

## INITIAL REVIEW DRAFT

### Regulatory Impact Review/ Initial Regulatory Flexibility Analysis for Proposed Regulatory Amendment

# Halibut IFQ Leasing by CDQ Groups

October 2016

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**Abstract:** This Regulatory Impact Review/Initial Regulatory Flexibility Analysis examines proposed management measures that would apply exclusively to the Individual Fishing Quota (IFQ) fishery in the Bering Sea and Aleutian Islands (BSAI) for Pacific halibut (*Hippoglossus stenolepis*), and Community Development Quota (CDQ) groups fishing in the BSAI. The proposed action under consideration in this analysis includes allowing CDQ groups to lease commercial halibut IFQ from quota share (QS) holders in times of low halibut catch limits in Area 4B and Area 4CDE. Under this proposed action, any leased halibut IFQ would be available for use by the halibut CDQ fleet on vessels less than or equal to 51 feet length overall (with a halibut CDQ permit and a CDQ hired master permit), subject to the group's internal halibut management. The purpose of this action is to keep CDQ residents fishing in years where the halibut CDQ may not be large enough to present a viable fishery for participants.

## List of Acronyms and Abbreviations

ADF&G	Alaska Department of Fish and Game
AKFIN	Alaska Fisheries Information Network
APICDA	Aleutian Pribilof Island Community Development Association
BSAI	Bering Sea and Aleutian Islands
BBEDC	Bristol Bay Economic Development Corporation
CBSFA	Central Bering Sea Fisherman's Association
CDQ	Community Development Quota
CVRF	Coastal Villages Region Fund
E.O.	Executive Order
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
FMP	fishery management plan
FR	<i>Federal Register</i>
FRFA	Final Regulatory Flexibility Analysis
GOA	Gulf of Alaska
IFQ	Individual Fishing Quota
IRFA	Initial Regulatory Flexibility Analysis
LOA	length overall
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NAICS	North American Industry Classification System
NSEDC	Norton Sound Economic Development Corporation
NMFS	National Marine Fishery Service
NOAA	National Oceanic and Atmospheric Administration
NPFMC	North Pacific Fishery Management Council
PPA	Preliminary preferred alternative
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SBA	Small Business Act
TAC	total allowable catch
U.S.	United States
QS	Quota share
YDFDA	Yukon Delta Fisheries Development Association

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# 1 INTRODUCTION

This document analyzes proposed management measures that would apply exclusively to the Individual Fishing Quota (IFQ) fishery in the Bering Sea and Aleutian Islands (BSAI) for Pacific halibut (*Hippoglossus stenolepis*), and Community Development Quota (CDQ) groups fishing in the BSAI. The proposed action under consideration in this analysis includes allowing CDQ groups to lease commercial halibut IFQ from quota share (QS) holders in times of low halibut catch limits in Area 4B and Area 4CDE. Under this proposed action, any leased halibut IFQ would be available for use by the halibut CDQ fleet on vessels less than or equal to 51 feet length overall (with a halibut CDQ permit and a CDQ hired master permit), subject to the group's internal halibut management. Implementation of the management measures evaluated in this analysis does not require an amendment to a Fisheries Management Plan; however, they would require an amendment to implementing Federal regulations and likely require changes to International Pacific Halibut Commission (IPHC) regulations.

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA).<sup>1</sup> An RIR/IRFA provides assessments of the economic benefits and costs of the action alternatives, as well as their distribution (the RIR), and the impacts of the action on directly regulated small entities (the IRFA). This RIR/IRFA addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act, Northern Pacific Halibut Act of 1982, Presidential Executive Order 12866, and the Regulatory Flexibility Act. An RIR/IRFA is a standard document produced by the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical background for decision-making.

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<sup>1</sup> The proposed action has no potential to effect individually or cumulatively on the human environment. The only effects of the action are economic, as analyzed in this RIR/IRFA. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

## 1.1 Purpose and Need

The CDQ program, as specified by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), is intended to provide western Alaska communities the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska (§305(i)).

The recent years of low halibut abundance and the resulting low catch limits in regulatory Area 4 have hindered most CDQ groups' ability to create a viable halibut fishing opportunity for their residents. Given the social and cultural dependence on this species, as well as the economic importance it renders for small vessel fishing operations, the purpose of this action would be to alleviate the adverse impacts of decreasing available halibut resource on Western Alaskan communities. The intention is to work towards the goals of the CDQ program without compromising the goals of the IFQ program.

The Council adopted the following purpose and need statement in December 2015:

*The Community Development Quota (CDQ) Program was established to provide an opportunity to eligible western Alaska communities to invest and participate in BSAI fisheries. Among the species CDQ groups are allocated, Pacific halibut is of primary importance to many resident small-boat fishermen for providing employment and income in many of the member communities. Most small vessels fishing halibut CDQ generally do not fish halibut IFQ, and recent years of low abundance have created hardships for participating CDQ halibut fishermen. In times of low halibut catch limits, additional opportunity for CDQ groups to lease and use halibut IFQ for fishing in Areas 4B and 4CDE may benefit resident CDQ fishermen without undermining the goals of the halibut IFQ Program.*

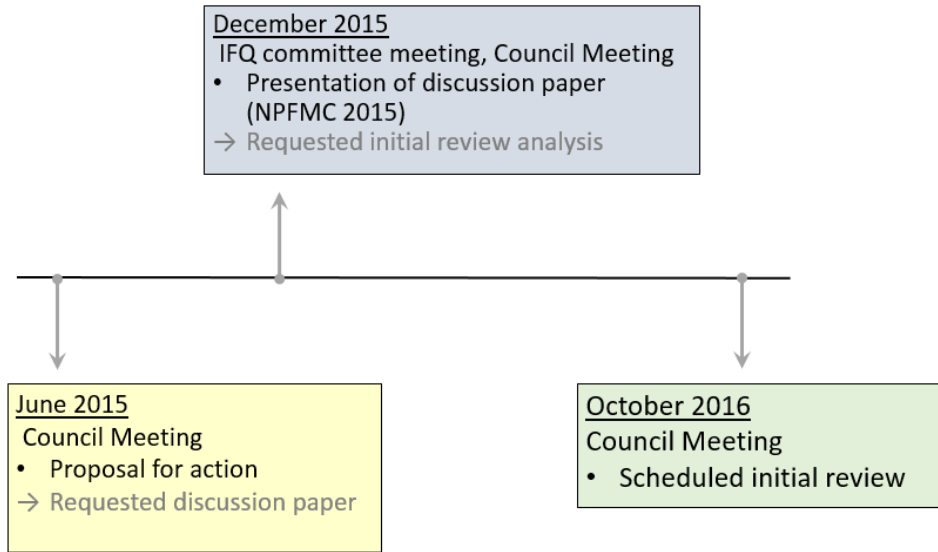
## 1.2 History of this Action

In June 2015, the Council initiated a discussion paper to examine the proposal to allow CDQ groups to lease halibut IFQ from private entities in Areas 4B, 4C, and 4D<sup>2</sup> for harvest by CDQ residents in years with low halibut catch limits in regulatory areas 4CDE. This discussion paper was presented to the IFQ Implementation Committee, Advisory Panel, and the Council in December 2015. At this December meeting, the Council adopted a purpose and need, created a set of alternatives, and requested an initial review draft of an analysis.

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<sup>2</sup> The motion for this proposal also suggested leasing Area 4E QS; however, IFQ is not issued in Area 4E. This clarification was made in the December 2015 alternatives.

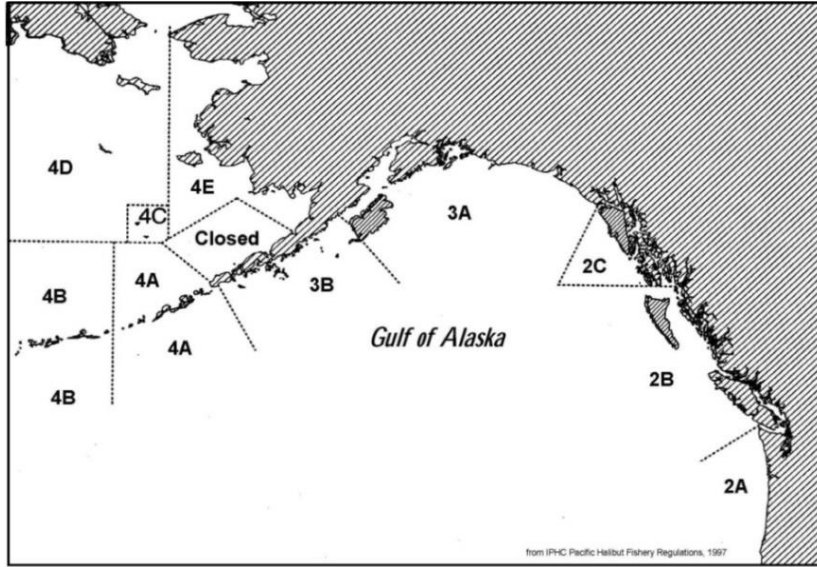
Figure 1 Timeline of Council action



### 1.3 Description of Management Area

The proposed action would apply to halibut regulatory areas in which CDQ groups hold halibut CDQ; this includes IPHC regulatory Area 4B, 4C, 4D, and 4E (Figure 2). The halibut catch limit for Area 4B, 4C, and 4D are shared between CDQ groups and the IFQ program. Throughout the duration of the IFQ Program, Area 4E TAC has exclusively allocated to the CDQ program; therefore, no 4E IFQ could be leased to a CDQ group. Option 4, of Alternative 2 would allow Area 4D IFQ be leased to CDQ groups and harvested in Area 4E. The current harvest flexibilities across IPHC area boundaries that are available to IFQ and CDQ participants, are explained in Section 3.5.2

Figure 2 Regulatory areas for halibut in Alaska



Source: IPHC, 2013



## 2 DESCRIPTION OF THE ALTERNATIVES

The action alternative in this analysis was designed to accomplish the stated purpose and need for the action; to enable CDQ groups the chance to provide their residents additional opportunity to harvest BSAI halibut, during times of low halibut abundance. The Council adopted the following alternatives for analysis in December 2015:

### **Alternative 1.** No Action

**Alternative 2.** Allow CDQ groups to lease halibut IFQ in Areas 4B, 4C, and 4D in years of low halibut catch limits in regulatory Areas 4B and 4CDE. Any IFQ transferred to a CDQ group under this provision would be added to their available halibut CDQ, intended for use by residents with a halibut CDQ permit and a CDQ hired master permit. No vessel over 51 feet LOA would be eligible to harvest the leased IFQ, and vessels would have to comply with IFQ use restrictions. (Options below are not mutually exclusive.)

**Option 1.** Defining ‘low catch limits’ for the purpose of allowing leases. Designation of low catch limits is independently determined for Areas 4B and 4CDE. The threshold for designating a year of low halibut catch limit in each area is less than (separate sub-options may be selected for Area 4B and Area 4CDE):

**Sub-option 1.** 1 million pounds

**Sub-option 2.** 1.3 million pounds

**Sub-option 3.** 1.5 million pounds

**Option 2.** IFQ class designations do not apply when the IFQ is being leased by a CDQ group.

**Option 3.** Leased Area 4D IFQ may be fished in Area 4E.

**Option 4.** Any Area 4B, 4C, or 4D catcher vessel QS transferred after December 14, 2015 may not be leased as IFQ to CDQ groups under this action for a period of:

**Sub-option 1.** 3 years

**Sub-option 2.** 4 years

**Sub-option 3.** 5 years

### 2.1 Alternative 1, No Action

In this analysis, the no action alternative is the regulatory status quo. With no action, CDQ groups are not eligible to purchase halibut or sablefish QS/IFQ, with the exception of class A shares (catcher/ processor shares; see Section 3.8.6 for further QS class explanation).

Additionally, under current regulations, leasing of IFQ derived from catcher vessel shares has generally been prohibited (for individuals or CDQ groups) since 1998. Several provisions are included in the

program that allowed for outright leasing under special conditions. This includes leasing of IFQ derived from Class A shares. It also includes leasing of catcher vessel IFQ under through:

- 1) temporary medical leases,
- 2) survivorship transfer privileges,
- 3) military leases,
- 4) leases through CQEs, and
- 5) IFQ to guided angler fish (GAF) transfers.

Therefore, individuals that are not QS holders, generally do not have access to catcher vessel IFQ leasing options to supplement halibut CDQ.

## 2.2 Alternative 2, Allow Halibut IFQ Leasing by CDQ Groups

The action alternative would allow CDQ groups to lease halibut IFQ in Areas 4B, 4C, and 4D in years of low halibut catch limits in regulatory Areas 4B and 4CDE. Any halibut IFQ transferred to a CDQ group under this provision would be available for use in conjunction with halibut CDQ, intended for use by residents with a halibut CDQ permit and a CDQ hired master permit. This action would *not* convert IFQ to CDQ. CDQ allocations of halibut would not change. No vessel over 51 feet LOA would be eligible to harvest the leased IFQ, and all vessels must comply with IFQ use restrictions.<sup>3</sup> For purposes of this analysis, the analysts assumed that under this Alternative, CDQ groups would be authorized to lease IFQ only in areas where the group holds a CDQ allocation (e.g., a CDQ group with a CDQ allocation only in Area 4C could only lease Area 4C IFQ). The Council should specify whether this is the appropriate assumption.

This alternative includes a series of sub-options for defining ‘low catch limits’ which would trigger the ability to lease. Separate sub-options may be selected for Area 4B and Area 4CDE.

An additional option would allow the lease IFQ pounds to be harvested on a vessel of any size (less than or equal to 51 feet LOA) regardless of the class designations of QS. In essence, this option would allow leased IFQ to be treated similarly to CDQ. Class designations on QS would remain when IFQ is not leased.

Under current regulations, only 4D CDQ is able to be harvested in Area 4E. An option under Alternative 2 would allow Area 4D IFQ that is leased to a CDQ group be fished in Area 4E. Without this option, regulatory boundaries apply as under status quo (described in Section 3.5.2).

Finally, one option under Alternative 2 would lock in a set of years after the acquisition of QS in which that QS could not be leased, so as not to encourage entry into the halibut QS market with the sole intention of leasing halibut IFQ to CDQ groups.

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<sup>3</sup> Fifty-one feet LOA was chosen as a threshold as the largest vessel privately-owned by a resident of a CDQ community that has landed halibut CDQ in the last two years (2014, 2015). This threshold was cited in public testimony by the entities proposing action.

### 3 REGULATORY IMPACT REVIEW

This Regulatory Impact Review (RIR)<sup>4</sup> examines the benefits and costs of a proposed regulatory amendment to allow CDQ groups to lease commercial halibut IFQ from quota share (QS) holders in times of low halibut abundance.

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

*In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and Benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

#### 3.1 Management Authority

Management of the halibut fishery off Alaska is based on an international agreement between Canada and the United States and is given effect by the Northern Pacific Halibut Act of 1982. The Act provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council’s actions are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

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<sup>4</sup> The proposed action has no potential to effect individually or cumulatively on the human environment. The only effects of the action are economic, as analyzed in this RIR/IRFA. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Regulations implementing the commercial IFQ fishery for Pacific halibut may be found at 50 CFR 679: Fisheries of the Exclusive Economic Zone off Alaska, Subpart D – Individual Fishing Quota Management Measures, Sections 679.40 through 679.45.

## 3.2 Purpose and Need for Action

The Council adopted the following purpose and need statement in December 2015:

*The Community Development Quota (CDQ) Program was established to provide an opportunity to eligible western Alaska communities to invest and participate in BSAI fisheries. Among the species CDQ groups are allocated, Pacific halibut is of primary importance to many resident small-boat fishermen for providing employment and income in many of the member communities. Most small vessels fishing halibut CDQ generally do not fish halibut IFQ, and recent years of low abundance have created hardships for participating CDQ halibut fishermen. In times of low halibut catch limits, additional opportunity for CDQ groups to lease and use halibut IFQ for fishing in Areas 4B and 4CDE may benefit resident CDQ fishermen without undermining the goals of the halibut IFQ Program.*

## 3.3 Alternatives

The action alternative in this analysis was designed to accomplish the stated purpose and need for the action; to enable CDQ groups the chance to provide their residents additional opportunity to harvest BSAI halibut, during times of low halibut abundance. The Council adopted the following alternatives for analysis in December 2015:

**Alternative 1.** No Action

**Alternative 2.** Allow CDQ groups to lease halibut IFQ in Areas 4B, 4C, and 4D in years of low halibut catch limits in regulatory Areas 4B and 4CDE. Any IFQ transferred to a CDQ group under this provision would be added to their available halibut CDQ, intended for use by residents with a halibut CDQ permit and a CDQ hired master permit. No vessel over 51 feet LOA would be eligible to harvest the leased IFQ, and vessels would have to comply with IFQ use restrictions. (Options below are not mutually exclusive.)

**Option 1.** Defining ‘low catch limits’ for the purpose of allowing leases. Designation of low catch limits is independently determined for Areas 4B and 4CDE. The threshold for designating a year of low halibut catch limit in each area is less than (separate sub-options may be selected for Area 4B and Area 4CDE):

**Sub-option 1.** 1 million pounds

**Sub-option 2.** 1.3 million pounds

**Sub-option 3.** 1.5 million pounds

**Option 2.** IFQ class designations do not apply when the IFQ is being leased by a CDQ group.

**Option 3.** Leased Area 4D IFQ may be fished in Area 4E.

**Option 4.** Any Area 4B, 4C, or 4D catcher vessel QS transferred after December 14, 2015 may not be leased as IFQ to CDQ groups under this action for a period of:

- Sub-option 1.** 3 years
- Sub-option 2.** 4 years
- Sub-option 3.** 5 years

### 3.4 Methodology for Analysis of Impacts

The evaluation of impacts in this analysis is designed to meet the requirement of E.O. 12866, which dictates that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision-makers “to maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” The costs and benefits of this action with respect to these attributes are described in the sections that follow, comparing the No Action Alternative 1 with the action alternative. The analyst then provides a qualitative assessment of the net benefit to the Nation of the action alternative, compared to no action.

This analysis primarily uses Alaska Department of Fish and Game (ADF&G) fish ticket data to describe the fishing behavior of the CDQ halibut small vessel fleet, which in this document is referring to vessels less than or equal to 51 feet length LOA that have previously relied on halibut CDQ to land halibut. In addition, NMFS Restricted Access Management (RAM) Division IFQ database is used to provide information on QS holdings. Publicly available information from NMFS RAM Division Transfer Reports (NMFS 2015a) provides information on QS prices and other transfer statistics. Anecdotal information was also gathered from representative of the CDQ groups, as well as other individuals involved in the halibut IFQ fisheries. A list of persons consulted is included in Section 6.

### 3.5 Background on the CDQ Halibut Fishery

The CDQ Program is an economic development program associated with federally managed fisheries in the Bering Sea/ Aleutian Islands (BSAI). NMFS, the State of Alaska, and the Western Alaska Community Development Association (WACDA) administer the CDQ Program. Its purpose, as specified in the Magnuson-Stevens Act (§305(i)(1)(A)), is to provide western Alaska communities the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska.

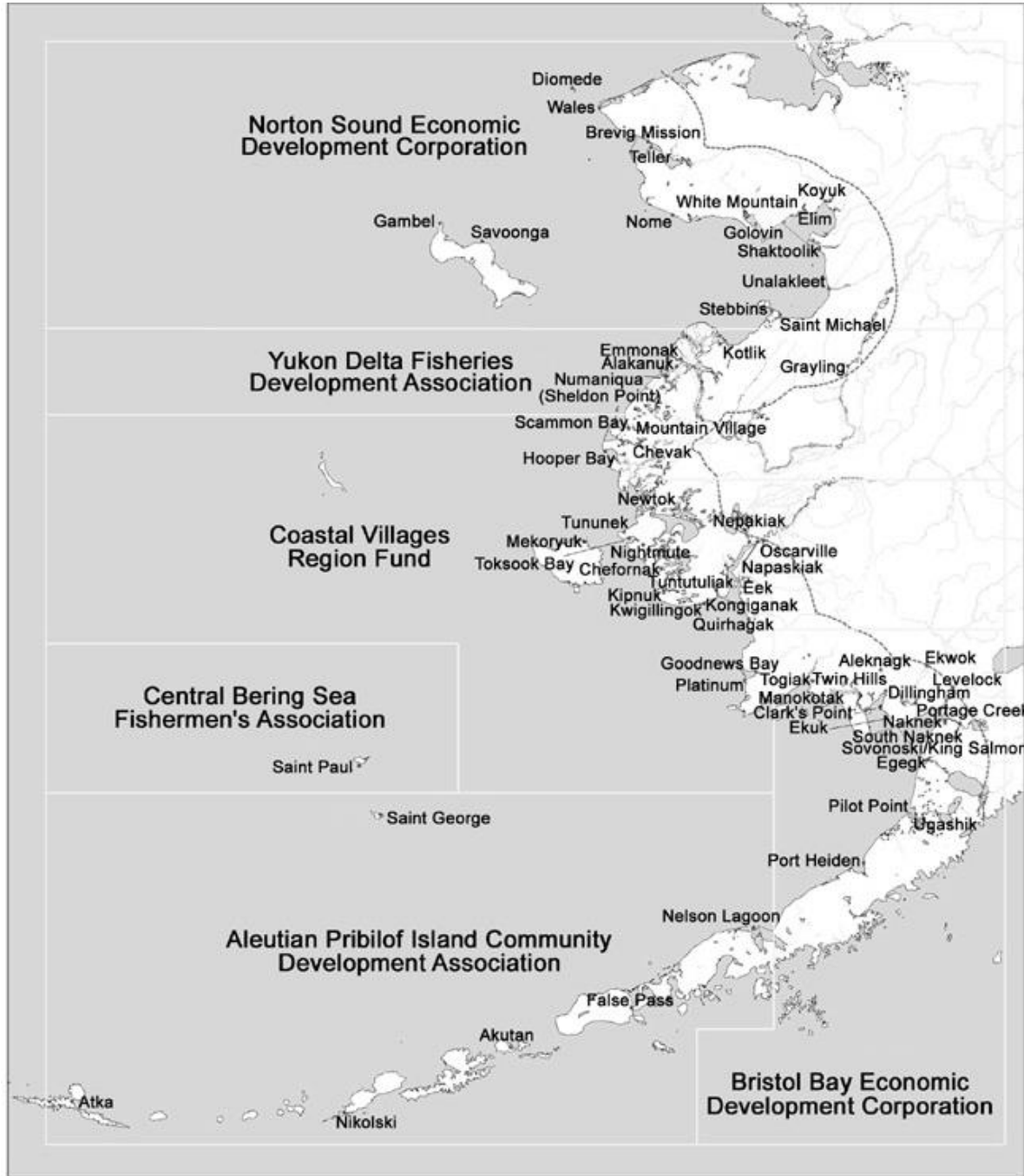
In fitting with these goals, NMFS allocates a portion of the annual catch limits for a variety of commercially valuable marine species in the BSAI to the CDQ Program. The percentage of each annual BSAI catch limit allocated to the CDQ Program varies by both species and management area. These apportionments are, in turn, allocated among six different non-profit managing organizations representing

different affiliations of communities (CDQ groups), as dictated under the Magnuson-Stevens Act. Eligibility requirements for a community to participate in the western Alaska Community Development Program are identified in the Magnuson-Stevens Act at §305(i)(1)(D). The six CDQ groups include:

- Aleutian Pribilof Island Community Development Association (APICDA)
- Bristol Bay Economic Development Corporation (BBEDC)
- Central Bering Sea Fisherman’s Association (CBSFA)
- Coastal Villages Region Fund (CVRF)
- Norton Sound Economic Development Corporation (NSEDC)
- Yukon Delta Fisheries Development Association (YDFDA)

Figure 3 identifies the names and relative locations of the CDQ groups and the communities they represent.

Figure 3 Western Alaska CDQ communities and groups



Source: NOAA, Alaska Fisheries Science Center

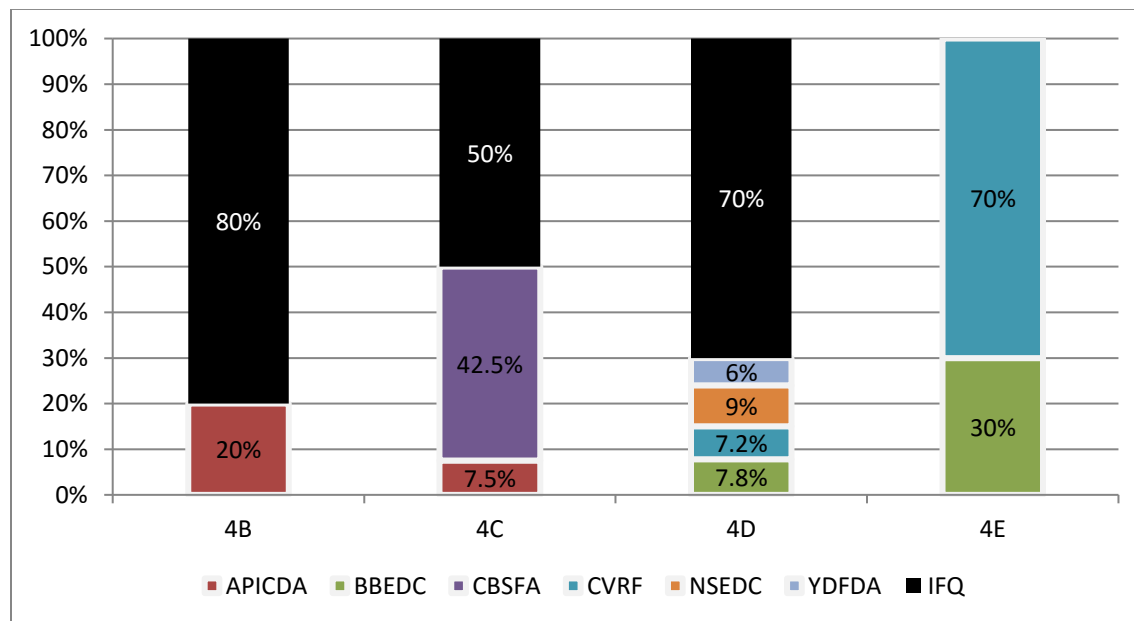
### 3.5.1 CDQ Allocations

Among the species CDQ groups are allocated for commercial fishing, Pacific halibut is an important species for resident employment and income in many of the groups. Halibut fisheries are regulated by the IPHC and NMFS, in consultation with the Council, as specified by the Northern Pacific Halibut Act. In

practice, the IPHC establishes catch limits for directed halibut fisheries and other halibut conservation measures, and the Council recommends regulations to govern the fisheries, including limited access and allocation decisions. Halibut is allocated to CDQ groups for commercial fisheries in four IPHC regulatory areas: 4B, 4C, 4D, and 4E (see Figure 4 and Table 1).

Allocations of halibut quota are expected to provide CDQ groups real opportunities for small vessel fishing for their fleets, and, as such, area allocations of halibut CDQ are generally correlated with the location of the groups (refer to Figure 2, 3 and 4). For instance, Area 4B is located in the Aleutian Islands where the full CDQ allocation (30% of total allowable catch (TAC)) is held by APICDA. Area 4C surrounds the Pribilof Islands and the CDQ portion of the TAC is split 85% to St. Paul Island’s CBSFA and 15% to APICDA, which includes St. George Island as a member. The large BS halibut area of 4D halibut CDQ is split 20% to YDFDA, 30% to NSEDC, 24% to CVRF, and 26% to BBEDC. Of the final Area 4E halibut CDQ, 70% is allocated to CVRF and 30% to BBEDC.

**Figure 4 Halibut CDQ/ IFQ allocation in the regulatory Areas 4B, 4C, 4D and 4E**



Source: 2016 CDQ program quota categories, target and non-target CDQ reserves, allocation percentages, and group quotas: <https://alaskafisheries.noaa.gov/sites/default/files/reports/annualmatrix2016.pdf>

Table 1 demonstrates the pounds that these percentages have represented over time (2008 through 2015). Current regulations authorize a CDQ group to transfer CDQ halibut to another CDQ group that has a CDQ halibut allocation in the same regulatory area.



**Table 1 Annual halibut CDQ allocation by regulatory area (all units in net headed and gutted pounds), 2008 through 2016**

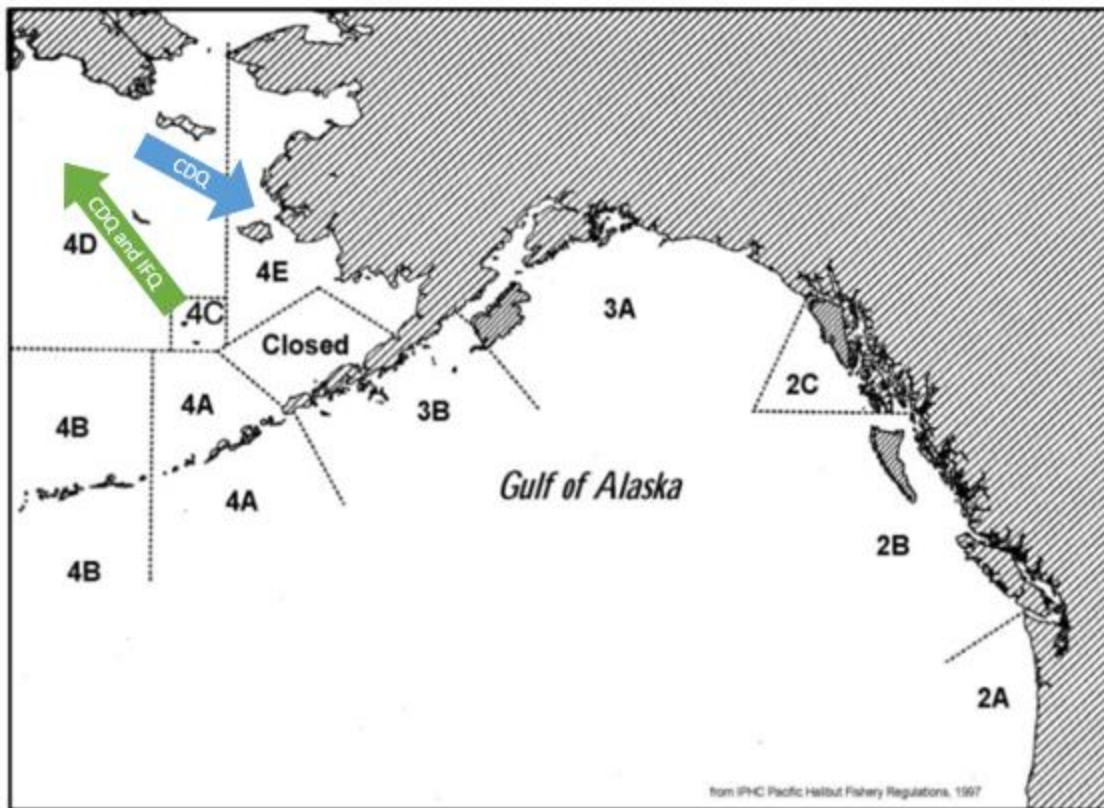
Area	Year	TAC	Program Allocations	APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
4B	2008	1,860,000	20%	372,000	0	0	0	0	0
	2009	1,870,000		374,000	0	0	0	0	0
	2010	2,164,000		432,000	0	0	0	0	0
	2011	2,180,000		436,000	0	0	0	0	0
	2012	1,869,000		373,800	0	0	0	0	0
	2013	1,450,000		290,000	0	0	0	0	0
	2014	1,140,000		228,000	0	0	0	0	0
	2015	1,140,000		228,000	0	0	0	0	0
	2016	1,140,000	228,000	0	0	0	0	0	
4C	2008	1,769,000	50%	132,675	0	751,825	0	0	0
	2009	1,569,000		117,675	0	666,825	0	0	0
	2010	1,625,000		121,875	0	690,625	0	0	0
	2011	1,690,000		126,750	0	718,250	0	0	0
	2012	1,107,356		83,052	0	470,626	0	0	0
	2013	859,000		64,425	0	365,075	0	0	0
	2014	596,600		44,745	0	253,555	0	0	0
	2015	596,600		44,745	0	253,555	0	0	0
	2016	733,600	55,020	0	311,780	0	0	0	
4D	2008	1,769,000	30%	0	137,982	0	127,368	159,210	106,140
	2009	1,569,000		0	122,382	0	112,968	141,210	94,140
	2010	1,625,000		0	126,750	0	117,000	146,250	97,500
	2011	1,690,000		0	131,820	0	121,680	152,100	101,400
	2012	1,107,356		0	86,374	0	79,730	99,662	66,441
	2013	859,000		0	67,002	0	61,848	77,310	51,540
	2014	596,600		0	46,535	0	42,955	53,694	35,796
	2015	596,600		0	46,535	0	42,955	53,694	35,796
	2016	733,600	0	57,221	0	52,819	66,024	44,016	
4E	2008	352,000	100%	0	105,600	0	246,400	0	0
	2009	322,000		0	96,600	0	225,400	0	0
	2010	330,000		0	99,000	0	231,000	0	0
	2011	340,000		0	102,000	0	238,000	0	0
	2012	250,290		0	75,087	0	175,203	0	0
	2013	212,000		0	63,600	0	148,400	0	0
	2014	91,800		0	27,540	0	64,260	0	0
	2015	91,800		0	27,540	0	64,260	0	0
	2016	192,800	0	57,840	0	134,960	0	0	
4CDE	2008	3,890,000		132,675	243,582	751,825	373,768	159,210	106,140
	2009	3,460,000		117,675	218,982	666,825	338,368	141,210	94,140
	2010	3,580,000		121,875	225,750	690,625	348,000	146,250	97,500
	2011	3,720,000		126,750	233,820	718,250	359,680	152,100	101,400
	2012	2,465,002		83,052	161,461	470,626	254,933	99,662	66,441
	2013	1,930,000		64,425	130,602	365,075	210,248	77,310	51,540
	2014	1,285,000		44,745	74,075	253,555	107,215	53,694	35,796
	2015	1,285,000		44,745	74,075	253,555	107,215	53,694	35,796
	2016	1,660,000	55,020	115,061	311,780	187,779	66,024	44,016	

Source: CDQ program quota categories, target and non-target CDQ reserves, allocation percentages, and group quotas (2008 through 2016): <https://alaskafisheries.noaa.gov/sites/default/files/reports/annualmatrix2016.pdf>

### 3.5.2 Harvest Flexibility (CDQ/ IFQ)

There is some fishing flexibility within the halibut regulatory areas as well (see Figure 5). Area 4C CDQ and IFQ may be harvested in Area 4C or Area 4D. Area 4D CDQ may be harvested in Area 4D or Area 4E. Therefore, the IPHC regulations dictate that the total amount of permissible halibut harvest for Area 4D is the sum of Area 4D TAC and Area 4C TAC. The total amount of permissible halibut harvest for Area 4E is the sum of the 4E TAC and 4D CDQ TAC. Reasons for this allowance and implications for this proposal are further discussed in Section 3.8.7.

Figure 5 Halibut CDQ and IFQ harvest flexibility in Areas 4CDE



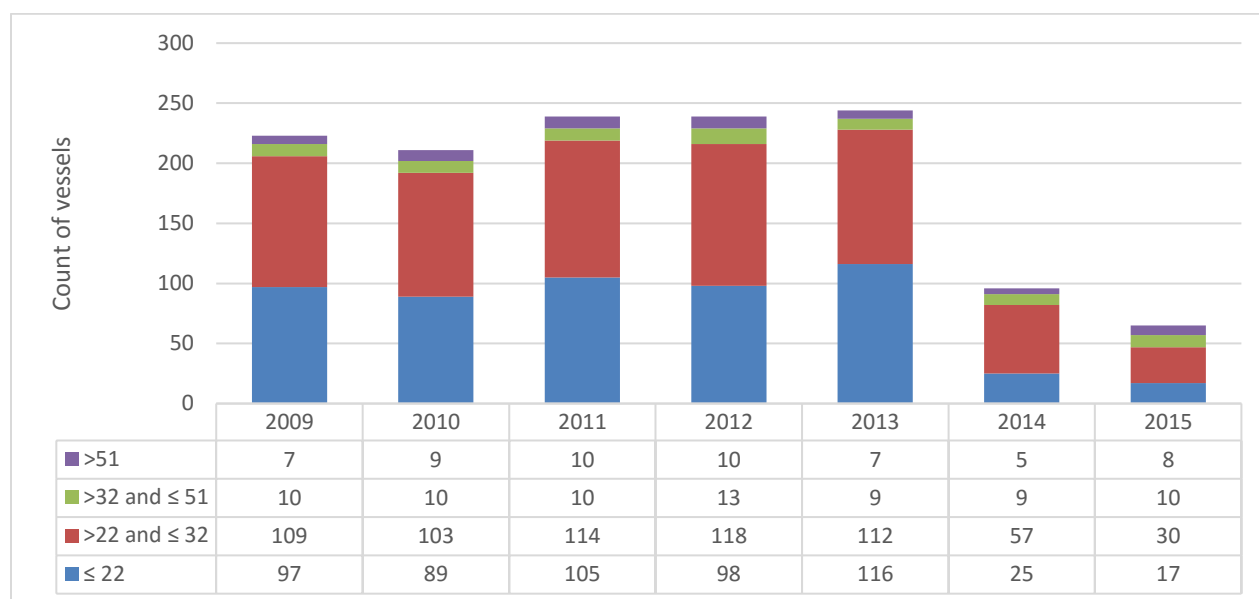
### 3.5.3 Halibut CDQ Fleet

The characteristic of the resident halibut CDQ fleets varies by group and is impacted by factors such as: the number of interested and qualified residents, the location of the halibut resource relative to nearshore fishing grounds, other fishing opportunities (such as salmon and crab fishing), other employment opportunities, and the availability of processing operations. Also, as some parts of the CDQ small vessel fishing operations have been subsidized by groups in the past, the resident fleet is also impacted by internal economic decisions made by the CDQ groups and in the ways they chose to promote economic development in their communities.

The vast majority of halibut CDQ is prosecuted by catcher vessels less than or equal to 51 feet LOA. From 2009 through 2015, the fishery was prosecuted by a fleet in which an average of 96% of the vessels were less than or equal to 51 feet LOA, and an average of 90% of the vessels were less than or equal to 32 feet LOA.

The sharp decrease in the number of vessels participating in halibut CDQ fishing observed between 2013 and 2014 in Figure 6 is in part due to the decline in available halibut CDQ (dropping in Areas 4CDE from 1.93 million pound to 1.285 million pounds), and in part to each CDQ group’s internal management response to this decline.

**Figure 6 Count of unique vessels landing halibut CDQ by length overall, 2009 through 2015**



Source: AKFIN comprehensive\_ft database

A diversification table can highlight vessel dependency on a particular fishery by comparing the value a vessel generates in one fishery versus all their other sources of fishing revenue. For instance, Table 2 illustrates that only a small number of vessels fishing halibut CDQ are generally also fishing halibut IFQ. Of the 444 unique vessels that fished halibut CDQ between 2009 and 2015, only 58 of these vessels also reported landing halibut IFQ (about 13%). Moreover, there is a dependency distinction based on vessel size. For vessels 32 feet LOA and under, virtually 100% of their halibut revenue was generated from CDQ halibut (rather than IFQ halibut), whereas larger vessels are more likely to also participate in the halibut IFQ fishery. Considering ex vessel revenue from all sources of fishing (including state fisheries like salmon and herring), halibut CDQ is shown to be the primary source of revenue for vessels that do not exceed 32 feet LOA.

One caveat of this method of identifying diversification, is that it relies on the overlap in fishing by a vessel. If, for example, an individual fished halibut CDQ on their own skiff in nearshore waters, then prosecuted their 4D halibut IFQ on a partner’s vessel, this would not be captured in Table 2. Table 3 in

Section 3.8.3 also displays QS holders in Area 4A, 4C, and 4D by registered address, providing a further metric identifying potential overlap between these stakeholder groups.

**Table 2 Diversification of ex vessel revenue for vessels that participate in the halibut CDQ fishery by LOA, 2009 to 2015**

Year	Length overall	Count of vessels landing halibut CDQ	Average ex vessel rev from halibut CDQ	Count of vessels that also landed halibut IFQ	Of the vessels that landed IFQ and CDQ, average ex vessel rev from halibut IFQ	Depedence on CDQ halibut versus IFQ halibut for (all vessels landing halibut CDQ)	Average ex vessel rev from all fisheries for vessel landing halibut CDQ	Dependence on CDQ halibut versus total fisheries ex vessel rev
2009	≤ 22	97	\$ 2,609.04	0	\$ -	100%	\$ 2,710.96	96%
	>22 and ≤ 32	109	\$ 16,298.03	4	\$ 116.15	100%	\$ 26,380.91	62%
	>32 and ≤ 51	10	\$ 74,208.95	3	\$ 3,486.35	99%	\$ 126,857.86	58%
	>51	7	\$ 220,588.00	17	\$ 22,131.30	80%	\$ 1,288,032.10	17%
	2009 total	223	\$ 19,353.22	24	\$ 521.09	100%	\$ 60,194.10	32%
2010	≤ 22	89	\$ 4,062.94	2	\$ 103.40	100%	\$ 4,496.17	90%
	>22 and ≤ 32	103	\$ 30,850.49	4	\$ 530.01	100%	\$ 43,419.83	71%
	>32 and ≤ 51	10	\$ 128,877.56	5	\$ 1,857.68	99%	\$ 198,070.62	65%
	>51	9	\$ 304,511.32	21	\$ 28,169.91	82%	\$ 1,368,447.80	22%
	2010 total	211	\$ 35,870.05	32	\$ 837.35	100%	\$ 90,848.99	39%
2011	≤ 22	105	\$ 4,529.80	0	\$ -	100%	\$ 4,463.19	98%
	>22 and ≤ 32	114	\$ 41,321.34	3	\$ 52.26	100%	\$ 49,927.53	80%
	>32 and ≤ 51	10	\$ 219,426.84	6	\$ 4,932.18	99%	\$ 317,443.83	67%
	>51	10	\$ 438,140.85	26	\$ 28,249.15	85%	\$ 2,458,148.89	17%
	2011 total	239	\$ 49,213.13	35	\$ 915.55	100%	\$ 141,909.21	34%
2012	≤ 22	98	\$ 5,921.43	2	\$ 102.64	100%	\$ 6,173.14	96%
	>22 and ≤ 32	118	\$ 26,367.96	10	\$ 202.30	100%	\$ 41,089.86	64%
	>32 and ≤ 51	13	\$ 116,268.50	8	\$ 9,887.02	95%	\$ 282,922.02	41%
	>51	10	\$ 222,026.74	24	\$ 19,000.04	83%	\$ 1,659,377.14	13%
	2012 total	239	\$ 31,060.57	44	\$ 556.02	100%	\$ 107,637.36	29%
2013	≤ 22	116	\$ 4,077.84	3	\$ 126.35	100%	\$ 4,506.45	90%
	>22 and ≤ 32	112	\$ 22,805.72	10	\$ 314.52	100%	\$ 35,390.16	64%
	>32 and ≤ 51	9	\$ 83,138.15	4	\$ 12,448.54	94%	\$ 190,963.25	44%
	>51	7	\$ 138,533.45	18	\$ 17,836.03	75%	\$ 1,256,954.87	11%
	2013 total	244	\$ 19,447.73	35	\$ 362.03	100%	\$ 61,490.98	32%
2014	≤ 22	25	\$ 13,744.02	3	\$ 735.99	99%	\$ 15,951.97	86%
	>22 and ≤ 32	57	\$ 25,789.73	10	\$ 538.03	100%	\$ 45,852.36	56%
	>32 and ≤ 51	9	\$ 91,021.55	8	\$ 9,210.94	92%	\$ 259,238.33	35%
	>51	5	\$ 189,622.65	15	\$ 19,270.05	77%	\$ 1,721,123.56	11%
	2014 total	96	\$ 37,301.27	36	\$ 714.79	99%	\$ 1,723,166.49	26%
2015	≤ 22	17	\$ 11,530.65	2	\$ 1,554.26	98%	\$ 14,639.17	79%
	>22 and ≤ 32	30	\$ 44,433.01	7	\$ 1,390.61	99%	\$ 66,088.16	67%
	>32 and ≤ 51	10	\$ 116,613.08	7	\$ 10,384.55	94%	\$ 289,713.80	40%
	>51	8	\$ 114,144.77	19	\$ 19,632.87	71%	\$ 1,235,113.06	9%
	2015 total	65	\$ 55,512.31	35	\$ 1,782.85	98%	\$ 230,916.20	24%

Source: AKFIN comprehensive\_ft database

Note: Ex vessel values are in real 2015 USD based on the BLS CPI

In addition to vessel dependency as demonstrated through revenue diversification in Table 2, other recent Council documents have worked to explain BSAI community dependence on halibut through other metrics. Particularly relative for the scope of this proposal, is Appendix C to the recent Public Review Draft of Amendment 111 to the BSAI groundfish Fisheries Management Plan (FMP) describes BSAI community engagement in the BSAI halibut fishery (NPFMC 2015a).

This document presents a broad range of information, such as the role of the fishing sector in each CDQ group regional economy, and in particular the role of the commercial halibut fishing sector. In addition to demographic statistics, it presents the number of community resident-owned BSAI halibut catcher vessels versus resident-owned catcher vessels used for other fisheries, as well as the number of participants with permits in the halibut fishery compared to other types of fishing permits. Some of this information is not only inclusive of residents that participant in halibut CDQ fishing in the BSAI, but also QS holders, vessel owners, and crew members that participate in the halibut IFQ fishery and are located in these communities.

### **3.6 Background on the Halibut IFQ Fishery**

In 1991 the Council recommended an IFQ program for the management of the fixed gear (hook and line) halibut and sablefish fisheries off of Alaska (NMFS & NPFMC 1992). The Secretary of Commerce approved the Council's IFQ program as a regulatory amendment in 1993, and the program was implemented by NMFS for the fishing season in 1995. The fundamental component of the IFQ program is quota shares, issued to participants as a percentage of the quota share pool for a species-specific IFQ regulatory area, which is translated into annual IFQ allocations in the form of fishable pounds.

Rather than presenting detailed background information in this section, relevant descriptions and data on the commercial halibut IFQ fishery and associated management program are incorporated into the analysis of impacts in relation to the proposed action.

There are also many sources that can provide more comprehensive and extensive background data on the IFQ Program. For example, the IFQ Program Review presented at the October 2016 Council meeting provides a comprehensive assessment of the procession of the program, framed around the 10 objectives identified by the Council when it developed the program. Additionally, QS transfer data, disaggregated in many ways, can also be found in the NOAA Fisheries Alaska Region Restricted Access Management (RAM) Transfer Report (NMFS 2015a), and choice statistics about the fishery were provided in the RAM Report to the Fleet (NMFS 2014), which was produced annually up until 2012.

### **3.7 Analysis of Impacts: Alternative 1, No Action**

In this analysis, the no action alternative is the regulatory status quo. Under status quo, there are two regulatory elements that prohibit the proposed action alternative from occurring.

In particular, with no action, CDQ groups are not eligible to purchase or lease halibut or sablefish QS/IFQ, with the expectation of Class A shares. CDQ groups can and have acquired Class A share halibut QS. Class A QS are the most flexible harvesting privileges. They can be used for both harvesting and

processing activities, or just harvesting activities,<sup>5</sup> on a vessel of any size. Three of the CDQ groups currently hold Area 4 halibut A class QS. APICDA and YDFDA both hold A class halibut QS in Area 4A, 4B, and 4D, and BBEDC holds A class halibut QS in Area 4B and 4D. Technically, these CDQ groups may already be able to have residents that participate in the small vessel CDQ halibut fishery act as hired masters to fish some of this IFQ, augmenting their CDQ allocation. However, because of the flexibility of Class A QS, it tends to be more valuable. Leasing A share IFQ to resident would forego revenue from a lease rate that they might be able to get from a private party. Therefore leasing A share QS to their residents may come at a higher opportunity cost for CDQ groups than the ability to lease B, C or D Class QS (catcher vessel shares).

The other regulatory elements under status quo that constrain the proposed action from occurring relate to the owner on board requirements of catcher vessel shares under the IFQ program. The program contains limitations on both on leasing and the use of hired masters.

Under current regulations, leasing of IFQ derived from catcher vessel shares has generally been prohibited (for individuals or CDQ groups) since 1998. Several provisions are included in the program that allow for outright leasing under special conditions. One of these provisions includes the leasing of IFQ derived from Class A shares. Special exceptions for leasing catcher vessel IFQ also includes the following situations:

- 1) temporary medical leases,
- 2) survivorship transfer privileges,
- 3) military leases,
- 4) leases through CQEs, and
- 5) IFQ to guided angler fish (GAF) transfers.

Therefore, individuals that are holders of catcher vessel QS, generally do not have access to catcher vessel IFQ leasing options.

It is also unlikely that CDQ community residents could increase participation in the IFQ fisheries by acting as a hired master for a catcher vessel QS holder. While not technically considered a lease based on federal regulations and requirements, the use of a hired master by a QS holder can often acts as a de facto lease depending on the arrangement with the individual or entity holding the QS.<sup>6</sup> The opportunity to use a hired master is only available to a limited number of QS holders in the program. Since the beginning of the program, individual and non-individual initial recipients of catcher vessel shares have been allowed to use hired masters to land their IFQ, except in halibut Area 2C fishery (where the use of hired masters is not allowed). However, beginning in December 2014, a halibut QS holder, including initial QS recipients,

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<sup>5</sup> In recent years, Class A share halibut IFQ has been exclusively fished on catcher vessels and landed on shore.

<sup>6</sup> The primary difference between the two practices is that leasing IFQ requires a formal leasing transfer application, and the IFQ permit is issued in the lessee's name; while in contrast, a hired master must obtain a hired master's permit, but their harvest is debited from an IFQ permit authorized under the name of the QS holder. The QS holder remains liable for any fishing violations reported associated with that permit. Additionally, for the use of hired masters, regulations require the QS holder to have a 20% ownership interest in the vessel used to harvest the IFQ, demonstrated for at least a 12-month period.



cannot use a hired master to harvest IFQ derived from their catcher vessel QS on any QS acquired after February 12, 2010 (79 FR 43679, July 28<sup>th</sup> 2014). QS holders that are not initial issuees, (as well as those in halibut Area 2C fishery) are not permitted to use a hired master to harvest their halibut IFQ regardless of when they acquired it.<sup>7</sup> Therefore in many cases, under status quo, the CDQ resident could not operate as a hired master. The QS holder would need to be on board the CDQ resident's vessel if they were to fish another entities IFQ.

There are a few other options for CDQ residents to expand their halibut operations in times of low halibut abundance. When available, CDQ groups can lease quota from each other. Additionally, with available funds CDQ residents could seek to acquire halibut QS to hold and use on their own. As seen in Table 2, however, there are low rates of harvest overlap of vessels that participate in landing halibut CDQ as well as halibut IFQ under status quo. This indicates that residents harvesting halibut CDQ generally have not had an opportunity or have made a choice not to participate in the halibut IFQ fishery.

The implications of Alternative 1 are heavily dependent on the health of the halibut resource. Since the proposed action under Alternative 2 only applies in times of low catch limits, if halibut catch limits remain above any of the proposed thresholds, the only difference between adopting an Alternative 1 and Alternative 2 is increased administrative effort to revise regulations and develop administrative processes for years in which CDQ groups may lease IFQ. If the catch limits for these areas do become low, the results of adopting status quo could include more negative impacts on residents of CDQ communities that have historically relied on CDQ halibut than might be achieved with action. However, no action would reduce the risk of exacerbating any possible negative impacts of low halibut catch limits on Area 4 IFQ crew and vessel owners. A greater discussion of the qualitative cost and benefits are included in the analysis for Alternative 2 under Section 3.8 and Section 3.9.

### **3.8 Analysis of Impacts: Alternative 2, Allow CDQ Groups to Lease Halibut IFQ**

The action alternative would allow CDQ groups to lease halibut catcher vessel IFQ in Areas 4B, 4C, and 4D in years of low halibut catch limits in regulatory Areas 4B and 4CDE. Any IFQ transferred to a CDQ group under this provision would be available for use in conjunction with halibut CDQ, intended for use by residents that have traditionally harvested halibut CDQ. This action would *not* convert IFQ to CDQ. CDQ allocations would not change. No vessel over 51 feet LOA would be eligible to harvest the leased IFQ, and all vessels must comply with IFQ use restrictions. This proposal does not limit that amount of IFQ that could be leased by a CDQ group in a year.

#### **3.8.1 Potential Benefits**

Halibut is a culturally and economically significant species for many user groups in the North Pacific; thus dramatic declines in IPHC Area 4 biomass levels (as well as coast-wide) have greatly impacted a substantial number of individuals and businesses. Particularly given the recent low catch limits for the commercial (IFQ and CDQ) fishery in Area 4, some of the CDQ groups are seeking opportunities to keep

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<sup>7</sup> There are some limited exceptions to these rules. See 50 CFR 679.42(i) for more details.

their residents actively fishing through these periods. In addition to the clear incentive of encouraging continued employment and income for residents traditionally involved in the halibut CDQ fishery, this proposed action is also seeking to keep processing plants and secondary service providers that the CDQ groups rely on in operation even during years of low halibut abundance.

The benefits that could be derived from such action are different among CDQ groups and would likely even be distributional within a CDQ group. Overall, this action is not necessarily expected to result in a financial gain for a CDQ groups that choose to lease halibut IFQ. It is likely that some or all of the leasing fee would need to be subsidized by the group. However, in particular, representatives from the CDQ groups CBSFA, NSEDC, and APICDA have all suggested that if available and feasible, their group would likely take advantage of the opportunity. Representatives have emphasized that the opportunity to keep community members employed has distributional benefits to the individuals involved in the fishery that would likely be worth the subsidized expense to the CDQ group (Jeff Kaufman, 10/9/2015, personal communications).

If the halibut catch limit for Area 4B and Area 4CDE falls to a low threshold (determined in Option 1 of this alternative), the actual use of this flexibility within a CDQ group will depend on a number of factors. The small vessel fleet that could potentially benefit from increased access to harvest opportunities tends to stay in nearshore areas and be more sensitive to ocean and weather conditions. Therefore, a CDQ group may be more motivated to use this option in a year where the halibut are found close enough to shore and when weather allowed them to fully prosecute their CDQ allocation in addition to any leased IFQ.

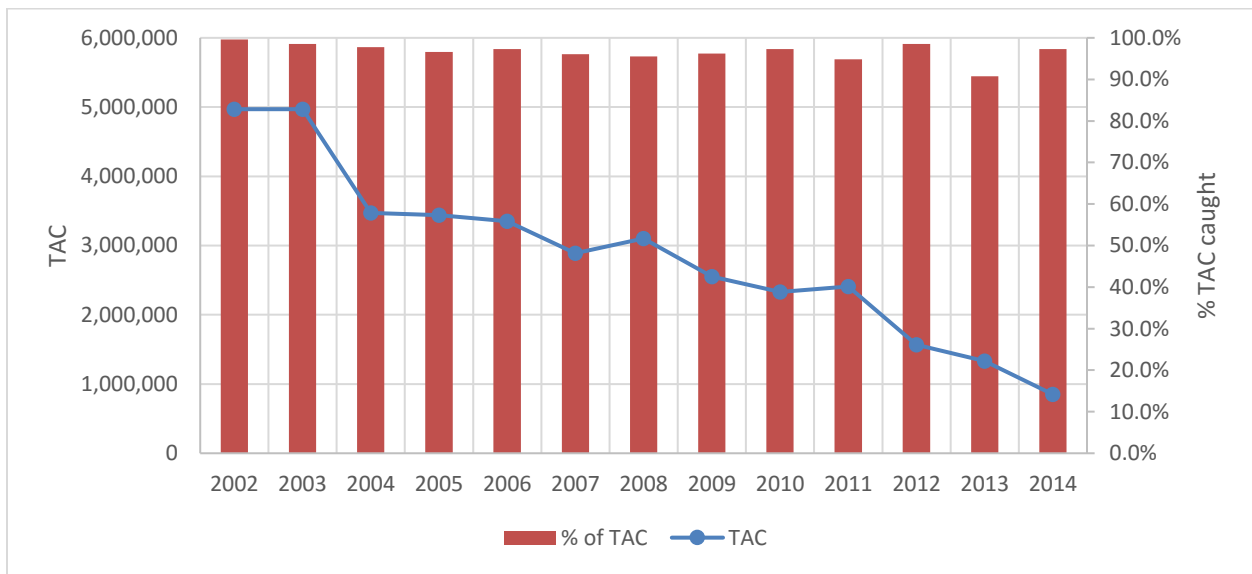
The current nature of the halibut fishery for the other CDQ groups makes it less likely that they would take advantage of this flexibility. In years where halibut catch limits have been very low, CVRF has made the internal management decision to not open their small vessel halibut fishery; therefore, it is unknown whether CVFR would ever take advantage of this additional flexibility. BBEDC and YDFDA halibut fisheries are such that either residents do not have direct access to the halibut resource due to location of the communities relative to the available stock or quota (such as YDFDA's allocation of Area 4D halibut CDQ), or residents target halibut around other priority fisheries (such as salmon fishing in Bristol Bay). However, representatives from BBEDC have still voiced support for this proposal (Ann Vanderhoven, 10/20/2015, personal communications).

Halibut QS holders of Areas 4B, 4C, and 4D may also benefit from this opportunity. These QS holders may feel constrained as their QS is associated with smaller and smaller pounds of IFQ. In years of low halibut abundance, it may not be economically viable for some QS holders to harvest their small amounts of IFQ, particularly in these remote areas in which operating costs are higher relative to other regulatory areas. Depending on operating costs and catch limits, QS holders leasing their IFQ to CDQ groups may be able to earn more revenue from leasing IFQ than from harvesting it themselves or hiring a master to harvest the IFQ (if the QS holder is eligible). To be clear, this action would not propose any amendments to QS use caps or vessel IFQ caps. This action would provide an opportunity for halibut QS holders with QS in Area 4B, 4C, or 4D a chance to lease this IFQ to CDQ groups in years when the harvest limits drop below a certain threshold, without a specified limit to the leasing potential.

IFQ leasing is prohibited, except for the specific exemptions explained in Section 3.7. IFQ hired master restrictions seeking to retain the owner-on-board characteristics of the fleet, do not permit the use of a hired master for many halibut QS holders. Specifically, non-initial issuees may not use a hired master to harvest their IFQ. Also in 2014, an amendment to the program was implemented prohibiting initial QS recipients from using a hired master to harvest IFQ derived from catcher vessel QS received by transfer after February 12, 2010. Therefore, this proposed action would present some halibut QS holders their *only* opportunity to lease Areas 4B, 4C, and 4D halibut QS. They could benefit from this opportunity by earning a lease rate for the IFQ they may or may not have fished.

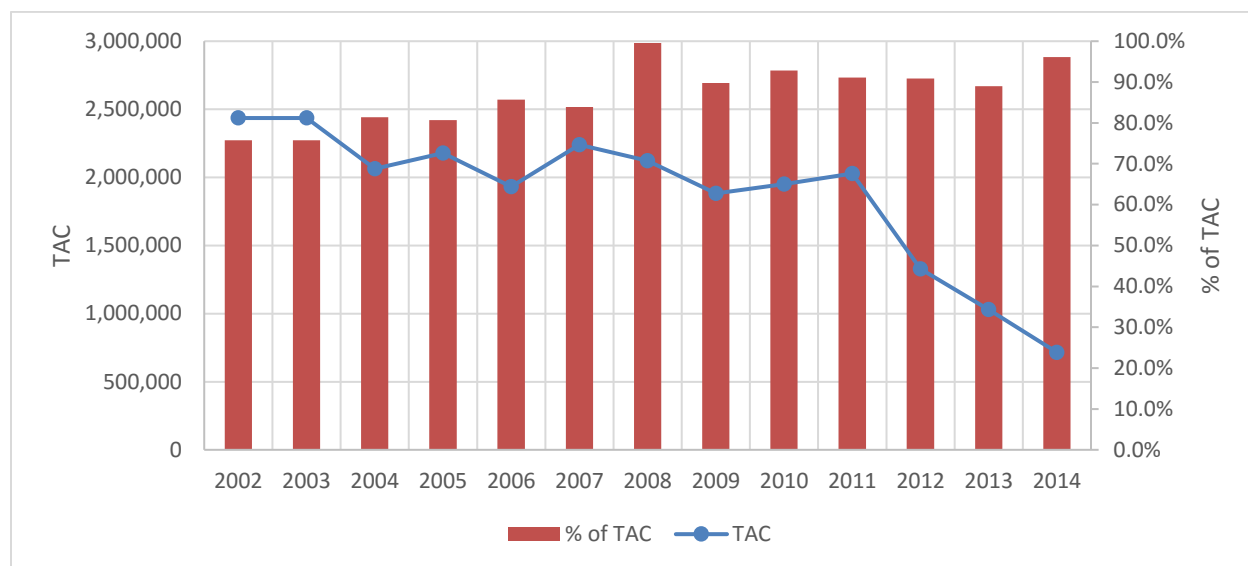
It should be noted, that the halibut IFQ catch limit has been nearly fully prosecuted in Area 4B, Area 4C/4D. Figure 7 and Figure 8 demonstrate the percent utilization of the IFQ catch limit relative to the declining catch limit. However, this does not necessarily mean that there has not been increased economic struggles relative to prosecuting small amounts of halibut IFQ in years of low catch limits. Recent public testimony has highlighted challenges associated with generating the economies of scale necessary to prosecute the small amount of IFQ, particularly with respect to constraining vessel IFQ caps.

**Figure 7 Halibut IFQ catch limits and percent of catch limit harvested for Area 4B**



Source: NOAA RAM division, IFQ Transfer Report 2015, available online:  
<https://alaskafisheries.noaa.gov/sites/default/files/reports/halibut-transferfrpt2015.pdf>

Figure 8 Halibut IFQ catch limits and percent of catch limit harvested for Area 4C/D



Source: NOAA RAM division, IFQ Transfer Report 2015, available online: <https://alaskafisheries.noaa.gov/sites/default/files/reports/halibut-transferfprt2015.pdf>

### 3.8.2 Potential Costs

Direct impacts would be expected to be positive or neutral for both participants of the CDQ groups and QS holders (as discussed in Section 3.8.1), because the opportunity for this additional flexibility in years of low halibut abundance would be voluntary for both user groups. However, Alternative 2 could plausibly have negative indirect effects on some stakeholders of the halibut IFQ fishery. It is possible this action could result in a displacement of some crew jobs, for the duration of time that the halibut catch limits are low enough to allow IFQ leasing, potentially disadvantage vessel owner (to the extent that they are not also the QS holder), and potentially disadvantage some processors (to the extent that they are not the primary processor for both IFQ and CDQ halibut from the area).

The uncertainty about how much IFQ may be leased, from whom, and how this would impact current operations, is the challenge associated with predicting the extent to which this action may have a negative impact on these stakeholders. Likely this action would result in some amount of temporary consolidation; impacting the number of trips taken, or resulting in some vessels not being used in the halibut fishery at all in a season. The impact to (non-QS holding) crew and the vessel owner are distributional. It would be expected that some crew and vessel owner could be disadvantaged, while vessel owners and crew of CDQ vessels may benefit. The negative impacts to whomever is disadvantaged in this flexibility could be compounded in a time when more state and federal fisheries involve barriers to entry (e.g. limited entry permits or quota share) making it potentially more difficult to identify temporary diversification opportunities in years when the halibut catch limits are low. If vessel owners are also QS holders, they would make the decision about whether to lease their IFQ in these years, thus would not be expected to be negatively impacted by this action.

Distributional impacts on processors could occur, if leased halibut IFQ were processed at a different plant than historical users would have relied on. Assuming resident halibut CDQ participants would chose to land any leased halibut IFQ at the same port as their halibut CDQ catch, landings data can demonstrate the overlap between ports receiving halibut CDQ versus ports receiving halibut IFQ. However, given the small number of processors in most communities, much of the data demonstrating overlap in IFQ and CDQ landings is confidential and cannot be presented in this analysis.

In some regions, there is only one active processing plant. In this situation, it is unlikely distributional impacts would be felt under the proposed action. Substantial overlap occurs between where halibut IFQ and CDQ is processed in Areas 4C and Area 4D.

In Area 4B and 4E, the proposed action may indirectly motivate distributional impacts on processors based on a change in landing patterns. Halibut IFQ could move from processors that have dominated the halibut IFQ market to other processors that have been more specialized in halibut CDQ. All of the ports that have received Area 4B halibut CDQ between 2009 and 2015, have also accepted some halibut IFQ. However, the primary processor for CDQ halibut contributes a small fraction of the IFQ processing. If Alternative 2, Option 3 is adopted (the opportunity to harvest leased Area 4D IFQ in Area 4E) Area 4D IFQ landings would may be landed in one of the 11 different Western Alaskan communities<sup>8</sup> that have processed halibut CDQ between 2009 and 2015.

### 3.8.3 Consistency with IFQ Program Goals

The IFQ program was developed to address issues associated with the race-for-fish that had resulted from the open-access and effort control management of the halibut and sablefish fisheries. Specifically, the Council identified several problems that emerged in these fisheries due to the previous management regime, including increased fishing, processing, and marketing costs without increasing catch, decreased product quality, sablefish and halibut prices, and the availability of fresh halibut, increased conflicts among halibut fishermen, sablefish fishermen, or other interest groups, adverse effects on halibut and sablefish stocks, and unintended distributions of benefits and costs.

In the original Supplemental Environmental Impact Statement (SEIS) for the IFQ program (NPFMC & NMFS 1992), the Council identified 10 policy objectives that it intended to address through specific elements of the IFQ program. Specifically, in selecting the elements of the IFQ program the Council attempted to do the following:

- 1) Address the problems that occurred with the open-access management regime.
  - The Council identified 10 specific problems: Allocation conflicts, gear conflicts, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and communities, and rural coastal community development of a small boat fleet.
- 2) Link the initial quota share allocations to recent dependence on the halibut and sablefish fixed gear fisheries.

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<sup>8</sup> 11 communities and "other Alaska".

- 3) Broadly distribute quota share to prevent excessively large quota share from being given to some persons.
- 4) Maintain the diversity in the fleet with respect to vessel categories.
- 5) Maintain the existing business relationships among vessel owners, crews, and processors.
- 6) Assure that those directly involved in the fishery benefit from the IFQ program by assuring that these two fisheries are dominated by owner/operator operations.
- 7) Limit the concentration of quota share ownership and IFQ usage that will occur over time.
- 8) Limit the adjustment cost to current participants including Alaskan coastal communities.
- 9) Increase the ability of rural coastal communities adjacent to the Bering Sea and Aleutian Islands to share in the wealth generated by the IFQ program.
- 10) Achieve previously stated Council goals and objectives and meet Magnuson-Stevens Act requirements.

Prompted by objective number 6, “assure that those directly involved in the fishery benefit from the IFQ program by assuring that these two fisheries are dominated by owner/operator operations,” the Council has made a number of regulatory amendments to the program that continue to limit the amount of leasing and hired skipper use that occurs in the fishery. The current regulatory structure outlines several specific exemptions to the leasing prohibitions, as well as keeping the use of hired masters to essentially those which took place through existing business relationships (as of February 12, 2010). The proposed action may be considered counter to this purpose, as it allows for an avenue to lease halibut QS without any owner-on-board provisions.

Proponents of the proposed action may argue that this type of leasing would be only permitted in dire circumstances (when halibut abundance has dropped below a certain threshold), and only involving a limited scope of participants (halibut CDQ participants and Area 4B, 4C, or 4D QS holders). Additionally, one of the other goals of the IFQ program is stated as “increase the ability of the rural coastal communities adjacent to the BS/AI to share in the wealth generated by the IFQ program” (NMFPC 1992).

It is a policy judgement whether this flexibility is warranted under the goals of the IFQ program. The purpose and need of this action specifically addresses the need to consider the objectives of both the IFQ and the CDQ programs.

### **3.8.4 Potential Market Effects**

Allowing for the opportunity for CDQ groups to lease halibut QS in Area 4B, 4C, and 4D could have an impact on the halibut QS market.

Without the adoption of Option 4 (establishing a cooling off period for CDQ leasing opportunities), the proposed action could result in individuals seeking to privately acquire more halibut QS with the intention of leasing it to the CDQ groups. This potential result of the proposed action would especially work counter to the IFQ program’s goal of promoting an owner-operated fleet, in addition to increasing the QS demand, which could impact the QS market. These impacts may be mitigated by establishing a cooling-

off period, during which newly acquired QS could not be leased, as provided in Option 4. This is option is discussed under Section 3.8.8.

Particularly with a cooling off period for leasing, by only allowing CDQ groups to lease, rather than permanently acquire QS, this proposed action would not likely induce QS movement or consolidation. Conversely, this action may motivate some QS holders that may otherwise consider selling, to hold onto their Area 4B, 4C or 4D halibut QS. This result could be considered either positive or negative, depending on an individual's interest in the fishery. Some stakeholders have suggested that it could help retain the local holdings of QS. This could especially be true for Area 4C holdings, where residents of St. Paul hold 27% of the QS pool. Table 3 demonstrates a link between communities and QS, by linking registered QS address.

**Table 3 Halibut QS holders in Area 4B, 4C, and 4D by QS area and registered address, 2015**

4B			
Address	QS holders	QS holdings	% of Area QS pool
<b>Alaska</b>	<b>39</b>	<b>4,374,156</b>	<b>47.1%</b>
ADAK	2	702,575	7.6%
ANCHORAGE	4	532,419	5.7%
ATKA	6	352,180	3.8%
CORDOVA	2	213,869	2.3%
DILLINGHAM	1	370,314	4.0%
DUTCH HARBOR	1	135,240	1.5%
FAIRBANKS	1	22,392	0.2%
HAINES	1	7,293	0.1%
HOMER	2	174,732	1.9%
JUNEAU	1	2,368	0.0%
KODIAK	15	1,588,001	17.1%
PETERSBURG	1	2	0.0%
SITKA	2	272,771	2.9%
<b>Outside Alaska</b>	<b>39</b>	<b>4,910,618</b>	<b>52.9%</b>

4C			
Address	QS holders	QS holdings	% of Area QS pool
<b>Alaska</b>	<b>21</b>	<b>1,944,790</b>	<b>48.4%</b>
ANCHORAGE	4	297,437	7.4%
DELTA JUNCTION	1	366,151	9.1%
HOMER	2	19,948	0.5%
ST GEORGE ISLAND	3	80,621	2.0%
ST PAUL ISLAND	12	1,070,655	26.7%
SEWARD	1	12,077	0.3%
UNALASKA	1	96,994	2.4%
WASILLA	1	907	0.0%
<b>Outside Alaska</b>	<b>21</b>	<b>2,071,562</b>	<b>51.6%</b>

4D			
Address	QS holders	QS holdings	% of Area QS pool
<b>Alaska</b>	<b>12</b>	<b>1,472,738</b>	<b>30%</b>
ANCHORAGE	4	198,868	4.0%
DELTA JUNCTION	1	292,706	5.9%
DILLINGHAM	1	122,473	2.5%
JUNEAU	1	213,044	4.3%
KODIAK	2	342,286	6.9%
ST PAUL ISLAND	1	38,984	0.8%
SEWARD	1	44,173	0.9%
UNALASKA	1	220,204	4.4%
<b>Outside Alaska</b>	<b>30</b>	<b>3,485,512</b>	<b>70.3%</b>

Source: NOAA RAM Division, accessed 11/18/2015, available online: <https://alaskafisheries.noaa.gov/permits-licenses>

Note: APICDA holds Area 4 class A QS registered to Juneau. YDFDA holds Area 4 class A QS registered to Anchorage. BBEDC Area 4 class A QS is registered to Dillingham.

For those individuals seeking entry into the halibut QS market, the lack of QS movement may not be a positive result. One might expect that decreasing catch limits would be associated with lower QS prices, more exit, and less demand for QS. However, these trends are not being observed in the IFQ fisheries. Area 4B, 4C, and 4D already tend to have the lowest level of QS transactions of any regulatory area

(although, this may also be because a portion of the catch limit is designated as CDQ) and the QS prices, similar to other regulatory areas, appear to be increasing (Table 4). However, compared to other IPHC areas off of Alaska, acquiring halibut QS in these areas is generally less expensive per pound. Between 2012 and 2014, reported price per pound averaged \$40.66, \$34.33, \$21.75, \$16.55 in Areas 2C, 3A, 3B, and 4A, respectively (NMFS 2015a) compared to the prices identified in Table 4 for Areas 4B, 4C, and 4D.

**Table 4 Prices for halibut QS transfers by regulatory area, 2005 through 2014**

Area	Year	Number of transactions used for pricing	Price per pound			Price per QS unit		
			Mean Price	Stan Dev of price	Total pounds transferred used for pricing	Mean Price	Stan Dev of price	Total QS units transferred used for pricing
4B	2005	8	\$ 7.49	\$ 1.18	63,139	\$ 1.46	\$ 0.23	324,243
	2006	2	C	C	7,850	C	C	54,558
	2007	9	\$ 8.45	\$ 2.51	37,045	\$ 1.05	\$ 0.31	298,569
	2008	18	\$ 9.99	\$ 2.35	131,987	\$ 1.60	\$ 0.38	823,570
	2009	12	\$ 10.39	\$ 1.36	129,379	\$ 1.67	\$ 0.22	802,982
	2010	5	\$ 8.93	\$ 1.53	21,700	\$ 1.66	\$ 0.28	116,598
	2011	15	\$ 11.05	\$ 1.86	122,182	\$ 2.08	\$ 0.35	650,471
	2012	4	\$ 19.60	\$ 1.26	58,425	\$ 3.16	\$ 0.20	362,811
	2013	1	C	C	508	C	C	4,066
2014	3	C	C	10,332	C	C	105,186	
4C	2005	7	\$ 5.46	\$ 2.02	86,607	\$ 1.23	\$ 0.46	383,147
	2006	0	\$ -	\$ -	0	\$ -	\$ -	0
	2007	6	\$ 8.04	\$ 1.82	67,184	\$ 1.87	\$ 0.42	289,134
	2008	7	\$ 8.65	\$ 1.47	61,260	\$ 1.90	\$ 0.32	278,173
	2009	6	\$ 11.41	\$ 1.56	67,133	\$ 2.23	\$ 0.31	343,693
	2010	4	\$ 9.90	\$ 0.22	55,116	\$ 2.00	\$ 0.04	272,450
	2011	18	\$ 12.20	\$ 2.31	116,704	\$ 2.57	\$ 0.49	554,708
	2013	3	C	C	6,873	C	C	64,271
	2014	4	\$ 13.33	\$ 1.46	10,983	\$ 0.99	\$ 0.11	147,877
4D	2005	4	\$ 9.09	\$ 1.31	19,557	\$ 2.33	\$ 0.34	76,317
	2006	0	\$ -	\$ -	0	\$ -	\$ -	0
	2007	9	\$ 8.77	\$ 2.18	114,370	\$ 2.31	\$ 0.57	434,031
	2008	1	C	C	3,526	C	C	14,118
	2009	3	C	C	11,584	C	C	52,298
	2010	4	\$ 9.50	\$ 2.85	39,239	\$ 2.18	\$ 0.65	171,040
	2011	10	\$ 13.58	\$ 1.14	163,162	\$ 3.24	\$ 0.27	683,856
	2012	0	\$ -	\$ -	0	\$ -	\$ -	0
	2013	2	C	C	3,683	C	C	30,370
2014	3	C	C	5,148	C	C	61,127	

Source: NOAA RAM division, IFQ Transfer Report 2015, available online:

<https://alaskafisheries.noaa.gov/sites/default/files/reports/halibut-transferfrpt2015.pdf>

Note: C denotes confidential information. Quota share prices in dollars per QS unit are not comparable across areas because the ratio of IFQs to QS differs from area to area and may differ from year to year as TACs change. QS prices in dollars per pound of associated IFQ are more comparable across areas.



### 3.8.5 Option 1: Defining ‘Low Catch Limit’

The action alternative identifies that the IFQ leasing option would only be available to CDQ groups, in years of low halibut catch limits in regulatory Areas 4B and 4CDE. Thus, one key Council decision point is in setting that threshold of low catch limits.

One thing to note is that, while Area 4E is not open to halibut IFQ fishing, and therefore 4E halibut IFQ would not be available to lease under the proposed action, the IPHC generates an estimate of exploitable biomass for Areas 4CDE (including biomass from closed areas) as one combined number and treats 4CDE as a single unit when recommending the catch limit for a given year. The 4C, 4D, and 4E subareas were created to serve the needs of the Council’s Area 4CDE Catch Sharing Plan (CSP). Once the catch limit is set for Area 4CDE by the IPHC, that limit is further apportioned to each of the three subareas using the CSP developed by the Council.<sup>9</sup>

In light of this apportionment process, the IPHC staff recommends Option 1 consider a ‘low abundance’ threshold at the combined Area 4CDE-level, due to the quota sharing among some of the 4CDE regulatory areas and ultimately the combined halibut abundance estimated for Area 4CDE.<sup>10</sup>

The IPHC does specify separate catch limits for Area 4B and 4CDE. Thus, the Option 1 of Alternative 2 allows the threshold for Area 4B to be chosen independently of Area 4CDE:

**Option 1.** Defining ‘low catch limits’ for the purpose of allowing leases. Designation of low catch limits is independently determined for Areas 4B and 4CDE. The threshold for designating a year of low halibut catch limit in each area is less than (separate sub-options may be selected for Area 4B and Area 4CDE):

- Sub-option 1.** 1 million pounds
- Sub-option 2.** 1.3 million pounds
- Sub-option 3.** 1.5 million pounds

To provide some context, these proposed thresholds are compared to the adopted catch limits in Area 4B and Area 4CDE, as well as attainment between 2008 and 2016 in Table 5. Throughout this time period, none of the catch limits have fallen below the 1 Milb threshold. Area 4CDE was below the 1.3 Milb threshold in 2014 and 2015 (1.285 Milb). Area 4B was below the 1.3 Milb threshold in 2014, 2015, and 2016 (1.14 Milb) and was below the 1.5 Milb threshold in 2013 (1.45 Milb). For most CDQ groups, a drop

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<sup>9</sup> The Council’s Catch Share Plan sets the combined Area CDE limits as: 46.43% to Area 4C, 46.43% to Area 4D, and 7.14% to Area 4E, when the total catch limit *does not exceed* 1,657,600 pounds. If the Area CDQ catch limit exceeds 1,657,600 pounds, then an addition fixed 80,000 pounds is set aside for Area 4E (CDQ), and the percentages are applied to the remainder.

<sup>10</sup> All of the proposed ‘low catch limits’ are below the threshold which changes the Area 4CDE allocations, therefore, it should not make a mathematical difference whether the Council used the combined Area 4CDE catch limits or the individual Area 4C and 4D catch limits to create a threshold to trigger the allowance of IFQ leasing; these apportionments will move together at all of the proposed thresholds.

in the number of small vessels participating in the CDQ halibut fishery occurred in either 2013, 2014 or both years (refer to Figure 6).

**Table 5 Adopted catch limits and commercial catch (including IPHC research catch; in pounds, net weight) for Area 4B and Area 4CDE, 2008 through 2016**

Year	4B		4CDE	
	Catch Limit	Commercial Catch	Catch Limit	Commercial Catch
2008	1,860,000	1,760,000	3,890,000	3,880,000
2009	1,870,000	1,590,000	3,460,000	3,310,000
2010	2,160,000	1,830,000	3,580,000	3,320,000
2011	2,180,000	2,050,000	3,720,000	3,430,000
2012	1,869,000	1,740,000	2,465,000	2,340,000
2013	1,450,000	1,250,000	1,930,000	1,770,000
2014	1,140,000	1,120,000	1,285,000	1,260,000
2015	1,140,000	1,110,000	1,285,000	1,210,000
2016	1,140,000	NA	1,660,000	NA

Source: 2016 CDQ program quota categories, target and non-target CDQ reserves, allocation percentages, and group quotas: <https://alaskafisheries.noaa.gov/sites/default/files/reports/annualmatrix2016.pdf>

Table notes: NA = not available data. Additional carryover from the underage/ overage not included. Catch from 2015 are preliminary estimates.

### 3.8.6 Option 2: Retention of QS Class Designations

When the halibut/ sablefish IFQ Program was first implemented, halibut QS was designated as one of four QS classes (also called “vessel category” or “size category” of QS). These classes included categories for: catcher processor (freezer) vessels (Category A); catcher vessels greater than 60 feet LOA (Category B); catcher vessels greater than 35 feet up to 60 feet LOA (Category C); and catcher vessels less than or equal to 35 feet LOA (Category D).

Amendments to the IFQ Program now allow more flexibility within these categories. For instance, IFQ permit holders are permitted to “Fish down” IFQ, meaning catcher vessel IFQ derived from larger class QS can be fished on smaller class vessels. In addition, in response to safety concerns in the BSAI, a program amendment now allows “fishing up” of D class QS in Areas 3B, 4C, and 4B. This means IFQ designated as D class can be harvested on a vessel less than or equal to 60 feet LOA in these areas. Table 6 demonstrates the current use restrictions by share category and how “Fish up” and “Fish down” adds flexibility for QS/ IFQ holders.

**Table 6 Current vessel QS class specifications for the halibut IFQ fisheries**

IFQ Species	QS Class	Vessel Length Designation
Halibut	A	Any length
	B	Any length
	C	≤ 60 feet
	D*	≤ 35 feet

\*Under the “fish up” provision, halibut IFQ Category D shares are able to be used on vessel ≤ 60 feet LOA in Areas 3B, 4C, and 4B.

As demonstrated in Table 2, while there has historically been a prominent small-vessel dependence on CDQ halibut, vessels of varying sizes have harvested CDQ halibut. The prosecution of CDQ halibut does not include vessel QS class restrictions. The objective of the action alternative, is to allow for additional opportunity for participants and vessels already available in the CDQ group communities, so that resident skippers and crew members can benefit from the resulting harvest of halibut IFQs. Therefore, the action would most readily provide this benefit, the more similar IFQ could be used in a manner similar to CDQ. Thus Alternative 2, Option 2 suggests IFQ class designations would not apply when the IFQ is being leased by a CDQ group.

However, the vessel size would be limited to those vessels 51 feet length overall (LOA) and under. In a previous action in which the Council chose to release CDQ vessels from License Limitation Program (LLP) requirements (NMFS 2015b), it was determined that most vessels that were privately owned by CDQ community residents were 46 feet LOA or under. Recent testimony indicated that additional vessels owned by comment residents that fish halibut may be up to 51 feet LOA.<sup>11</sup>

The provision specified under Alternative 2, Option 2 is similar in some ways to the Community Quota Entity (CQE) provisions of the IFQ Program. The CQE provision in the IFQ Program allows eligible Gulf of Alaska coastal communities and the community of Adak in the Aleutian Islands to obtain quota share by transfer and lease the resulting IFQ to residents of the CQE community.<sup>12</sup> Under provisions of that program vessel designations assigned to the QS do apply to the annual IFQ when it is leased to a CQE community residents; and the IFQ permit issued to the community resident reflects that the IFQ may be harvested from a vessel of any size.<sup>13</sup> NMFS would need to establish a similar system under this proposed IFQ program provision. When a CDQ group leases annual IFQ, that IFQ would have to be placed on a separate annual IFQ Permit with a special length designation displayed on the permit itself that would make it clear to the IFQ permit holder (the CDQ group), the CDQ hired master, and the NOAA Office of Law Enforcement that the IFQ could only be harvested on a vessel that was less than or equal to 51 feet LOA. To facilitate this action, changes will need to be made to the database processes that transfer IFQ from one permit holder to another. It is anticipated that a moderate amount of

<sup>11</sup> This length designation was confirmed by vessel ownership data for active vessels in 2014 and 2015.

<sup>12</sup> Current regulations allow the Adak CQE to lease IFQ to persons that are not residents of the community. Beginning on March 17, 2019, the Adak CQE must lease IFQ only to community residents.

<sup>13</sup> Except D class IFQ derived from QS held by a CQE in IFQ regulatory areas 3A and 4B must be fished on a vessel ≤ 35 feet in length.

programming will need to be done and adequate testing of the database processes will need to occur. The costs related the programming of these database changes would be charged to the appropriate cost recovery program (see Section 3.8.9.4).

This provision under Option 2, Alternative 2 would only apply while the annual IFQ is leased to the CDQ Group. The QS vessel class requirements will be applied once again to the non-CDQ permit holder once the lease period has ended. This provision facilitates the use of the IFQ on the wide range of vessel types that is present in many CDQ communities.

Therefore, there may not be a compelling reason to apply vessel share designations to IFQ that is leased to CDQ group if the Council chooses Alternative 2. The flexibility to use QS that is available and vessels that are currently available in these communities could ensure a greater possibility that benefits are realized. Moreover, the 51 feet LOA limit would prevent CDQ groups from leasing IFQ with the intention of consolidating it onto one large vessel (greater than 51 feet LOA) owned by the group or through outside interests, rather than having CDQ community residents as hired skippers to harvest the leased IFQ on their own small vessel.

### **3.8.7 Option 3: Leased Area 4D IFQ May Be Fished in Area 4E**

Option 3 of the action alternative would allow for more explicit movement of Area 4D IFQ into Area 4E. Under this option:

**Option 3.** Leased Area 4D IFQ may be fished in Area 4E.

Even without the adoption of Option 3, Alternative 2, this action has the potential to change some of the historic patterns of harvest; both within a regulatory area and among areas, through the ability to harvest some halibut QS associated with one regulatory area, across area lines. As previously mentioned, some of the QS is able to be harvested in multiple IPHC regulatory areas. The Area 4C CDQ/ IFQ allocation may be fished in 4C or 4D. The Area 4D CDQ allocation may be fished in 4D or 4E. Although there is no IFQ fishery in Area 4E, and Area 4D IFQ cannot be fished in Area 4E, harvest in Area 4E could be indirectly impacted by this proposal as well.

For example, if NSEDC wanted to expand their halibut fishing opportunities in Area 4E (the Nome halibut fishery), they may attempt to lease Area 4D halibut IFQ QS. This non-CDQ IFQ would not be transferable to harvest opportunities in Nome, however NSEDC could use this IFQ to provide opportunities to their Savoonga fishery, freeing up Area 4D CDQ to be transferred to their Nome fishery.

Movement of harvest intensity between these regulatory areas has not been considered a conservation concern by the IPHC, as it was determined in 2003 that the entirety of the 4D CDQ catch limit could be caught in Area 4E (with automatic deduction of any 4D CDQ caught in Area 4E from the Area 4D CDQ available quota). NMFS based the previous modifications to allow Area 4D CDQ use in Area 4E primarily on the rationale that the IPHC considers halibut in Areas 4C, 4D, and 4E (4CDE) to be a single stock and finds no biological or conservation basis for separate catch limits in these areas. Separation of these areas was a socio-economic decision established in the Council's Catch Sharing Plan for Area 4.

This flexibility allowed fishery participants from Western Alaskan communities an opportunity to fish 4D CDQ halibut on small vessels in nearshore areas closer to their homes.

Historically, Area 4E has had up to 67% harvest above its allocated level due to this ability to move fishing effort from Area 4D. Area 4D harvest is often lower than its harvest limit, even with the inclusion of 4C allocation caught in Area 4D. Thus while the IPHC may not perceive this potential for change in locational fishing intensity from the proposed action to be a threat to overall stock conservation as long as the Area 4CDE total catch limit is not exceeded, there is a possibility of localized impacts on fishing opportunities if fishing effort patterns change substantially.

If the Council chooses to adopt Alternative 2, Option 3, it would make recommendations for regulatory changes to the IPHC as well as to the Secretary of Commerce. In order for ‘CDQ-leased’ Area 4D IFQ to be harvested in Area 4E, IPHC and NMFS regulations would need to be amended. For IPHC regulation changes, the Commissioners would need to take action on these changes at its annual meeting in January. IPHC-recommended regulation changes are then forwarded to the governments of the U.S. and Canada for implementation before the start of the fishing season in that same year. If the Council and NMFS recommend regulation changes to the IPHC, they would do so during IPHC’s call for regulatory proposals in the fall of the year prior to anticipated implementation. Regulatory change proposals are due to IPHC at the end of October each year to be considered for action by the Commissioners for the next year’s fishery.

A preliminary evaluation has determined that the following IPHC regulations may need to be revised with the inclusion of Option 3:<sup>14</sup>

- Section 7 (Fishing in Regulatory Area 4E and 4D) to add IFQ leased by CDQ,
- Section 11 (Catch Limits) to add IFQ amounts leased by CDQ, and
- Section 18 (Fishing Multiple Regulatory Areas), which currently has specific prohibitions about how much halibut from multiple areas may be possessed on board a vessel in any specific area at any time.

### 3.8.8 Option 4: Cooling Off Period for Lease of QS

As described in Section 3.8.3, there is a potential for QS market effects given a new opportunity to lease IFQ. Individuals could seek to acquire halibut QS in Areas 4B, 4C, or 4D with the explicit intention of leasing the IFQ to the CDQ groups. Establishing a cooling-off period, a period of time after QS is acquired in which that QS could not be leased, may discourage this type of market behavior. The proposed option states:

**Option 4.** Any Area 4B, 4C, or 4D catcher vessel QS transferred after December 14, 2015<sup>15</sup> may not be leased as IFQ to CDQ groups under this action for a period of:

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<sup>14</sup> Note that some of these regulations may need to be amendment for Alternative 2 even without the adoption of Option 3.

<sup>15</sup> The Council selected the control date, based on the date they first considered the proposal as a discussion paper and first considered setting a control date.

**Sub-option 1.** 3 years

**Sub-option 2.** 4 years

**Sub-option 3.** 5 years

A cooling-off period would discourage a person from buying QS with the intention of leasing the IFQ, as it is difficult to make a large investment, such as a QS purchase, by relying on potential sources of revenue (lease rates) several years away. Moreover, it is difficult to predict what the halibut stock conditions (and ultimately catch limits) will be 3, 4, or 5 years out, therefore a buyer would be uncertain of whether this option would even be available to them. The inclusion of this option would make it more difficult to consider leasing as a viable opportunity when determining whether to buy QS.

### **3.8.9 Other Management and Enforcement Considerations**

#### **3.8.9.1 Vessel IFQ Caps**

The vessel IFQ cap (also referred to as “vessel cap” or “vessel use cap”) restricts the amount of IFQ that can be consolidated and accounts for the IFQ species harvest on one vessel during a season. Vessel IFQ caps do not apply to CDQ. However, in the proposed action, vessel IFQ caps would still apply for the IFQ leased to CDQ groups and fished by CDQ hired masters, just as it does under the status quo for the vessel being used by any other hired skipper. Under status quo, if a vessel is harvesting both CDQ and IFQ halibut during a single trip, they are required to ensure these separate harvests are identifiable, and this requirement would be maintained under the proposed action.

While regulations would not change in this situation, the scope of this action may expand this provision to vessels operators that are not familiar with this practice. While it may be unlikely that a small CDQ resident-owned vessel would be in danger of exceeding the vessel IFQ caps for halibut, these vessel operators would still be required to ensure IFQ halibut and CDQ halibut are separate harvests and are identifiable.

#### **3.8.9.2 Overage/ Underage Provision**

The overage/ underage provision for the IFQ fishery provides flexibility for IFQ holders who are near their IFQ landing limits. This provision allows for an administrative adjustment of IFQ permits as a result of under- and overfishing the prior year up to 10%. Overages of greater than 10% of the IFQ allocation remaining at time of landing are treated as violations and subject the IFQ holder to enforcement action. Administrative adjustments “follow the QS” so that the adjustment is computed for the permit of the person who, at the beginning of a year, holds the QS associated with the IFQ that was under- or overfished the prior year. Under Alternative 2, this provision would be in place, consistent with the status quo.

#### **3.8.9.3 Certification**

For monitoring and enforcement purposes, the more provisions for CDQ hired masters match what is currently required of halibut IFQ hired masters, the easier this action could be to implement. For example,

this would mean a vessel operator harvesting halibut CDQ and halibut IFQ leased to a CDQ group would need to carry:

- CDQ halibut permit
- CDQ hired masters permit
- IFQ permit of CDQ group
- IFQ hired master permit

Halibut that is landed would be coming off two separate catch limits. Therefore, for purposes of catch accounting, participants would need to understand which halibut they harvest is associated with the group's CDQ and what is associated with IFQ.

#### **3.8.9.4 Cost Recovery**

The proposed action alternative would be expected to generate some initial administrative costs. For example, in establishing the regulations to provide for IFQ leasing to CDQ groups during low catch limit years, NMFS would create an IFQ permit held only by CDQ groups with a special length designation displayed on the permit in order to allow for flexible vessel class categories (under Alt. 2 Option 2, see Section 3.8.6). NMFS would also make changes to the database that monitors transfers of IFQ from one permit holder to another. There also may be some small variable costs associated with the annual use of this IFQ leasing flexibility, including the issuing of the IFQ hired master permit to hired masters designated by a CDQ group and any increased enforcement costs.

Section 304(d)(2)(A) of the Magnuson-Stevens Act, obligates NMFS to recover the actual costs of management, data collection, and enforcement (direct program cost) of the IFQ fisheries. Therefore, NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). While cost specific to the CDQ Program are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), the proposed regulatory changes would be made to the IFQ leasing and hired master use provisions and therefore constitute changes in management of the IFQ Program. CDQ group participants using this flexibility would be expected to contribute to IFQ cost recovery as a portion of the ex vessel value of their landed halibut; just as any other user of halibut IFQ.

### **3.9 Summation of the Alternatives with Respect to Net Benefit to the Nation**

This section uses qualitative methods to assess the potential net benefit of action on the Nation (relative to the no action baseline). Compared to 'no action', the proposed action (Alternative 2) in this analysis would allow CDQ groups to lease Area 4B, 4C, or 4D commercial halibut IFQ from QS holders in times when the catch limit in Area 4B and/or Area 4CDE reaches below a certain limit. Under Alternative 2, any leased halibut IFQ would be available for use by the halibut CDQ fleet onboard vessels less than or equal to 51 feet length overall (with a halibut CDQ permit and a CDQ hired master permit), subject to the group's internal halibut management.

The analysis indicates that if the halibut catch limits for these areas never fall low enough for this flexibility to be available (i.e., the catch limit does not fall below the threshold determined under Alternative 2, Option 1), the proposed action will have no effect on any stakeholder groups compared to the baseline, with the exception that some minor administrative costs will be incurred by NMFS (see Section 3.8.9.4). These costs would be expected to be recovered in the cost recovery fee program for the IFQ fisheries.

If the halibut catch limit does fall below the established threshold, there is no guarantee that any CDQ group will choose to pursue IFQ leasing opportunities. Groups may take advantage of other economic fishing opportunities such as, having residents harvest A class IFQ, increasing their harvest of CDQ Pacific cod to augment revenue from halibut, and/ or leasing halibut CDQ from other CDQ groups. It could also be the case, that although the catch limit is low, the halibut resource and/ or ocean and weather conditions are not conducive to promoting additional halibut harvesting opportunities in nearshore areas that are accessible to the CDQ fleet. Furthermore, CDQ group may choose to use their funds to promote other types of economic opportunities for their residents. In any of these case, the proposed action will also have no effect on any stakeholder groups, with the exception that some minor administrative costs will be incurred by NMFS.

If a CDQ group does choose to lease IFQ in order to promote additional halibut harvesting opportunities for their residents at times of low halibut catch limits, there is expected to be distributional impacts. Assuming that the groups are acting in the best economic and socio-economic interests of the residents in their communities, this additional opportunity could keep halibut fisheries open to the CDQ fleet, and could keep community members employed in harvesting and secondary service operations and in a culturally important profession. In addition, this action may provide an opportunity for halibut QS holders with QS in Area 4B, 4C, or 4D a chance to lease this IFQ to CDQ groups and receive a lease rate in years when the harvest limits drop below a certain threshold. This may be their only opportunity to lease and it may create the benefit of helping to retain local QS holdings.

These benefits are in contrast to possible distributional cost on non-QS holding crew and vessel owners, depending on how leased IFQ impacts current operations. There would be possible distributional impacts to processors, to the extent that these processors are not the primary plant for both IFQ and CDQ halibut in the region. The lack of movement in the QS market could create additional barriers to entry for new QS holder; however, QS from these areas has typically been the least expensive compared to other areas off of Alaska.

Overall, there would be no expected changes to the amount of halibut harvested, conservation of the species, product produced, price of the product, or other impacts to the consumers, and therefore the proposed action would either have no effect on net benefits to the Nation, or if negative distributional costs proved to be minor, and community and socio-economic benefits occurred, action could potentially produce small net benefit to the Nation.



## 4 INITIAL REGULATORY FLEXIBILITY ANALYSIS

### 4.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612). This IRFA evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action.

The RFA, first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are 1) to increase agency awareness and understanding of the impact of their regulations on small business, 2) to require that agencies communicate and explain their findings to the public, and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either ‘certify’ that the action will not have a significant adverse economic impact on a substantial number of small entities, and support that certification with the ‘factual basis’ upon which the decision is based; or it must prepare and make available for public review an IRFA. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis, unless, based on public comment, it chooses to certify the action.

In determining the scope, or ‘universe’, of the entities to be considered in an IRFA, NMFS generally includes only those entities that are directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

### 4.2 IRFA Requirements

Until the North Pacific Fishery Management Council (Council) makes a final decision on a preferred alternative, a definitive assessment of the proposed management alternatives cannot be conducted. In order to allow the agency to make a certification decision, or to satisfy the requirements of an IRFA of the preferred alternative, this section addresses the requirements for an IRFA. Under 5 U.S.C., section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;

- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
  3. The use of performance rather than design standards;
  4. An exemption from coverage of the rule, or any part thereof, for such small entities.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed action (and alternatives to the proposed action), or more general descriptive statements, if quantification is not practicable or reliable.

### 4.3 Definition of a Small Entity

The RFA recognizes and defines three kinds of small entities: 1) small businesses, 2) small non-profit organizations, and 3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern’, which is defined under section 3 of the Small Business Act (SBA). ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49% participation by foreign business entities in the joint venture.”

Section 601(3) of the RFA provides that an agency, after consultation with SBA’s Office of Advocacy and after an opportunity for public comment, may establish one or more definitions of “small business” which are appropriate to the activities of the agency. In accordance with this provision, NMFS has

established a small business size standard for all businesses in the commercial fishing industry, for the purpose of compliance with the Regulatory Flexibility Act only. **A business is considered to be a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual gross receipts not in excess of \$11.0 million for all its affiliated operations worldwide.** The \$11.0 million standard applies to all businesses classified under the North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses.

For fish processing businesses, the agency relies on the SBA size criteria. A seafood processor (NAICS 311710) is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business that both harvests and processes fish (i.e., a catcher/processor) is a small business if it meets the criteria for the applicable fish harvesting operation (i.e., the \$11.0 million standard described above). A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when 1) a person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock; or 2) if two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners, controls the board of directors and/or the management

of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated, and is not dominant in its field.

Small governmental jurisdictions. The RFA defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

#### **4.4 Reason for Considering the Proposed Action**

The purpose of this action alternative would be to alleviate the adverse impacts of decreasing available halibut resource on Western Alaskan communities, while taking into account the objectives of the halibut IFQ program. The Council adopted the following purpose and need statement in December 2015:

*The Community Development Quota (CDQ) Program was established to provide an opportunity to eligible western Alaska communities to invest and participate in BSAI fisheries. Among the species CDQ groups are allocated, Pacific halibut is of primary importance to many resident small-boat fishermen for providing employment and income in many of the member communities. Most small vessels fishing halibut CDQ generally do not fish halibut IFQ, and recent years of low abundance have created hardships for participating CDQ halibut fishermen. In times of low halibut catch limits, additional opportunity for CDQ groups to lease and use halibut IFQ for fishing in Areas 4B and 4CDE may benefit resident CDQ fishermen without undermining the goals of the halibut IFQ Program.*

#### **4.5 Objectives of Proposed Action and its Legal Basis**

The CDQ program, as specified by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), is intended to provide to provide western Alaska communities the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska (§305(i)). Recent years of low abundance have created hardships for participating CDQ halibut fishermen. The objective of the proposed action is to provide additional fishing opportunity for resident CDQ halibut fishermen in years of low halibut catch limits, without undermining the goals of the halibut IFQ Program.

The Halibut Act grants the Council the authority to oversee allocations of the halibut fishery in Alaskan and Federal waters. Thus the proposed action would not require changes to any Fisheries Management Plan; however, it would represent an amendment to a number of Federal regulations related to the IFQ

program leasing provisions and the CDQ program. The proposed action would also constitute a proposal for corresponding changes in International Pacific Halibut Commission regulations.

## 4.6 Number and Description of Directly Regulated Small Entities

The thresholds that define a small entity are described in Section 4.3. The operative phrase in the action alternative under consideration is: [To] allow CDQ groups to lease halibut IFQ in Areas 4B, 4C, and 4D in years of low halibut catch limits in regulatory Areas 4B and 4CDE. In light of that, the universe of entities that might be directly regulated by this action is limited to the CDQ groups and the harvesters that have traditionally harvested halibut CDQ and may have an opportunity to harvest leased halibut IFQ as well.<sup>16</sup>

Regardless of their revenues, as they are deemed “small non-profits” that are independently owned and not dominant in their field, for purposes of the Regulatory Flexibly Act, CDQ groups are considered to be small entities (Querirolo 2013).

In addition to these six CDQ entities, the harvesters that have recently participated in the commercial halibut CDQ fishery are also considered to be directly regulated under the proposed action alternative. Under the action alternative, these entities may also have the opportunity to participate in the halibut IFQ fishery. To the extent that they do not already participate in this fishery, these individuals will be subject to new rules and regulations associated with halibut IFQ fishing. Given data limitation, vessels are considered a proxy for harvesters. AKFIN has provided the analysts with the most recent complete set of gross revenue data by vessel. This includes 244 vessels harvesting halibut CDQ in 2013, 94 vessels in 2014, and 65 vessels in 2015.

As defined in Section 4.3, an \$11.0 million standard now applies to all businesses classified under the NAICS code 11411 (i.e., commercial fishing), regardless of the type of fishing operation. Section 4.3 also explains that if a vessel has a known affiliation with other vessels – through a business ownership or through a cooperative – are measured against the small entity threshold based on the total gross revenues of all affiliated vessels. Based on average annual gross revenue data, including affiliations, all vessels that landed halibut between 2013 and 2015 are considered small entities, except for one vessel which participated in 2013. Including the six CDQ groups the total number of small entities directly regulated in the proposed action alternative results in: 249 small entities in 2013, 100 small entities in 2014, and 71 small entities in 2015.

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<sup>16</sup> The NMFS Regional Economist for Alaska provides guidance on the preparation of the IRFA. That guidance states that for a small entity to be “directly regulated” by the action, the action must require some affirmative action on the part of the specific entity. This is a higher threshold than simply stating that an entity is potentially impacted by the action. The action alternative under consideration merely “allows” CDQ groups and their resident fleets to participant in leasing of B, C and D class IFQ; it does not require it. Secondary impacts of IFQ leasing cannot strictly be described as the result of direct regulation. It is questionable whether any entities or harvesters are directly regulated by the considered action, since no affirmative action on their part is *required*.

## 4.7 Recordkeeping, Reporting, and Other Compliance Requirements

*This section cannot be fully completed until the Council selects a preferred alternative.* However thus far, no unique professional skills have been identified to be required for the CDQ groups or vessel operators to comply with any of the reporting and recordkeeping requirements associated with the proposed action. The requirements that apply to the CDQ groups require knowledge of the CDQ group's fishing activities, including contractual arrangements with vessel operators and processing plants, and quota balances, and the authority to submit information to NMFS on behalf of the CDQ group. These responsibilities generally are fulfilled by a member of the CDQ group's professional staff who already is fulfilling similar reporting and recordkeeping functions for other aspects of the CDQ Program. The vessel operator must have the ability to receive information from the CDQ group and the organizational skills necessary to maintain the document(s) in good, readable condition in a place on the vessel where it can be retrieved, if requested by U.S. Coast Guard or NMFS enforcement officers.

## 4.8 Federal Rules that may Duplicate, Overlap, or Conflict with Proposed Action

*This section cannot be fully completed until the Council selects a preferred alternative.* At this stage, no existing federal rules have been identified that would duplicate, overlap, or conflict with the proposed action alternative.

## 4.9 Description of Significant Alternatives to the Proposed Action that Minimize Adverse Economic Impacts on Small Entities

The purpose of an IRFA analysis is to identify if the proposed action will result in a disproportionate and/or significant adverse economic impact on the directly regulated small entities, and to consider alternatives that would lessen this adverse economic impact to those small entities. Section 4.6 highlighted that the number of small, directly regulated entities according to SBA definitions includes CDQ groups and halibut CDQ harvesters. However, importantly, these entities would all be voluntarily participating in the IFQ program regulatory system in addition to their current operations, and therefore they would be expected to experience positive economic (and socio-economic) impacts from Alternative 2.

Alternative 1 (the no action alternative) would not be expected lessen the adverse economic impact on directly regulated small entities, as the impacts from Alternative 2 are expected to be positive towards these entities. In addition, Alternative 1 would not meet the Council's objective of providing for additional harvesting flexibility for CDQ group community residents at times of low halibut catch limits, nor would it address Magnuson-Stevens Act National Standard 8<sup>17</sup> and the objectives of the CDQ program cited in §305(i)(1)(A).

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<sup>17</sup> Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of

*A discussion of the economic impacts to small entities from the options that are presented under Alternative 2 will be expanded on once the Council had identified a preferred alternative. Until then, this section cannot be fully completed.*

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paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities. (Magnuson-Stevens Act §301(a)(8))

## 5 PACIFIC HALIBUT ACT CONSIDERATIONS

### 5.1 Northern Pacific Halibut Act

The fisheries for Pacific halibut are governed under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773-773k). For the United States, the Halibut Act gives effect to the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea. The Halibut Act also provides authority to the Regional Fishery Management Councils, as described in § 773c:

*(c) Regional Fishery Management Council involvement*

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the International Pacific Halibut Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 1853(b)(6) of this title. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation, and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

It is necessary for the Council to consider the directions in the Halibut Act about the regulations that may result from this action. Much of the direction listed in § 773c(c) is duplicative with the Magnuson-Stevens Act's National Standard 4, requiring that regulations not discriminate between residents of different States, and directing that if halibut fishing privileges are allocated or assigned among fishermen, such allocation shall be fair and equitable.

The Halibut Act also directs regulations to be consistent with the limited entry criteria set forth in the Magnuson-Stevens Act. These are criteria that the Council and the Secretary must take into account when establishing a limited access system for a Magnuson-Stevens Act fishery. The criteria are listed below.

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant consider actions.

*Once the Council has identified a preferred alternative, this section will include an assessment of that alternative in relation to these criteria.*



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