questions for the Record":

The questions as posed regard CDQs (Community Development Quotas) already existing in Western Alaska (Bering Sea / Aleutian Islands.)

As you know, there are currently no CDQs in the Gulf of Alaska and our constituency, with the exception of communities on the eastern side of the Aleutians, are not in CDQ areas. Therefore, we cannot comment on the questions as they directly relate to the current CDQ program.However, our testimony to the Subcommittee reflected the concern we have in the Gulf of Alaska that there is no corresponding program which can retain or encourage fisheries access, specifically in our smaller communities. Our feeling, substantiated by declining village populations and job opportunities, by the "migration" of permits and quota shares outside of those communities and by the erosion of fishing access, is that if we don't do something soon, we are going to see a lot of "ghost towns" in the Gulf of Alaska.

We are losing what development and access we traditionally had and we are fighting continual restrictions on developing new fisheries access, such as within the charter and tourism industry.

Subsequent to our testimony, we have continually promoted our proposal to the North Pacific Fishery Management Council (NPFMC) regarding amendments to the existing Halibut and sablefish IFQ (Individual Fishing Quota) program which would allow a community non-profit to purchase X number of quota shares (based on a cap) for management within a community. The purpose of this proposal is to maintain a certain level of quota share within a small coastal community (or group of communities) in perpetuity. This would be based on open market criteria. The status of this proposal is that it is only now (as of February 11, 2001) being tasked by Council for first analysis. This action has ostensibly been delayed by an overburden on staff due to analysis of the Stellar sea lion Biological Opinion and other issues before Council. This has not been a satisfactory response for us but we are encouraged that the Council is now moving forward. We still have a long way to go but we are gaining political support from various stakeholders as people further understand the proposal.It is important to note that our commercial proposal is NOT a reallocation of resources but just an addition of "qualifying buyer." As we understand from NMFS (National Marine Fisheries Service) General Counsel, this is an allowable amendment to the existing IFQ program.

An additional proposal regards a community set-aside for the proposed halibut charterboat IFQ program. We have been continually testifying before Council that the charter ITQ will only work in our communities if (a) we don't repeat the same mistakes of the commercial IFQ implementation, and (b) if we have a "community set aside" for initial issuance that allows our current operators to stay fishing and promotes growth in the industry, combined with proposed Local Area Management Plans (LAMPs) which can protect conservation concerns.

We are concerned, also, about other rationalization plans for other fisheries and we want to make certain with every rationalization proposal that (a) the impacts on small coastal communities are well analyzed, and (b) there is some form of "set-aside" or allowance for community purchase. Here again, our intent is to reverse the decline of fisheries access, prevent any future loss, and encourage new forms which stabilize community economics.

We feel these items are specifically pertinent to Section 301 (a) (8) of the Magnuson-Stevens Fishery Conservation Management Act regarding consideration of com-

munity impacts. We feel we have had to continually educate Council members and others of their obligation to consider those impacts and we believe we are making progress in this direction but it is a painfully slow process with no current guarantee of positive results for the communities. We have chosen to "work within the system" and we are committed to that process, but we ask that the Senate Committee keep in mind the dilemma we are facing.

Subsequent to the January 18, 2000 hearings, we submitted copies of our proposals to the Senate Committee, but I am sending additional copies to your office for the record.

Thank you. Please call us at the above number if there are further questions.

Sincerely,

Gale K. Vick, Executive Director
Gulf of Alaska Coastal Communities Coalition (GOAC3)

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO MICHAEL J. HYDE

Question 1. If Congress were to allow for some form of ITQ's, how should the issue related to fees on initial allocation of quota shares and an annual tax on quota shares be handled?

Answer. As Congress considers whether or not the moratorium on new Individual Fishing Quotas (IFQs) programs should expire, it is appropriate for Congress to review the issue of fees and taxes. While Congress has authorized the collection of fees to recover management and enforcement cost for IFQ/ITQ programs, the Secretary is prohibited from collecting fees for in other fisheries, except for purpose of recovering administrative costs. Congress should begin first by deciding whether IFQ/ITQ programs should be treated differently than other limited access programs in which the government extends to a certain class of individuals the privilege to participate in a specific fishery.

This policy issue received little or no attention in 1996 when the Magnuson-Stevens Act was amended, authorizing the Secretary to collect a fee of up to 3 percent to recover the costs of managing and enforcing an IFQ/ITQ program. (Congress extended the authority to use fees collected under an IFQ/ITQ system to fund programs aiding new entrants and small boat fishermen.) Congress should be cautious before it considers fees on recipients of initial quota allocation shares or attempts to collect economic rent from IFQ/ITQ participants. The issue should be considered within the context of the increasing use of limited entry systems.

Question 2. If councils were allowed to design an ITQ program with fees or taxes, would your positions on ITQs change?

Answer. If councils were given a free hand to impose fees and taxes on ITQ programs, my position on ITQs would not change, but my enthusiasm for participating in an ITQ program might well diminish. Congress established a national policy in 1996 relating to appropriate fee levels. Congress might elect to amend those provisions, but it should continue to provide for a uniform, national policy on fees in the Magnuson-Stevens Act to which councils must adhere.

Question 3. Can you offer the Subcommittee any guidance on whether you can in fact continue to have traditional, family-run businesses in a fishery with an ITQ program?

Answer. The answer is an unqualified "yes." The halibut/sablefish IFQ program is an excellent example of a fishery that retained its traditional, family-run business character after converting from a dangerous, wasteful "race for fish" format to a rationalized IFQ fishery. The North Pacific Council instituted limits on quota accumulation and adopted numerous other management measures designed to preserve the socio-economic characteristics of the fishery. Congress should allow councils the flexibility to tailor future IFQ/ITQ programs to meet the management objectives of disparate fisheries.

RESPONSE TO WRITTEN QUESTIONS BY HON. JOHN F. KERRY TO KEVIN B. O'LEARY

Question 1. What type of buyback program is recommended for crab?

Answer. Because the Alaska crab industry is currently facing a fisheries disaster, with greatly reduced crab seasons, a straight buyback for crab licenses is unrealistic. The buyback regulations (which have not been published) would require some demonstration of an ability to repay a loan. For the crab fisheries of Alaska, it is most likely appropriate to combine some form of straight federal disaster aid to a

portion of the fleet, giving them an opportunity to sell out of the fishery and lose the license/catch history and vessel. This disaster money coupled with the ability to obtain direct and individual loans to purchase catch history seems to make a lot of sense. One thought that seems to have some merit is that of the ability to use existing Capital Construction Fund accounts for the purpose of buying someone out.

Regarding a buyback in the form of a reverse auction, this concept should certainly be considered. A benefit to the nation would be that those entities that are bought out won't go bankrupt causing further distress in the industry.

Question 2. How have bycatch incentives worked and what have been the problems?

Answer. As long as there is a "race for fish", bycatch incentives will not work. When the fishery is slowed down through an IFQ or co-operative program, then there is a reason to expect that industry will have the ability to make a bycatch difference. Until that time, the only option is to set a bycatch cap at the lowest possible level and shut fisheries down when the cap is achieved.

Question 3. What are the costs and benefits of bycatch quotas, the sale of bycatch to support research, and the donation of unavoidable bycatch to food kitchens?

Answer. The concept of bycatch quotas has been debated among industry for many years. One position is that by giving bycatch quotas based on history that you are simply rewarding those who were the dirtiest. Another way to give bycatch quotas would be to estimate a realistic bycatch rate based on data and everyone would receive an equal share. A bycatch quota would only work if there were an IFQ system in place for the target species. The ability to slow the fishery down and take more care under a quota system will automatically reduce the bycatch of prohibited species, undesirable species, and the interaction with seabirds. This is a good thing for the resource.

The sale of bycatch to support research is probably not a good idea. The whole idea is to reduce the bycatch, not make money on it. This would reduce the incentives to fish clean and have a lower bycatch. After all, it is being used for a good cause. It is also possible that research dollars could be higher than what the fishermen who target on that species for their livelihood might receive. This would result in an allocation dispute over the resource that is not needed.

With regard to the donation of unavoidable bycatch to food banks, I can only say that it is the right thing to do. With world hunger and many people in the United States experiencing hunger problems, we have an obligation as stewards of the resource to make sure the best and wisest utilization is developed. It is absolutely appropriate to take unavoidable bycatch, such as halibut and salmon in the trawl fisheries, process that product and give it to the poor.

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