

**Marine Fish Conservation Network comments
on the on Draft Recommendations of
U.S. Commission on Ocean Policy Stewardship Working Group
January 2003**

Precautionary Approach.

- The Network strongly supports the use of the precautionary approach in managing ocean and coastal resources and applauds the Working Group for recommending its use to the full Commission.
- We suggest that the Commission not recommend limiting its use to instances where there are “threats of serious or irreversible damage,” rather it should be used to prevent this from happening.
- In our view, the precautionary approach should be applied to existing as well as new plans. Finally, we recommend the use of the following definition:

“precautionary approach” means exercising additional caution in favor of conservation in any case in which information is absent, uncertain, unreliable, or inadequate as to the effects of an existing or proposed action; and selecting and implementing any action that will be significantly more likely than not to satisfy conservation objectives.

Ecosystem-based management. The Network has long argued that U.S. fisheries management should move from single species management to ecosystem-based management. Therefore we strongly support the Working Group’s recommendation that we should begin phasing in ecosystem-based management of our fisheries. We recommend that the Commission make it clear that ecosystem-based management includes all species, not just those that are commercially important and that its primary goal be the conservation of biodiversity. We also note that a major argument against ecosystem-based management is the time and effort required to incorporate ecosystem-based management principles into each management plan. While we believe that this is ultimately the direction that management should take, and interim step could be a requirement that managers develop a general ecosystem plan for the region that describes the ecosystem(s), their biological, physical, and chemical dynamics, key predator-prey relationships, and the habitat needs of the different life stages of the species that make up the food web(s). Each management plan should be consistent with this ecosystem plan. Finally, we disagree with the Working Group’s recommendation that current fishery management council boundaries be used to delineate ecosystems. Ecosystem delineation should be a science-based process. We have recommended that the councils undertake this task based on guidelines developed by NMFS.

Biodiversity. We strongly support the Working Group’s statements on the need to protect and restore biodiversity. However, we encourage the Commission to go beyond studying biodiversity and the causes of declining biodiversity. Where existing knowledge is adequate, action to conserve, protect, and restore biodiversity is necessary.

This concept was recently supported by the National Research Council in its report on bottom trawling where they stated that, “The lack of area-specific studies on the effect of trawling and dredging gear is insufficient justification to postpone management of fishing effects on seafloor habitat.”

Use and Review of Scientific Information. It appears to us that the general goal of this recommendation is to separate the scientific process of quota setting from the more political process of allocating that quota among user groups. While our Board has not specifically taken a position on this issue, the vast majority supports separating quota setting from allocation, because of their experience with the councils inappropriately manipulating stock assessments and quotas. However, while there is strong support for the concept, some Board members are concerned that requiring the councils to form Science and Statistical Committees (SSCs) to perform this task would not accomplish this goal. Their concern is that the SSCs will still be subordinate to the councils and potentially subject to pressure to manipulate the assessments and quotas. For this concept to succeed, the quota setting entity must truly be independent. Many of our Board also object to allowing the councils to continue to set the Total Allowable Catch (TAC) because it will continue to afford them with an opportunity to manipulate the quota setting process.

We would also like to comment on the Working Group’s recommendation that fishing be prohibited if the NMFS Regional Science Center Director does not calculate the allowable biological catch (ABC) prior to start of the fishing season. While we support the concept of forcing NMFS and councils to develop ABCs in a timely manner, our fishermen Board members are concerned that fishermen will be forced to unfairly pay the price for the inaction of others.

Finally, with regard to the Working Group’s three-leveled peer-review process, we recommend that the commission clarify that the general principle of this process is independent peer review by scientists. This clarification is necessary because there are numerous fishing industry proposals to allow fishermen to participate in peer reviews. While collaborating with the fishing industry to gather information upon which to base the assessments is useful, fishermen generally don’t have the scientific expertise to evaluate the assessments. In addition, we recommend that the Commission clarify that these new peer-review procedures incorporate, to the extent practicable, existing processes used by councils such as stock assessment review committees (SARCs). We also object to the recommendation that “controversial results” trigger the crisis review procedure. Whether an assessment is controversial or not has no bearing on its validity. We suggest that the trigger for the crisis procedure be anomalous results. Finally, we recommend that a process for updating stock assessment methodologies be included.

Nomination and Appointment of RFMC Members. The composition and conduct of the councils has long been of great concern to the Network and we welcome the Commission’s interest in this area. However, the Working Group’s recommendation that the governors be required to submit two candidates from the commercial fishing industry, recreational fishing sector, and general public will insure a more balance slate of

candidates, but will do little to actually insure balanced representation on the councils. In our view the Secretary of Commerce should be legally required to appoint a balanced membership for each council. We also recommend that the Commission address the conflicts of interest of many council members. Given the fact the many council members have an economic interest in the fisheries they regulate, there is little wonder that they are reluctant to vote for conservation measures that will cost them money. We propose that any council member who has disclosed a financial interest be prohibited from voting on any matter before the council that would affect that interest. In addition, we recommend that persons who have been convicted of a criminal violation of the Magnuson-Stevens Act be prohibited from serving on a council.

Fishery Management Council Jurisdiction. We are not opposed to giving the interstate fisheries management commissions additional authority to regulate fisheries that are primarily conducted in state waters. However, many on our Board believe that the interstate commissions should be required to meet the same conservation standards as those contained in the Magnuson-Stevens Act to insure that conservation is not diminished. We also recommend that the Commission clarify the intent of the Working Group recommendation that the management of Highly Migratory Species remain at the national level. On the west coast and in Hawaii the councils manage highly migratory species, while on the east coast they are managed by NMFS. We recommend that this division of management authority be maintained.

Cooperative Research. We strongly support the creation of a national cooperative research program. Given the current federal fiscal crisis, we question whether general fund monies will be available for such a program. We propose using a portion of the Saltonstall-Kennedy (S-K) program funds for this purpose. Currently, Congress diverts nearly all of the S-K funds each year for general NOAA operating expenses. We strongly support using these funds for programs that are more directly related to fisheries management.

Dedicated Access Privileges. We would first like to recommend that the Commission cease using the phrase dedicated access privileges. This appears to us to be a transparent attempt to disguise controversial individual fishing quota (IFQ) programs. There is no way around it, IFQs are controversial, and for good reason – they represent a fundamental change in the way we manage our public fish resources. The Network is deeply concerned that privatizing this public resource will facilitate the corporatization of our ocean fisheries with potentially devastating impacts on coastal communities. We are equally concerned that poorly regulated IFQs will do little to improve the conservation of ocean fish. Because of these concerns we believe that Congress must place a moratorium on new IFQ programs unless and until legislation to establish national standards for the design and conduct of IFQ programs is signed into law. The Network believes that such national standards, at a minimum, must:

- Promote the conservation of ocean fish by providing additional and substantial conservation benefits to the fishery.
- Limit the duration of IFQ programs and quota shares to 7 years.

- Provide for a fair and equitable initial allocation of quota shares.
- Ensure that IFQ programs and shares are reviewed and renewed only if they are meeting or exceeding the conservation requirements of the Magnuson-Stevens Act, if not, they must be revised or revoked.
- Define and prohibit the excessive consolidation of quota shares.

For the Commission's information, attached please find a summary of our entire set of proposed IFQ standards and a redline version of our proposal which shows how it would change the Magnuson-Stevens Act if adopted.

Reducing Capacity. The Network generally supports initiatives to reduce fishing capacity in fisheries that have excess capacity as long as such programs ensure that capacity is permanently reduced by eliminating vessels and permits. We would like to point out one recurring problem we see in discussions on capacity. We often hear overfishing blamed on “too few fish being chased by too many boats.” This is simply not true. The problem is that we often have a capacity to catch fish that far exceeds the reproductive capacity of the fish population. This problem cannot be addressed by just eliminating vessels because the vessels that remain in the fishery may simply increase their fishing capacity. This will result in fewer boats catching the same number of fish. While this may make the remaining vessels more economically viable, it will do little for fish conservation.

The Marine Fish Conservation Network (Network) is a broad-based coalition of more than 150 conservation and fishing organizations dedicated to promoting the long-term sustainability of marine fish. Individual Fishing Quota (IFQ) programs provide for exclusive allocations of fishing quotas to individuals in particular fisheries. IFQs allocate a percentage of the total allowable catch of a species of fish in a fishery to an individual before the fish are caught. In 1996, because of concerns with the impact of IFQ programs on both fishermen and the marine environment, Congress placed a moratorium on the establishment of new IFQ programs. The IFQ moratorium expired on September 30, 2002. *The Network supports continuing the IFQ moratorium, UNLESS AND UNTIL Congress adopts legislation containing national standards, such as those set forth below, for the design and conduct of IFQ programs in order to ensure that these programs contribute to and enhance the conservation and management of our nation's marine fisheries.*

No Compensable Property Right

IFQ programs must acknowledge that fish resources are publicly owned, that IFQs are not compensable property rights, and that IFQs are revocable. Quota shares must be of a set duration - not to exceed five years, after which they may be renewed subject to satisfying defined criteria.

IFQ Shareholders Must Provide Additional Conservation Benefits to the Fishery

Any decision to renew an IFQ share must be based on an evaluation of whether the shareholder is meeting the requirements of the IFQ program and providing additional and substantial conservation benefits. Additional and substantial conservation benefits are scientifically measurable improvements in avoiding bycatch, preventing high-grading, reducing overfishing, rebuilding overfished stocks, and protecting essential fish habitat.

Protection for Individual Fishermen and Fishing Communities

To ensure that IFQ fisheries have broad participation, limits must be established to prevent excessive consolidation of quota shares. Preference should be provided in initial allocations to fishermen who can demonstrate a record of conservation-minded fishing practices are owner-operators, and have long-term participation in the fishery. Each IFQ program must ensure that a portion of each annual-allocation is set-aside for entry-level fishermen and small vessel operators. Finally, decisions on whether to develop or approve an IFQ program by a council must be approved by a super majority of the participants in the fishery.

(Over)

IFQ Programs Must Provide Additional Conservation Benefits to the Fishery

IFQ programs must be reviewed every five years and decisions on whether to renew the program and how to improve it based on the outcome of that review.

Independent Review of IFQ Programs and Shareholders

A national IFQ review panel, consisting of individuals knowledgeable about fisheries management, but with no financial interest in any fishery, should be established to review IFQ programs. In addition, each fishery management council must establish and maintain an Individual Fish Quota Review Panel, consisting of individuals with knowledge in fisheries management, but with no financial interest in an IFQ program, to conduct reviews of performance of IFQ shareholders.

Recovery of Costs

IFQ programs must recover all administrative costs, including costs of enforcement, observer coverage, and independent peer reviews of the programs.

Default Quota Allocation Mechanism

If a council does not adopt an IFQ system that adequately meets the above standards, the Secretary shall require the use of a royalty auction to allocate quota shares. For more information on auctions see - <http://www.foe.org/camps/eco/ifq/auctions.html>

**Changes to the Magnuson-Stevens Fishery Conservation
and Management Act if the Marine Fish Conservation Network's
Individual Fishing Quota Proposal is Enacted**
(additions are underlined and deletions are crossed out)

§ 3 DEFINITIONS

As used in this Act, unless the context otherwise requires--

* * * * *

(46) The term 'fishing quota system' means any system that requires a user to acquire a Federal permit, which specifies by a unit or units a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person or a definable group of persons, to harvest fish in a fishery, during each fishing season for which the permission is granted, including area or community quotas, sector quotas, fishing cooperatives, and individual fishing quota programs.

(47) The term 'fishing quota share' means a Federal permit under a fishing quota system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person or a definable group of persons, during each fishing season for which the permission is granted.

§ 303. CONTENTS OF FISHERY MANAGEMENT PLANS

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(b) **DISCRETIONARY PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

* * * * *

~~(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such a system, the Council and the Secretary take into account—~~

- ~~(A) present participation in the fishery,~~
- ~~(B) historical fishing practices in, and dependence on, the fishery,~~
- ~~(C) the economies of the fishery,~~
- ~~(D) the capability of fishing vessels used in the fishery to engage in other fisheries,~~
- ~~(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and~~
- ~~(F) any other relevant considerations:~~

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) the conservation requirements of this Act with respect to the fishery;
- (B) present participation in the fishery;
- (C) historical fishing practices in, and dependence on, the fishery;
- (D) the economics of the fishery;
- (E) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (F) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (G) the fair and equitable distribution of a public resource; and
- (H) any other relevant considerations.

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(d) INDIVIDUAL FISHING QUOTAS.—

~~(1)(A) A council may shall not submit and the Secretary may shall not approve or implement before October 1, 2000, any a fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program that does not meet the requirements of this subsection.~~

~~—(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately return by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).~~

(1) IN GENERAL.- A fishery management plan for a fishery that is managed under a limited access system authorized by subsection (b)(6) may establish a fishing quota system for the fishery. In addition to complying with the other requirements of this Act, the Councils and Secretary shall ensure that any such limited access fishing quota system submitted and approved after September 30, 2002—

(A) promotes management measures designed to ensure the sustainability of the fishery and provides additional and substantial conservation benefits to the fishery;

(B) is of a fixed duration, not to exceed 7 years;

(C) provides for administration of the system by the Secretary in accordance with the terms of the plan;

(D) establishes procedures for the Council having authority over the fishery to review the quota system at least 6 months prior to the end of the 7 year period established under subparagraph (B) and the expiration or revision of the plan that establishes the system if the requirements of this Act for the system are not met;

(E) expire if the review required in subparagraph (D) is not completed, if such review finds that the system is not meeting or exceeding the requirements of the Act including providing additional and substantial conservation benefits, or if the Secretarial Review Panel established in paragraph (7) recommends that the system not be renewed;

(F) allocates, reviews, and limits or terminates quota shares in accordance with this subsection;

(G) provides a fair and equitable process to appeal to the Secretary decisions made by a Council on-

(i) eligibility to participate in all referenda authorized under this subsection and eligibility to receive or bid for an allocation of quota shares; and

(ii) limitations, restrictions, and revocations of quota shares;

(H) minimizes negative social and economic impacts of the system on local coastal communities;

(I) ensures adequate enforcement, management and data collection, including the use of observers where appropriate at a level of coverage that should yield statistically significant results; and

(J) provides a mechanism for recovering all direct costs related to administering and implementing the program, including enforcement, management and data collection (including adequate observer coverage), provided the assessment of such fees is proportional to the amount of quota held and fished by each quota holder;

(2) ALLOCATION OF QUOTA SHARES.-

(A) IN GENERAL.- The Council having authority over the fishery shall make a fair and equitable allocation of all, or only a portion, of the total allowable catch limit as quota shares among categories of vessels. In allocating quota shares under a fishing quota system established by a fishery management plan in a manner that is consistent with the requirements of this subsection, the Council shall-

(i) take into account present and historic participation in the fishery;

(ii) ensure quota shares are held only by persons engaged in fishing in the fishery for which the quota is issued who are natural persons of the United States or permanent resident aliens qualified by Federal or State law to participate in the fishery;

(iii) except in the case of a system which allocates quota shares by royalty auction, establish procedures for allocating a portion of the annual harvest to entry-level fishermen, small vessel owners, and crew members who do not otherwise hold or qualify for quota shares; and

(iv) prevent any person from acquiring an excessive share of fishing quotas issued for a fishery and establish any other limits or measures necessary to prevent inequitable concentration of quota share and to prevent significant impacts on any fishery or fishing community.

(B) ROYALTY AUCTIONS.- The Secretary shall require the use of royalty auctions for the allocation of quota shares if the Secretary determines that the Council's fishing quota system does not meet the requirements of this subsection. Royalty auctions for the allocation of quota shares shall-

(i) proportionally distribute the total quota among existing categories of vessels;

(ii) proportionally distribute quota into bidding sectors according to fishing gear type within each vessel category;

(iii) create incentives in successive auctions for fishermen to increase their gear selectivity by increasing the quota proportion by –

(I) vessel category;

(II) bidding sector; or

(III) other appropriate qualifier; and

(iv) create incentives in successive auctions to reward individual fishermen for exceeding conservation standards in this Act by –

(I) establishing and distributing additional fishing quota for such fishermen; or

(II) establishing areas of convenient and productive fishing potential into which only such fishermen would be allowed entry.

(C) REGULATIONS.- A quota share issued under a fishing quota system established by a fishery management plan may be received and held in accordance with regulations prescribed by the Secretary under this Act.”

(3) NO CREATION OF RIGHT, TITLE, OR INTEREST IN FISH.-

Approval and establishment of a limited access fishing quota system and the allocation of quota shares shall not create, or be construed to create, any right, title, or interest in any fishery or to any fish before the fish is harvested. A

fishing quota issued under a limited access fishing quota system established by a fishery management plan shall be considered to be a grant to the holder of the fishing quota of permission to engage in activities permitted by the fishing quota. Limitation or termination of the fishing quota shall not confer any right of compensation to the holder of the fishing quota.

(4) TERMINATION OR LIMITATION OF QUOTA SYSTEM OR QUOTA SHARES.—

(A) TERMINATION OR LIMITATION OF QUOTA SYSTEM FOR CONSERVATION AND MANAGEMENT OF THE FISHERY.-A fishing quota system established for a fishery may be limited or terminated at any time if necessary for the conservation and management of the fishery, including if the quota system has been found to have jeopardized the sustainability of the stock or the safety of fishermen, by-

(i) the Council which has authority over the fishery for which the system is established, through a fishery management plan or amendment;

(ii) the Secretary, pursuant to section 304(h) of this Act;

(iii) the Secretary, in the case of any fishing quota system established by a fishery management plan developed or approved by the Secretary; or

(iv) the Secretary, if the Secretarial Review Panel finds that the system is not meeting or exceeding the requirements of the Act including, if applicable under (d)(1)(A), providing additional and substantial conservation benefits, and the Council or Secretary does not make the changes recommended by the Secretarial Review Panel to ensure compliance with this subsection.

This subparagraph does not diminish the authority of the Secretary under any other provision of this Act.

(B) TERMINATION OR LIMITATION OF QUOTA SHARES.- A fishing quota issued under a fishing quota system established by a fishery management plan—

(i) shall expire not later than 7 years after the date it is issued;

(ii) shall be reviewed by the Council Review Committee established in paragraph (6) not later than 6 months prior to expiration under subparagraph (i);

(iii) upon expiration under subparagraph (i)

(I) shall be revoked, limited, or reallocated in accordance with the terms of the plan and regulations

issued by the Secretary or the Council having authority over the fishery for which it is issued, if, based on a review by the committee established under paragraph (6), the fishing quota share holder is not meeting or exceeding the requirements of this Act or the conservation and management requirements of the fishery (including as a result of a violation of this Act or any regulation prescribed under this Act); or

(II) except in the case of quota shares allocated by royalty auction, may be renewed if the share holder is meeting or exceeding the requirements of the program and this Act based on a review by the committee established under paragraph (6), by each Council having authority over the fishery;

(5) REFERENDUM PROCEDURE .—

(A) A Council may submit a fishery management plan or plan amendment that creates a fishing quota system only if the development and submission of such plan or plan amendment is approved in the referenda conducted under subparagraphs (D) and (E).

(B) The Secretary, at the request of a Council, shall conduct the referenda described in subparagraphs (D) and (E). The Secretary shall develop guidelines to determine procedures and eligibility requirements for referenda that provide for the participation of all participants in the proposed fishing quota system without regard to, or requirement for, ownership of or interest in a fishing vessel, and any other procedures necessary to conduct such referenda in a fair and equitable manner.

(C) Each referendum shall be decided by the affirmative vote of a two-thirds majority of the votes cast by persons who participate in the proposed fishing quota system. Prior to the referenda, the Council shall identify, based on the criteria developed by the Secretary in paragraph (B), and notify all such persons eligible to vote in the referendum and make available to all such persons information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed fishing quota system.

(D) The initial referendum shall be used to determine support of the eligible participants for proceeding with the development of a fishing quota system.

(E) The second referendum shall be used to determine support of eligible participants for submitting a specific proposed fishing quota system to the Secretary for approval and implementation.

(6) COUNCIL PROGRAM REVIEW COMMITTEE.—

(A) Each Council, upon deciding to pursue a fishing quota program for a fishery, shall establish and maintain, and appoint members of a committee to make recommendations for development, evaluation, and necessary changes to such programs to ensure that such programs meet the requirements of this Act, including providing additional and substantial conservation benefits to the fishery, and the intended goals for such program.

(B) The Council, in consultation with the Secretary, shall develop guidelines that will ensure that committee members are qualified for appointment and are subject to conflict of interest rules.

(C) Appointments to the committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to all groups affected by such programs, including, but not limited to, commercial, recreational, and subsistence fishing interests, fishing communities, and conservation organizations, and shall not include persons holding fishing quotas for the fishery.

(D) Each committee shall review fishing quota systems every 7 years to ensure that systems meet the requirements of this Act, including providing additional and substantial conservation benefits to the fishery, and evaluate whether the system has improved management, conservation, and safety in the fishery. Pursuant to such review, the Committee shall recommend any changes to the system necessary to ensure it meets those requirements and standards of improvement.

(E) The Committee shall review compliance of individual quota holders with the system and the Act at least once every 7 years, and may recommend that a quota share be renewed if the quota share holder is in compliance with the requirements of the program and this Act, or that a quota share be limited, reduced, or revoked if the share holder is not meeting such requirements. In the case of a quota share allocated by royalty auction, may recommend incentives if the quota share holder is in compliance with the program and this Act, or be denied such incentives or prohibited from future participation in subsequent royalty auctions if the share holder is not in compliance with the program or this Act.

(i) Reduced and revoked quota shares shall be reallocated through a mechanism approved by the Council. In the case of any such reallocation, preference shall be given to those quota share holders that the review committee determines are providing additional and substantial conservation benefits to the fishery, or to

new entrants in a gear or vessel category that, as a group, are providing additional and substantial conservation benefits to the fishery.

(ii) Any recommendation for limitation, reduction, revocation, or reallocation of quota share is subject to review under the process established under paragraph (1)(G) of this subsection.

(F) The Council shall transmit to the Congress a report containing the results of each program review within 90 days after the review is completed.

(7) SECRETARIAL REVIEW PANEL.—

(A) Not later than 6 months after the date of the enactment of the Magnuson-Stevens Act Amendments of 2002, the Secretary shall establish a review panel for the purposes of —

(i) conducting the reviews of individual fishing quota systems required by subparagraph (1)(D) to determine whether a system is meeting the requirements of this Act, including providing additional and substantial conservation benefits to the fishery;

(ii) providing the appropriate Council with recommendations on whether an individual fishing quota system should be renewed if the system is meeting or exceeding the requirements of the Act including providing additional and substantial conservation benefits, and if renewed, what, if any, modifications should be made to the program to ensure that it is meeting the requirements of this Act; and

(iii) developing standards for the review of individual fishing quota share holders by individual fishing quota review committees of Councils.

(B) The review panel shall pay particular attention to—

(i) the success of the systems in conserving and managing fisheries;

(ii) the costs of implementing and enforcing the systems;

(iii) the economic effects of the systems on local communities;

and

(iv) the methods used to establish or allocate individual quota shares.

(C) The review panel shall consist of—

(i) the Secretary or a designee of the Secretary;

(ii) the Commandant of the Coast Guard or a designee of the Commandant;
(iii) a representative of each Council, selected by the Council from among its members, except that such member cannot be a current holder of a fishing quota; and
(iv) 5 individuals with knowledge and experience in fisheries management who do not currently hold fishing quotas in any fishery.

(D) Based on the evaluation required under subparagraph (A), the review panel shall, by September 30, 2004, submit recommendations to the Secretary for the development of the regulations required under section 304(i).

(8) DEFINITIONS.—For the purposes of this subsection, the term:

(A) the term ‘additional and substantial conservation benefits to the fishery’--

(i) means scientifically measurable benefits to the fishery at the time of establishment of the system, that substantially—

(I) avoid bycatch and minimize the mortality of unavoidable bycatch;

(II) prevent highgrading;

(III) reduce overfishing (including localized depletions)

and rebuild overfished stocks; and

(IV) protect essential fish habitat; or

(ii) if it is not possible to directly measure conservation benefits, such term means actions taken by an individual fishing quota share holder that are considered necessary to provide such benefits.

(B) the term ‘bidding sector’ means a bidding segment within a royalty auction defined by vessel category, gear type, geographic area, or other appropriate qualifier.

(C) the term ‘excessive share’ means any person controlling in excess of 1 percent of the total individual fishing quotas issued in a fishery except that a Council may increase such percentage –

(i) to no more than 5 percent, if the Council can demonstrate that such an increase will not be detrimental to other individual fishing quota share holders in the program; or

(ii) to no more than 15 percent, if there are 20 or fewer participants in the fishery and the Council can demonstrate that such an increase will not be detrimental to other individual quota share holders in the program

(D) the term ‘fair and equitable allocation’ means initial or subsequent allocation of individual fishing quota shares based on multiple criteria that provide preference for –

(i) conservation performance, including the use of selective fishing practices that have minimal bycatch, prevent highgrading, and adverse impacts on essential fish habitat;

(ii) owner-operators of fishing vessels; and

(iii) long term participation in the fishery.

(E) the term ‘processor quota system’ means a limited access system to process a quantity of fish, expressed by unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a United States fish processor.

(F) the term ‘qualified bidder’ means a person with a minimum of 1 full fishing season of experience in the fishery for which an individual quota system is established.

(G) the term ‘royalty auction’ means an allocation of individual quota shares to the highest bidder by means of a public sale at which qualified bidders offer and agree to pay a percentage of the proceeds of the sale of fish landed pursuant to the individual quota shares as compensation for a license to capture and sell fish within an individual quota system.

(9) PROCESSOR QUOTA SYSTEMS PROHIBITED.—A Council may not submit and the Secretary may not approve or implement a fishery management plan, plan amendment, or regulation that establishes a processor quota system.

(2)(10)(A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

(B) This subsection shall not be constructed to prohibit a Council from submitting, or the Secretary from approving and implementing,

amendments to the Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog ~~individual~~ fishing quota programs.

(3)(11) An ~~individual~~ fishing quota or other limited access system authorization --

(A) shall be considered a permit for the purpose of section 307, 308, and 309;

(B) may be revoked or limited at any time in accordance with this Act;

(C) shall not confer any right of compensation to the holder of such ~~individual~~ fishing quota or other such limited access system authorization if it is revoked or limited; and

(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested;

(4)(12)(A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C.App.1274(a)(7)), to issue obligations that aid in financing the--

- (i) purchase of ~~individual~~ fishing quotas in that fishery by fishermen who fish from small vessels; and
- (ii) first-time purchase of ~~individual~~ fishing quotas in that fishery by entry level fishermen.

(B) A council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

(5)(13) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the national Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program --

(A) establishes procedures and requirements for the review and revisions of the terms of such program (including any revisions that may be necessary once a national policy with respect to ~~individual~~ fishing

quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of ~~individual~~ fishing quotas;

(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management ;

(C) provides for a fair and equitable initial allocation of ~~individual~~ fishing quotas, prevents any person from acquiring an excessive share of the ~~individual~~ fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for-entry-level fishermen, small vessels owner, and crew members who do not hold or qualify for ~~individual~~ fishing quotas.

§ 303 ACTION BY THE SECRETARY

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(i) ACTION ON LIMITED ACCESS SYSTEMS.—In addition to the other requirements of this Act, the Secretary may not approve a fishery management plan that establishes a limited access system that provides for the allocation of fishing quotas (in this subsection referred to as a ‘fishing quota system’) unless the plan complies with section 303(d). Within 1 year after receipt of recommendations from the review panel established under section 303(d)(6), the Secretary shall issue regulations which establish requirements for establishing a fishing quota system. The regulations shall be developed in accordance with the recommendations of the review panel.
The regulations shall—

(1) specify factors that shall be considered by a Council in determining whether a fishery should be managed under a fishing quota system;

(2) ensure that any fishing quota system is consistent with the requirements of this Act, and require the collection of fees in accordance with subsection (d)(1) of this section;

(3) provide for appropriate penalties for violations of regulations governing fishing quota systems, including the revocation of individual quota shares for such violations;

(4) include recommendations for potential management options related to fishing quotas, including the use of leases or auctions by the Federal Government in the establishment or allocation of fishing quotas; and

(5) establish a central lien registry system for the identification, perfection, and determination of lien priorities, and nonjudicial foreclosure of encumbrances, on fishing quotas.