


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke   
Executive Director

DATE: April 4, 1996

SUBJECT: Review of Groundfish and Crab License Limitation/CDQ Proposed Regulations

ESTIMATED TIME

2 HOURS

**ACTION REQUIRED**

Review structure of proposed program implementation and provide comments to NMFS.

**BACKGROUND**

The NMFS Regional Office has been working on the Proposed Rule to implement the license limitation program. We have an opportunity now to provide input on that package before it goes to the Secretary of Commerce (SOC). Rather than reviewing the whole complex of regulations, NMFS will highlight the basic structure of the package and specific areas where clarification of intent is needed. This is divided into two basic components: (1) the provisions of the License Limitation program, and (2) the provisions of the expanded CDQ program.

The regulatory package will be completed for submittal to the SOC, hopefully by early summer. Included will be the Council staff's Final Supplementary Analysis of the Preferred Alternative for the License Limitation Program, which has been utilized in developing these draft regulations. The program is still on line for 1998 implementation, if approved by the SOC. Attached for reference (item C-6(a)) is a copy of the program elements approved by the Council in June 1995.

## GROUND FISH LICENSE LIMITATION PROGRAM - PREFERRED ALTERNATIVE

### Components and Alternative Elements Affecting Initial Assignment

#### License Classes

A single type of licenses will be issued (as opposed to multiple types of permits as described in other options).

#### Nature of Licenses

The Groundfish License Program will restrict access to groundfish fisheries in the EEZ off the Coast of Alaska; The License Program does not restrict access to waters of the State of Alaska. The program will issue non-severable area endorsements for the following management areas: AI, BS, WG, CG+WY, EY+SO. The endorsement would be contained under one of the following General License Umbrellas: GOA, BSAI, or GOA/BSAI. Demersal Shelf Rockfish in waters east of 140° W, and fixed-gear sablefish are excluded from the Groundfish License Program.

#### License Recipients

Licenses will be issued to current owners (as of 6/17/95) of qualified vessels.<sup>1</sup> (Owners must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. This date may be subject to modification under certain circumstances involving qualified vessels now operating under foreign flags.)

#### License Designations

Licenses and Endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three Vessel Length Classes (<60', ≥60' & <125', ≥125'). In the Eastern Gulf (EY + SO) an additional designation allowing the use of legal fixed gear only will be assigned, regardless of the gear used to qualify for the endorsement. CP/CV designations will be determined based on the activities of the vessel during 1/1/94-6/17/95 or the most recent year of participation during the Endorsement Qualifying Period (EQP). Vessel Length Classes will be based on the length overall of the vessel as of 6/17/95, as long as the vessel conforms with the provisions of the '20% upgrade' and 'Maximum LOA' rules defined in the moratorium<sup>2</sup>. Owners of

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<sup>1</sup>The language in this section has been changed from the "DRAFT FINAL ACTION" language distributed at the Council meeting on Sunday, June 18, 1995. These changes were made to more accurately reflect the intent of the Council regarding the definition of "current owners," and to ensure consistency regarding the specific dates in the action. All occurrences of the date "6/15/95" have been changed to "6/17/95" in this document to reflect the date of the final Council action. Originally, this section read as follows:

Licenses will be issued to current owners of vessels. Current Owners are defined as those "persons" eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.

<sup>2</sup>Maximum LOA (the "20% rule" from the moratorium regulations) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to use a moratorium permit to catch and retain moratorium crab species or conduct directed fishing for moratorium groundfish species during the moratorium, except as provided at § 676.4(d). The maximum LOA of a vessel with moratorium qualification will be determined by the Regional Director as follows:

- (1) For a vessel with moratorium qualification that is less than 125 ft LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125 ft, whichever is less; and
- (2) For a vessel with moratorium qualification that is equal to or greater than 125 ft, the maximum LOA will be equal to the vessel's original qualifying length.

Original qualifying length with respect to a vessel means the LOA of the vessel on or before June 24, 1992.

Length overall of a vessel (from 50 CFR § 672.2 & § 675.2) means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fitting or attachments. (In instances when the length falls on a ½', the LOA is the nearest even number, e.g., 124'6" is LOA 124', and 125'6" is LOA 126'.)

vessels which have upgraded beyond the "Maximum LOA" would receive licenses and endorsements, but these licenses and endorsements could not be assigned to the qualifying vessel.

### **Qualifying Periods**

For General Licenses, the Qualifying Period (QP) is 1/1/88-6/27/92, with the additional provision that any vessel which "crossed over" to groundfish from crab under the provisions of the proposed moratorium by 6/17/95 would also qualify for a General License. For vessels under 60', the General QP is extended through Dec. 31, 1994 for groundfish pot or jig gear—recipients must choose one area endorsement if qualified for multiple endorsements. Vessels which qualify as "cross-overs" or because of the extended General QP would be allowed to use any legal gear to harvest groundfish. For Area Endorsements, the QP is 1/1/92-6/17/95.

The following exemptions are included in the License Limitation program: (1) vessels that were exempted from the proposed moratorium would also be exempt from the license limitation program (26' in the GOA and 32' in the BSAI); and (2) vessels in the BSAI using jig gear that are less than 60' using a maximum of 5 machines, one line per machine, and a maximum of 15 hooks per line. Unlike the moratorium, any 'exempt' vessel which qualifies for a license would receive that license.

### **Landings Requirements For General License Qualification**

One landing of groundfish<sup>3</sup> in the General QP, or qualified "moratorium crossover" vessels which "crossed over" from crab by 6/17/95.

### **Landings Requirements for Endorsement Qualification**

#### Bering Sea/Aleutian Islands:

An endorsement will be issued if a vessel made at least one groundfish landing in an area (BS or AI) during the endorsement period (1/1/92-6/17/95).

#### Gulf of Alaska:

(1) For all vessels less than 60' in all GOA endorsement areas, an endorsement will be issued if the vessel made at least one landing in the area during the endorsement period (1/1/92-6/17/95).

(2) For the Central Gulf/West Yakutat and Southeast Outside endorsement areas, all vessels  $\geq 60'$  but less than 125', which made at least one landing in an area in any two of the four endorsement calendar years (1992, 1993, 1994, or 1995 through 6/17/95), OR four landings between 1/1/95 and 6/17/95 would receive an endorsement for the area. For all vessels  $\geq 125'$ , endorsements will be issued to vessels which made at least one landing in an area in any two of the four endorsement calendar years (1992, 1993, 1994, or 1995 through 6/17/95).

(3) For the Western Gulf area, all vessels less than 125 feet which made at least one landing between 1/1/92 and 6/17/95 will receive an endorsement. Vessels which are  $\geq 125'$  must have made at least one landing in the WG in any two of the four endorsement calendar years (1992, 1993, 1994, or 1995 through 6/17/95) in order to receive an endorsement for the area.

## **Components and Alternative Elements Affecting the Ownership, Use, and Transfer of Licenses**

### **Who May Purchase Licenses**

Licenses may be transferred only to "persons" defined as those eligible to document a fishery vessel under chapter 121, Title 46 U.S.C. There shall be no leasing of groundfish licenses.

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<sup>3</sup>"Groundfish Landings" are defined in the Groundfish License Limitation Program to include all groundfish managed under Federal Fishery Management Plans (excluding Demersal Shelf Rockfish in waters east of 140° E., and fixed-gear sablefish) which were made in the EEZ or in the waters of the State of Alaska.

### **Vessel/License Linkages**

Licenses may be transferred without a vessel, i.e., licenses may be applied to vessels other than the one to which the license initially was issued, subject to license designations, and the "20% rule" and "maximum LOA" in the moratorium regulations, and the "no leasing" restriction. Licenses may be applied to vessels shorter than the "maximum LOA" regardless of vessel class designations, i.e. "downgrades" in vessel classes are allowed.

### **Options Regarding the Separability of Species and/or Area Designations**

Area endorsements are not separable, and shall remain as a single "package," which includes the assigned CV/CP and vessel length class designations. Crab and groundfish licenses that are initially issued to a person (as defined under "License Recipients") are not separable and shall remain as a block for a period of three years. After which time, the Council may review whether or not the groundfish and crab licenses should remain non-severable. Groundfish Licenses obtained after the initial allocation will not be combined with any other licenses owned by the person, and will remain a separate license.

### **Vessel Replacement and Upgrades**

Vessels may be replaced or upgraded within the bounds of the vessel length designations and the 20% Rule as defined in the moratorium proposed rule. If a vessel upgrades under the "20% rule" to a length which falls into a higher vessel length designation after 6/17/95, then the vessel owner would receive the license and endorsements, but could not use them on that vessel<sup>4</sup>.

### **License Ownership Caps**

No more than 10 general licenses per person with grandfather provisions to those persons who exceed this limit in the initial allocation. The intent of the Council is that this limit is applied to the "person" as defined under "License Recipients," and is not interpreted to apply to individual owners within corporations or partnerships.

### **Vessel License Use Caps**

There is no limit on the number of licenses (or endorsements) which may be used on a vessel.

### **Vessel Designation Limits**

A vessel which qualifies for multiple designations (i.e., both as a CV and as a CP) under the use restriction component will be able to participate under any designation for which it qualifies. CV/CP designations will be based on activities during 1/1/94-6/17/95 or the most recent year of participation during the EQP. If a vessel qualifies as a CP only it may select a one-time (permanent) conversion to a CV, though a CP may operate in either mode. If a vessel qualifies as a CV only, it is restricted to operate as a CV.

### **Community Development Quotas.**

7.5% of all BSAI groundfish TACs not already covered by a CDQ program, and a pro-rata share of PSC will be allocated to CDQ Communities as defined in the current CDQ program, with the addition of Akutan. PSC will be allocated "off the top" before the trawl/non-trawl split. The Groundfish CDQ program will be patterned after current CDQ program but will not contain a sunset provision.

### **Other Provisions**

- 1 Licenses represent a use privilege. The Council may convert the license program to an IFQ program or otherwise alter or rescind the program without compensation to license holders.
- 2 Severe penalties may be invoked for failure to comply with conditions of the license.

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<sup>4</sup>This is an issue for vessels which have an original qualifying length >50' LOA but less than 60' LO' which have an original qualifying length greater than 103' LOA but less than 125'. If these vessels upgrade r allowed by the "20% rule" after 6/17/95, they will have exceeded the length allowed by the vessel length cl.

- 3 Licenses may be suspended or revoked for serious and/or multiple violations. (The Council recommends NMFS consult with the Coalition for Stability in Marine Financing regarding license revocation concerns.)
- 4 Implement a Skipper Reporting System which requires groundfish license holders to report skipper names, address, and service records to NMFS.
- 5 An analysis of the impact of various rent collection levels and mechanisms, and enforcement and program implementation costs is required.
- 6 Vessels targeting non-groundfish species (salmon, crab, etc.) that are currently allowed to land incidentally taken groundfish without a groundfish permit, will be allowed to continue to land bycatch amounts. Additionally, vessels participating in the Sablefish and Halibut IFQ program would continue to be able to land bycatch amounts of groundfish as specified in regulations governing that program.
- 7 Vessels which qualified for the NPFMC license limitation program that have been lost or destroyed are still eligible to receive earned licenses and endorsements, subject to rules and conditions outlined in this program.
- 8 Vessels which qualify under the moratorium and were lost, damaged, or otherwise out of the fishery due to factors beyond the control of the owner and which were replaced or otherwise reentered the fisheries in accordance with the moratorium rules and which made a landing in a fishery any time between the time the vessel left the fishery and 6/17/95, will be qualified for a general license and endorsement for that area.
- 9 Vessels which receive an "empty umbrella" because they qualified under the GQP in one FMP and made landings during the EQP in the other FMP, would be issued endorsements and a general license for the FMP area and FMP subareas for which they meet the Endorsement Landings Requirements.
- 10 The CDQ vessel exemption included in the Moratorium will continue under the Groundfish License Limitation Program. This exemption allows vessels <125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ fisheries. If the vessel is sold to an interest outside the CDQ plan, the vessel will no longer be exempt from the requirements of the license program.
- 11 Each element and component of the Groundfish and Crab license limitation program as described in this action are integral to the overall program. No component or element of the program should be regarded as severable by the Secretary of Commerce.
- 12 Buy-back or Retirement programs for vessels or licenses will not be implemented at this time.
- 13 The Two-Tiered Skipper License Program will not be implemented at this time. Future analysis of a license program for skippers, based on the amended program outlined by SEA, will be set on its own time line.
- 14 Community Development Licenses will not be a part of the Community Development Program.
- 15 The Council will consider options to compensate vessel owners who qualified for Southeast Outside endorsements using trawl gear, if and when individual quota programs are studied.
- 16 The option to allow vessels which are designated as catcher vessels to add limited amounts of processing capability will not be allowed under this action. This option will be further analyzed when the Council addresses "Full Utilization."
- 17 A sunset date on the Groundfish License Program will not be set at this time.

## CRAB LICENSE LIMITATION PROGRAM - PREFERRED ALTERNATIVE

### Components and Alternative Elements Affecting Initial Assignment

#### License Classes

A single type of licenses will be issued (as opposed to multiple types of permits as described in other options).

#### Nature of Licenses

The Crab License Program restricts access to the Bering Sea and Aleutian Islands King and Tanner Crab Fisheries in the EEZ. The program does not restrict access within waters of the State of Alaska, nor does it affect crab fisheries which are not managed by the BSAI King and Tanner Crab FMP. The Crab License Program will issue General Licenses and Endorsements for each species/area combination.

The species / area combinations are as follows:

1. Pribilof red + Pribilof blue king crab
2. *C. opilio* + *C. bairdi*
3. St. Matthew blue king crab
4. Adak brown king crab
5. Adak red king crab
6. Bristol bay red king crab
7. Dutch Harbor brown king crab
8. Norton Sound red king crab

The Council also recommends classifying all crab species not included in the endorsement list that are covered under the Crab FMP as "developing fisheries." This list includes but is not limited to: Bering Sea brown king crab, BSAI *C. tanneri*, *Lithodes couesi*, and *C. angulatus*, and Dutch Harbor red king crab. To participate in a developing fishery a person must have a valid federal crab license as defined in this program.

#### License Recipients

Licenses will be issued to current owners (as of 6/17/95) of qualified vessels.<sup>5</sup> (Owners must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. This date may be subject to modification under certain circumstances involving qualified vessels now operating under foreign flags.) In the Norton Sound King crab summer fishery, "persons" eligible to receive a license include the following:

- a) individuals who held State of Alaska Permit for the Norton Sound King Crab summer fishery and who made at least one landing; or
- b) current vessel owners (as of 6/17/95) in instances where a vessel was corporate owned, but operated by a skipper who was a temporary contract employee.

#### License Designations

Licenses and Endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three Vessel Length Classes (<60', ≥60' & <125', ≥125'). CP/CV designations will be determined based on the activities of the vessel during the most recent year of participation during the Endorsement Qualifying Period

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<sup>5</sup>The language in this section has been changed from the "DRAFT FINAL ACTION" language distributed at the Council meeting on Sunday, June 18, 1995. These changes were made to more accurately reflect the intent of the Council regarding the definition of "current owners," and to ensure consistency regarding the specific dates in the action. All occurrences of the date "6/15/95" have been changed to "6/17/95" in this document to reflect the date of the final Council action. Originally, this section read as follows:

Licenses will be issued to current owners of vessels. Current Owners are defined as those "persons" eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.

(EQP). Vessel Length Classes will be based on the overall length of the vessel as of 6/17/95<sup>6</sup>, as long as the vessel conforms with the provisions of the '20% upgrade' and 'Maximum LOA' rules defined in the moratorium<sup>7</sup>. Owners of vessels which have upgraded beyond the "maximum length" would receive licenses and endorsements, but these licenses and endorsements could not be assigned to the qualifying vessel. Further, for the Norton Sound King crab summer fishery, vessels less than 32' may upgrade beyond 20% but may not exceed 32' unless the 20% upgrade would result in a vessel that exceeds 32'.

### Qualifying Periods

For General Licenses, the Qualifying Period (QP) is 1/1/88 - 6/27/92, with the additional provision that any vessel which "crossed over" to crab from groundfish (by 12/31/94) under the proposed moratorium would also qualify for a General License. Vessels meeting these requirements would receive endorsements based on landings in the Endorsement Qualifying Period (EQP) of 1/1/92 - 12/31/94, except Bristol Bay red king crab which will use 1/1/91-12/31/94 as the endorsement qualifying period. (Vessels in the Norton Sound King Crab fisheries, and Pribilof King Crab fisheries will be exempt from the requirements of the EQP, and must have made landings between 1/1/93 - 12/31/94<sup>8</sup>).

### Minimum landings

To receive a Red or Blue King crab species/area endorsement a vessel must have made at least one landing in a Red or Blue King crab fishery in the endorsement list above during the EQP. To receive a Brown King crab species/area endorsement, a vessel must have made at least three landings in the Brown King crab fishery during the Endorsement Qualifying Period (EQP) of 1/1/92 to 12/31/94. To receive a combined *C. opilio*/ *C. bairdi* crab species/area endorsement, a vessel must have made at least three landings in the *C. opilio*/ *C. bairdi* crab fisheries during the EQP.

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<sup>6</sup>This date is consistent with the date used to determine length classes in the Groundfish License Limitation Program. If different dates were used in the two programs, the possibility of having a single vessel with two different length class designations arises.

<sup>7</sup>Maximum LOA (the "20% rule" from the moratorium regulations) with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to use a moratorium permit to catch and retain moratorium crab species or conduct directed fishing for moratorium groundfish species during the moratorium, except as provided at § 676.4(d). The maximum LOA of a vessel with moratorium qualification will be determined by the Regional Director as follows:

- (1) For a vessel with moratorium qualification that is less than 125 ft LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125 ft, whichever is less; and
- (2) For a vessel with moratorium qualification that is equal to or greater than 125 ft, the maximum LOA will be equal to the vessel's original qualifying length.

Original qualifying length with respect to a vessel means the LOA of the vessel on or before June 24, 1992.

Length overall of a vessel (from 50 CFR § 672.2 & § 675.2) means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fitting or attachments. (In instances when the length falls on a 1/2', the LOA is the nearest even number, e.g., 124'6" is LOA 124', and 125'6" is LOA 126'.)

<sup>8</sup>The Council passed an amendment in this section stating that a vessel which qualifies for a Norton Sound King Crab endorsement, would not be issued other endorsements. The Council's intent is that a vessel not be allowed to participate in both the Norton Sound Fishery and another BSAI crab fishery in the same year. The Council's intent is best implemented by maintaining the current super-exclusive registration for the Norton Sound fishery, and allowing persons to receive any and all endorsements for which the vessel qualifies.

## **Components and Alternative Elements Affecting the Ownership, Use, and Transfer of Licenses**

### **Who May Purchase Licenses**

Licenses may be transferred only to "persons" defined as those eligible to document a fishery vessel under chapter 121, Title 46 U.S.C. There shall be no leasing of crab licenses.

### **Vessel/License Linkages**

Licenses may be transferred without a vessel, i.e., licenses may be applied to vessels other than the one to which the license initially was issued, subject to license designations, and the "20% rule" and "maximum LOA" in the moratorium regulations, and the "no leasing" restriction. Licenses may be applied to vessels shorter than the "maximum LOA" regardless of vessel class designations, i.e. "downgrades" in vessel classes are allowed.

### **Options Regarding the Separability of Species and/or Area Designations**

Species/area endorsements are not separable, and shall remain as a single "package," which includes the assigned CV/CP and vessel length class designations. Crab and groundfish licenses that are initially issued to a person (as defined under "License Recipients") are not separable and shall remain as a block for a period of three years, after which time the Council may review whether or not the groundfish and crab licenses should remain non-severable. Crab Licenses obtained after the initial allocation will not be combined with any other licenses owned by the person, and will remain a separate license.

### **Vessel Replacement and Upgrades**

Vessels may be replaced or upgraded within the bounds of the vessel length designations and the 20% Rule as defined in the moratorium proposed rule. If a vessel upgrades under the "20% rule" to a length which falls into a higher vessel length designation after 6/17/95, then the vessel owner would receive the license and endorsements, but could not use them on that vessel<sup>9</sup>.

### **License Ownership Caps**

No more than 5 general licenses per person, with grandfather provisions to those persons who exceed this limit in the initial allocation. The intent of the Council is that this limit is applied to the "person" as defined under "License Recipients," and is not interpreted to apply to individual owners within corporations or partnerships.

### **Vessel License Use Caps**

There is no limit on the number of licenses (or endorsements) which may be used on a vessel.

### **Vessel Designation Limits**

A vessel which qualifies for multiple designations (i.e., both as a CV and as a CP) under the use restriction component will be able to participate under any designation for which it qualifies. Vessel designations will be based on activities during 1/1/94 - 12/31/94 or the most recent year of participation during the EQP. If a vessel qualifies as a CP only, it may select a one-time (permanent) conversion to a CV, though a CP may operate in either mode. If a vessel qualifies as a CV only, it is restricted to operate as a CV.

### **Community Development Quotas.**

For those BSAI Crab species for which there is an assigned Guideline Harvest Level, 7.5% of the GHV shall be allocated to CDQ communities, as defined in the current CDQ program, with the addition of Akutan. The Crab CDQ Program shall be patterned after current CDQ program but will not contain a sunset provision.

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<sup>9</sup>This is an issue for vessels which have an original qualifying length >50' LOA but less than 60' LOA, or vessels which have an original qualifying length greater than 103' LOA but less than 125'. If these vessels upgrade to the full extent allowed by the "20% rule" after 6/17/95, they will have exceeded the length allowed by the vessel class designations.



### **Other Provisions**

- 1 Licenses represent a use privilege. The Council may convert the license program to an IFQ program or otherwise alter or rescind the program without compensation to license holders.
- 2 Severe penalties may be invoked for failure to comply with conditions of the license.
- 3 Licenses may be suspended or revoked for serious and/or multiple violations. (The Council recommends NMFS consult with the Coalition for Stability in Marine Financing regarding license revocation concerns.)
- 4 Implement a Skipper Reporting System which requires crab license holders to report skipper names, address, and service records to NMFS.
- 5 An analysis of the impact of various rent collection levels and mechanisms, and enforcement and program implementation costs is required.
- 6 No future super-exclusive areas will be proposed (this option is only an expression of Council intent).
- 7 Vessels which qualified for the NPFMC license limitation program that have been lost or destroyed are still eligible to receive earned licenses and endorsements, subject to rules and conditions outlined in this program.
- 8 Vessels which qualify under the moratorium and were lost, damaged, or otherwise out of the fishery due to factors beyond the control of the owner, and which were replaced or otherwise reentered the fisheries in accordance with the moratorium rules and which made a landing in a fishery any time between the time the vessel left the fishery and June 17, 1995 (the date of final Council action on the license program), will be qualified for a general license and endorsement for that fishery.
- 9 The CDQ vessel exemption included in the Moratorium, will continue under the Crab License Limitation Program. This exemption allows vessels <125' obtained under an approved CDQ plan to participate in both CDQ and non-CDQ fisheries. If the vessel is sold to an interest outside the CDQ plan, the vessel will no longer be exempt from the requirements of the license program.
- 10 Each element and component of the Groundfish and Crab License Limitation Program as described in this action are integral to the overall program. No component or element of the program should be regarded as severable by the Secretary of Commerce.
- 11 An Individual Transferable Pot Quota (ITPQ) System will not be implemented at this time.
- 12 Buy-back or Retirement programs for vessels or licenses will not be implemented at this time.
- 13 The Two-Tiered Skipper License Program will not be implemented at this time. Future analysis of a license program for skippers, based on the amended program outlined by SEA, will be set on its own time line.
- 14 Community Development Licenses will not be a part of the Community Development Program.
- 15 A sunset date on the Crab License Program will not be set at this time.

# **Alaska Fisheries Conservation Group**

P.O. Box 910 Woodinville, WA 98072 (206)488-7708 Fax 823-3964

21 April 96

Rick Lauber, Chairman  
North Pacific Fishery Management Council  
Anchorage, Alaska

Dear Rick,

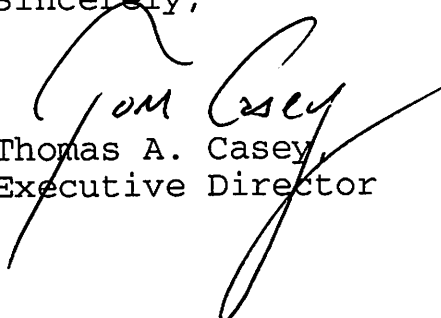
Before the Council approves regulations for its License Limitation program passed last June in Dutch Harbor, we request that the Council rescind CDQ's in the BSAI crab fisheries.

Years ago, the Council approved the **Super-Exclusive** crab fishery in Norton Sound deliberately to create crab fishing opportunities for Western Alaska coastal fishermen. That has happened as planned.

The Council created CDQ's as part of the Inshore-Offshore Amendment to the BSAI Groundfish Plan. The groundfish industry accepted CDQ's as part of that compromise.

The BSAI crab fleet has never accepted CDQ's as part of any Council compromise. CDQ's have no place in the BSAI crab fisheries and we request that the Council remove them from its License Limitation program before final regulations are sent to the Secretary of Commerce.

Sincerely,

  
Thomas A. Casey,  
Executive Director



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

C-6

April 12, 1996

Mr. Richard B. Lauber, Chairman  
North Pacific Fishery Management Council  
605 West 4th Avenue, Suite 306  
Anchorage, Alaska 99501-2252

Dear Rick:

At its meeting in Dutch Harbor in June 1995, The North Pacific Fishery Management Council approved for Secretarial review a proposal to establish a license limitation program (LLP) for all groundfish and crab fisheries under the Council's purview. In addition, this action would expand the current Western Alaska Community Development Quota (CDQ) Program to include other groundfish and crab species not currently included in a CDQ. Taken together, the proposed LLP and multi-species CDQ program would amend three fishery management plans (BSAI groundfish, GOA groundfish, and BSAI crab), and serve as a major step toward realization of the Council's comprehensive rationalization plan.

Alaska Region staff have been working, in cooperation with Council staff, to draft proposed implementing regulations that must be submitted with the proposed FMP amendments and other documents to start the Secretarial review process. The Council's meeting this month provides us an opportunity to brief the Council on the progress we have made to date and to ascertain that we have accurately captured the Council's intent for the LLP and multi-species CDQ program. In addition, we would like to clarify several issues relevant to the potential implementation of both programs.

#### The LLP Proposal

We have prepared a brief summary of the proposed LLP based on our understanding of the Council's action in June 1995, and the Council's clarifications in September 1995. This summary is attachment 1. This summary includes four issues on which we would like further clarification. Attachment 2 is draft regulatory language that we would use as a basis for preparing the draft proposed rulemaking documents. The issues on which we are seeking further clarification appear in bold type in this draft regulatory language. Please note that this draft text does not implement the LLP and should not be used by anyone to assume fishing privileges. Rather, it is provided only for Council review. If the proposed LLP is approved, a final implementing rule will be published in the Federal Register after opportunity for public comment on a proposed rule.



## The Multi-Species CDQ Proposal

Perhaps the most significant issue relevant to the potential implementation of this proposal is the precise accounting of CDQ catches and bycatches. CDQ allocations and transfer of CDQ fish also are important. Attachment 3 discusses these issues in the context of an overall view of the program's design and operation, if it is approved after Secretarial review. We have developed this program design document in close consultation with State of Alaska staff. Draft regulatory language for the proposed multi-species CDQ program is premature, however, the program design document sufficiently describes our understanding of the Council's intent. Further, it raises two issues on which we need further Council clarification. These issues are fully described in attachment 4. Of course, Council clarification would be appropriate also on elements of the program design that we may have misinterpreted before we complete work on the draft proposed rule documents.

### Review and Implementation Schedule

Based on Council comments and directions at its April meeting, we will draft a single proposed rule document for both programs in cooperation with Council staff. After preliminary review by Alaska Region, Enforcement, and General Counsel staff, we will forward the draft proposed rule to Council staff for incorporation into the FMP amendment package. Currently, we are anticipating having this work completed by the end of July. The Secretarial review process would begin in early August. This process includes a 60-day public comment period on the proposed FMP amendments and a concurrent 45-day public comment period on the proposed rule. An approval/disapproval/partial disapproval decision would be made in November, and a final rule would be published before the end of this year. If approved, we would undertake program implementation work during 1997, and fishing under the LLP and multi-species CDQ programs would begin in 1998.

Sincerely,



Steven Pennoyer  
Director, Alaska Region

### Attachments:

1. Summary of basic LLP elements
2. LLP draft regulatory language
3. Multi-Species CDQ program design
4. CDQ issues for Council clarification

cc with attachments: GCAK, Lindeman  
F/EN5, Meyer

**ISSUES TO BE REVIEWED BY THE COUNCIL  
(IN BOLD TYPE)**

1. **DEFINITION OF MAXIMUM LENGTH OVERALL, I.E., 20% RULE. (PAGE 5)** ✓
2. **DIFFERENT DEFINITION OF QUALIFIED PERSON FOR NORTON SOUND KING CRAB FISHERY. (PAGE 6)**
3. **CLARIFICATION OF NORTON SOUND KING CRAB ENDORSEMENT--WHICH SPECIES? (PAGE 18)**
4. **DOES HARDSHIP PROVISION REFLECT INTENT OF COUNCIL? (PAGE 24)** *D.K.*

## **License Limitation Program for Groundfish and Crab Basic Program Elements**

### **I. Groundfish**

#### **A. Licenses**

1. Licenses for groundfish will be issued with area endorsements for the AI, BS, WG, CG&WY, SO based on participation.
2. Licenses will be designated as Catcher Vessel (CV) or Catcher/Processor Vessel (C/PV) and classified in one of three vessel length categories (less than 60 feet, 60 feet to less than 125 feet, and 125 feet or greater).
3. Licenses will be issued to persons who owned qualified vessels on June 17, 1995.

#### **B. Qualifying Periods**

1. General: January 1, 1988 through June 27, 1992 with "cross-overs" from crab allowed until June 17, 1995. Vessels under 60 feet have GQP extended through December 31, 1994 for groundfish pot or jig gear.
2. Area Endorsements--Various (see table)

**LICENSE LIMITATION PROPOSAL QUALIFYING PERIODS FOR GROUND FISH**

VESSEL SIZE	GENERAL QUALIFICATIONS <sup>1</sup>	AREA ENDORSEMENTS		
		BS AND AI	CG AND EG	WG
LESS THAN 60 FEET	1/1/88 THROUGH 6/27/92 <sup>2</sup> 1/1/88 THROUGH 12/31/94 <sup>3</sup>	1 LANDING <sup>4</sup> DURING 1/1/92 THROUGH 6/17/95	1 LANDING <sup>4</sup> DURING 1/1/92 THROUGH 6/17/95	1 LANDING <sup>4</sup> DURING 1/1/92 THROUGH 6/17/95
60 FEET TO LESS THAN 125 FEET	1/1/88 THROUGH 6/27/92 <sup>2</sup>	1 LANDING <sup>4</sup> DURING 1/1/92 THROUGH 6/17/95	1 LANDING <sup>4</sup> IN EACH OF ANY 2 CALENDAR YEARS 1/1/92 THROUGH 6/17/95 OR 4 LANDINGS <sup>4</sup> 1/1/95 THROUGH 6/17/95	1 LANDING <sup>4</sup> DURING 1/1/92 THROUGH 6/17/95 IF CV; 1 LANDING <sup>4</sup> IN EACH OF ANY 2 CALENDAR YEARS 1/1/92 THROUGH 6/17/95 OR 4 LANDINGS <sup>4</sup> 1/1/95 THROUGH 6/17/95 IF C/PV
125 FEET OR GREATER	1/1/88 THROUGH 6/27/92 <sup>2</sup>	1 LANDING <sup>4</sup> DURING 1/1/92 THROUGH 6/17/95	1 LANDING <sup>4</sup> IN EACH OF ANY 2 CALENDAR YEARS 1/1/92 THROUGH 6/17/95	1 LANDING <sup>4</sup> IN EACH OF ANY 2 CALENDAR YEARS 1/1/92 THROUGH 6/17/95

- <sup>1</sup> EXEMPTIONS:
- (A) LESS THAN OR EQUAL TO 26 FEET IN GOA; LESS THAN OR EQUAL TO 32 FEET IN BSAI.
  - (B) LESS THAN 60 FEET USING JIG GEAR (LESS THAN 5 MACHINES/ONE LINE PER MACHINE/MAXIMUM 15 HOOKS PER LINE.
  - (C) LESS THAN OR EQUAL TO 125 FEET FOR A VESSEL PARTICIPATING IN A CDQ FISHERY.

<sup>2</sup> THE GENERAL QUALIFICATION PERIOD IS EXTENDED THROUGH 6/17/95 FOR VESSELS THAT QUALIFIED FOR A CRAB FISHERIES ENDORSEMENT UNDER THE MORATORIUM ON ENTRY.

<sup>3</sup> APPLIES ONLY FOR GROUND FISH POT AND JIG GEAR.

<sup>4</sup> LANDINGS INCLUDE ALL GROUND FISH UNDER FMPS EXCEPT DSR EAST OF W. 140° LONGITUDE AND SABLEFISH.

### C. General Provisions

1. Licenses may be transferred only to persons eligible to document a fishery vessel under Title 46 U.S.C. chapter 121 (U.S. ownership requirements). Licenses may not be leased.
2. Licenses may be transferred without a vessel; however, "20% rule" applies (similar to Moratorium).
3. Area endorsements issued together are non-severable. Crab and groundfish licenses issued together are non-severable for a period of at least 3 years.
4. Vessels can be upgraded or replaced within the "20 % rule."
5. License ownership per person is limited to 10, with a provision to allow persons to exceed this limit at initial issuance. No limit on how many licenses can be used on a single vessel.

### D. Other Provisions

1. Vessels targeting non-groundfish species that are currently allowed to land incidentally taken groundfish will be allowed to continue that practice (continue to land bycatch allowances).
2. Hardship provision to allow persons to qualify who would have qualified but for circumstances beyond their control.
3. A license authorizes the use of legal gear only, regardless of what type of gear was used to qualify. Consideration will be given to compensate persons who qualified with gear no longer authorized.



## II. Crab

### A. Licenses

1. Licenses will be issued with the following endorsements:
  - a. Pribilof red and Pribilof blue king
  - b. *C. opilio* and *C. bairdi*
  - c. St. Matthew blue king
  - d. Adak brown king
  - e. Adak red king
  - f. Bristol Bay red king
  - g. Dutch Harbor brown king
  - h. Norton Sound king
2. Licenses will be designated as CV or C/PV and classified in one of three vessel length categories (less than 60 feet, 60 feet to less than 125 feet, and 125 feet or greater).
3. Licenses will be issued to persons who owned qualified vessels on June 17, 1995.

## B. Qualifying Periods

1. General: January 1, 1988 through June 27, 1992 with "cross-overs" from groundfish allowed until December 31, 1994.
2. Area/Species Endorsement: January 1, 1992 through December 31, 1994 (except for Bristol Bay red king--January 1, 1991 through December 31, 1994).
3. Landing Requirements for endorsements--Various (see table)

## C. General Provisions

1. Licenses may be transferred only to persons eligible to document a fishery vessel under Title 46 U.S.C. chapter 121 (U.S. ownership requirements). Licenses may not be leased.
2. Licenses may be transferred without a vessel; however, "20% rule" applies (similar to Moratorium).
3. Area endorsements issued together are non-severable. Crab and groundfish licenses issued together are non-severable for a period of at least 3 years.
4. Vessels can be upgraded or replaced within the "20 % rule."
5. License ownership per person is limited to 5, with a provision to allow persons to exceed this limit at initial issuance. No limit on how many licenses can be used on a single vessel.

**LICENSE LIMITATION QUALIFYING PERIODS FOR CRAB**

<b>AREA/SPECIES</b>	<b>GENERAL QUALIFICATIONS</b>	<b>AREA/SPECIES ENDORSEMENT QUALIFICATIONS</b>	<b>LANDING REQUIREMENTS</b>
Pribilof red and blue king	N/A	1/1/93 through 12/31/94	At least one landing during the EQP
<i>C. opilio</i> and <i>C. bairdi</i>	1/1/88 through 6/27/92	1/1/92 through 12/31/94	At least three landings during the EQP
St. Matthew blue king	1/1/88 through 6/27/92	1/1/92 through 12/31/94	At least one landing during the EQP
Adak brown king	1/1/88 through 6/27/92	1/1/92 through 12/31/94	At least three landings during the EQP
Adak red king	1/1/88 through 6/27/92	1/1/92 through 12/31/94	At least one landing during the EQP
Bristol Bay red king	1/1/88 through 6/27/92	1/1/91 through 12/31/94	At least one landing during the EQP
Dutch Harbor brown king	1/1/88 through 6/27/92	1/1/92 through 12/31/94	At least three landings during the EQP
Norton Sound king	N/A	1/1/93 through 12/31/94	At least one landing during the EQP if red or blue; at least three landings during the EQP if brown

#### D. Other Provisions

1. All crab species not included under endorsements but that are covered under an FMP will be designated as "developing fisheries." To participate in a "developing fishery," a person must have a crab license issued under this program.
2. Hardship provision to allow persons to qualify who would have qualified but for circumstances beyond their control.
3. For the Norton Sound king summer fishery, "persons" eligible to receive a license include:
  - a. individuals who held a State of Alaska Permit for the Norton Sound king crab summer fishery and who made at least one landing; or
  - b. current vessel owners (as of June 17, 1995) in instances where a vessel was owned by a corporation but operated by a skipper who was a temporary contract employee.

**VESSELS PARTICIPATING IN BSAI AND GOA 1990-1992, 1994 AND VESSELS  
ELIGIBLE FOR A LICENSE UNDER LLP**

<b>AREA</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1994</b>	<b>LICENSE</b>
<b>ALL</b>	1550	1797	1918	1595	2435
<b>BSAI</b>	316	408	409	323	548
<b>GOA</b>	1433	1661	1770	1503	2252
<b>W. GULF</b>	174	306	329		
<b>C. GULF</b>	573	744	858		
<b>E. GULF</b>	900	955	948		

<b>PARTICIPATION IN THE BASE QUALIFYING PERIOD</b>	<b>PARTICIPATION IN THE ENDORSEMENT QUALIFYING PERIOD</b>	<b>ENDORSEMENT ELIGIBILITY</b>
BSAI groundfish or crab	BSAI groundfish	BSAI
BSAI groundfish or crab	BSAI and GOA groundfish	BSAI
BSAI groundfish or crab	GOA groundfish	GOA
GOA groundfish	GOA groundfish	GOA
GOA groundfish	BSAI and GOA groundfish	GOA
GOA groundfish	BSAI groundfish	BSAI
BSAI groundfish or crab and GOA groundfish	BSAI groundfish	BSAI
BSAI groundfish or crab and GOA groundfish	GOA groundfish	GOA
BSAI groundfish or crab and GOA groundfish	BSAI and GOA groundfish	BSAI and GOA
Vessel is <60' and no base period landings	BSAI and/or GOA groundfish with pot and/or jig gear	One FMP subarea only
Vessel is <60' with BSAI crab landings	BSAI and/or GOA groundfish with pot and/or jig gear	Choice <sup>A</sup>

<sup>A</sup> These vessels may choose to qualify under the rules for "crab crossover" vessels or as "pot/jig" vessels. Choosing to qualify as "crab crossover" vessels will mean that they qualify for only BSAI or GOA, but not both. Choosing to qualify as "pot/jig" vessels will mean that they must select a single subarea endorsement.

## LICENSE LIMITATION PROGRAM

I. Purpose and scope.

(a) Regulations in \_\_\_\_\_ implement the license limitation program for the commercial groundfish fisheries in the EEZ off of Alaska and the license limitation program for the commercial crab fisheries for the Bering Sea and Aleutian Islands in the EEZ off of Alaska.

(b) Regulations in \_\_\_\_\_ govern the commercial fishing for groundfish by vessels of the United States using authorized gear within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority.

(c) Regulations in \_\_\_\_\_ govern the commercial fishing for crab species by vessels of the United States using authorized gear within that portion of the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority.

II. Definitions.

In addition to the definitions in the Magnuson Act and in \_\_\_\_\_, and except as otherwise noted, the terms in this \_\_\_\_\_ have the following meanings:

Area endorsement means the designation on a license that

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authorizes the vessel designated on the license to conduct directed fishing for groundfish in the designated area. Area endorsements, which are inclusive of but not necessarily the same as management areas, subareas, and regulatory areas defined at \_\_\_\_\_, are as follows:

(1) Aleutian Islands area endorsement. Authorizes the vessel designated on the license to conduct directed fishing for groundfish in the Aleutian Islands subarea;

(2) Bering Sea area endorsement. Authorizes the vessel designated on the license to conduct directed fishing for groundfish in the Bering Sea subarea;

(3) Central Gulf endorsement. Authorizes the vessel designated on the license to conduct directed fishing for groundfish in the Central Gulf regulatory area and the West Yakutat regulatory district;

(4) Southeast Outside endorsement. Authorizes the vessel designated on the license to conduct directed fishing for groundfish in the Southeast Outside regulatory district; and

(5) Western Gulf endorsement. Authorizes the vessel designated on the license to conduct directed fishing for groundfish in the Western Gulf regulatory area.

Area/species endorsement for crab species license means the designation on a license that authorizes the vessel designated on the license to conduct fishing for the designated crab species in

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the designated area. Area/species endorsements for crab species licenses are as follows:

- (1) Adak brown king;
- (2) Adak red king;
- (3) Bristol Bay red king;
- (4) *C. opilio* and *C. bairdi*;
- (5) Dutch Harbor brown king;
- (6) Norton Sound \_\_\_\_\_ king;
- (7) Pribilof red king and Pribilof blue king;
- (8) St. Matthew blue king.

Authorized jig gear means a maximum of 5 jig machines, one line per machine, and a maximum 15 hooks per line.

Catcher/processor vessel designation means a license designation that authorizes the vessel designated on the license to conduct directed fishing for and process groundfish or to conduct fishing for and process crab species.

Catcher vessel designation means a license designation that authorizes the vessel designated on the license to conduct directed fishing for but not process groundfish or to conduct fishing for but not process crab species.

Crab species means all crab species covered by a fishery management plan, including, but not limited to, red king crab (*Paralithodes camtschatica*), blue king crab (*Paralithodes platypus*), brown or golden king crab (*Lithodes aequispina*),

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scarlet or deep sea king crab (Lithodes couesi), Tanner or snow crab (Chionoecetes bairdi), Tanner or snow or queen crab (Chionoecetes opilio), grooved Tanner crab (Chionoecetes tanneri), and triangle Tanner crab (Chionoecetes angulatus).

Crab species license means a license issued by NMFS that authorizes the vessel designated on the license to conduct fishing for crab species.

Directed fishing for groundfish means any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable bycatch amount for that species or species group as calculated under §§ 672.20(g) and (h) and 675.20(h) and (i) of this chapter.

Fishing for crab species means any activity, other than scientific research conducted on a scientific vessel, which involves:

- (1) The catching, taking, or harvesting of crab species;
- (2) The attempted catching, taking, or harvesting of crab species;
- (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of crab species; or
- (4) Any operation at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

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Groundfish means target species and the "other species" category, specified annually pursuant to § 672.20(a)(1) or § 675.20(a)(1) of this chapter, except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program at \_\_\_\_\_ are not considered groundfish for purposes of the license limitation program.

Groundfish license means a license issued by NMFS that authorizes the vessel designated on the license to conduct directed fishing for groundfish.

Legal landing means any amount of the appropriate species that was landed in compliance with Federal or state commercial fishing regulations in effect at the time of landing.

Maximum length overall (MLOA) means 1.2 times the length overall (LOA) of the vessel on June 17, 1995, except that the MLOA of a vessel cannot exceed:

- (1) 59 feet (\_\_\_ m) LOA, if the LOA of the vessel on June 17, 1995, was less than 60 feet (\_\_\_ m);
- (2) 124 feet (\_\_\_ m) LOA, if the LOA of the vessel on June 17, 1995, was less than 125 feet (\_\_\_ m); or
- (3) The LOA of the vessel on June 17, 1995, if that LOA was 125 feet (\_\_\_ m) or greater.

Qualified person means a person who was eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C. For purposes of initial issuance of a license, a qualified person

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must have owned the vessel on June 17, 1995, that made legal landings in the appropriate qualifying periods specified in section III(d) and (e), except for the area/species endorsement at section III(e) (2) (viii), a qualified person also includes:

(1) Individuals who held a State of Alaska Permit for the Norton Sound king crab summer fishery and who made at least one landing during the period in section III(e) (2) (viii); and

4/20  
5:20pm → (2) Corporate vessel owners that owned a vessel on June 17, 1995 that made at least one landing during the period in section III(e) (2) (viii) and that was operated by an individual who was a temporary contract employee.

Vessel length category means the length category designated on a license based on the MLOA of the vessel.

### III. Licenses for groundfish or crab species.

(a) General requirements. (1) In addition to the permit and licensing requirements prescribed at \_\_\_\_\_, and except as provided in paragraph (b) of this section, all vessels within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority must have a groundfish license on board at all times it is engaged in fishing activities defined in section II as directed fishing for groundfish. This groundfish license, which will be issued by NMFS to a qualified person in the name of a vessel, must be

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specific as to the area, vessel designation, and vessel length category for the vessel that is authorized to conduct directed fishing for groundfish.

(2) In addition to the permit and licensing requirements prescribed at \_\_\_\_\_, and except as provided in paragraph (b) of this section, all vessels within that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority must have a crab species license on board at all times it is engaged in fishing activities defined in section II as fishing for crab species. This crab species license, which will be issued by NMFS to a qualified person in the name of a vessel, must be specific as to the species, area, vessel designation, and vessel length category for the vessel that is authorized to conduct fishing for crab species.

(b) Exempt vessels. Notwithstanding the requirements of paragraph (a) of this section, a vessel within one of the following categories may, in compliance with other Federal or State of Alaska regulations, conduct directed fishing for groundfish or conduct fishing for crab species without a groundfish license or crab species license unless that behavior is prohibited by other Federal or State of Alaska regulations:

(1) A vessel other than a catcher vessel or catcher/processor vessel;

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(2) A catcher vessel or catcher/processor vessel that conducts directed fishing for groundfish in the Gulf of Alaska and does not exceed 26 ft (7.9 m) LOA;

(3) A catcher vessel or catcher/processor vessel that conducts fishing for crab species in the Bering Sea and Aleutian Islands management area or that conducts directed fishing for groundfish in the Bering Sea and Aleutian Islands management area and does not exceed 32 ft (9.8 m) LOA;

(4) A catcher vessel or catcher/processor vessel that conducts directed fishing for groundfish in the Bering Sea and Aleutian Islands management area, that does not exceed 60 ft (18.3 m) LOA, and that uses only authorized jig gear, as defined in section II;

(5) A catcher vessel or catcher/processor vessel that conducts directed fishing for demersal shelf rockfish in the Gulf of Alaska east of 140° W. longitude;

(6) A catcher vessel or catcher/processor vessel that conducts fishing for IFQ halibut or IFQ sablefish or halibut or sablefish under the Western Alaska Community Development Quota Program in accordance with regulations at \_\_\_\_\_; or

(7) A catcher vessel or catcher/processor vessel that, after November 18, 1992, is specifically constructed for and used in accordance with a Community Development Plan approved by the Secretary of Commerce under \_\_\_\_\_, is designed and equipped

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to meet specific needs that are described in the Community Development Plan, and does not exceed 125 ft (38.1 m) LOA.

(8) The exemption in paragraph (b) (7) of this section expires on the date the vessel ownership changes to an interest outside the Community Development Plan.

(c) Vessel designations and vessel length categories. (1) Vessel designations--(i) Catcher vessel. A license will be assigned the vessel designation of catcher vessel if:

(A) For groundfish, no groundfish were processed on the vessel that qualified for the groundfish license under paragraph (d) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent year of participation during the area endorsement qualifying period specified in paragraph (d) (2) of this section; or

(B) For crab species, no crab species were processed on the vessel that qualified for the crab species license under paragraph (e) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent year of participation during the area/species endorsement qualifying period specified in paragraph (e) (2) of this section.

(ii) Catcher/processor vessel. A license will be assigned the vessel designation of catcher/processor vessel if:

(A) For groundfish, groundfish were processed on the vessel that qualified for the groundfish license under paragraph (d) of

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this section during the period January 1, 1994, through June 17, 1995, or in the most recent year of participation during the area endorsement qualifying period specified in paragraph (d) (2) of this section; or

(B) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (e) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent year of participation during the area endorsement qualifying period specified in paragraph (e) (2) of this section.

(2) Vessel length categories. A license will be assigned one of the vessel length categories in paragraphs (c) (2) (i) through (c) (2) (iii) of this section based on the MLOA of the vessel.

(i) Vessel length category "A" if the MLOA of the vessel is equal to or greater than 125 ft (38.1 m) LOA;

(ii) Vessel length category "B" if the MLOA of the vessel is equal to or greater than 60 ft (18.3 m), but less than 125 ft (38.1 m) LOA; and

(iii) Vessel length category "C" if the MLOA of the vessel is less than 60 ft (18.3 m) LOA.

(3) A license can be used only on a vessel that is named on the license, that comports with the vessel designation, and that has an LOA less than the MLOA of the vessel used to originally

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qualify for the license.

(d) Qualifications for a groundfish license. A groundfish license will be issued to a qualified person in the name of the vessel that meets the criteria in paragraphs (d) (1) and (d) (2) of this section.

(1) General qualification periods. (i) To qualify for one or more of the area endorsements in paragraphs (d) (2) (i) and (d) (2) (ii) of this section, a vessel must have made at least one legal landing of any groundfish species in the Bering Sea and Aleutian Islands management area during:

(A) The period January 1, 1988, through June 27, 1992;

(B) The period January 1, 1988, through December 31, 1994, provided that the legal landing was made using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(C) The period January 1, 1988, through June 17, 1995, provided that the vessel qualifies for a crab fisheries endorsement under the Moratorium on Entry in \_\_\_\_\_.

(ii) To qualify for one or more of the area endorsements in paragraphs (d) (2) (iii) through (d) (2) (v) of this section, a vessel must have made at least one legal landing of any groundfish species in the Gulf of Alaska during:

(A) The period January 1, 1988, through June 27, 1992;

(B) The period January 1, 1988, through December 31, 1994, provided that the legal landing was made using pot or jig gear

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from a vessel that was less than 60 ft (18.3 m) LOA; or

(C) The period January 1, 1988, through June 17, 1995, provided that the vessel qualifies for a crab fisheries endorsement under the Moratorium on Entry in \_\_\_\_\_.

(2) Endorsement qualification periods. A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (d) (2) (i) through (d) (2) (v).

(i) Aleutian Islands area endorsement. A vessel of any length (vessel categories "A" through "C") must have made at least one legal landing of groundfish during the period January 1, 1992, through June 17, 1995, in the Aleutian Islands subarea for an Aleutian Islands area endorsement.

(ii) Bering Sea area endorsement. A vessel of any length (vessel categories "A" through "C") must have made at least one legal landing of groundfish during the period January 1, 1992, through June 17, 1995, in the Bering Sea subarea for a Bering Sea area endorsement.

(iii) Central Gulf area endorsement:

(A) A vessel assigned to vessel category "A" must have made at least one legal landing of groundfish in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Central Gulf regulatory area or the West Yakutat regulatory district for a Central Gulf area endorsement;

(B) A vessel assigned to vessel category "B" must have made

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at least one legal landing of groundfish in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, or at least four legal landings of groundfish during the period January 1, 1995, through June 17, 1995, in the Central Gulf regulatory area or the West Yakutat regulatory district for a Central Gulf area endorsement; and

(C) A vessel assigned to vessel category "C" must have made at least one legal landing of groundfish during the period January 1, 1992, through June 17, 1995, in the Central Gulf regulatory area or the West Yakutat regulatory district for a Central Gulf area endorsement.

(iv) Southeast Outside area endorsement:

(A) A vessel assigned to vessel category "A" must have made at least one legal landing of groundfish in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Southeast Outside regulatory district for a Southeast Outside area endorsement;

(B) A vessel assigned to vessel category "B" must have made at least one legal landing of groundfish in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Southeast Outside regulatory district, or at least four legal landings of groundfish during the period January 1, 1995, through June 17, 1995, in the Southeast Outside regulatory district for a Southeast Outside area endorsement; and

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(C) A vessel assigned to vessel category "C" must have made at last one legal landing of groundfish during the period January 1, 1992, through June 17, 1995, in the Southeast Outside regulatory district for a Southeast Outside area endorsement.

(v) Western Gulf area endorsement:

(A) A vessel assigned to vessel category "A" must have made at least one legal landing of groundfish in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Western Gulf regulatory area for a Western Gulf area endorsement;

(B) A vessel assigned to vessel category "B" and the vessel designation of catcher vessel must have made at least one legal landing of groundfish during the period January 1, 1992, through June 17, 1995, in the Western Gulf regulatory area for a Western Gulf area endorsement;

(C) A vessel assigned to vessel category "B" and the vessel designation of catcher/processor vessel must have made at least one legal landing of groundfish in each of any 2 calendar years during the period January 1, 1992, through June 17, 1995, in the Western Gulf regulatory area, or at least four legal landing of groundfish during the period January 1, 1995, through June 17, 1995, in the Western Gulf regulatory area for a Western Gulf area endorsement; and

(D) A vessel assigned to vessel category "C" must have made

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at last one legal landing of groundfish during the period January 1, 1992, through June 17, 1995, in the Western Gulf regulatory area for a Western Gulf area endorsement.

(3) A qualified person that is issued a groundfish license based on a vessel's qualifications under paragraph (d) (1) (i) (B) or (d) (1) (ii) (B) of this section must choose a single area endorsement for that groundfish license even if the vessel would have qualified for more than one area endorsement.

(4) Notwithstanding the provisions in paragraph (d) of this section, a qualified person who owned a vessel on June 17, 1995, that made a legal landing of groundfish that meets the criteria in paragraph (d) (1) (i) of this section, and the criteria in paragraphs (d) (2) (iii), (iv), or (v) of this section, but not the criteria in paragraphs (d) (2) (i) or (ii) of this section, will receive a license with endorsement(s) in paragraphs (d) (2) (iii), (iv), or (v) of this section for which the vessel made legal landings that meets the criteria in those paragraphs.

(5) Notwithstanding the provisions in paragraph (d) of this section, a qualified person who owned a vessel on June 17, 1995, that made a legal landing of groundfish that meets the criteria in paragraph (d) (1) (ii) of this section, and the criteria in paragraphs (d) (2) (i) or (ii) of this section, but not the criteria in paragraphs (d) (2) (iii), (iv), or (v) of this section, will receive a license with endorsement(s) in paragraphs

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(d) (3) (i) or (ii) of this section for which the vessel made legal landings that meets the criteria in those paragraphs.

(e) Qualifications for a crab species license. A crab species license will be issued to a qualified person in the name of the vessel that meets the criteria in paragraphs (e) (1) and (e) (2) of this section, except that vessels are exempt from the requirements in paragraph (e) (1) of this section for the area/species endorsements in paragraph (e) (2) (i) and (e) (2) (viii) of this section.

(1) General qualification period. To qualify for one or more of the area/species endorsements in paragraph (e) (2) of this section, a vessel must have:

(i) Made at least one legal landing of crab species during the period January 1, 1988, through June 27, 1992; or

(ii) Made at least one legal landing of crab species during the period January 1, 1988, through December 31, 1994, providing that the vessel qualifies for a groundfish fisheries endorsement under the Moratorium on Entry in \_\_\_\_\_.

(2) A crab species license will be assigned one or more area/species endorsements based on the criteria in paragraphs (e) (2) (i) through (e) (2) (viii) of this section.

(i) Pribilof red king and Pribilof blue king. A vessel must have made at one legal landing in the Pribilof red king or Pribilof blue king crab fisheries during the period January 1,

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1993, through December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(ii) C. opilio and C. bairdi. A vessel must have made at least three legal landings in the C. opilio or C. bairdi crab fisheries during the period January 1, 1992, through December 31, 1994, to qualify for a C. opilio and C. bairdi area/species endorsement.

(iii) St. Matthew blue king. A vessel must have made at least one legal landing in the St. Matthew blue king crab fishery during the period January 1, 1992, through December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(iv) Adak brown king. A vessel must have made at least three legal landings in the Adak brown king crab fishery during the period January 1, 1992, through December 31, 1994, to qualify for a Adak brown king area/species endorsement.

(v) Adak red king. A vessel must have made at least one legal landing in the Adak red king crab fishery during the period January 1, 1992, through December 31, 1994, to qualify for a Adak red king area/species endorsement.

(vi) Bristol Bay red king. A vessel must have made at least one legal landing in the Bristol Bay red king crab fishery during the period January 1, 1991, through December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(vii) Dutch Harbor brown king. A vessel must have made at

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least three legal landings in the Dutch Harbor brown king crab fishery during the period January 1, 1992, through December 31, 1994, to qualify for a Dutch Harbor brown king area/species endorsement.

(viii) Norton Sound king. NEED CLARIFICATION ON WHETHER THIS IS A RED, <sup>OR</sup> BLUE, OR ~~BROWN~~ KING FISHERY. THE ORIGINAL ATTACHMENT HAS "RED" LISTED, HOWEVER, THIS HAS BEEN CROSSED OUT. VERIFY WHICH SUBSPECIES ARE INCLUDED. A vessel must have made at least one (three) legal landings in the Norton Sound \_\_\_\_\_ king crab fishery during the period January 1, 1993, through December 31, 1994, to qualify for a Norton Sound \_\_\_\_\_ king area/species endorsement.

(f) Application for a groundfish license or a crab species license. (1) A qualified person must meet all the criteria for eligibility in this \_\_\_\_\_ and submit a timely and complete application to the Director, Alaska Region, NMFS, to receive a groundfish license or a crab species license.

(2) An application for a groundfish license or a crab species license may be requested from and submitted to the Restricted Access Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668. Requests may be made by telephone by calling 907-586-7202 or 800-304-4846. A complete application for a groundfish license or a crab species license must include the following information:

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(i) Name of the vessel, state registration number of the vessels and, the U.S. Coast Guard documentation number of the vessel, if any;

(ii) Name, business address, and telephone and fax number of the owner of the vessel as of June 17, 1995, include all owners if more than one;

(iii) Name of the managing company;

(iv) Valid documentation of the legal landings that qualify the vessel for a groundfish license or a crab species license if requested by the Regional Director due to an absence of landing records for the vessel during the qualifying periods;

(v) Valid documentation of the vessel's LOA on June 17, 1995;

(vi) Valid documentation to support the vessel's designation of catcher vessel or catcher/processor vessel based on the criteria in section III(c)(1); and

(vii) Signature of the qualified person who was the owner of the vessel on June 17, 1995, or the person who is legally responsible for representing that owner.

#### IV. Transfers

(a) General requirements. A person must be a qualified person to receive a groundfish license or a crab species license through transfer.

(b) Transfer procedures. (1) A transferred license cannot

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be used to conduct directed fishing for groundfish or to conduct fishing for crab species until a transfer application has been reviewed and approved by the Regional Director and a new license is issued in the name of the recipient of the transferred license.

(2) Transfer applications can be requested from and submitted to the address in section III(e) (2).

(3) Transfer applications must contain the following information to be reviewed by the Regional Director:

(i) Name of the person who is transferring the license, include all persons if more than one;

(ii) Name of the person who is the recipient of the transferred license, include all persons if more than one; and

(iii) Valid documentation that the recipient of the transferred license meets the criteria in section IV(a).

(4) A transfer application will not be approved by the Regional Director if:

(i) The recipient of the transferred license does not meet the criteria in section IV(a);

(ii) There are fines, civil penalties, other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations involving any persons that are party to the transfer;

(iii) The transfer would cause the recipient of the

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transferred license to exceed the license caps in section V(a);  
or

(iv) Other information requested on the transfer application was not supplied to the satisfaction of the Regional Director.

(c) Vessel linkage--(1) A groundfish license or a crab species license may be transferred to a qualified person without a designated vessel; however, the license cannot be used to conduct directed fishing for groundfish or to conduct fishing for crab species until the name of the recipient of the transferred license and a designated vessel on which the license will be used appears on the license as issued by NMFS.

(2) The activity of the designated vessel must comply with the vessel designation of the vessel that was used to originally qualify for the license.

(3) The designated vessel cannot exceed the MLOA of the vessel that was used to originally qualify for the license.

#### V. Prohibitions.

In addition to the prohibitions specified at \_\_\_\_\_, it is unlawful for any person to do any of the following:

(a) Number of licenses--(1) Have more than 10 groundfish licenses in the name of that person at any time, except as provided in paragraph (a) (3) of this section;

(2) Have more than 5 crab species licenses in the name of that person at any time, except as provided in paragraph (a) (3)

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of this section; or

(3) Have more licenses than allowed in paragraphs (a) (1) and (a) (2) of this section unless those licenses were initially issued to that person; however, that person may not receive any licenses by transfer until the number of licenses in the name of that person is less than the numbers specified in paragraphs (a) (1) and (a) (2); furthermore, when a person becomes eligible to receive licenses by transfer through the provisions of this paragraph, that person is subject to the provisions in paragraphs (a) (1) and (a) (2);

(b) Use gear other than legal fixed gear east of 140° W. longitude, regardless of the gear used to qualify for the license;

(c) Conduct directed fishing for groundfish without a groundfish license that displays the name of the person to which the license was issued and the name of the vessel on which the license is being used, except as provided in section III(b);

(d) Conduct fishing for crab species without a crab species license that displays the name of the person to which the license was issued and the name of the vessel on which the license is being used, except as provided in section III(b);

(e) Conduct directed fishing for groundfish or conduct fishing for crab species with a license on a vessel not named on that license;

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(f) Use a license on a vessel that has an LOA that exceeds the MLOA of the vessel that was used to originally qualify for that license.

IV. Other provisions.

(a) Licenses issued pursuant to section III(d) and (e) do not represent either an absolute right to the resource or any interest that is subject to the "takings" clause of the Fifth Amendment to the U.S. Constitution. Licenses issued pursuant to section III(d) and (e) represent a use privilege that may be revoked or amended subject to the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law.

(b) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson Fishery Conservation and Management Act or any regulations issued pursuant thereto, or a violation of other applicable law, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(c) Notwithstanding the provisions of the license limitation program in this \_\_\_\_\_, vessels fishing for species other than groundfish as defined in section II that were authorized to incidentally catch groundfish without a Federal groundfish permit

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will continue to be authorized to catch the maximum retainable bycatch amounts of groundfish as provided in \_\_\_\_\_ without a groundfish license.

(d) A qualified person, who owned a vessel on June 17, 1995 that qualifies for a groundfish license or crab species license but which has been subsequently lost or destroyed, will be issued the license for which the lost or destroyed vessel qualified; however:

(1) The license issued will have the vessel designation and vessel length category of the vessel subsequently lost or destroyed; and

(2) The license issued cannot be used to conduct directed fishing for groundfish or to conduct fishing for crab species until a vessel, which does not exceed the MLOA of the vessel lost or destroyed and on which the license will be used, is designated on the license.

(e) A qualified person, who owned a vessel on June 17, 1995 that qualified for the moratorium on entry but that was unable to meet all the criteria in section III(d) for a groundfish license or section III(e) for a crab species license because the vessel was lost, damaged, or otherwise unable to participate in the groundfish or crab fisheries, may receive a license if:

(1) The reasons why the vessel was lost, damaged, or otherwise unable to participate in the groundfish or crab

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fisheries was for factors that were substantial in nature and beyond the control of the owner or operator;

(2) The owner or operator was unable to mitigate the factors referred to in paragraph (e) (1) of this section in time to allow the vessel to qualify for a license under section III(d) or (e);

(3) The vessel was replaced or otherwise reentered the appropriate fishery in accordance with the provisions of the moratorium on entry as provided in \_\_\_\_\_; and

(4) The vessel made a legal landing in the appropriate fishery after the time the vessel was unable to participate in the groundfish or crab fisheries but before June 17, 1995.

(f) Severability of licenses. (1) Area endorsements or area/species endorsements specified on a license by initial issuance are not severable from the license and must be transferred together.

(2) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

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## **The Community Development Quota Program Design under the Groundfish and Crab License Limitation Proposal**

### **A. Council recommendation**

7.5% of all BSAI groundfish TACs not already covered by a CDQ program, and a pro-rata share of PSC will be allocated to CDQ Communities as defined in the current CDQ program, with the addition of Akutan. PSC will be allocated "off the top" before the trawl/non-trawl split. The Groundfish CDQ program will be patterned after current CDQ program but will not contain a sunset provision. (Council newsletter, 6/28/95)

### **B. General Program Design**

1. CDQ species will include all groundfish TAC species (including pollock and sablefish) and prohibited species in the Groundfish CDQ Program; halibut in the Halibut CDQ Program; and king and tanner crab in the Crab CDQ Program.
2. Individual CDQ groups will receive a percentage allocation of groundfish, prohibited species, halibut, and crab based on their Community Development Plan (CDP) proposals to the State and the State's recommendations to the Council and NMFS.
3. All groundfish and PSC harvested by vessels participating in the Groundfish CDQ Program must be accounted for in the allocation to a CDP.
4. Groundfish bycatch in the Halibut CDQ Program must be accounted for out of CDQ groundfish allocations.
5. Once a CDQ or PSC CDQ has been reached, vessels or processors fishing for the CDQ group would be prohibited from operations that would result in the further catch of the species for which a quota had been reached (see transferability provisions and attainment of PSC CDQs sections).
6. None of the groundfish catch or PSC bycatch from the groundfish CDQ fisheries will accrue to the non-CDQ fishery TACs or PSC limits.
7. Unused CDQ or CDQ PSC from the CDQ fisheries will not be transferred back to the open access fisheries.



**C. Allocation to the CDQ Programs**

7.5 percent of all groundfish total allowable catches (TACs), except the fixed gear sablefish TAC, and 7.5 percent of the prohibited species bycatch limits will be allocated annually to a CDQ reserve for the individual TAC species or species groups and prohibited species.

Table 1. Allocation of Groundfish, Halibut, Crab, and Prohibited Species to the CDQ Program.

<b>CDQ Category</b>	<b>CDQ Reserve</b>	<b>Expiration</b>
Groundfish (except pollock and sablefish)	7.5 % of TAC (specified as 1/2 of the non-specific reserve for each species)	no sunset
Pollock	7.5 % of TAC (1/2 reserve)	sunset in 1998
Sablefish Fixed Gear Allocation Trawl Allocation	20% fixed gear allocation 7.5% trawl allocation	no sunset
Prohibited Species Catch	7.5% of PSC limits	no sunset
Halibut	from 20% to 100% of area catch limits	no sunset
King and Tanner Crab	7.5% of the crab available for commercial harvest each yr.	no sunset

1. Table 2 summarizes groundfish CDQ reserves based on 1996 TACs.
2. Sablefish allocation to CDQ program will total approximately 15 percent of the TAC due to combination of sablefish fixed gear CDQ reserve (20 percent of fixed gear TAC) and sablefish CDQ reserve (7.5 percent of trawl TAC).

Table 2.

## Amount of groundfish available to CDQ fishery based on 1996 TACs.

Species	TAC	CDQ Reserve
<b>Pollock</b>		
Bering Sea	1,190,000	89,250
Aleutian Islands	35,600	2,670
Bogoslof District	1,000	75
<b>Pacific cod</b>	270,000	20,250
<b>Sablefish</b>		
BS	1,100	
Trawl	550	41
HAL	550	110
AI	1,200	
Trawl	300	23
HAL	900	180
<b>Atka mackerel Total</b>	106,157	7,962
Western AI	45,857	3,439
Central AI	33,600	2,520
Eastern AI/BS	26,700	2,003
<b>Yellowfin Sole</b>	200,000	15,000
<b>Rock sole</b>	70,000	5,250
<b>Greenland turbot Total</b>	7,000	525
BS	4,667	350
AI	2,333	175
<b>Arrowtooth flounder</b>	9,000	675
<b>Flathead sole</b>	30,000	2,250
<b>Other flatfish</b>	35,000	2,625
<b>Pacific Ocean perch</b>		
BS	1,800	135
AI	12,100	908
<b>Other red rockfish - BS</b>	1,260	95
<b>Sharpchin/North AI</b>	5,229	392
<b>Shortraker/Rougheye AI</b>	1,125	84
<b>Other rockfish</b>		
BS	447	34
AI	857	64
<b>Squid</b>	1,000	75
<b>Other species</b>	20,125	1,509
<b>TOTAL</b>	<b>2,002,300</b>	<b>150,173</b>

**D. Gear or Use Restrictions in the Groundfish CDQ Program**

1. The fixed gear sablefish CDQ reserve must be harvested with fixed gear only.
2. All other groundfish CDQ reserves, including the 7.5 percent of the sablefish trawl allocation, may be harvested with any gear type.
3. Prohibited species catch CDQ reserves must be used as prohibited species bycatch to support halibut and groundfish directed fisheries.

**E. CDQ Transferability Provisions**

1. CDPs may obtain transfers of groundfish species in order to continue fishing and they may transfer excess groundfish CDQ to other CDPs. Transfers are effective only for the year in which they are made.
2. Transfer requests must be approved in advance of fishing.
3. PSC will not be transferable. (Result of CDQ group attaining specific PSC CDQ reserve is summarized in section G.)

**F. Community Development Groups and Community Development Plans**

1. CDQ groups will request allocations of all CDQ species (crab, halibut, groundfish, prohibited species) in one CDP.
2. CDPs will include a Multi-Species Fishing Plan identifying the percentage of each groundfish, PSC, halibut, and crab allocation requested; the method of harvest, list of processors and vessels (name, identification numbers, size, etc.); catch accounting and monitoring procedures; observer coverage levels; catch utilization plan; plan for preventing overages; and other aspects of the CDQ fisheries.
3. All CDQ programs will be put on the same three year cycle starting in 1999. Currently, sablefish and halibut are on a 1995-1997 cycle and pollock is on a 1996-1998 cycle. The cycles must be standardized because the future CDQ program will fully allocate the halibut, groundfish, and PSC reserve to these groups. CDPs must be considered at the same time to assure that aggregate CDQ reserves are not exceeded.
4. In 1997, CDQ groups will submit CDPs for the 1998 fishing year for all species except pollock. In 1998, they will submit CDPs for a three-year cycle (1999-2001) for all species.

**G. Prohibited Species Catch Limits in the Groundfish CDQ Program**

1. PSC limits for the open access fisheries will be reduced by the amounts allocated to CDPs.
2. Salmon, herring, and crab PSC bycatch by fixed gear will not accrue to the CDQ groups PSC limits.
3. Halibut PSC bycatch by pot and jig gear will not accrue to the CDQ groups halibut PSC CDQ.
4. The prohibited species catch CDQ reserves will include:

Red king crab in Zone 1:	15,000 crabs
Tanner crab in Zone 1:	75,000 crabs
Tanner crab in Zone 2:	225,000 crabs
Herring:	127.28 mt (based on 0.075% of 1996 limit)
Non-chinook salmon:	3,150 salmon
Chinook salmon:	3,600 salmon
Halibut:	350.6 mt of mortality

5. Attainment of PSC limit by a CDP triggers the same action as required for the non-CDQ fisheries:

(i) attainment of the red king crab or tanner crab limit in Zone 1 closes Zone 1 to all trawl vessels fishing for the CDP;

(ii) attainment of the tanner crab limit in Zone 2 closes the BSAI to all trawl vessels fishing for the CDP;

(iii) attainment of the herring limit closes the Herring Savings Areas to all trawl vessels fishing for the CDP;

(iv) accounting for the "non-chinook" salmon PSC CDQ reserve in a CDP's trawl fisheries starts August 15. If a CDP's limit is reached, all trawling under the CDP is closed in the five-block area (Chum Salmon Savings Area) from September 1 through October 14. (All trawling is prohibited in the Chum Salmon Savings Area from August 1 - 31.)

(v) accounting for the chinook salmon PSC CDQ reserve in a CDP's trawl fisheries occurs between January 1 and April 15. If a CDP's limit is reached, all trawling under the CDP is closed in the nine-block area (Chinook Salmon Savings Area) from through April 15.

(vi) attainment of the halibut PSC limit closes both trawl and longline fishing for groundfish in the BSAI under the CDP.

#### **H. The Crab CDQ Program**

1. The crab FMP will be amended to authorize the Crab CDQ Program.
2. A crab CDQ reserve will be specified in NMFS regulations (7.5% of the crab available for commercial harvest each year).
3. Administrative requirements will be the same as for all CDPs (e.g., plans, amendments, managing organizations, etc.).
4. All quota monitoring, recordkeeping and reporting, observer coverage requirements, and enforcement for the Crab CDQ Program will be the responsibility of the State of Alaska.

#### **I. CDQ Catch Monitoring Requirements**

The expanded Groundfish CDQ Program will require NMFS to monitor quotas for halibut and all groundfish TAC and prohibited species for each CDQ group. The fishing and processing activity of all vessels and processors contracted by each CDQ group will be based on information collected and disseminated by NMFS. CDQ groups may contract with a single vessel or processor or with many vessels and processors of varying gear types and sizes. Regardless, NMFS will be required to manage the data collection and quota monitoring program that will provide information to each CDQ group about the amount of each species harvested - including bycatch and discard species.

NMFS will be enforcing the requirement that vessels and processors may not continue to fish and catch more of a particular species if they have exhausted their quota for that species. This requirement is more restrictive than the current halibut and sablefish ITQ or CDQ fisheries in which fishing activity is constrained only by the harvest of the target species. Under the expanded CDQ program, harvest of the bycatch and discard species is likely to become the limiting factors in fishing activity, therefore, methods for estimating the catch weight of each species need to be accurate and defensible.

To the degree possible, NMFS would like to use methods that rely on the vessel or processors weighing catch and on observers witnessing the process and verifying the accuracy of the weighing equipment. In some cases, observers' total catch weight estimates and species composition sampling will continue to be used for CDQ monitoring. However, NMFS proposes to minimize the need for observers to provide estimates, except in cases where the procedures can be standardized to assure consistent data collection and are accepted by both NMFS and the industry as the best available data. The opportunity for arguments between the vessel operators or processors and the observers about estimates of CDQ catch must be minimized in order for

NMFS to provide accurate and timely information about CDQ and PSC CDQ balances and to enforce the CDQ Program.

NMFS proposes that the best way to obtain the weight of each CDQ species or species group is to require that all catch be weighed, including the catch of CDQ species that will be discarded. In order to assure that the scale weight information is accurate, these scales must be certified by an authorized weights and measures agency and monitored by observers. For shoreside processors, each species or species group must be weighed separately and, for at-sea processors, species composition sampling may continue to be used. In addition, all catch under the CDQ program must be observed, except for vessels less than 60 feet LOA.

#### **1. Requirements by Vessel or Processor Type**

**(i) Shoreside processors and processor vessels operating in State waters must sort all landed CDQ species by TAC species or species group or by PSC species and weigh each species or species group, except salmon and crab PSC, separately on a scale certified by the State of Alaska. The weighing or counting of CDQ species must be observed by a NMFS-certified observer.**

**(ii) Catcher vessels must retain all CDQ and PSC species, except halibut PSC, and deliver this catch to a processor with a scale certified by the State of Alaska. Observers would estimate halibut bycatch amounts for halibut discarded at sea.**

**(iii) Trawl catcher/processor vessels and mothership processors taking deliveries from catcher vessels using trawl gear must weigh all CDQ catch on a scale certified by an authorized state or local weights and measures inspector (ie. State of Alaska or the State of Washington) before discard or processing. A NMFS-certified observer must sample each haul for species composition. The weight of the CDQ species for purposes of CDQ monitoring will be determined by applying the observer's species composition sample data from each haul to the total catch weight from the scale.**

**(iv) Total catch weight by processor vessels in the pelagic pollock CDQ fisheries may continue to be estimated by observers using volumetric methods. Volumetric estimates using certified bins and a standard density factor for pure pollock catches will be applied. Species composition sampling or separate weighing of bycatch species would be used to determine the weight of each species in the catch.**

**(v) Longline and pot processor vessels must weigh all CDQ species on a scale certified by an authorized state or local weights and measures inspector (ie. State of Alaska or the State of Washington). The species composition of the catch may be determined by weighing each species or species group separately or by observer sampling. No CDQ species, except halibut, may be discarded from a longline or pot processor vessel until it has been weighed. Halibut PSC discards must be made using careful release requirements. Observers would estimate halibut bycatch amounts.**

## **2. Certified Scales for At-Sea Processors**

Weights and measures agencies can only certify scales for which standards and test procedures have been developed and published in Handbook 44. At this time, platform scales used to weigh catch at sea could be certified, however, motion-compensated belt-conveyor scales like those currently in use on several processor vessels cannot be certified. NMFS is attempting to develop the appropriate certification procedures for these scales, but it is unlikely that the certification program will be established in time for processor vessels to use these scales by January 1, 1998 unless the incentive of CDQ program participation accelerates the pace of the development of the at-sea scales certification process.

## **3. Observer Coverage Requirements**

All CDQ catch on vessels equal to or greater than 60 ft and in all shoreside processing plants must be observed by a NMFS-certified observer. This likely will require one observer on all catcher vessels and two observers on all processor vessels fishing 24-hours a day.

Options for accounting for groundfish bycatch on unobserved catcher vessels include:

1. require full retention and accept landed catch reports
2. assume bycatch amounts for unobserved fleet and subtract from CDQ either before or after allocation to a CDP.

**Groundfish CDQ Program Design  
Issues That Need Further Council Clarification**

**Accounting for Groundfish Bycatch in the Halibut CDQ Fisheries**

**Problem:** Groundfish bycatch occurs in the halibut CDQ fisheries.

**Options**

- A. Groundfish bycatch must be accounted for by individual CDQ groups with halibut CDQ in the same manner as all other groundfish CDQ catch.
- B. Estimated groundfish bycatch from the halibut CDQ fisheries would be deducted from the CDQ reserves on a species-by-species basis before allocation to individual CDQ groups.
- C. Groundfish bycatch in the halibut CDQ fisheries would accrue to the license limitation fisheries' TACs and would not be deducted from CDQ groundfish reserves or individual group allocations.

**Background from 1995 halibut CDQ fisheries**

Total halibut allocation: 1,198,000 lbs (divided among 6 CDQ groups)  
Total halibut CDQ harvested: 1,142,507 lbs

Number of vessels:

Size	Number	% Harvest
<= 32'	120	77%
33'-59'	1	<1%
60'-124'	6	23%
<b>Total</b>	<b>127</b>	<b>100%</b>



Four of the vessels in the 60' to 124' size category also participated in the sablefish CDQ fishery and could have been fishing both halibut and sablefish CDQs at the same time.

One processor reported groundfish bycatch from two landings in the halibut CDQ fisheries to NMFS on Weekly Production Reports. No other reports of groundfish bycatch in the 1995 halibut CDQ fisheries were received. The data from these two landings reported 13.34 mt groundfish bycatch (mainly arrowtooth flounder, other groundfish, and rockfish) for 107,836 lbs or 48.91 mt halibut, a 21 percent bycatch rate (13.34/62.25). If all halibut CDQ vessels experienced the same groundfish bycatch rate as those reporting to NMFS, the total allocation of 1,198,000 lbs of halibut CDQ would result in approximately 148 mt of groundfish bycatch.

**Option A:** Groundfish bycatch must be accounted for by individual CDQ groups with halibut CDQ in the same manner as all other groundfish CDQ catch.

- (i) each CDQ group with a halibut CDQ allocation must have sufficient groundfish to cover bycatch needs;
- (ii) all catcher vessels in the halibut CDQ fisheries would be required to retain and land all CDQ groundfish, which would be deducted from the CDQ group's groundfish CDQ allocations.

**Option B:** Estimated groundfish bycatch from the halibut CDQ fisheries would be deducted from the CDQ reserves on a species-by-species basis before allocation to individual CDQ groups.

- (i) data on which to base these estimates are limited;
- (ii) vessels fishing exclusively for halibut CDQ would not be required to account for groundfish bycatch from the CDQ groups' groundfish CDQs;
- (iii) retainable groundfish bycatch amounts would have to be specified to limit the amount of groundfish bycatch from the halibut CDQ fisheries;
- (iv) vessels fishing both halibut CDQ and other groundfish CDQ on the same fishing trip would be required to account for all their groundfish bycatch under the CDQ groups' groundfish allocation. It would be too difficult to apportion their groundfish bycatch among their halibut CDQ and other groundfish CDQ fisheries.

**Option C:** Groundfish bycatch in the halibut CDQ fisheries would accrue to the license limitation fisheries' TACs and would not be deducted from CDQ groundfish reserves or individual group allocations.

- (i) vessels fishing exclusively halibut CDQ would not be required to account for groundfish bycatch under their CDP;
- (ii) retainable groundfish bycatch amounts would have to be specified to limit the amount of groundfish bycatch from the halibut CDQ fisheries;
- (iii) vessels fishing both halibut CDQ and other groundfish CDQ on the same fishing trip would be required to account for all their groundfish bycatch under the CDQ groups' groundfish allocation. .

## **Accounting for Pollock Catch in the 1998 CDQ Fisheries**

**Problem:** Under the current pollock CDQ program, the entire pollock CDQ reserve is allocated among six CDQ groups who have contracts with specific harvesting and processing partners. These contracts are in effect through December 31, 1998. If other groundfish and prohibited species are brought into the CDQ program on January 1, 1998, two issues arise with respect to pollock CDQ management in 1998.

- 1. Other groundfish and prohibited species that will be harvested as bycatch in the 1998 pollock CDQ fisheries must be accounted for.**

### Options

- A. Individual CDQ groups with pollock CDQ allocations would be required to obtain sufficient groundfish and PSC bycatch to support these fisheries in their 1998 CDPs.**
  - B. The estimated groundfish and prohibited species bycatch in the pollock CDQ fisheries would be subtracted from each CDQ species reserve before allocations were made to any CDQ group.**
  - C. Groundfish and prohibited species bycatch from the pollock CDQ fisheries would accrue to open access TACs and PSC limits.**
- 2. Pollock that will be harvested as bycatch in other groundfish CDQ fisheries in 1998 must be accounted for.**

### Options

- A. Individual CDQ groups would be required to obtain sufficient pollock bycatch to support bycatch needs in their other groundfish CDQ fisheries.**
- B. Estimated pollock bycatch in other groundfish CDQ fisheries would be subtracted from the overall pollock CDQ reserve before pollock was allocated to each CDQ group**
- C. Pollock bycatch in other CDQ groundfish fisheries would accrue to the open access pollock TAC and would not be required to be accounted for in the 1998 CDQ fisheries.**

Option A under each issue represents what NMFS believes is the intent of the Council with respect to the overall Groundfish CDQ Program and what would be required for all other groundfish CDQ fisheries upon implementation of the LL/CDQ regulations. Implementation of Option A also would eliminate the need to have a separate section in the CDQ regulations to address the 1998 pollock CDQ fisheries.

## 1. Groundfish and PSC bycatch in the pollock CDQ fisheries in 1998

### Background

Table 1 summarizes the estimated groundfish and prohibited species bycatch in the 1995 pollock CDQ fisheries.

Under each of these three options, the pollock CDQ fisheries in 1998 could be designated pelagic-only to limit the amount of groundfish and PSC bycatch. A pelagic-pollock fishery would be defined by both gear limitations and catch composition.

Option A: Individual CDQ groups with pollock CDQ allocations would be required to obtain sufficient groundfish and PSC bycatch to support these fisheries in their 1998 CDPs.

- (i) Groundfish and prohibited species bycatch in the pollock CDQ fisheries would accrue against a CDQ group's groundfish and PSC allocations. If these other groundfish CDQ allocations were caught before the pollock CDQ, the group would either have to transfer sufficient groundfish to continue the pollock CDQ fisheries, or stop fishing. These are the same requirements that would be placed on all other groundfish CDQ fisheries in 1998.

Option B: The estimated groundfish and prohibited species bycatch in the pollock CDQ fisheries would be subtracted from each CDQ species reserve before allocations were made to any CDQ group.

- (i) CDQ groups with pollock CDQs would not be required to account for groundfish and prohibited species bycatch under their 1998 CDPs and the CDQ pollock fisheries would not be affected by attainment of any other groundfish or prohibited species CDQ.
- (ii) This option would address concerns about holding processors and vessels that already have signed contracts for the CDQ fisheries accountable for bycatch.

Option C: Groundfish and prohibited species bycatch from the pollock CDQ fisheries would accrue to open access TACs and PSC limits.

**Table 1. Groundfish Catch and Prohibited Species Bycatch in the 1995 Pollock CDQ Fisheries**

Species	Bottom Pollock (mt)	Pelagic Pollock (mt)	Total (mt)	% of Total Catch
Pollock	3,690.30	91,480.82	95,171.12	98.44%
Atka mackerel	8.74	5.57	14.31	0.01%
Arrowtooth	35.16	43.12	78.28	0.08%
Other flatfish	3.64	18.16	21.80	0.02%
Flathead sole	24.96	86.48	111.43	0.12%
Yellowfin sole	0.43	2.27	2.70	0.00%
Rock sole	88.58	93.16	181.74	0.19%
Greenland turbot	0.00	6.28	6.28	0.01%
Pacific cod	385.75	488.54	874.29	0.90%
POP	0.11	26.72	26.83	0.03%
Other Rockfish	0.00	0.38	0.38	0.00%
Sharp/Northern	0.00	0.00	0.00	0.00%
SRRE	0.00	0.14	0.14	0.00%
SRSN	0.00	0.41	0.41	0.00%
Sablefish	0.00	2.66	2.66	0.00%
Squid	0.63	113.81	114.44	0.12%
Other Groundfish	28	43	71	0.07%
<b>Total non-pollock</b>	<b>576</b>	<b>931</b>	<b>1,506</b>	<b>1.56%</b>
<b>Total catch</b>	<b>4,266</b>	<b>92,412</b>	<b>96,678</b>	<b>100.00%</b>
<b>% of total catch</b>	<b>4%</b>	<b>96%</b>	<b>100%</b>	
<b>Gfish bycatch % of Total Catch</b>	<b>13.50%</b>	<b>1.00%</b>	<b>1.56%</b>	

**Prohibited Species Bycatch in the 1995 Pollock CDQ Fisheries**

Species	Bottom Pollock	Pelagic Pollock	Total
Halibut (mt mortality)	18.12	12.13	30.25
Bairdi T. crab (#)	4,949	675	5,624
Red king crab (#)	0	6	6
Chinook salmon (#)	47	1,959	2,006
Other salmon (#)	2	584	586
Herring (lbs)	110	54,915	55,025

## **2. Pollock bycatch in other CDQ groundfish fisheries in 1998**

### **Background**

Pollock bycatch under the Groundfish CDQ Program would occur primarily in trawl fisheries for Pacific cod or flatfish. Estimated pollock bycatch in these fisheries could range from 5,000 mt to 9,000 mt annually.<sup>1</sup>

**Option A:** Individual CDQ groups would be required to obtain sufficient pollock bycatch to support bycatch needs in their other groundfish CDQ fisheries.

- (i) A CDQ group with other groundfish CDQ fisheries would have to allocate some of their pollock CDQ allocation for bycatch in these fisheries, thereby reducing the amount of pollock available for their current pollock partners.
- (ii) Some of the current CDQ contracts stipulate that all of the pollock CDQ received by a particular CDQ group would be given to their current harvesting partner, which may restrict a CDQ group's ability to reserve some of the pollock for bycatch in their other groundfish CDQ fisheries. These contracts would have to be renegotiated if CDQ groups with pollock and other groundfish CDQ fisheries were required to account for pollock bycatch in 1998.<sup>2</sup>

**Option B:** Estimated pollock bycatch in other groundfish CDQ fisheries would be subtracted from the overall pollock CDQ reserve before pollock was allocated to each CDQ group

- (i) Individual CDQ groups would not be responsible for accounting for bycatch amounts of pollock in their other groundfish CDQ fisheries.
- (ii) The amount of pollock bycatch in other groundfish CDQ fisheries would need to be limited by a maximum retainable bycatch amount.

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<sup>1</sup>If none of the Pacific cod were harvested by trawl gear, all the flatfish CDQ reserves (25,125 mt based on 1996 TACs) were harvested with trawl gear, and a 20 percent pollock bycatch occurred - approximately 5,000 mt of pollock bycatch would be harvested. Harvesting all of the Pacific cod (20,250 mt) in trawl fisheries could result in an additional 4,000 mt of pollock bycatch.

<sup>2</sup>Several pollock CDQ contracts may have to be renegotiated regardless of the decision on this question because existing contracts refer to "all CDQ" or "any CDQ" rather than "pollock CDQ". CDQ groups may or may not have entered these pollock CDQ contracts anticipating the inclusion of all groundfish and crab in the last year of the contract period (1998).

- (iii) If the Council wishes to make a recommendation about provisions for unharvested pollock bycatch reserve at the end of 1998, it would need to recommend how the remaining pollock bycatch reserve would be allocated among CDQ groups. Release of this pollock bycatch reserve could not be made until after all CDQ groundfish fisheries that were likely to harvest substantial amounts of pollock were finished, which could be late in the year. The time or conditions under which this release would be made also would need to be stipulated in regulation.

Option C: Pollock bycatch in other CDQ groundfish fisheries would accrue to the open access pollock TAC and would not be required to be accounted for in the 1998 CDQ fisheries.

- (i) Between 5,000 mt and 9,000 mt of pollock could accrue against the license limitation fisheries' pollock TAC in 1998.
- (ii) The amount of pollock bycatch in other groundfish CDQ programs would need to be limited by a maximum retainable bycatch amount.

North Pacific Fishery Management Council  
CDQs under the License Limitation Program  
Transcription of Council Discussion  
April 21, 1996

[To save time and space the formalities of seeking and receiving formal recognition from the Chair have been omitted]

**Tape 63**

**Wally Pereyra:** I'd like talk a little bit about process if I may. The National Marine Fisheries Service has come forward with I think a fairly aggressive program here and I certainly appreciate the thought and so forth they've given to this, but they've come forward and asked us to give them direction. And the direction is a little bit different than the license limitation portion. Earlier, when they were asking for whether they had interpreted something correctly or not. Here what I see is the National Marine Fisheries Service coming forward with specific options and it seems to me that this is more of an action process that we're involved in here, a formalized Council action process that relates to policy and that being the case, and again I realize the Council had no prior knowledge of this probably that we would have this kind of option list provided to us or asked of us. That being the case I think it's incumbent on us to have a more formalized process that provides for public notice that notices that this is an action item, that has the document going out to the public, that has the SSC giving us some input. I would note in particular the issue of the accountability part of the CDQs. I think these are very important. There's been some testimony from Brent Paine about the PSC side of it; I have some further questions about that myself, about how that's going to be taken care of. I think it needs to have the SSC looking at that, but more importantly, I think the SSC needs to look at this whole precision and accuracy question relating to weighing at sea, weighing on shore, one versus the other, and the way in which we're doing this. And for that reason I feel that we need to agenda this item for some future Council meeting. I realize the June meeting is pretty full, but maybe the September meeting when we can go through a more formalized process on it. I'm not satisfied with what we've done so far. I think it's deficient.

**Dave Benton:** Just a couple of comments in response to that and then I have a question for Ron. There's a number of items here in the document that the National Marine Fisheries Service has provided to us and the staff presentation which I believe are germane to our actions today to provide clarity on our intentions regarding the CDQ program under the license limitation program. I think that these need to be clarified for staff. They are in the process of developing the proposed rules that would accompany this program. Those proposed rules would be subject to a formal public process, just like in most other fishery management plan amendments. We're following that formal process. There will be opportunity for public comment on those proposed rules, so I would imagine, and I believe the schedule also accommodates that those proposed rules would come before the Council if the Council chooses to comment on them at that time as well. But I do believe we need to walk through these elements stepwise so we can provide some clarification on issues that have been raised by National Marine Fisheries Service in light of our adoption of a CDQ program under license limitation back in Dutch Harbor. And so, Ron, do I have my sequence of events correct, that was my question to you.

**Clarence Pautzke:** I was going to ask Ron when he thought the proposed rule would be published. Will we have a window of opportunity to comment, say at the June meeting, the September meeting, when do you think it'll be in the register?

**Ron Berg:** Dave is right with regard to the sequence. The timing is real important here because we're shooting for 1998 to get a final rule actually in place both for licenses and for CDQs. We were looking at likely accepting from the Council the regulations; I think you all know that we work with Council staff and actually draft the regulations in cooperation with General Counsel, and we're looking at trying to get that back right on August 1,



let's say anyway late summer, early fall, but we're talking about like August 1. Of course once we do that, under the Magnuson Act, regulations are actually supposed to be published on Day 15 in that process, so that would be like August 15 theoretically. Of course your September Council meeting would be inside that 45-day comment period and the Council would be able to comment on its own regulations at that time.

Pautzke: O.K., so then we would have an ability. . . we're giving you direction now, but we would have an ability at our September meeting in Sitka to comment further and then we would finally see what comes out of the Secretarial review process and if we wanted to make changes of what we had done previously we could probably do that within the envelope of the 1997 amendment cycle so changes, say amendment one to this, could be in place for 1998 when the whole program starts. So we really have a double opportunity; one here to influence the proposed rule and the second one to launch an amendment or revisions to it if we wanted to during 1997 as long as it all came together for 1998.

Berg: That's partially correct. Of course it always depends on which item; it often takes a whole year it seems to adopt something and implement it, but if it's just say a clarifying type regulation or something which is more of a regulatory amendment, then I would anticipate that you're correct, that it would be in place by 1998.

Pereyra: There's been a major policy decision made on behalf of the National Marine Fisheries Service that we were never made aware of in the original discussion of this particular issue, and that policy decision is that all CDQ other species will have to be weighed and that. . . [lost some in tape changeover] Tape 64 . . . with offshore organizations that those relationships and those assets will not be able to be used in their normal mode. Now, Mr. Cohen gave some testimony that indicated to me anyway that this could result in potentially some significant economic dislocations, some reduced earnings and so forth that might be anticipated. Now, that being the case I'd have to ask the question, what are the magnitudes of these reduced earnings to the CDQ communities. For example, has any thought been given as to how a CDQ community extracts any royalty for its yellowfin sole if that yellowfin sole has to be taken on shore? I can tell you right now, based upon what I know about the yellowfin sole market, there's not much there and by the time a catcher boat has to be paid and a shore plant has to go through the process of processing their product and so forth, there's not much there. In fact, I'd say there's nothing there, which means that the values that were expected from this program are not going to be realized. That being the case, are we in fact meeting the original intent of this program? I think that has to be looked at, it's a very significant issue. If we're not meeting the original intent of the program, then the justification for it lacks support and I think this is a very, very significant policy decision that's been made and I don't think it's had proper review, so again I would ask the Council seriously consider about backing off on this particular proposal at this time, until the proper technology is available and is certified so that it can be applied. We know what it's going to cost potentially to put these scales on, I think there were some estimates made of that, but there were not estimates made of what the income foregone would be if these communities were forced into some sort of a less economic mode from their perspective. So, I offer that for consideration and further discussion.

Benton: We may want to get staff up here because this is one of the elements that in my mind I was thinking that we would want to go through, would be weighing. The others are, and this isn't an inclusive list, but certainly we'd want to talk about the schedule that NMFS has laid out for blending the different programs, whether or not the Council intended that, and some other matters. And I guess I would ask maybe Sally if we want to take up weighing first. I think we need to have Sally up at the table so we can discuss it and I have a question for Sally in this regard, or maybe it's for Ron, and with regard to the weighing of product at sea. National Marine Fisheries Service in this document has proposed that it be with certified scales. And, as I recall the discussion that we had during staff presentation, National Marine Fisheries Service indicated that the overriding goal is to be able to ensure proper enumeration and accurate enumeration of the various CDP quotas and with that goal in mind it's National Marine Fisheries Service's judgment that weighing either on shore or at sea is probably the best methodology that's on their screen right now, but with a recognition as I understood the discussion that if by time of implementation certified scales were not available, that other methodologies would be looked at, other tools

would be in place or developed to ensure that we could meet the overall goal which is to enumerate accurately these quotas on behalf of the CDPs. Is my understanding correct, Mr. Berg?

Berg: Not exactly correct, Dave. What we're concerned about is starting the program off even on the first year, say 1998, with the right tools to get the accurate weights. We haven't really seen an alternative there. There is the old way of using standard density factors and volumetrics. The problem is the agency doesn't have a good list of standard density factors except in the midwater pollock fishery, and that's just one species. So we look at trying to get an accurate weight from a program which, if you can envision as I have, you have a 25-ton codend on board and you're trying to figure out the volume of that and you're trying to figure out the species composition, and then you really need to have a density factor there. And, every haul is different. You get more cod and less flatfish in some of these, and so to come up with a standard density factor, we didn't see it as a solution to come up with an accurate measurement. So, when we try to cross that bridge and try to come up with a means to get an accurate measurement to make closures, close one individual CDP entity against another, you want to start the program off the right way on the first year.

Pereyra: That being the case, I have never, as long as I've been on the Council, seen a document, supporting document, that compares the precision and accuracy of alternative "A" versus alternative "B" versus alternative "C". I've never seen that, and yet it's a very important document to have. That document also, I think, it's very important that it has peer review at the Council level, which is our Scientific and Statistical Committee. That hasn't been done. So, what it is, it's a sort of a best guess, if you will, by the Service--I'm not criticizing the Service in this case, but I mean that's what it really boils down to. I have a real problem with that, particularly when I read in this document that with regard to halibut, the halibut for the offshore operations will be required to be enumerated using a . . . with the observers, which is weighing samples and then extrapolating, or weighing the entire catch of halibut while, for the inshore operation it'll be based upon observer estimates of discards. So you've got one standard being applied to the offshore fleet and a different standard being applied to the inshore fleet. Now, if scales are good enough for the offshore fleet, they should be good enough for the inshore fleet, which indicates to me that what you need to do is require that all halibut be weighed irregardless of where the dominant catch is going. That being the case, if you don't have certified scales then essentially you can't start the program.

Berg: You know, Wally, shoreside processors have certified scales and of course what we're looking at is requiring the bycatch, except for halibut, say, . . . because of the mortality, we were trying to come up with a design that wouldn't increase mortality on halibut and halibut itself has been a difficult issue for us. All of the other bycatch species would be brought shoreside, and of course for the at-sea component we were trying to get estimates of the weights of halibut or . . . alternatives like using a weight frequency table, like the IPHC has and . . . to get weights from that. Halibut's been hard because we're trying not to do anything to increase the mortality on that, but for everything else, shoreside has certified scales to weigh.

Tillion: We've already voted to do this where we didn't vote on it in such a manner that there would be a delay; we have voted to do it and it is up to NMFS to come up with a solution. If they require weighing and your factory trawler does not have a scale then they might not be able to deliver to you, but there is no reason to delay the program. Now, could we get to hearing the detail of what they want to do and commenting on them? We have already made the decision that 7.5% of the product will go to CDQ; we're now hearing from NMFS how they are going to manage it. I don't see that any delays are required. Let's listen to them and see what their explanations are and make our remarks accordingly. But any time you talk about a delay, I'd say I'd rather see your particular project not go forward, but as far as the CDQs going forward, we've already made that decision.

Pereyra: In reference to Mr. Tillion's argument, I'm just going through the reasoning, I think, that one has to look at when they're deciding whether or not we are at a position where we in fact can apply 100% scales at this point in time. If your agenda, Mr. Tillion, is to put all the fish on the beach, this is a good way to proceed. It will put

it on the beach for a long period of time. But at the same time I think you have to realize that there will be a loss to the CDQ communities. They will pay for this. They will be the ones that are asked to forego income, to forego revenues from the CDQ. That then I think goes right at the face of the very basis for this program in the first place. You have some CDQ communities that have made investments. For example, the APICDA group, I know that they've recently bought a longliner and in talking with them I think that they had the idea that they were going to process codfish on that longliner. Their decision to buy that longliner was made after the Council made its decision on other species CDQ. They're not going to be able to do that based on this program, and it could be a long time before they can. Can they bring them into the beach? Yes, Larry Cotter mentioned that they could bring them into the beach, but at the same time that wasn't what they had planned and it's going to cost them something of income foregone. How that affects the profitability of the vessel they bought, I've no idea, but I think these are the sorts of things that need to be looked at. You just can't blithely go on and say, 'ah, we're going to do it this way,' without recognizing that there are costs associated with it. And these costs I think have to be weighed against the benefits. What are the real benefits to be derived by this highly precise and potentially inaccurate approach. I'm not convinced that going out there and requiring that every single fish that comes on board has to be packed on board and has to be taken into the beach, with the exception of halibut, and then weighed. How do the weights that are made on the beach compare with the true weights which go on board the deck of the vessel? The inaccuracies there could be substantial. It'll be very precise; you will have very well monitored certified scales giving you these very, very precise numbers. You can say, 'yeah, we got scales and this is wonderful and so forth,' but in fact the total weight you have may not track with what the real weights are. And when we look at this and compare this with what's happening in the populations at sea, and what's happening in the Bering Sea ecosystem as a whole, let's face it, who are we kidding? I think the agenda's quite clear.

Behnken: I sort of think it's time to get off this, but I guess it's just Mr. Pereyra's comments. . . I appreciate his concern that the CDQ groups are able to optimize the value of their allocations and I think we would all like to see them do that. But as far as being able to predict in the future what that means, the Council's never been able to do that. We may find that next year the shoreside processors come up with a whole new product form for arrowtooth flounder that puts them in the forefront and I don't think we can hold this program up based on those kinds of lack of evaluations.

Lauber: O.K., the item that we have agenda'd is that National Marine Fisheries Service has asked for some comments and I don't know that we're necessarily limited to those items that they have indicated that they want comments on, I mean we can make other comments, but we have been asked for comments. We're not reviewing the license limitation program, that's obviously gone and under consideration by the Secretary, or shortly will be, and we have been asked for these comments. I would point out that there have been times when we have been critical of National Marine Fisheries Service because they've done things and just dumped them on us, we felt, when we didn't have an opportunity to comment. Now they're giving us an opportunity; I don't know that they're necessarily going to follow what we say, but we have the opportunity and I think we should avail ourselves of it. As far as any other comments we want to make, if anyone has anything that they want to submit, we can bring it up and we'll see if the Council wants to actually adopt that as a comment that we're sending forth as a Council. Otherwise, individuals of course when the proper time comes can comment. And as Clarence has pointed out, a lot of adjustments that can be made, can be made before it's implemented. But somewhere along the line we're going to have to decide what we're going to do here and we've been asked by NMFS to make comments. They have asked us for some, at least we should address those. If you want to address others, certainly we can make that. But that's all we're doing, is making comments and they've outlined some various options that we can call clarification if you like, or whatever, but that's what we have on the agenda. Now, speaking of the agenda and Murphy's Law being what it is, I knew this situation would arise, but let's just take a moment to see where we are on the agenda and possibly that might give some of you an idea whether you want to keep your rooms or whether you want to check out, and maybe a noon-time check-out may be a pretty good idea.

[discussion of remaining agenda items]

Lauber: We are continuing our work on item C-6 and I don't know if we have any suggestions of how we start working through this, but we have several proposals they wish comments on on the CDQ program. How about trying Accounting for Groundfish Bycatch in the Halibut CDQ Fishery. There were three suggestions, options, does anybody have any preference or what we were thinking of?

Benton: In going through both attachments 3 and 4 I've noted a number of issues, some of which were identified by National Marine Fisheries Service, one of which was not, which I think is very important. And, so I think staff might want to be up at the table because there may be questions on how this affects what they've prepared here. My first issue that I would raise is regarding the proposal that's sort of worked into their framework on how to merge the various CDQ programs. And, I went back. . .and there's two issues here. One is what do you do with the license limitation CDQ program and the pollock, and then what do you do with the license limitation program and the halibut and sablefish program. To me those are related but separate issues.

And, I would like to take up the relationship between the pollock program and the license limitation program first if I might, to get some clarification. Sally, throughout attachment 3 and on into attachment 4 in the way you've laid this out, you have laid out a number of issues that arise from the relationship between the license program and the pollock program and in my review of what we did in June and reconfirmed in September, the Council I think was actually fairly clear that the pollock program and the license limitation program were separate and distinct for that one year, 1998. Now, I'll make sure I have my understanding correct here about the timelines. It's my understanding that the pollock program terminates at the end of 1998, is that correct? [affirmative response from Sally Bibb] And the license program would go into effect, if approved by the Secretary, in January of 1998, is that correct? O.K., so it'd be in 1997 that the CDQ groups would be preparing and submitting their CDPs, their applications, following approval by the Secretary, and then the State would be submitting the recommendation to the Secretary for approval of the individual CDPs. Do I have this correct now?

Bibb: Yes, and the way we're thinking about it is that the CDPs would be prepared and submitted to the State by mid-year sometime, so they'd actually have to be working on those early in 1997.

Benton: O.K., thank you. As I recall the Council discussion on this item in Dutch Harbor there was quite a bit of discussion about whether or not pollock were part of this program under license limitation. And in part that had to do with the relationship of the license program and inshore-offshore, and the license limitation program has no sunset, as you correctly identified, and the inshore-offshore amendment terminates in three years and that includes the pollock CDQ program. During the discussion by the Council during that meeting, as I recall it, the issue came up, 'well, so does that mean that pollock then really doesn't have a sunset and is pollock really part of the CDQ program under licenses?' And the answer to that was pretty clearly no. In September that question was raised again and I have the minutes from the September 1995 meeting and in those minutes under CDQ issues under license limitation the minutes state that the Council verified that pollock would not be included in the license limitation CDQ program. So, with that, it seems to me that some of the issues that are identified here in terms of the relationship with pollock and licenses go away for 1998 and I think that doesn't mean they go away entirely but I think it sets up the schedule a little differently. In 1998 not only will be implementing this new CDQ program but we will be at that time I think pretty well aware of the operational difficulties for this multi-species CDQ operation and we will also be amending inshore-offshore and reauthorizing, presumably, pollock CDQs. If we don't reauthorize pollock CDQs and they expire, then there is no operational difficulty here other than we have to figure out what we do about pollock bycatch. And we would do that I would presume at that time. If however we do extend the pollock CDQ program in 1998 that might be the time where we can look at the operational issues of making that merger and by modifying the pollock CDQ program; at that time we can make those two compatible. And so it seems to me that what we have is in 1998 a year where it's sort of a transition period and I'm wondering if, given the record the Council's built on pollock and license limitation, am I correct, then, that some of the issues that you have identified would . . . [rest lost in tape changeover]

**Tape 65**

**Bibb:** [beginning lost in tape changeover]. . . with the sunset on the pollock CDQ program was relating that to the specification of the pollock CDQ reserve and that would be portion of the regulation that would say, 'this reserve would expire as of the end of 1998.' But, we were trying to set up these regulations so that all administrative and quota monitoring and CDP would be general and would apply to any reserve that was specified, so I think that the question really remains how we handle the bycatch, the bycatch that accrues in the pollock fishery in '98 and the pollock bycatch in the other fisheries and I don't know that I see any other issues in that that would be relevant to that, so you point those out to me if that were the case. So, if what you're saying is that by the record that the Council has built saying that these are separate programs that means that we would not need to account for. . . or, we could continue to account for the bycatch in the pollock CDQ program separately and outside of the CDQ program; I think that's probably what we're talking about mostly?

**Benton:** Sally, it seems to me, and I think we're saying the same thing, that if they are accounted as separate programs, the pollock program currently is operating under a set of rules and regulations, including rules and regulations that involve bycatch; that for 1998 those rules would continue to apply to the pollock CDQ program.; that in establishing the license limitation program, the implementation issues of how you account for catch, the monitoring, the program, the things you've identified here, you're correct, those would all be done. The accounting for PSC and for bycatch would be within the universe of the license limitation species and fisheries. So they would be separate and I think that was the Council's intent because I believe the Council recognized the difficulty of merging those two, especially if the one program did not get extended in 1998, so it would continue in 1999 and beyond.

**Bibb:** Well, we don't actually has any specific regulations related to the pollock CDQ program as to how we handle the bycatch as far as I'm aware. So, regulations that apply specifically to the pollock program deal mainly with how we're going to do the accounting for the pollock and the certified bin requirements and the observer coverage levels. So, we don't have specific regulations on how. . . I guess it's been a policy that since there isn't a CDQ for those other species that it is accruing against the TACs in (or and?) open access PSC limits.

**Benton:** So in this instance then it would be option C that you've identified here for 1998; it would be option C with regard to groundfish and PSC bycatch in the pollock CDQ fisheries.

**Bibb:** I think we're asking the Council to verify that for us.

**Benton:** Mr. Chairman, would it be appropriate for us to adopt it as a motion? Is that what National Marine Fisheries Service needs, or can we do this like we did with the clarifications on the license program, the other part, and just deliver a sense of the Council?

**Berg:** The reason we really brought this back to the Council is because since the groundfish CDQ plan hadn't really been spelled out in detail this question about groundfish CDQs in the pollock program or pollock bycatch in the CDQ program just wasn't that clear to us. We felt therefore that since there were certain ways of handling it, it could come across as bycatch, as option C, against open access, or these other two options. If we were to write a regulation as to how to handle it without further instruction, right now, we didn't really know what the September direction was to guide that, so we'd really prefer that the Council consider it, and I think a motion is appropriate.

**Pereyra:** It seems to me that the Council voted 7.5% of all the other species as part of the CDQ allocation. If the pollock is taking codfish, it has to come out of that allocation. It can't be separate. Because then if it is separate, then you're going over 7.5% because codfish is one of the other species. It doesn't matter how you're taking it

and how you organize your CDQ program so that that's accounted for. But I don't think you have the authority to take more than 7.5% codfish and how you want to do it is up to you.

Benton: Under present regulations and if the Secretary does not approve the license limitation program, we have a way that we deal with that issue currently. When we discussed this in June and when we verified our vote in September, we recognized that the pollock program was going to operate for that one interim year under the regulations it's currently, rules or policies, that it's currently operating under, fully recognizing that there are some slight inconsistencies there, but they are separate programs and because they're separate programs they operate under different rules with the intent that in 1998, which would be the period in which we would reauthorize the pollock CDQ program if we do so, that at that time we would resolve these inconsistencies and we would fully merge the two programs and it would be the intention and assumption that we do exactly what you're talking about, but at this time, to get in to try and do that without going through a very specific process of changing the pollock CDQ program, then. . .that's what we're going to have to do; we're going to have to change the pollock CDQ program in order to make this work and it's my recollection and when I look back at the September minutes they confirm my recollection that that's sort of the approach that we took.

Behnken: So that does in fact mean then that for one year the CDQ groups may be taking more than 7.5% of P. cod pollock and that that's O.K. I mean, I know it's not much, but that's the issue, I'm not sure if it's a legal issue or . . .

Benton: I don't see that as being a legal issue because what we're talking about is a directed fishery for CDQs for certain species under license limitation.

Behnken: So that means that the directed fisheries are limited to 7.5%, rather than total, is what you're saying.

Benton: What I'm saying is that for 1998 we kept these programs separate.

Pereyra: Then how is the codfish in the pollock program accounted for?

Benton: As it's currently accounted for, and it's accounted for as bycatch against the open TAC.

Pereyra: I have a little different interpretation of it. I see that as soon as you put the 7.5% all other species program in place, at that point in time you are then making the decision to account for all CDQ-caught codfish, irregardless of whether you catch that CDQ codfish pursuant to a pollock program or whether you catch it pursuant to taking your yellowfin CDQ and incidentally accounting for the codfish that's taken.

Benton: If we were to do that, I think that what we'd have to do is initiate a plan amendment on the pollock program to accomplish that; that's a separate action, but I think that's what we'd have to do. Otherwise, the rules right now that are in place for the pollock program account for this bycatch and it's listed out on page 6, of I think it's attachment 4, if you wish to look at it. But that would be my understanding.

Berg: Really, for 1998, I don't believe it's a legal call, I think it's a policy call of what the Council wants to do. We could handle these options for 1998 for that transition year with a certain set of regulations which are intended to handle just 1998 and then we start off the year after that with the integrated program, so I don't think it's a legal call, I think it's a policy call as to what the Council wants to do for 1998.

Benton: I guess then what Mr. Berg is suggesting is that he needs a motion one way or the other on this?

Berg: Yes.

Benton: Then I would move that the Council reconfirm the action that was taken previously that, for the interim year of 1998 that the pollock and license limitation CDQ programs would be separate, with the intention that during the process of considering whether or not to extend the pollock program beyond 1998 that the issues of merging the pollock program and the license limitation program CDQs would be addressed at that time.

Kevin O'Leary: Second.

Lauber: Is there any objection to the motion? Hearing none, it passes.

Benton: I would also offer an attendant motion at this time and if I have a second I will speak to this motion. I would move that, and I would assume that this would be a regulatory amendment, for that interim year of 1998 with regard to the pollock CDQ fishery that it be designated midwater trawl only, or pelagic trawl.

Behnken: Second.

Benton: One of the issues that has been raised and is of concern to the State and I think to the Council, is the issue of bycatch in that interim year and the need to minimize that bycatch as much as possible. The technical issues of merging these programs are significant and need to be carefully considered but nonetheless I think the Council does need to take action to minimize the impact in this interim year on the open access fishery. And I call the Council's attention to table 1 on page 6 of what I believe is attachment 3, no. 4. There's a table there that shows the various groundfish catch and prohibited species bycatch in the '95 pollock CDQ fisheries, breaks the bycatches out between bottom pollock and pelagic pollock and if you'll note, some of the bycatches in the bottom pollock are very significant. Dr. Pereyra raised the issue of Pacific cod taken in the CDQ pollock fishery and by this action we can reduce that almost by half. If you look at halibut bycatch, it would reduce it by more than half, if you look at crab bycatch for bairdi, it would reduce it by over 4,000 crabs out of a grand total of 5,600 crab. I think that by implementing this measure we can make an important contribution to minimizing the impacts of the pollock CDQ program in that year on the open access fishery.

Pereyra: I'd like to add that the bottom pollock is less than 5% of the total take, so the impact is almost de minimus. . . on the directed pollock fishery.

Lauber: You heard the motion, is there any further discussion? Any objection to the motion? Hearing none, it passes.

Mace: I'm wondering how far we wish to go with this. This is simply, as I understand it, comments to NMFS and we're going to have to come back and look at this later and I wonder if continuing in this direction is going to be all that productive or whether we ought to get on to another agenda item. How much more do we have to go?

Benton: Mr. Mace is thinking, as usual, a step ahead of me, but right along the same lines I am. I had a question for Sally or Mr. Berg on which other issues in here they specifically needed some guidance on. These two here were of critical importance to me in terms of clarifying some of the framework that they're going to be developing implementation plans around.

Berg: Sally, you wanted comment for the way bycatch would be treated in the sablefish fishery?

Bibb: In the halibut CDQ fishery.

Lauber: Those are the ones in attachment 4?

Bibb: Yes, the first question in attachment 4.

Benton: Much like with the pollock fishery, I think that when we considered developing a license limitation program we thought about the halibut and sablefish CDQ program. I think that the decision at that time, again, was to keep these separate. The issue here becomes a little more complicated by the fact that as we heard in public testimony there are different CDQ groups involved with halibut than there are with the pollock program, and this will have some fairly significant complicating factors in terms of how you deal with the allocation process under the license limitation CDQ program and the applications because those groups are different and the halibut is allocated by a much different mechanism than say the pollock is, because it's by area. And, my sense of the matter is that we would be well served by keeping these separate. The analysis shows, I don't have the page here handy, actually I think it's on page. . . looks like page 2, but I have an unnumbered page, but it looks like page 2 of the analysis, it shows the amount of groundfish bycatch that would be accounted for by the halibut program at 148 metric tons as an estimate. Is that correct, Sally?

Bibb: Actually, that's an extrapolation of bycatch in two landings, so I would not really want to put a lot of weight on that to tell you the truth. I put that in to say that if we absolutely had to get a number and we had to use the only data we had available, that's where we'd end up. But I think you're much more likely. . . we would be depending on reported bycatch, and what we have as far as reported bycatch is 13 metric tons. I don't know what the actual bycatch would be.

Pereyra: In the case of pollock we had a phase-in of one year. In the halibut CDQ fishery, granted it isn't large but I think there's the opportunity for abuse here, potentially. I'm not saying that there would be, but potentially. So I do think it needs to be bounded in some way and how you want to bound it in regards to what the CDQ allocation is for the other species at the time we do this rollover, probably would be a good time to make it be all inclusive.

Benton: I have a question for Mr. Berg and then I think I'm prepared to make a motion. Mr. Berg, in the opinion of the National Marine Fisheries Service this amount of bycatch that we have here that's an extrapolated amount, is that in your view a relatively de minimus amount that we could deal with for, let's say the one year, one or two years that we would have there between the implementation of the license limitation program and then the rollover over period when we would do the adjustments?

Berg: It could be a de minimus amount like Sally was talking about; we don't have a good record for catch here. I could see where option B for example would be something we would make a determination about what the numbers might be, then we would actually subtract it off the groundfish CDQ allocations and then we wouldn't even, except as we had the tools to do it, we wouldn't do a real empirical monitoring job. Then if that didn't work, in the future I guess there'd be a way to come back and change it.

Benton: It seems to me this would be for a one year period again, it'd be 1998, which would be the period under which we would be revising, looking at a revision, to the program that would be merging the license program and the pollock program. Probably, as Dr. Pereyra has pointed out, it makes sense to take those matters up at that time instead of trying to make adjustments at this time. I think I've seen Mr. Berg nod his head, sort of, so I'm going to make a motion. I would move that in 1998 the Council, as part of the process of merging the license limitation program and the pollock CDQ program also take into consideration and address the need for accounting for groundfish bycatch in the halibut and sablefish program but until that time the current regulations that are in place for the halibut and sablefish program would remain in place.

Berg: So, Dave, as I understand from your motion you're really looking at say like Option C, where, for 1998 anyway, it would be treated the same way as pollock?



Benton: For 1998, that's correct.

Tillion: Just a question of . . . now, when you're talking about the halibut, when we did that one they were permanent allocations, unlike yearly. You're not playing around with them?

Benton: No.

Lindeman: One thing here is that in any of these motions and stuff, it just occurred to me that you're kind of wording these things like "when in 1998," "when you merge license limitation and pollock CDQs." And since pollock CDQs expire with inshore-offshore at the end of 1998, you might consider using "if" so it's not a foregone conclusion without the Council's deliberating the issue.

Benton: That was clearly my intention, Counselor, and I believe I said that a number of times previously and if I said "when" this time, it was a slip of the tongue. Sorry.

Behnken: I guess what I'm understanding is what we're doing is moving option C for one year, implementation of one year, and at which time this will be revisited. As long as that's the understanding, because I'm not comfortable with this kind of set up continuing for more than one year, but I'll second the motion for one year only.

Lauber: O.K., now it's moved and seconded.

Berg: Dave, you actually had sablefish in there, too, and Sally raised a point with me that, if it's O.K. with the chairman, I'd like Sally to ask you the question.

Bibb: I just wanted to clarify that our question really related to how to handle groundfish bycatch in the halibut CDQ fishery, which is . . . it's much easier to have that as a separate CDQ fishery. Now, you've included sablefish in your motion and that I think is a different matter. Because sablefish is . . . what we're concerned about is part of the groundfish CDQ program and so the information that I've presented on the bycatch, this 13 metric tons of just arrowtooth and other groundfish, that's from the halibut CDQ fisheries; the sablefish is a different matter and I think much more difficult to separate out and keep the accounting of bycatch separate. And, also the sablefish CDQ program doesn't have this transition year that pollock does because the sablefish CDQ program and contracts will end at the end of 1997 and will be completely re-starting their cycle in 1998. Anyway, I just wanted to clarify that what we were asking about versus what your motion is, I think they're different.

Behnken: Question of Sally. . . anyway, if we go with option C, if a vessel fishing CDQ halibut takes sablefish and say they're not fishing CDQ sablefish and there's a certain mortality assigned to that, that sablefish catch then comes out of the non-CDQ IFQ fishery? Is that where that accounting would come from? Or how does that work?

Bibb: If you tried to keep the halibut CDQ program separate from the groundfish CDQ program, what that means to us is that any groundfish bycatch in what you could classify as a directed halibut CDQ fishery would not be counted against any groundfish CDQ reserve. That's what option C would say, so the only place left, if you actually got a reported landing of sablefish, the only place left is to count that against some non-CDQ allowance and I'm not sure how that works with the full allocation of the sablefish IFQ. Anyway, that would be a question, where we would have to count that against and how much that actually would be. I don't know.

Benton: Sally, your question to me was whether or not I intended to include the sablefish CDQ program in that, and I did, and the reason simply is because the sablefish and halibut allocations, in the allocation process that's employed by the Secretary and upon the recommendation of the State, has a very close causal link in it between

halibut and sablefish and they are very closely akin to the sablefish and halibut IFQ program. And I too believe that what we want to do is merge these program, but I think we want to do it at the same time where we consider all the different ramifications of how that affects the overall operation of the program. It seems to me that in 1998, that is a period of time that we will be looking at this and we can do that in a very uniform and comprehensive manner. The issue you raised about the expiration in 1997 has to do with the approval of the CDPs as they're presently constituted and what we may want to consider is simply extending those existing CDPs while we develop this overall integration package for those two programs. If we do that I think we would then be in a position to review all of the consequences of how to merge these programs and could do it in such a manner that the CDQ groups have some surety about how they plan their activities. And the problem we have, just like the halibut programs, is that there are some different groups involved here and the way the allocations went together were all interconnected between halibut and sablefish and the extension for that period of time would probably be the least disruptive to the overall operation of the program and provide the Council with the best opportunity, I think, to . . . lost remainder in tape change over. . . [change to Tape 66]

Bibb: . . . [first part lost in tape changeover]. . . I guess one of the things, Dave, that I guess we would want to avoid having to have another transition year problem, if at the end of '97 if you re-up those sablefish CDQs for three years, for example, then we would be reexamining this in the middle of that contracting period, so I think the three-year cycle for sablefish, what you're suggesting is that we wouldn't, starting in 1998, be going into another three-year cycle?

Benton: No, I'm not. What I'm suggesting is it would be very simple to just extend the current CDPs for that one year, and then the cycle on all three CDQ programs could be sort of made consistent and concurrent. Much like what the CDQ groups were testifying in public testimony.

Bibb: So, what that would mean is that in 1998 we would define a sablefish directed CDQ fishery using some kind of a directed fishing standard approach that would separate it from, say a Pacific cod longline CDQ fishery and any bycatch that occurred in that strictly sablefish or halibut operation would accrue to the open access TACs for the year 1998 only. But in a Pacific cod longline CDQ fishery, all that bycatch would have to be accounted for under the CDQ umbrella. So we're just separating out a directed sablefish fixed gear CDQ . . .

Benton: For that one year, until we can merge these program, correct, as they are currently put together.

Bibb: I guess I don't see that that is, that is not administratively necessary in the same way that it is for pollock, but just to clear that up. I think pollock is a separate situation because of the fact that the pollock cycle actually extends through 1998 and the sablefish and halibut does not.

Benton: The sablefish and halibut both extend well beyond 1998 and what we're struggling with, I think, is the timing of how to merge these programs and to do it in the most efficient way that would afford us the ability to develop something that is consistent and do it in a comprehensive manner. That's all I'm trying to get through and believe me if I thought that in this instance that there were very, very significant problems that would come about by not doing this, I would have a very different opinion. But I think that for that one year as a transition period I don't think it'll be that significant a problem.

Lauber: Any further discussion? Oh, we had a motion didn't we?

Pautzke: Option C for '98.

Lauber: Option C for '98 . . . any further discussion? Any objection to the motion? Dr. Barker objected.

Pautzke: . . .clarifications that you just gave, you mean sablefish, too, as far as combining with halibut, so it should be slash sablefish [halibut/sablefish]?

Benton: That's correct. Because we have three programs and they're . . .

Lauber: Now, is there anything else we need to . . .

Benton: Only one other matter that I'm aware of Mr. Chairman. Well, I'll defer to Sally, are there other things that you wish to have clarification on?

Bibb: No.

Benton: I think the only other one I wish to bring up was the matter of how to deal with PSC bycatch. I think it's important to clarify this matter. This Council is taking dramatic actions to deal with waste and discard and I think will take further actions to deal with bycatch in the near future, including individual vessel bycatch accounts in some form. I think that with regard to how we deal with bycatch in this fishery, that's a very important precedent and a very important statement by the Council, so I'd like to make a motion at this time, Mr. Chairman, that we concur with the National Marine Fisheries Service proposal that PSC bycatch be non-transferable and that we adopt as part of the program the suggestion made by the CDQ organizations that transfers of quota and bycatch pre-season would be allowed up until January 31st or some date chosen by National Marine Fisheries Service prior to January 31st that was in keeping with the TAC-setting process.

O'Leary: Second.

Benton: The CDQ groups made the proposal for the pre-season transfer, if you would, of quota between themselves and PSC bycatch along with that quota. I think that's a good suggestion, it allows for them to adjust their operations in a manner that does not provide for the misuse or abuse of getting an award of PSC bycatch. The prohibition on inseason transfers of PSC bycatch, as we heard in public testimony, are intended to be a measure to encourage clean fishing practices. When you look at the bycatch amounts that National Marine Fisheries Service has provided for us, they're very minor amounts of PSC. Like for halibut, it would basically be 350 metric tons divided between six groups, roughly 60 metric tons each for each group for halibut bycatch; that's a pretty small amount. I see this as a very aggressive way to approach this issue. Thank you.

Pereyra: I must rise in opposition to this. I think that putting in some sort of a prohibition on the non-transfer of PSC is going to result in potentially non-utilization possibly of some directed CDQ fisheries species, or even worse, the full utilization of PSC, because if an operation has got a pretty good buffer of PSC they're not going to be very careful in the operations because they've got lots of PSC to carry them through. While if it has some potential market value they're more likely to be judicious because there is some value there so I'm going to have to be opposed to this.

Lauber: I don't know whether I oppose this or not but it seems to me that the Council's charge or responsibility of establishing the prohibited species catch, if the current prohibited species catch is too high, then we should lower it; or if it's too low it should be raised, whatever the situation. But what we're supposed to be doing is setting that. If what we're doing here is to further reduce the prohibited species catch I guess that's a way of doing that, but are we doing it at the risk of reducing this particular fishery. The other thing I've heard people indicate and this is not necessarily the reason that we did this, but it's one of the supposed benefits of the CDQ program is that it has demonstrated certain advantages to this type of a program and if I've heard it once I've heard it a thousand times from Dr. Pereyra alone, and we've also been talking about an individual bycatch quota thing, this certainly wouldn't be as sophisticated as that but it might be a way of seeing how that works as well. It doesn't

mean I'm going to vote against it; I'm not speaking for that reason, but maybe you could address. . .or am I completely off or misreading this, or . . .it's Mr. Benton's motion so I'll have him answer.

Benton: I'll call your attention for the purposes of this discussion to Attachment 3, page 5. In the middle of the page it lists out the prohibited species catch that the CDQ reserves would include, and I believe this is based on 1996, is it not Sally?

Bibb: No, actually this is based on the prohibited species catch limits that are in our regulations, applying the percentage of . . .

Benton: But this would be the amounts that would be accorded to this. . .that's correct, thank you. I guess the way that I understand how this would work is that each of the groups would be afforded a certain amount of PSC bycatch and there are currently six groups, so we could look at it as they get one-sixth, for simplicity's sake, of these numbers. Taking halibut, that's roughly 58 metric tons or so, per group. That's a pretty small amount of halibut. Now if you had, and as we hear from the CDQ groups in public testimony, the way this would work is that if you had two groups that had equal amounts of CDQ directed target species and they had equal amounts of halibut and Group A was fishing along and they ran out of their PSC they would have to stop fishing for their CDQ. If Group B was fishing along and they hadn't run out of their halibut and had actually harvested up to their CDQ and still had halibut left over, under this proposal they couldn't sell their halibut. The halibut doesn't become a commodity for them. What they could do would be to transfer their CDQ over and presumably because they're the ones that get to go fish it and the other group is going to have an economic loss because they can't go fish their CDQ, then they're going to win. That provides a pretty strong incentive in my view, and this is what the CDQ groups said, to fish clean so you don't run out of your halibut PSC so you can maximize the benefit that you'd have from your CDQ allocation. So in that regard I think that is a very strong incentive for the CDQ operations to try to look at ways to harvest their CDQ allocations in a clean and efficient manner. The connection here between what we might do in terms of looking at a VBA program I think are particularly important. The proposals as they've come forward to the Council and the proposals that are in the Congress, generally speaking, call for non-transferable VBAs. And in that instance I think the idea there is, again, you have a certain quantity of fish. Two companies, they have equal amounts of PSC for example, they're fishing along Company A runs out of their halibut PSC, they don't get to fish any longer. They have an economic incentive then to clean their act up next time around because they don't get to participate. Meanwhile, Company B makes better use of their halibut PSC by avoiding it, they can fish longer for the target species and they have an economic incentive to be clean and they've met that so they will get an economic reward. And I think that's the intention here with my motion; I hope that answers your question.

Lauber: Well, what you would do is if one CDQ group had fished out their halibut, then they would have to stop fishing, but they would have CDQs for other species which could be transferred to another CDQ group that had halibut and they could continue fishing. So, it would be a reward for the other CDQ groups that fished clean.

Benton: The CDQ group that fished clean would get the reward in that instance, yes.

Lauber: Would they have to transfer it just gratis? They couldn't get any money for it?

Benton: Well, it would probably be an economic transaction but believe me I think if we were in the desert and it was you and me, for example, and I ran out of gas and you had a gallon of gas, I'd pay top dollar for it, you'd make this a very favorable economic transition for you.

Lauber: Not unless I intend to stay in the damn desert.

Behnken: I guess the comment I would make is I think the way this is set up, we are making sure that these CDQ groups can optimize their groundfish harvests. It isn't in any way reducing or set up to reduce halibut PSC, or halibut bycatch. I realize it's a really small amount, that's the decision we're making right now. I sort of hope that at some point in the future reducing halibut bycatch in and of itself becomes a goal, but I think right now I think that's the direction we're taking.

Pereyra: Following along Mr. Benton's reasoning, it seems to me then that if we're extending this to the VBA program, if the VBAs are going to be non-transferable, then the only way this experiment could be extended would be if we had IQs on all the other directed species and I must say I applaud the State's new clairvoyance on this particular issue. I can certainly embrace that; I don't think that's necessarily what you had in mind, but getting back to the Chairman's comments earlier, I do think there's some real merit to be realized in this CDQ operation to give us some appreciation of what we might expect in the larger world of the open access or the full access fishery. And so, I'd like to offer a substitute motion that on an experimental basis we allow for transferability of the PSCs within the CDQ fishery. That's my motion.

Fluharty: Second.

Pereyra: I think there's enough been said on this particular issue and this particular motion, I think, speaks to the concerns that I have about the PSCs and how they're going to be utilized. I do believe that there's an opportunity to lower caps. The way to do this is to make them more dear and the way you make them more dear is where they have a cost associated with them. In the case of the CDQ fishery if a person knows that there is a possibility of caps being lowered if in fact there is excess PSC left it seems to me the individuals involved might find it in their collective advantage to utilize all the PSC fully some way or the other so that there isn't any excess and they can make the argument then that really you can't lower the cap because you're going to impact our fishery if you do so. But by making it transferable you wind up where you can make this more dear and as you make it more dear people will have more of an incentive to avoid PSC, which I think is the direction we want to be going.

O'Leary: We're getting a bit far afield here it seems to me because I think what Dr. Pereyra is doing now is beginning the process of debating the transferability of VBAs. My sense of what the CDQ groups told us was that they felt comfortable with a program that allowed for some transfer of PSC basically prior to the start of operations that would allow simply for the transfer of CDQ quota amongst groups and I think they're comfortable with that because of the success that they've had in their other CDQ fishery right now and I see no reason to not go along with what they desire in this particular case. If we want to talk about VBAs, it strikes me that that's a much larger issue and I don't know if it's really a good idea to start the debate on that right now. But I have a very different sense, without going into it, of transferability issues on VBAs.

Fluharty: It seems like we need to be thinking of the CDQ fishery in the near future and I guess that would go as long as we're under a ban on ITQs if that's going to be the case, that we try to use it to obtain information that's going to be helpful, both in managing that fishery and future fisheries. And so as far as I'm concerned we can start with a non-transferability or transferability option and transferability has been more under discussion and probably has more questions associated, at least in my mind and in the minds of many people around here than non-transferability but I can see the experiment going either way. My purpose in seconding this is to get the Council to buy into a process of adaptive management where we choose one of these for a specific amount of time, long enough to allow it to operate, and we watch it carefully how it works, what kinds of problems come up and what kinds of problems are solved by doing so, so I think that this offers us a very viable approach in a short-term period.

Barker: I've been listening to this debate with some interest and I'm kind of in an awkward position as maybe a voice in the wilderness. It seems like the Halibut Commission and the way the management is run is that we've set PSCs up as the necessary cost of doing business recognizing that those are not going to be a harvestable

component. Yet both of these in some fashion have created a harvestable component that has a market value and I don't think that was the original purpose of PSCs, that was related to the directed catch and of CDQs and now you've got kind of an overlay of the CDQ program and some of the tones of another CDQ program with PSCs . . . any . . . a label of transferability, and coming from that premise I can't support either one.

Samuelson: I'll be voting against the amendment and supporting the motion.

Pautzke: I'd ask Mr. Benton how he saw some things playing out as far as transferability issues. When I first read the CDQ transferability provisions here on page 4 of Attachment 3 it sounded like those transferability provisions for the groundfish species were put in as kind of a . . . as we're going along in the season and we find we're running out of bycatch of certain groundfish species that maybe I can go over to another CDQ group and pick up some yellowfin sole or cod if that's what I need. And I was trying to put those together with what I thought was going to be the State action at the start of the CDQ program, set certain percentages of each species that would go to each CDQ group like they do now with halibut and sablefish. Will you say that, for instance, 20% goes to this CDQ program, or at the first of the year will all the CDQ groups be able to mix and match what their markets are and their species and so it never ends up at the 20%. Like say I'm a CDQ group and the State says to me, now for halibut you get "x" percent and you get "x" percent and you get "x" percent. Will those percentages have any meaning if you've got transferability of the groundfish species or will they all mix and match what their needs are right at the first of the year, regardless of what the State says a particular percentage they should get?

Benton: Clarence, are you speaking to the transferability that would be in place if Dr. Pereyra's substitute motion was to carry?

Pautzke: I'm trying to find out what you're doing with groundfish species first, and then go to that issue.

Benton: Under the proposal that was in my motion then I take it. Under that proposal the PSC bycatch would be non-transferable between CDQ groups. We haven't gotten to, and I think it's an implementation issue that will take some fleshing out, how inside a particular CDQ group they are going to allocate their PSC bycatch because that is directly related to how allocation of particular groundfish is conducted. In other words, there are a couple of ways that this could work in terms of dealing with a multi-species CDQ allocation. One way of going about it is on a species-by-species basis, so group A only gets P. cod and group B only gets yellowfin, or something like that. Is that . . . am I tracking?

Pautzke: Yes - what was your intent there? Would you be giving them a "x" percentage of each species that were allowed for CDQs?

Benton: Right, see, and that issue hasn't been sorted out exactly yet. What has been sorted out, and National Marine Fisheries Service I think has characterized it here, is that the CDP, or the CDQ group, would have a species budget approved by the Secretary. That species budget may just be one percentage, you know, 10% of the 7.5%, it may work out that way. Or, it may vary by species. We haven't sorted through that quite yet. But what they would have would be a species budget that they were required to operate within and as part of that they would have PSC.

Pautzke: I would just think that if a CDQ group came in and had a mix of different species, regardless of what the State percentage is, that they'd be smart enough to know how much halibut or any of the other bycatch species they needed and for all practicable purposes you would have had a transferable PSC program.

Benton: I don't think it would work like that because the internal allocation of the PSC is not necessarily transferable because they're making an internal allocation of how they're going to use that PSC quota. But where

it does become transferable is if CDQ group A and CDQ group B could exchange or sell back and forth their PSC and that becomes particularly troublesome in-season--somebody's fishing along and they're not living within the rules and are exceeding their bycatch allowances.

Lauber: O.K. Ready for the question? Better call the roll on this one. We're voting on Mr. Pereyra's amendment, which would make PSCs transferable for an experimental period.

Roll call:	Berg	No
	Pereyra	Yes
	Samuelson	No
	Tillion	Absent
	Barker	No
	Behnken	No
	Benton	No
	Fluharty	Yes
	Mace	No
	O'Leary	No
	Lauber	No

Pautzke: Failed.

Lauber: Now we have before us the [change to tape 67] main motion, which is . . .

Pautzke: PSCs would be non-transferable; you could have some transferring taking place for a yearly basis before January 31st or some earlier date chosen by NMFS in keeping with the TAC-setting process. Did I get that right?

Pereyra: I'd like to amend the motion that initial transferring among the groups be allowed up until the first of July, which is the 30th of June.

Lauber: Fails for lack of a second. We have before us the main motion.

Benton: Just as a point of clarification for Clarence, that transfer was in connection with transfer of CDQ quota too, it was sort of as a bundle, right? It's my understanding that's what the CDQ groups were . . .

Samuelson: They can still trade CDQ.

Pautzke: You're allowed under these provisions to transfer groundfish species CDQs. . .

Behnken: This is a little bit of a follow-up of what Clarence was bringing up, I think. So, if a CDQ group has applied and in their CDP they say, 'we're going to harvest this amount of yellowfin sole,' and then they get it and they decide within the next . . . what, I don't know long a period it is between when they get their allocation and when this January 31st date is, but 'well, we've changed our minds and we're not going to go harvest yellowfin sole, therefore we don't need all of our halibut.' They're going to trade it off to someone who's going to go harvest that yellowfin sole, with the yellowfin sole, that's kind of the idea? [several comments, but couldn't hear] So, the groups then could decide that this group's going to be the yellowfin sole group, we're going to be the P. cod group, and we're going to be the rock sole group and before season redistribute everything from what the State initially said. Or is that the kind of thing you just haven't worked out yet but you're leaving that open right now?

Benton: We have had discussions about that and we don't have all the details worked out on the implementation but it would be. . . it is more or less our intent that that massive kind of transfer not occur. That what we would do once the Secretary has approved the allocation, that. . . and like I said, we do not have the implementation details on this worked out, but that there would be some controls on the amount and degree to which you could shift away from your allocation without going through a formal plan amendment on your CDP. Certainly the group can have the ability now to amend their community development plan if they want to go in a different direction. That's a formal process; they have to submit a very detailed plan; it has to be in keeping with the intent and purposes of the CDQ program. It has to be reviewed by the State, and approved by the State for recommending to the Secretary for adoption, the Secretary reviews and approves those plan amendments and they can be very, very detailed and very lengthy and it's not a simple process. So, there would be controls put in place on the example you've identified, Ms. Behnken, once the plans are approved.

Samuelsen: I think we would have found a cure for AIDS by now if we examined the AIDS epidemic as bad as we've examined the CDQ fisheries. The CDQ groups, it's my understanding from talking with most of them, will be looking to draw the maximum economic benefit from any species. Going back to the halibut/sablefish IFQ program and the awards that were made to the different groups, some of the CDQ groups are subsidizing their halibut program via sablefish. So I think as these other species come on board the CDQ groups will be talking to each other, they're developing a work force with technical skills, whatever, to put people out there working in these various fisheries, different processing lines, we've got roe technicians being trained; they'll make a judgement call amongst themselves on who's going to be doing what. Or maybe one of them wants to get into it all, or maybe all of them want to get into it all, all the different fisheries. But I think that's an economic decision that they have to make amongst themselves and surely, as in the open access fishery, market dictates whatever we do. And they'll be taking that factor into consideration and so as we put up these fences and move on and develop this program, you know, I wrote on my little briefing document to NMFS - this is a keep file, because when we go and develop individual bycatch quotas for different vessels and what-not, I want to have this little document because I don't look at the CDQ groups as being a, quote, experiment any more. We had double observers on them; the Council and NMFS have stated time and time again that they've got excellent data from the CDQ groups which are double observers - have we instituted that program throughout the industry? No. That isn't an experiment to me, that's a penalty, but I'll live with the penalty. That's what the CDQ groups have said. So as we go along here I think that what's good for the goose is good for the gander and what happens in the CDQ fishery under the license limitation program, if we see positive results, then as we develop new programs for the open access fishery that we take those good results and apply them to the open access fishery from the CDQ fishery. Thank you. I'll be voting for the motion.

Pereyra: I can't vote for the motion. Following along Mr. Samuelsen's reasoning which I totally embrace in terms of getting the maximum value out of the program, I can see a situation developing where if one group is the cod group, they happen to have a longliner, or maybe there's two groups that have a longliner and they're working together; another group's a yellowfin sole group -- well, one starts running out of PSC and they say, O.K., fine, we'll go ahead and allocate all the rest of the yellowfin sole we've got over to this group that's doing codfish. Well you're not going to do yellowfin sole on a longliner, so I think it creates some real impediments towards maximizing the benefit and realizing the gains which Mr. Samuelsen's talking about here. I think what we're doing is building a gingerbread house without a roof on it and as soon as it rains we're going to find that all the walls fall down, so I'll have to vote against it.

Fluharty: I just want to be sure that we understand. I don't say that the CDQ fishery is experimental fishery. I say that the way we approach things like PSC and ways that we work with those does give us the kind of information and does help us go there and so that we should maximize the information that we can get from that and I will be supporting this motion because I see it as another way to get information that I think I need to have to be able to work further on. I don't see CDQ fisheries as experiments but I see the techniques that we use to manage them as having potential for experimentation that benefits the total fishery.



Lauber: Ready for the question? Call the roll on the main motion.

Roll call:	Pereyra	No
	Samuelson	Yes
	Tillion	Absent
	Barker	No
	Behnken	Yes
	Benton	Yes
	Fluharty	Yes
	Mace	No
	O'Leary	Yes
	Berg	Yes
	Lauber	Yes

Pautzke: Passed.

Lauber: Now, does that take care of that? O.K.

[End of this agenda item]