


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: April 12, 1994

SUBJECT: Sablefish and Halibut IFQ Program

ESTIMATED TIME 4 HOURS

ACTION REQUIRED

- (a) Progress report on implementation.
- (b) Report on regulatory changes from December 1993 meeting.
- (c) Additional issues.

BACKGROUND

- (a) Status of implementation.

Staff from NMFS Restricted Access Management Division will be on hand to update the Council on the implementation of the IFQ program. From what we understand, implementation is still on track for March 1995.

- (b) Status of Plan and Regulatory amendments from previous meetings.

In December the Council reviewed the Final Rule (item C-1(a)) which was published on November 9, 1993, comparing the provisions of the regulations to program intent as passed by the Council in April 1992. The Council made the following specific clarifications and revisions (with reference to Final Rule sections):

1. Broadened the ability of persons with non-written leases to demonstrate their qualification for initial QS allocation. (676.20(a)(iii))
2. Reiterated their prohibition on using halibut catcher vessel QS on freezer vessels. (676.22(i)(3))
3. Clarified that the use of sablefish catcher vessel QS on freezer vessels is still subject to vessel size categories. (676.22(i)(3))
4. Changed the sablefish CDQ limit from 12% per community to 33% per applicant. (676.24(b))
5. Requested staff to examine the option of basing the CDQ compensation formula on the average of the 1988, 1989, and 1990 TACs, as opposed to the 1994 TAC. (676.24(i)(4))

6. Clarified that the use of catcher vessel QS/IFQ by solely-owned corporations in Southeast Alaska (Area 2C for halibut) is subject to the same provisions as for individuals. (676.22(i)(2))
7. Prohibited the use of catcher vessel sablefish IFQ on any vessel with frozen or otherwise processed IFQ product on board (this allows for retention and freezing of Pacific cod and rockfish bycatch). (676.22(i)(3))

Item C-1(b) is the letter I wrote to NMFS about the above clarifications.

Related to Item 7 above, the Council requested NMFS to report back on the changes necessary to the regulations to implement this intent, such as how a freezer vessel would be defined or how a trip would be defined. Item C-1(c) is a letter from IPHC regarding this issue. It expresses concern over allowing frozen product of any kind to be on board.

Item C-1(d) is a discussion paper regarding the CDQ compensation formula. This paper examines alternative methods for calculating the compensation, with projected effects on both halibut and sablefish allocations. The Council needs to finalize this issue at this meeting in order to keep the implementation on track.

Related to Item 6 above, there has been some question as to whether individuals could, by incorporating, circumvent the 'owner on board' provisions for solely-owned corporations in Southeast Alaska (IPHC Area 2C). Changes to the QS/IFQ use provisions should clear up this issue, and will be described by NMFS staff. Item C-1(e) is a summary of the status of various regulatory changes to the program prepared by NMFS.

The other major issue discussed by the Council was that of vessel clearance requirements for landings outside of Alaska. The Council tabled discussion of this issue until this meeting, with a request to NOAA GC for clarifications and possible solutions. An additional request was made to examine the effects of confidentiality restrictions on QS allocations in other U.S. limited entry fisheries.

The Council-appointed IFQ Industry Implementation Group met on Tuesday, January 4, 1994 at NMFS headquarters in Juneau to discuss these and other issues related to the IFQ regulations. Their report to the Council is included as Item C-1(f).

(c) Additional Issues

Since the December meeting, some additional issues have been raised concerning the IFQ program for sablefish and halibut. Item C-1(g) contains two letters from the IPHC regarding provisions of the IFQ program:

Underage Program. The first letter suggests that the Council consider an underage program in addition to the overage program already in-place for the program.--An underage program would allow IFQ not harvested in one year to be carried over to the next. If the Council wishes to include such a provision in the program, they will want to consider an acceptable percentage to be carried over which would balance individuals' concerns over unharvested IFQ with concerns regarding stock overharvest in a given year.

Trip Definitions and Other Issues. The second IPHC letter, addressed to NMFS, reiterates some of the issues already mentioned here, and includes some additional concerns including: the definition of 'trip', recordkeeping and reporting issues, and the issue of legal landings records from British Columbia. NMFS staff have been discussing these issues with the IPHC and are available to apprise the Council of the status of these issues.

Item C-1(h) is a letter from Access Unlimited, Inc., also addressed to NMFS, which highlights some additional concerns. The issues raised include: (1) lack of a clear definition of what constitutes a lease, (2) how NMFS will handle various 'successor in interest' cases, and (3) issues surrounding lending restrictions which might be placed on QS/IFQs by financial institutions.

Finally, Item C-1(i) is a letter from the Klawock Cooperative Association requesting the Council consider amending the sablefish/halibut IFQ program to establish a CDQ program for Southeast Alaska. They would like the Council to put this issue on the agenda for the June meeting, when they will provide a more detailed proposal for consideration.

Federal Communications Commission.
Victoria M. McCauley,
Assistant Chief, Allocations Branch, Policy
and Rules Division, Mass Media Bureau.
[FR Doc. 93-27448 Filed 11-8-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-210; RM-8283]

Radio Broadcasting Services; Webster Springs, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cat Radio, Inc., substitutes Channel 262B for Channel 262A at Webster Springs, and modifies its construction permit accordingly. See 58 FR 40398, July 28, 1993. Channel 262B can be allotted to Webster Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction petitioner's requested site. The coordinates for Channel 262B at Webster Springs are North Latitude 38-28-42 and West Longitude 80-34-54. Since Webster Springs is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirements of § 73.1030(a) of the Commission's Rules. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-210, adopted October 10, 1993, and released November 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 262A and adding Channel 262B at Webster Springs.

Federal Communications Commission.

Victoria M. McCauley,
Assistant Chief, Allocations Branch, Policy
and Rules Division, Mass Media Bureau.

[FR Doc. 93-27449 Filed 11-8-93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-219; RM-8290]

Radio Broadcasting Services; Staples, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 234C3 for Channel 234A at Staples, Minnesota, and modifies the construction permit for Station KSKK to specify operation on Channel 234C3 in response to a petition filed by Normin Broadcasting Company. Canadian concurrence has been received for the allotment of Channel 234C3 at Staples at coordinates 46-23-29 and 94-57-21. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93-219, adopted October 19, 1993, and released November 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 234A and adding Channel 234C3 at Staples.

Federal Communications Commission.

Victoria M. McCauley,
Assistant Chief, Allocations Branch, Policy
and Rules Division, Mass Media Bureau.

[FR Doc. 93-27450 Filed 11-8-93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204, 672, 675, and 676

[Docket No. 921114-3183; LD. 102892B]

RIN 0648-AD19

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; Limited Access Management of Fisheries off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (BSAI), Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the fishery for Pacific halibut in and off the State of Alaska (Alaska or State). These regulations establish an individual fishing quota (IFQ) limited access system in fixed gear fisheries for Pacific halibut and sablefish in and off Alaska. In addition, this action implements a Western Alaska Community Development Quota (CDQ) program for halibut and sablefish fixed gear fisheries.

These actions are intended by the North Pacific Fishery Management Council (Council) to promote the conservation and management of halibut and sablefish resources, and to further the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act)

that provide authority for regulating these fisheries. The IFQ program is intended to resolve various conservation and management problems that stem from the current "open access" regulatory regime. The CDQ program is intended to help develop commercial fisheries in communities on the Bering Sea coast by allowing them exclusive access to specified amounts of halibut and sablefish in the BSAI.

EFFECTIVE DATE: December 9, 1993, except §§ 676.20(a) through (e) and (g) and 676.21, which will become effective on January 1, 1994, and §§ 675.20(a)(3) introductory text, 676.13(a) and (b), 676.14, 676.16, 676.17, 676.20 introductory text and paragraph (f), 676.22, 676.23, and 676.24, which will become effective on January 1, 1995.

ADDRESSES: Copies of Amendments 15 and 20, and the final supplemental environmental impact statement/environmental impact statement (FEIS) for the IFQ program may be obtained from the Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION: The Alaskan fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) and the affected human environment are described in the FEIS and in the FMPs. The FEIS incorporates a supplemental EIS (SEIS) with respect to sablefish, regulatory impact reviews (RIRs), initial regulatory flexibility analyses (IRFAs), and fishery impact statements that assess the potential economic and social effects of this action. Specifically, the FEIS is comprised of the: (1) Draft SEIS/RIR/IRFA regarding sablefish dated November 16, 1989; (2) revised supplement to the Draft SEIS/RIR/IRFA dated May 13, 1991; (3) Draft EIS/RIR/IRFA regarding halibut dated July 19, 1991; (4) Draft SEIS/EIS/RIR/IRFA regarding sablefish and halibut dated March 27, 1992; and (5) Final SEIS/EIS/FRFA dated September 15, 1992, which includes responses to comments received on the March 27, 1992, draft. This entire suite of analyses is referred to hereafter as the FEIS. Unless otherwise noted, however, page or section references to the FEIS refer to the September 15, 1992, document.

The halibut regulatory amendment and Amendments 15 and 20 to the respective FMPs implemented by this action were prepared by the Council and submitted to the Secretary of Commerce (Secretary) for review under

provisions of the Halibut Act and the Magnuson Act. The Under Secretary approved the regulatory amendment and Amendments 15 and 20 on January 29, 1993.

The Council does not have an FMP for halibut. The domestic fishery for halibut in and off Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary, limited access policies for the Pacific halibut fishery in Convention waters in and off Alaska (see discussion in "Consistency" section below).

"Convention waters" means the maritime areas off the west coast of the United States and Canada as described in Article I of the Convention (see 16 U.S.C. § 773(d)). The Council acted under this authority in recommending its IFQ program for the halibut fishery. The Under Secretary approved this recommendation on January 29, 1993.

Sablefish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA groundfish FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to the U.S. groundfish fisheries appear at 50 CFR part 620.

Background

The problems and issues that the halibut regulatory amendment and Amendments 15 and 20 are intended to resolve are discussed in the FEIS and in the proposed rule (57 FR 57130, December 3, 1992, corrected at 57 FR 61870, December 29, 1992). These include allocation conflicts, gear conflict, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and fishing

communities, and rural coastal community development of a small boat fleet.

Implementation of the IFQ program for halibut and sablefish fixed gear fisheries culminates more than 5 years of discussion, debate, and analysis by the Council and NMFS. Beginning in 1987, the Council solicited the views of the fishing industry and general public on current problems in managing the sablefish fishery including limited access alternatives. In December 1988, the Council decided that the open access status quo was unacceptable for the fixed gear sablefish fishery and expressed a desire to explore the limited access options of license limitation and IFQs. During 1989, the Council identified the 10 conservation and management problems listed above and developed a draft supplemental EIS that analyzed four alternative management regimes, including continued open access (status quo), license limitation, IFQs, and annual fishing allotments. At its meeting in January 1990, the Council decided to focus on IFQ options as an alternative to the status quo. The Council considered a series of analyses of IFQ options throughout 1990 and early 1991. In addition, in early 1991, the Council found that management problems in the fixed gear sablefish fishery also afflicted the halibut fishery. Therefore, the Council decided to consider similar alternative IFQ systems for the halibut fishery with the intent that a single IFQ program would be applied to both fisheries. A draft EIS assessing the potential effects of alternative halibut IFQ programs was prepared and made available for public comment on August 2, 1991 (56 FR 37094).

At its meeting in September 1991, the Council tentatively selected a preferred IFQ alternative for both fisheries and announced its intention to make a final decision on the preferred alternative at its meeting in December 1991. Meanwhile, an agency/industry IFQ implementation team, established by the Council, reviewed the Council's tentative recommendation for practical difficulties. After receiving additional public comment and recommendations of the implementation team, the Council, on December 8, 1991, approved the halibut and sablefish fixed gear fishery IFQ program for Secretarial review.

Council staff prepared a supplement to the draft EIS after the Council, at its meeting in January 1992, requested additional analysis of the potential effects of the preferred IFQ alternative. This additional supplemental analysis was made available to the public on

March 27, 1992. At its meeting in April 1992, the Council received additional public comment on the proposed IFQ program and the March 27, 1992, analysis, and reconfirmed its original decision to recommend the halibut and sablefish IFQ program to the Secretary. A 45-day public comment period on the draft EIS was announced on May 15, 1992 (57 FR 20826).

The Director, Alaska Region, NMFS (Regional Director), made a preliminary evaluation of all documents relevant to the Council's IFQ recommendation and determined that they were sufficient in scope and substance to warrant public and Secretarial review. The official "receipt date" of the Council's IFQ program recommendation is October 26, 1992. A notice of availability of the FMP amendment was published on November 3, 1992 (57 FR 49676), and the proposed rule was published on December 3, 1992. A notice of availability of the FEIS was published on December 11, 1992 (57 FR 58805). Ninety-two letters of comment were received on the proposed rule. After careful consideration of the comments, key issues raised during Council development of the IFQ program, the FEIS, and the public record, the Secretary, on January 29, 1993, approved the recommended IFQ program in its entirety.

Consistency With Magnuson Act and Halibut Act Provisions To Establish Limited Access Management Regimes

The Secretary is authorized by sections 304 and 305 of the Magnuson Act to approve and implement an FMP or FMP amendment recommended by the Council if the FMP or amendment is consistent with the national standards at section 301, other provisions of the Magnuson Act, and other applicable laws. One key provision of the Magnuson Act is section 303(b)(6), which specifies factors that the Council and the Secretary must consider in developing a limited access system. With respect to halibut, section 5(c) of the Halibut Act authorizes the Secretary to implement limited access regulations for the U.S. halibut fishery. Such regulations must be consistent with the Halibut Act and section 303(b)(6) of the Magnuson Act, and must not be in conflict with IPHC regulations. The following discussion reviews the Secretary's findings of consistency with these key statutory requirements.

National Standard 1

This national standard requires conservation and management measures to prevent overfishing while achieving, on a continuing basis, the optimum

yield (OY) from the fishery. Although separate issues, the prevention of overfishing and the achievement of OY are related. In effect, the most important limitation on the specification of OY is that management measures designed to achieve it must also prevent overfishing. "Overfishing" is defined in the NOAA Guidelines for Fishery Management Plans (Guidelines), 50 CFR part 602, as a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce maximum sustainable yield on a continuing basis (§ 602.11(c)).

The Council has developed an objective and measurable definition of overfishing groundfish as required by the Guidelines. The Council annually specifies the total allowable catch (TAC) of sablefish to assure that harvesting up to its TAC does not cause overfishing of the sablefish stock. The IPHC follows a similar process in establishing the annual catch limits for halibut.

The IFQ program will not change the process by which the Council and the IPHC respectively establish the sablefish TACs and halibut catch limits, but rather will modify the distribution of harvesting allocations among fishermen. Therefore, the IFQ program sustains existing management measures that prevent overfishing. Further, the IFQ program will improve the prevention of overfishing by providing for reductions in bycatch and deadloss that normally increase with increased fishing effort in open access fisheries. The slower paced fishery that is anticipated under the IFQ program will reduce fishing mortality caused by lost fishing gear and bycatch because gear conflicts will be reduced with fewer fishermen operating over a longer season, and because fishermen will more carefully set and retrieve their gear to minimize their operating costs. The bycatch of halibut or sablefish in fixed gear fisheries for other species is reduced when fishermen who hold halibut or sablefish IFQ can land those species that would otherwise be discarded. The slower paced fishery also will enhance the ability of NMFS to prevent exceeding the overall TAC or catch limit because the individual landings of fish will be more closely monitored.

The achievement of OY is enhanced as a result of improvements in the prevention of overfishing. Reductions in wastage of fish from bycatch and deadloss are likely to produce increases in future yields. Fishing mortality of young, undersized fish results in a loss of the growth of those fish. This lost growth represents foregone future biomass and potential harvest. The reduction of such loss will increase the

benefits to the Nation in terms of potential food production, recreational opportunities, economic, social, and ecological factors. The IFQ program further optimizes the yield from these fisheries by addressing problems associated with allocation conflicts, gear conflicts, deadloss, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability, and rural coastal development of a small-boat fleet.

National Standard 2

National standard 2 requires conservation and management measures to be based on the best scientific information available. The analytical work and data sources queried in developing the IFQ program were extensive. As explained in the preamble to the proposed rule, a series of four separate analyses comprise the FEIS and were made available for public review over a period of two and a half years. This analytical work relied on the most current landings data, economic, social, and biological information available at the time of the analysis. Data sources are given in reference chapters of the FEIS and its component parts. In addition to the FEIS and the Council's record of debate and public comment, the Secretary considered information presented in comments on the FMP amendments and proposed rule. The Secretary is satisfied that a reasonably comprehensive record of data collection and analysis has been assembled and finds that the IFQ program is consistent with national standard 2.

National Standard 3

This standard requires an individual stock of fish to be managed, to the extent practicable, as a single unit throughout its range, and interrelated stocks of fish to be managed as a unit or in close coordination. The range of halibut and sablefish stocks extends from the northern limits of the BSAI, north and south of the Aleutian peninsula and islands, and throughout the GOA to the U.S.-Canada boundary at Dixon Entrance. These species are found also inside State (territorial sea and internal) waters and in the EEZ. They are found also in Canadian waters and in and off of the States of Washington and Oregon, which are outside the jurisdiction of the Council.

Although national standard 3 does not apply to the halibut IFQ program developed under the Halibut Act, this IFQ program will govern all commercial halibut fishing throughout the range of Pacific halibut in and off Alaska. This fishery accounts for 79.6 percent of the total commercial halibut fishery, based

on 1993 catch limits. With respect to sablefish, the IFQ program will apply to all fishing with fixed gear in the EEZ and, with limited exception, to fishing with fixed gear in State waters by fishermen with IFQ permits. The sablefish fishery occurs predominately in the EEZ. Several relatively small and distinct sablefish fisheries (i.e., Prince William Sound, Chatham Strait, and Clarence Strait) within State waters are managed by the State. The IFQ program will not apply to these fisheries. The IFQ program also will not apply to other sablefish fishing with fixed gear that is entirely within State waters by persons fishing without IFQ permits. Such fishing is expected to produce insignificant harvests of sablefish.

The Council included halibut and sablefish in the same IFQ program because these species are interrelated. The IFQ program also requires other species (i.e., Pacific cod and rockfish) to be retained, if caught in association with the IFQ species, to the extent such retention does not violate other State or Federal catch limitations. This management measure purposely recognizes the interrelated nature of the IFQ species with other stocks of fish. Therefore, the Secretary finds the IFQ program consistent with national standard 3.

National Standard 4

Under national standard 4, conservation and management measures shall not discriminate between residents of different states. Further, if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. The Halibut Act also requires any allocations or assignment of halibut fishing privileges among U.S. fishermen to be consistent with the same standards. This national standard raises two issues, discrimination and allocation.

Discrimination. An FMP must not differentiate among people or corporations based on their state of residency and must not rely on or incorporate a discriminatory state statute (§ 602.14(b)). All fishermen are accorded the same treatment under the IFQ program, regardless of their state of residence, and there is no evidence of discriminatory state statutes in the IFQ implementing rules. The CDQ part of the IFQ program provides special benefits to residents of certain communities on the Bering Sea coast.

However, management measures that have different effects on persons in various geographic locations are permissible.

Allocation. An "allocation" or "assignment" of fishing privileges is defined in the Guidelines as direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals (§ 602.14(c)(1)).

To be consistent with the "fairness and equity" criterion, an allocation should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Otherwise, the inherent advantaging of one group to the detriment of another would be without cause. In addition, an allocation of fishing privileges may impose hardships on one group if they are outweighed by the total benefits received by another group (§ 602.14(c)(3)(i)).

The contribution of the IFQ program to the achievement of the BSAI and GOA groundfish OYs is discussed under national standard 1, above, and under the section 303(b)(6) factors below. In addition, the IFQ program will contribute to the achievement of OY by reducing the likelihood of localized and pulse overfishing by spreading fishing effort over more time. Total fishing mortality also should be reduced by providing fishermen with incentive to more carefully deploy and retrieve their gear. This should reduce ghost fishing by lost gear and reduce discard mortality rates of juvenile undersized fish.

The primary management objectives of the FMP for BSAI groundfish are essentially the same as national standards 1, 2, 4, and 5. The furtherance of these objectives are discussed under these respective standards. The primary management goal of the FMP for GOA groundfish is to maximize positive economic benefits to the United States consistent with resource stewardship for the continuing welfare of GOA living marine resources. Specific objectives to accomplish this goal that are relevant to the IFQ program include minimizing waste and developing fishing effort controls when requested by the industry. As indicated in the FEIS (sec. 6.1), economic benefits to the United States are expected from the IFQ program, although they are not maximized in deference to social concerns. Fishing mortality attributable to deadloss and bycatch discards are reduced as explained above. The IFQ program, which will control fishing effort by controlling access to the resource, was developed at the request

of a large part of the fixed gear fishing industry.

There is no question that the IFQ program will restructure the current fixed gear fishery for halibut and sablefish. Some fishermen will be better off and some will be worse off under the IFQ program. Although the program will not prevent most persons from entering these fisheries, those persons who receive an initial allocation of harvesting privileges will have a competitive advantage over subsequent participants by not having to pay for those privileges. In brief, those persons benefited by receiving an initial allocation are vessel owners or lease holders who owned or leased a vessel that made fixed gear landings of halibut and sablefish at any time during 1988, 1989, or 1990. The Council's rationale for this particular allocation is that vessel owners and lease holders are the participants who supply the means to harvest fish, suffer the financial and liability risks to do so, and direct the fishing operations. Processors typically are not directly involved in harvesting fish, and crew members are rewarded for their labor and risks through a profit sharing system. The FEIS indicates that the Council made a reasonable effort to estimate the benefits and costs imposed by this allocation as compared with alternative allocation schemes, including the status quo.

An allocation of fishing privileges may be considered consistent with the conservation criterion if it encourages a rational, more easily managed use of the resource, or if it optimized the yield in terms of size, value, market mix, price, or economic or social benefit of the product (§ 602.14(c)(3)(ii)). The IFQ program satisfies this criterion because it allows fishermen to adjust their fishing operations according to weather conditions, market prices, and other factors that currently are discounted in a race for fish during relatively short fishing seasons. This IFQ system will decrease fishing mortality due to discards and bycatch because fishermen will have an incentive to minimize their costs. Fishermen will have an opportunity to land halibut and sablefish that they caught in other fixed gear fisheries that would be otherwise discarded. In addition, the IFQ program will provide an incentive for fishermen to land a premium product that will maximize market value. This will occur as a result of a greater ability for fishermen to coordinate their landings with market variables, and more time while fishing to clean and properly preserve their catch. Hence, the overall yield, in terms of volume and value, from the halibut and sablefish resources

will be optimized. However, enforcement of IFQ rules is critical to limit the extent to which highgrading and underreporting of harvests subtract from gains in yield.

Finally, consistency with national standard 4 requires avoidance of excessive shares. An allocation must be designed to avoid creating conditions that foster any person or other entity from acquiring an inordinate share of fishing privileges or control by buyers and sellers that would not otherwise exist (§ 602.14(c)(3)(iii)). Although the national standard guidelines do not specifically define an "excessive share," they imply conditions of monopoly or oligopoly. The Council was especially concerned with the effects of consolidation under the IFQ program on current participants and coastal communities. Therefore, the Council recommended a limit on ownership of 1 percent of the total quota share (QS) of sablefish for the BSAI and GOA. These limitations are area-specific for sablefish east of 140° W. longitude, and similar limits for halibut are area-specific. These limits are adopted by the Secretary and appear at § 676.22 (e) and (f) of the final rule. For reasons explained in the preamble to the proposed rule, these limits are imposed on the use of QS rather than its ownership. It is possible that these limits could be concentrated in a single area which could result in localized oligopsony for harvesting or processing. This would not, however, lead to overall market control of the fishery. In addition, a limit is imposed on the amount of QS that can be used on any single vessel (§ 676.22(h)). Finally, NOAA notes that the allocation scheme can be changed by the Council and the Secretary without permission of the QS or IFQ holders. Such a change may occur if the Council determines that the IFQ program in operation allows for too much or too little consolidation. Therefore, the IFQ program is consistent with national standard 4 with regard to excessive share.

National Standard 5

This standard requires conservation and management measures to promote efficiency in the use of fishery resources, where practicable, except that no such measure will have economic allocation as its sole purpose. The Guidelines recognize that, theoretically, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel (§ 602.15(b)(2)). Hence, an efficient management regime conserves all resources, not just fish stocks. Implementing more efficient

management will change the distribution of benefits and burdens in a fishery if it involves the allocation of harvesting privileges. This standard mandates that any such redistribution should not occur without an increase in efficiency unless less efficient measures contribute to other social and biological objectives.

Although the requirements of national standard 5 do not apply to the halibut IFQ system developed pursuant to the Halibut Act, the Secretary finds that the entire IFQ program, including those measures developed for halibut, is consistent with this standard. This IFQ program provides fishermen an opportunity to reduce economic waste associated with overcapitalization, congested fishing grounds, and fishing mortality due to bycatch discard. Harvesting costs will be lowered because of reduced need for fishermen to carry redundant gear and reduced vessel operating costs (FEIS p. 2-6). The quality and value of fishery products will be increased (FEIS p. 2-4), and there will be increased permanent employment opportunities for crew members and processor workers in coastal communities (FEIS p. 2-12). Processing and marketing costs should decrease as the need to hold large amounts of processed fish in storage until sold is diminished (FEIS p. 2-6). Moreover, the replacement of short intensive fishing seasons with longer, predictable seasons will increase safety at sea and reduce the cost of human capital and equipment invested in the production of halibut and sablefish products. Greater efficiency may have been achieved; however, the Council minimized disruption to the current social fabric through various restrictions on the use and transfer of QS. The IFQ program also will provide biological benefits in terms of reduced discard and deadloss waste, and enhanced prevention of overfishing. These social and biological considerations indicate that economic allocation is not the sole purpose of the IFQ program.

National Standard 6

National standard 6 requires that management measures allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Variations, uncertainties, and unforeseen circumstances can be experienced in the form of biological or environmental changes, or social, technological, and economic changes. Flexibility of a management regime is necessary to respond to such contingencies (§ 602.16 (b) and (c)).

Again, although the requirements of national standard 6 do not apply to the

halibut IFQ system developed pursuant to the Halibut Act, the Secretary finds the entire IFQ system, including measures developed under the Magnuson Act and the Halibut Act, is consistent with national standard 6. The IFQ program will not change the way in which the overall halibut and sablefish catch limits are determined. These catch limits respond to changes in stock conditions to the extent that they are based on annual biological estimates. However, the IFQ program provides for increased flexibility for fishermen to adjust their fishing effort to changes in biological or economic conditions. The IFQ program allows fishermen to fish when conditions are most favorable (to the fishermen) and to reduce fishing effort on halibut and sablefish when conditions are less favorable. Under current open access management, a fisherman who wants to participate in these fisheries to any extent is forced to participate during the relatively short fishing seasons, regardless of prevailing economic conditions. The IFQ program will enhance the ability of the fishery to respond to variations and contingencies

National Standard 7

This national standard requires management measures to minimize costs and avoid unnecessary duplication. Management measures should not impose unnecessary burdens on the economy, individuals, organizations, or governments (§ 602.17(c)).

The requirements of national standard 7 do not apply to halibut regulations developed pursuant to the Halibut Act. Nevertheless, the Secretary finds that this IFQ system, including those regulations developed under the Halibut Act, is consistent with national standard 7. The FEIS (p. 6-2) indicates that the IFQ program will increase administration and enforcement costs by about \$2.7 million per year, but that annual benefits will be at least \$30.1 million. In addition, a fisherman is afforded greater flexibility under the IFQ program by adjusting his QS holdings and determining when he will conduct fishing. Fishermen who choose to exit the fishery may receive economic benefit if they sell their QS harvest privilege. The burdens on fishermen who do not receive an initial allocation of QS and on society as employment patterns shift, and other transition costs, are discussed throughout the FEIS

Magnuson Act Section 303(b)(6)

Section 303(b)(6) of the Magnuson Act provides for the establishment of limited access management systems in order to achieve OY if, in developing

such a system, the Council and Secretary take into account: (1) Present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels used in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations. Section 5(c) of the Halibut Act also requires any limited access regulations for halibut to be consistent with section 303(b)(6) of the Magnuson Act.

The IFQ program will enhance the achievement of OY by reducing the risk of overfishing, decreasing rates of fishing mortality due to deadloss and discard waste, and increasing economic benefits to fishermen and to the Nation. The risk of overfishing is reduced because consolidation of fishing effort under the IFQ program will lead to a more manageable fishery. The program involves improved reporting systems to determine harvested amounts of halibut and sablefish more accurately. Fishing mortality due to deadloss and discard waste will be reduced as the pace of fishing is slowed. Under the IFQ program, fishermen will maximize the value of their harvest while minimizing fishing costs instead of trying to maximize the amount of fish harvested as in the current open access fisheries. This focus on value and cost will provide an incentive to increase the care taken in setting and retrieving gear. The incidence of lost fishing gear, and its attendant deadloss due to ghost fishing, will decrease. Gear conflict that results in lost gear also will decline as fishing grounds will be less crowded under a longer fishing season. Catches of legal-sized halibut and sablefish that are made incidental to fishing for other species with fixed gear may be retained if the vessel operator has unused IFQ. This will reduce wasteful halibut and sablefish mortality due to bycatch. The bycatch of non-IFQ species also should be reduced because fishermen will have more time to release carefully these species to maximize their survival. Waste of Pacific cod and rockfish caught in conjunction with IFQ species will be reduced because of the requirement to retain these species unless otherwise directed by other State or Federal rules. Economic benefits to fishermen will result from increased value of their halibut and sablefish landings. Fishermen will be given an increased incentive under the IFQ program to improve handling of their product to reduce spoilage and increase market value. Fishermen will be better able to

time their fishing activities with peaks in the market value of halibut and sablefish. Further, fishermen will have an increased interest in the health of the resource as a result of their investment in QS. Economic benefits to the Nation have been estimated to be in the range of \$30.1 million to \$67.6 million (FEIS p. 6-2).

Present participation in the fishery. For purposes of the IFQ program, "present participation" is defined by the initial allocation qualifying criteria: ownership or lease of a vessel that made fixed gear landings of halibut or sablefish at any time during 1988, 1989, or 1990. The Council developed these criteria after consideration of earlier years and ways of participating in the fishery other than by vessel ownership or lease. The Council's rationale for the specified qualifying years was that they provided a reasonable time in which to demonstrate dependence on the fishery. Including earlier years would allow more fishermen to qualify that have since exited the fishery and are no longer participating. Consideration of later years was abbreviated because the Council, which was formulating this policy in 1991, did not want to exacerbate overcapacity in the fishery by allowing speculative fishing in that year and subsequent years to qualify for an initial allocation of QS. Distribution of initial QS to persons participating in any of the 3 qualifying years will allocate QS to some persons who have not participated in 1991, 1992, or 1993, but fewer such persons will receive an initial allocation than under other options considered by the Council.

The Council's consideration of "present participation" also included the form of involvement in the fishery (e.g., as a vessel owner, crew member, or processor). As explained under national standard 4, above, the Council perceived vessel owners and lease holders as the most directly involved persons in terms of capital investment. The conservation and management problems resolved by this program stem largely from excess capital in the fisheries. Therefore, it is reasonable to define the group of persons who make the capital investment decision to either enter or exit a fishery as "present participants" for initial allocation purposes. The IFQ program does not deny the opportunity for other participants to continue participating as they have done as crew members or in some other capacity. The extent to which employment opportunities are likely to be affected is discussed in sections 2 and 3 of the FEIS.

Historical fishing practices in, and dependence on, the fishery. The Council

considered a person's record of landings in a fishery as the most important indicator of that person's dependence on the fishery. Investment in, or size of, a vessel was rejected as an important indicator because small vessels may sometimes harvest more fish than large vessels. Equal allotments would benefit participants with relatively low landings at the cost of those with relatively high landings (FEIS sec. 7.0). The Council also considered the unique characteristics of the halibut and sablefish fisheries in formulating the IFQ program. The fact that these fisheries are prosecuted mostly by small, owner-operated vessels was repeated often in public testimony. The Council also was aware of the special relationship between vessel owners and fish processors, and vessel owners and crew. Council consideration of these current practices and dependencies resulted in numerous limitations on control, use and transferability of QS. These limitations stem from a profound concern that the IFQ program could cause too much change in current fishing practices. A general description of the fishery is given in the FEIS.

Economics of the fishery. The economics of the halibut and sablefish fishery were a central concern to the Council and a motivating influence to develop the IFQ program. Six of the ten conservation and management problems identified by the Council are economic problems (see "Background" above). Moreover, as a resolution to these problems, the IFQ program will have economic effects on the fishery. The Council's consideration of economic factors and the potential effects of the IFQ program and other alternatives is the subject of most of the FEIS.

Capability of fishing vessels used in the fishery to engage in other fisheries. The IFQ program does not require the departure of any vessel from the halibut and sablefish fisheries. However, a reduction in fleet size is expected as owners of less efficient vessels market QS to owners of more efficient vessels (within vessel category limitations). Hence, vessel owners or lease holders voluntarily leaving the IFQ fisheries will be compensated to some extent. This is in contrast to overcapitalized open access fisheries in which exit frequently results from bankruptcy. The FEIS describes the fixed gear fisheries as multi-species. The IFQ program will allow small amounts of QS to be used for the landing of halibut or sablefish that are taken incidental to the targeted harvesting of other species. Fishermen may choose not to acquire large amounts of QS to conduct targeted harvesting of halibut or sablefish. Fixed

gear fishing vessel owners who choose to hold no QS may use their fishing vessels in other fisheries. The potential effects on these other fisheries is discussed in the FEIS (sec. 4.0).

Cultural and social framework.

Development of the IFQ program has been controversial for the Council and the Secretary primarily because of changes this management policy can bring to the current cultural and social fabric of the fishery. A key concern of the Council was a means of providing for economic rationalization of the fishery while preventing undue cultural and social disruption. Frequent public comment to the Council on cultural and social aspects relevant to the fishery maintained the importance of these issues. The Council considered, described, and assessed relevant cultural and social issues in the FEIS.

Other relevant considerations. Vessel and crew safety was an important consideration in developing the IFQ program. The short and infrequent fishing seasons for halibut, especially in the GOA, often compel fishermen to risk their vessels and lives to fish in poor weather instead of waiting for the weather to clear and miss the fishery. This was one of the 10 problems identified by the Council and is characteristic of overcapitalized open access fisheries. The IFQ program will resolve this problem by allowing fishermen to choose when they will go fishing within a 9-month period. Fishing can be postponed due to poor weather conditions, if necessary, or when the crew is fatigued. Although the IFQ program will not prevent casualties at sea, it is designed in part to allow fishermen to make sensible judgments that will enhance their safety.

Changes From the Proposed Rule in the Final Rule

The IFQ program implemented by this rule is described at length in the proposed rule notice published on December 3, 1992. The principal parts of the program remain as discussed in that notice. These include initial allocation of QS, annual allocation of IFQ, transfer provisions, limitations on IFQ harvests and QS use, monitoring and enforcement provisions, and the western Alaska CDQ program. However, some changes from the proposed rule are made in the final rule in response to comments received. Changes made in response to comments received are addressed in "Response to Comments" below. Other changes are made to clarify the intent and effectiveness of the regulations and improve their parity with the language of the Council's December 8, 1991, motion approving the

IFQ program and the FMP amendment text for Amendments 15 and 20. Principal changes made for clarification purposes are as follows:

1. In accordance with the requirements of section 3507(f) of the Paperwork Reduction Act, § 204.1(b) is revised to include the display of the Office of Management and Budget (OMB) control numbers assigned for the IFQ program.

2. Sections 672.2, 675.2, and paragraph 675.24(c)(1) are removed from the proposed rule. In addition, the term "fixed gear" in § 675.20(a)(3) is changed from the proposed rule to "hook-and-line and pot gear" and the definition of "fixed gear" in § 676.11 is changed from the proposed rule. These changes are necessary to clarify that the sablefish TAC allocation scheme is not changed by the IFQ program. Allocation of sablefish TAC between fishing gears began in the GOA in 1986 and in the BSAI in 1990 pursuant to approved amendments to the respective FMPs. For the GOA, the FMP and its implementing regulations at § 672.24(c) specifically divides the sablefish TAC between hook-and-line gear and trawl gear. These two gear types are defined at § 672.2. Pot gear and other types of gear comprised of hooks and lines (e.g., hand lines, jig, or troll gear) are specifically not allowed to retain sablefish. In the BSAI, the FMP and its implementing regulations at § 675.24(c) divides the sablefish TAC between hook-and-line and pot gears and trawl gear. Again, other gear types are not allowed to retain sablefish. However, the FMP amendment text for the IFQ program indicates that the program is applicable to the "fixed gear" fishery and defines "fixed gear" as including all hook-and-line fishing gears, including longline, jigs, handlines, troll gear, etc., and pot gear in the BSAI. For consistency with the proposed FMP amendment text, the proposed rule defined "fixed gear" as all groundfish pot gear and hook-and-line gear, including longline, jigs, handlines, troll gear, subject to other gear restrictions in parts 672 and 675. This language would have allowed for the exclusion of pot gear in the GOA, for example, but it also would have required changing the sablefish TAC allocation regulations from the specific "hook-and-line gear" (and pot gear in the BSAI) to the more general "fixed gear." NOAA has determined that such a regulatory change, as contemplated in the proposed rule, would require FMP amendments in addition to the amendments implemented by this final rule; this is because the provisions of the current FMPs that allocate the

sablefish TAC among gear types explicitly do not include jigs, handlines, and troll gear (and pot gear in the GOA) and were not modified by these amendments. Hence, the revised "fixed gear" definition in the final rule more clearly specifies which gear types are affected by the IFQ program and is more consistent with existing FMP requirements on TAC allocation.

The fixed gear definition with respect to halibut includes jigs, handlines, and troll gear in addition to the common setline or hook-and-line gear. This difference between sablefish and halibut fisheries results from the more general "hook-and-line gear" specified at § 301.17 as required for the harvesting of halibut. This regulation allows any gear that uses hooks and lines to harvest halibut. Hence, jigs, handlines, and troll gear that employ hooks and lines can be used to land halibut under the IFQ program. Another simplifying factor is that the halibut catch limit is not specifically allocated between trawl and other gear types.

3. The definition of "catcher vessel" is changed by making an exception for a freezer vessel that acts as a catcher vessel during a fishing trip. This change clarifies § 676.22(i)(3) which allows the use of catcher vessel IFQ on a freezer vessel provided that no processed products of any species are onboard the vessel during a fishing trip on which catcher vessel IFQ is being used. This change also improves the distinction between the two types of vessels based on whether processing occurs during a fishing trip or during a fishing year.

4. The definition of "dockside sale" is moved to the definitions section (§ 676.11) from § 676.14(d) because the term is used also in other paragraphs. The definition is revised to clarify that dockside sales are transfers of IFQ fish from the harvester to individuals for personal consumption, and not for resale. Such transfers to non-registered buyers will require the harvester to hold a registered buyer permit in addition to an IFQ permit and card. Further, the text of §§ 676.13(a)(2) and 676.14(d) is revised to clarify the conditions under which registered buyer permits will be necessary, and indicate that landings of IFQ fish outside of an IFQ regulatory area or the State of Alaska must be treated in the same manner as a dockside sale. These changes are made to clarify the requirements of dockside sales and IFQ landings outside of an IFQ regulatory area or the State of Alaska. The changes also clarify the reporting requirements of registered buyers.

5. The definition of the sablefish CDQ reserve is changed to reflect the correct proportion of the sablefish fixed gear

TAC as 20 percent. The proposed rule incorrectly specified 12 percent. Notice of this mistake was published on December 29, 1992 (57 FR 61870).

6. IFQ permits will not include the metric tonnage of the initial allocation for the permit holder. Instead, a statement will accompany the permit which will indicate the amount allocated to the IFQ permit holder. Sections 676.13(b)(1), 676.20(f)(3), and 676.21(e) were reworded to reflect this change.

7. A new paragraph is added at § 676.16(b) to prohibit the intentional submission of false information. In combination with § 676.16(a), the new paragraph emphasizes the need to provide truthful, accurate information on any reports, applications or statements required by the IFQ program. Former § 676.16(b) is redesignated § 676.16(c) and so on through this section.

8. Also in § 676.16, the prohibition against retaining IFQ fish without an IFQ card in the name of "the individual" is changed to "an individual" to clarify that any individual onboard a vessel, who holds an IFQ card with valid IFQ for the IFQ regulatory area and vessel category in which the vessel is operating, may use it to retain halibut or sablefish on the vessel. As used in the proposed rule, this paragraph may have been misinterpreted to mean that only the person responsible for the harvesting activity, such as the vessel owner or operator, had to have an IFQ card. This interpretation would be inconsistent with provisions for IFQ crew members to add their own IFQ to that of the vessel's owner or operator to increase the harvesting potential of the vessel. One or more IFQ permit and card holders, other than the vessel owner or operator, may harvest IFQ fish from the same vessel, up to the vessel limitations specified at § 676.22(h).

9. Section 676.16 is also changed by deleting former paragraphs (n) and (o), and adding a new paragraph (o). The deleted paragraphs were determined to be redundant. The new paragraph prohibits a person from operating a vessel as a catcher vessel and freezer vessel during the same fishing trip. This change adds clarification to the revised catcher vessel definition at § 676.11 (see also change 3 above).

10. To further clarify qualifications for initial allocations, an addition is made to § 676.20(a)(1) stating that sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in the determination. Additionally, evidence of legal landings, for initial QS

calculation purposes, is specifically limited to state and Federal catch reports at § 676.20(a)(1)(v). Text is added to this paragraph to clearly specify that a state catch report is an Alaska, Washington, Oregon, or California fish ticket that has been submitted in compliance with regulations of the respective state that were in effect at the time of landing. A Federal catch report is described as a weekly production report submitted in compliance with 50 CFR 672.5(c) or 675.5(c) at the time of landing. Other types of documents that report landings of fish will not be considered evidence of legal landings for purposes of initial allocation of QS.

11. The adjective "initial" is added before QS in § 676.20(b) to emphasize that the modification of QS to accommodate the CDQ program will occur only once with the calculation of the initial QS allocation. The CDQ adjustment will occur at the IFQ level after determination of a preliminary QS. If fishing under the IFQ program begins in 1995, then the TACs used for this purpose will be those specified for 1994. The modified IFQ (after the CDQ adjustment) then will be the basis for recalculating the initial QS. The reason for this approach is that the TACs for halibut and sablefish are not specified until late January or early February. Use of the previous year's TAC specifications will allow calculation and issuance of initial QS prior to February of the first year of fishing under the program. In addition, this will allow for an ample period of time to effect transfers of QS before the IFQ calculation date specified in § 676.20(f)(2).

12. The confidentiality of proprietary catch data is protected under current state and Federal law. Basically, these regulations prohibit the release of any catch or landings data to anyone other than the person who submitted the state fish ticket or Federal catch report. Exceptions to this rule allow for the release of aggregated data (of 3 or more persons) and the release of data to a third party if the person to whom the data are confidential signs a statement waiving his or her protection of confidentiality. These rules will affect the calculation of initial QS as described at § 676.20(b): The Regional Director will comply with state and Federal laws regarding confidentiality. These confidentiality laws could complicate the initial distribution of QS. If a person who qualifies for an initial allocation of QS had a crew member report a landing on a state fish ticket, the reported catch on that fish ticket would be confidential to that crew member. The Regional

Director would not be able to release those landing data to the qualified person unless the crew member signed a waiver or the qualified person obtained a court-ordered release. This clarification is necessary to alert qualified persons that the application process for QS is subject to state and Federal confidentiality laws and that it is their responsibility to secure the necessary waivers from other persons who may have landed halibut or sablefish on their behalf.

13. The IFQ calculation date in § 676.20(f)(2) of December 31 is changed to January 31 to allow more time for QS transfers to affect IFQ allocations prior to the beginning of the fishing season on March 1 of each fishing year. In addition, this change will allow QS transfers to occur through the annual meeting of the IPHC, at which the current year's catch limit of halibut is established. Calculation of halibut IFQs is partly based on the halibut catch limits established by the IPHC.

14. A new paragraph is added at § 676.20(g) to clarify the interests of QS, IFQ, and permit holders.

15. Two changes are made in § 676.22(e). The first changes the sablefish QS use limit to 1 percent of the combined total sablefish QS instead of the total fixed gear TAC. This change more accurately reflects the language of the Council's motion and the approved FMP amendment text, and makes this limit consistent with that for halibut in the following paragraph (see response to comment 67). The second change corrects a drafting oversight by changing "140° east" to "140° west" longitude.

16. In § 676.22(i)(2), "sablefish IFQ" is changed to "sablefish QS." This change corrects a drafting oversight and clarifies that the exemption provided in the preceding paragraph applies to initial allocation of sablefish QS consistent with its application to the initial allocation of halibut QS.

17. Section 676.23 is deleted as redundant to §§ 676.10 and 676.11. Former §§ 676.24 and 676.25 in the proposed rule are renumbered as §§ 676.23 and 676.24, respectively.

18. Minor changes to § 676.24 include additional language in paragraph (c) to stress that materials in possession of the State of Alaska pertinent to hearings may be released only under State and Federal confidentiality laws. In paragraph (f)(2)(i), the coast of the Chukchi Sea is added as a location where a community would not be eligible for the CDQ. Also, paragraph (f)(5)(iv)(E) adds a factor that the Governor must consider prior to recommendation of a CDP.

19. Compensations of additional halibut and sablefish QS for amounts foregone due to the CDQ program are clarified by making two changes in § 676.24(i) (formerly § 676.25(i)). First, "IFQ" is changed to "QS." This change improves consistency with the text of the Council's motion. Also, this change should make calculation of the compensation faster because the calculation would be based on the QS pool as of January 31 instead of waiting for final TAC specifications on which to base IFQ calculations. Second, a new paragraph (i)(3) is added to clarify that the compensation will occur only once, in the first year of fishing under the IFQ program, and it will be based on the QS pool in each IFQ regulatory area as of January 31 of the first year of fishing under the IFQ program. These are the same QS pool amounts that will be used for calculating IFQs that year pursuant to § 676.20(f)(2).

20. Explanations for additional changes to the final rule's regulatory text from the proposed rule may be found throughout the Response to Comments section.

Response to Comments

The IFQ program has been controversial in its development, review, and approval primarily because it will fundamentally change the current method of managing the halibut and sablefish fisheries and will limit access to them. Hence, public testimony and comment to the Council, NMFS, and the Secretary has been voluminous. Comments received on the draft SEIS/EIS are summarized and responded to in the FSEIS/EIS. The following summary includes only those comments on the proposed rule that were received by the comment deadline of January 11, 1993. Of these, 49 letters from 62 individuals expressed support for the proposed action while 30 letters from 32 individuals were opposed. Some letters in each category also included attachments of other letters, petitions, and news articles. Points raised in the attachments generally reiterated or reinforced the points made in the letters to which they were attached. Another 13 letters expressed neither support nor opposition but made technical comments or recommended certain changes in the regulations. This group of letters includes several that responded to an expressed interest by the Secretary in comments on efficiency constraints proposed by the Council. Letters of support and opposition also made specific recommendations for change.

Comment 1: The IFQ proposal intends to allocate publicly-owned common

property to a limited class of fishermen, and to use public tax dollars to fund the administration of this program for the benefit of these special interests. The Magnuson Act should be amended to provide the public with a fair return on the public fishery resources to avoid unnecessary windfall profits to a few at great cost to the public. All industries must pay for their raw materials in producing any product for profit. The fishing industry's raw materials are the public's fish which currently are free. The fishing industry should pay the public for the use of its resources and their management.

Response: Neither the Magnuson Act nor the Halibut Act provides authority to charge resource user fees or rents. In the coming months, NOAA will be participating in a broad review of user fees or rents, which will include evaluation of alternatives for applying them in appropriate fisheries. This could result in charging fees for initial and subsequent allocations of QS, IFQ, or landings, or any combination of these, in the sablefish and halibut fisheries. NOAA will seek the views of interested parties during this review. While the IFQ program will benefit the Nation, and is consistent with current law, public benefits can be increased from resource user fees or rents.

Comment 2: The IFQ program is the only alternative that addresses all ten problems identified by the Council. The IFQ program offers the best chance of solving current industry problems including safety, marketing, and overcapitalization. No other alternative better solves the problems of resource waste, overcrowding, product quality, safety, and bycatch. Problems of discarding, and gear conflict should be resolved by the IFQ program while increasing economic benefits and improving biological conservation. Open access and traditional management techniques are not working. The IFQ program is based on free-market principles commonly used in the private sector; it is a pro-business plan. Current management results in extremely short fishing seasons which are dangerous and wasteful. The IFQ program would reduce waste of bycatch, fuel, fishing gear, ice, cold storage, and loss of life at sea. The program has been thoroughly analyzed and benefits from ample public review and participation in its design over the past 5 years. The unsafe fishing conditions that fishermen are forced to endure as a result of extremely short openings is a critical flaw of current management. Fisheries management should take responsibility for the safety and welfare of fishermen affected by regulations in addition to

conservation and management of the fishery. The program will increase economic benefits from the fisheries and improve biological conservation by making the fisheries easier to manage. Consumers will benefit by having a steady supply of fresh fish to the market. The program is rational; initial allocations reward participation in the fisheries proportionately. Fishermen will have a personal stake in the fishery under the IFQ program which will foster a stewardship attitude toward the resources and their environment. Similar IFQ-type programs have proven successful in other fisheries. The IFQ program should be approved in its entirety. There should be no partial disapproval of transfer restrictions as these are necessary to mitigate socio-economic impacts that will occur if historic delivery patterns are disrupted or the traditionally diverse fleet is displaced. Further prevention of excessive fleet consolidation may be needed.

Response: Comment noted. NOAA agrees with most of these points and supports the IFQ program. However, limited access regimes are not appropriate for all problems affecting the fishing industry. Some traditional management measures will continue to be used and others may be necessary to prevent overfishing or other conservation problems if the IFQ program is not adequately addressing such problems.

Comment 3: Adoption of the IFQ plan will result in lost jobs for up to 12,000 fishermen in the halibut fleet and 2,600 fishermen in the sablefish fleet. It is unlikely that all of these fishermen will be able to move to other fisheries. The impact of such job loss on communities and fishing-related industries is not fully addressed.

Response: The Council and the Secretary carefully assessed the potential social and economic effects of this IFQ system. Although the number of employment opportunities fishing for and processing halibut and sablefish are likely to decrease with the intended consolidation of the fleet, the fishing and processing positions that remain should be more secure and better paid. The fishing seasons in the halibut and sablefish fisheries currently are so short that most fishermen cannot depend on them for full-time employment. There is little employment security in the halibut and sablefish fisheries currently under open access management. Extremely short fishing seasons under open access force vessel owners and processing plant operators to rely more on part-time transient labor instead of full-time resident labor. Stability in the

participation of fishing vessel owners also is not high currently. Of the approximately 8,000 vessel owners who participated in the halibut fishery between 1984 and 1990, only 9 percent participated in all 7 years (FEIS 2.2.18). The IFQ program could provide greater employment security by increasing the use of a coastal community's resident labor force and decreasing the use of transient labor (FEIS 2.2.16). The fishermen likely to leave the fisheries under the IFQ program will be occasional or part-time fishermen. Career or full time-fishermen are more likely to increase their stake in the IFQ fisheries and enjoy greater economic stability and security in their employment than they currently experience.

Comment 4: The IFQ plan is unfair because it would take a public resource worth millions of dollars that everyone has access to and give it to a privileged few. This would unfairly force traditional small-boat fishermen out of the fishery and replace them with large corporations or, like other limited entry programs, will result in rich doctors and lawyers having the permits. This would prevent many small-boat fishermen from being able to improve their boats and gear. Since most of the benefits of the program would be captured by relatively few individuals, a large number of individuals currently working in the fisheries would be unemployed and increase the burden on social services. Management should spread out access to the resources to keep more people working and protect against the concentration of harvesting by a privileged minority.

Response: Seeking maximum participation in a fishery is a management policy that may be appropriate for some fisheries. The Council did not consider it an appropriate policy to achieve OY from the halibut and sablefish fisheries, however, because it exacerbated numerous conservation and management problems and resulted in wasted value from an important national resource. The addition of more harvesters or more fishing effort to a fishery with a finite production capability at some point will not yield more product. The halibut and sablefish fisheries have surpassed that point, but more fishing effort was continually added in recent years resulting in decreased fishing seasons (FEIS 1.3.2, July 19, 1991, and Fig. 1.1, Nov. 16, 1989) and the 10 conservation and management problems identified above (see Background). The Council's IFQ management policy is carefully crafted, however, to prevent the opposite

extreme of minimizing participation in the fisheries. To the extent practicable, it is designed to retain the social and cultural framework relevant to the fisheries. For example, it includes constraints on the transfer of QS among vessel categories and requires catcher vessel QS holders to be onboard during fishing operations. The traditional small-boat fisherman will not necessarily be forced out of the fishery. However, if he decides to leave the fishery, a small-boat fisherman will likely transfer his QS to another small-boat fisherman. Policies like this reflect the concern expressed by the Council, the fishing industry, and the affected public about excessive consolidation of fishing privileges and disruption of the traditional fixed gear fishing fleet.

Comment 5: The cultural and social framework of the fishery was not taken into account in formulating the IFQ plan. The culture of Alaska contains the philosophy of "common use" and an abhorrence of "exclusive right or special privilege fishery," concepts embodied in the State's Constitution.

Response: The Council and the Secretary adequately took into consideration the cultural and social framework relevant to the fisheries in developing the IFQ program as required by the Magnuson Act and the Halibut Act. Evidence of this consideration is in the FEIS which is comprised of several analyses. These include the original draft dated November 16, 1989, which was supplemented by drafts dated: (1) May 13, 1991; (2) July 19, 1991; and (3) March 27, 1992. The most recent FEIS document, dated September 15, 1992, summarizes and responds to comments on the March 27, 1992 draft. The November 1989 draft contains a description of the economic and social environment (Chapter 3). This section describes commercial fishing activities, their relationship to the processing and marketing sectors, social and cultural characteristics of the fisheries, and coastal communities. Detailed descriptions of fleet structure, population, employment, history, demographics, and culture also are contained in this document or referenced. This analysis examines the likely effects of alternative management strategies and evaluates the efficacy of each alternative. The July 1991, analysis contains a detailed description of the economic and social environment of the halibut fisheries. Chapter 4 of the document compares IFQ management with open access in regard to 28 parameters including economic stability in affected coastal communities, employment, and anticipated effects on fishing operations. Chapter 5 of the July

1991 document contains a detailed description of the social environment of the halibut fishery. Specific demographic profiles of affected coastal communities are provided that address the relative importance of the halibut fishery to each community and the size, composition, and stability of the resident work force as it relates to fisheries. The March 1992 analysis contained another assessment of potential coastal community impacts (Chapter 3) that includes the potential for QS/IFQ to move away from coastal communities as has occurred in the State's salmon limited entry program. Consideration of the social and cultural framework of the fishery resulted in numerous constraints imposed on the transfer and use of QS and IFQ (§§ 676.21 and 676.22). These constraints will be costly in terms of foregone economic efficiency of the fleet but are nevertheless necessary to prevent undue disruption in the social and cultural framework of the halibut and sablefish fisheries.

Comment 6: The program expropriates existing private property rights in the common property fishery and reassigns property rights to a new group of persons using arbitrary criteria. Those from whom property rights are taken should be compensated.

Response: There are no private property rights in wild fish before they have been reduced to one's possession. Therefore, no private property has been taken, no property rights have been reassigned, and no compensation is due. The assignment of transferable harvesting privileges to persons who owned or leased a fixed gear fishing vessel that made landings of halibut or sablefish in 1988, 1989, or 1990 is reasonably based on information, available to the Council at the time that it made its decision, on present participation in, and current dependence on, the fisheries.

Comment 7: The IFQ program amounts to a takeover of our natural resources by the Federal Government. Fishermen should not have to pay for a harvesting privilege that is already their Constitutional right.

Response: There is no provision of the U.S. Constitution that guarantees anyone a right to fish. The IFQ program does not amount to a "takeover" of the halibut and sablefish resources by the Federal Government. The Federal Government is responsible under the Magnuson Act and the Halibut Act to conserve and manage these and other fishery resources for the benefit of the Nation. Limited access management programs are authorized by these laws as necessary to achieve OY.

Comment 8: The IFQ program does not privatize ownership rights to individual fish stocks but only to the right to harvest certain species. Therefore, the "race-for-fish" problem is not solved but limited only to a privileged and protected group.

Response: Under open access and license limitation programs, all fishermen harvest fish from the overall catch quota. Therefore, fishermen who harvest faster harvest more fish than slower fishermen by the time the common quota is reached and authorities close the fishery. Under the IFQ program, fishermen, limited by their individual quotas, need not race for a share of the total quota. Instead, they can direct their efforts at reducing the cost of their operations and improving product quality.

Comment 9: The claim that ownership of harvesting rights will promote stewardship of the resource is not true. The long-term detrimental effects of abusive behavior are shared by all industry participants, not just the abusive individual, thereby reducing incentive for an individual to take responsibility for his own behavior.

Response: Fishermen who hold QS have an individual interest in the halibut or sablefish resource. Individual behavior that degrades that interest, such as underreporting or discarding dead fish that should be counted against an IFQ, could adversely affect the harvesting potential of QS or the future value of QS when the QS holder decides to leave the fishery. As abusive behavior is more likely to be noticed by other fishermen than by the Government, the IFQ program is expected to foster a cooperative effort in enforcing the IFQ rules. Fishermen who invest in the fishery by buying QS will more likely hold a long-term view of their industry and seek to recapture their investment costs and make a reasonable profit year after year. An open access fishery, on the other hand, inspires a short-term perspective because investment or entry costs are relatively low and the costs of resource abuse are spread over a large number of fishermen. Consolidation of the fleet under the IFQ program will increase the cost of resource abuse to individuals remaining in the fishery. The IFQ program will likely inspire more individual responsibility for resource stewardship, not less. Furthermore, it is conceivable that the underreporting by one IFQ holder that potentially causes the TAC to be exceeded in one fishing year could result in a decreased TAC and correspondingly lower IFQs the following year.

Comment 10: Initial allocation of fishing privileges to "present participants" is only indirectly related to present participation. Fishers' catch history is only the outcome of their participation (i.e., the score of the game). Investment in the fisheries, for example, is more indicative of participation.

Response: The Magnuson Act and the Halibut Act require the Council and the Secretary to take present participation in, and dependence on, the fishery into account in developing limited access systems. The Council chose to use catch history over a specified period of time as an indicator of present participation in, and dependence on, the fishery. NOAA agrees that a person's catch history provides a reasonable indication of that person's participation in, and dependence on, the fishery. Investment also may be an indication of these factors, but investment data would be more cumbersome to use and verify because of difficulties in acquiring and interpreting such data.

Comment 11: The initial allocation to those who invest (in fishing vessels) would unfairly allocate a valuable asset to relatively few fishermen and businessmen who own vessels to the exclusion of the vast majority of fishermen who crew and operate the vessels. This would make vessel owners and lease holders "fishermen" regardless of their participation in the fishing activity of their vessel. Crew members and captains who actually fished would be excluded from receipt of QS regardless of the years of personal investment they have as real fishermen. By discriminating between fishermen who are vessel owners and fishermen who are crew members, the IFQ program would violate the Halibut Act which strictly prohibits discrimination between any fishermen, not just fishermen from different states. Moreover, it would effectively redefine "fishermen" as "investors" and would violate national standard 4 of the Magnuson Act and the Halibut Act, which require allocations to be fair and equitable to all fishermen. Financial investment in the fishery should not be the only criterion for getting QS.

Response: The Council chose vessel ownership or lease as a criterion for initial allocation of QS because of the financial risk that such persons assume in undertaking a commercial fishing enterprise. Persons who bear this financial risk are the persons who make the decision of whether to enter or exit a fishery and affect the amount of capital in a fishery (see response to comment 13). However, financial investment in a fishing vessel is not the

only criterion for receiving an initial allocation of QS. Vessel owners or lease holders also must demonstrate that halibut or sablefish were landed by their vessels during certain years. No investment in a fishing vessel is required to receive transferred QS. Neither term "fishermen" nor "investor" is defined in the Magnuson Act or the Halibut Act. For allocation purposes, a vessel owner or lease holder is a "fisherman" as much as a person who physically handles fishing gear and fish. The Magnuson Act and the Halibut Act authorize such allocations, but stipulate that they be fair and equitable, reasonably calculated to promote conservation, and carried out in a manner such that no particular individual, corporation, or other entity acquires an excessive share. The Guidelines at 50 CFR 602.14(c) help interpret these criteria. An "allocation" or "assignment" of fishing privileges is defined as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals (§ 602.14(c)(1)). The advantaging of one group to the detriment of another is inherent in an allocation. Allocations do not have to preserve the status quo in a fishery to qualify as "fair and equitable." This criterion can be satisfied if the allocation is rationally connected with the achievement of OY or with the furtherance of FMP objectives, and if the hardship imposed on one group is outweighed by the total net benefits to all. The Council's decision to allocate QS initially to vessel owners and lease holders who made landings of halibut and sablefish during certain years and not to any other U.S. fishermen satisfies this criterion as discussed above under national standards 1 and 4. This allocation promotes conservation and the achievement of OY by encouraging a more rational use of the resource and optimizing the market value of the yield. Net benefits to the Nation are evident from the FEIS (see summary of costs and benefits in FEIS sec. 6.0). Finally, the IFQ rules developed by the Council sufficiently prevent the acquisition of an excessive share either in the initial allocation or subsequent transfer of QS. Therefore, the initial allocation of QS to vessel owners and lease holders and not to crew members is consistent with the anti-discrimination provisions of the Magnuson Act and Halibut Act.

Comment 12: The proposed requirement for an initial allocation of QS does not take into account present participation. It would exclude vessel

owners with long-term history of participation in the halibut fishery prior to 1988 and subsequent to 1990. The qualifying period for halibut QS should be expanded to include years earlier than 1988. The effect of the 3-year qualifying period on the halibut fishery is to exclude about 2,500 participants from receiving an initial allocation. Most of these participants are small-vessel fishermen. Their exclusion from an initial allocation serves to benefit the large-vessel fishermen. The IFQ program unfairly favors newcomers into the fishery. There should be a "grandfather" provision to award shares to those who pioneered the fishery.

Response: NOAA finds no inherent bias in favor of large vessels in the initial allocation of QS because the distribution of vessel size during the 3-year qualifying period is roughly the same as that immediately before and after the period. When the Council discussed the qualifying period, it reasoned that a qualifying date earlier than 1988 would include fishermen who have since retired or otherwise left the fisheries, and consequently have not demonstrated sufficient present participation in, and current dependence on, these fisheries to merit an initial allocation of QS. The Council wanted, to the extent possible, to grant initial allocations of QS to currently active participants in the fisheries. However, the Council chose to exclude landings after 1990 because the Council had only incomplete data on 1991 participants when it made its final decision to approve the IFQ program in December 1991. Moreover, the Council chose not to base initial allocations on prospective participation in 1992 and 1993 because this would stimulate entry into the fisheries in those years by persons who have not been historical participants, thereby exacerbating the conservation and management problems that the Council is attempting to resolve.

Comment 13: Crew members do not get paid a wage; everyone shares equally in the risk of a fishing operation. Fishing is a share-basis enterprise. Hired skippers and crew members are self employed, they own their share of the catch, and are responsible for their social security and unemployment taxes. As such, they are independent contractors, not employees, for purposes of taxes and benefits. The vessel owner is often absent during fishing operations. Therefore, it is unfair to give vessel owners a valuable harvesting right based on the crew's share of the catch. A proposal to give crew members an initial allocation of QS based on their average share of the catch over the qualifying years was discounted by the

Council as too complex, but without it the plan would concentrate 100 percent of the ownership of the resource in the hands of 20 percent of the work force that harvests it. Crew members would be prevented by the IFQ program from moving up in the profession, and may be prevented from finding any fishing job as the size of the fleet decreases. It would narrow the options for those who have participated as deckhands and boat operators. The IFQ plan would take away the livelihood of crew members, without compensation, so that others can have a more lucrative and convenient work environment, and hold an exclusive fishing right in perpetuity. This would violate the Magnuson Act.

Response: NOAA finds no violation of the Magnuson Act or the Halibut Act by implementing the allocation of fishing privileges as prescribed by those laws. The advantaging of one group to the detriment of another is inherent in an allocation and is consistent with the Magnuson Act and Halibut Act if certain criteria are satisfied (see discussion of national standard 4 and section 303(b)(6) above, and response to comment 11). The Council considered allocating QS to crew members but decided against it because of the practical difficulties of documenting crew shares. Instead, the Council decided to give eligibility for initial allocations only to vessel owners and lease holders because they have a capital investment in the vessel and gear that continues as a cost after crew and vessel shares are paid from a fishing trip. However, the IFQ system does not ignore crew members or prevent them from "moving up" in the fishing profession or continuing to find crewing positions. Skilled crew members should be more in demand under the IFQ program if they can contribute to the value of the fish products and lower costs of fishing. Crew members who purchase QS also will be in demand for the added harvesting potential they will bring to a vessel. The IFQ program provides for enhanced safety for crew members who work in one of the most hazardous work environments. For these reasons, professional fishing vessel crews in the halibut and sablefish fisheries are expected to be better off under the IFQ program than under open access management. Finally, the IFQ program does not grant anyone an exclusive fishing right "in perpetuity." Although the IFQ program is expected to continue indefinitely, it is subject to refinement, amendment, or even repeal as a result of subsequent decisions by the Council, the Secretary, and the U.S. Congress.

Comment 14: The definition of "IFQ crew member" precludes individuals who do not receive an initial allocation of QS from acquiring catcher vessel QS in the future. This is because the word "and" would require both conditions, experience and an initial allocation, to be met before receiving a transfer of QS. In addition, the definition creates a special class of U.S. citizens that has exclusive access to the halibut resources. This definition is not fair and equitable to all U.S. fishermen and consequently violates national standard 4.

Response: NOAA agrees that the word "and" in the proposed definition of "IFQ crew member" at § 676.11 is too restrictive because it would prevent entry of new fishermen into the halibut and sablefish fisheries. In this action "and" is replaced by "or." This change clarifies that both conditions, experience and receipt of an initial allocation, are not necessary to qualify as an IFQ crew member, but either condition will suffice. Although the definition does create a "special class," it is not a closed class since any person with at least 150 days experience working as part of the harvesting crew in any U.S. fishery could qualify for catcher vessel QS, even though that person did not receive an initial allocation. The Council determined that only IFQ crew members should be able to acquire and use catcher vessel QS as a means of fostering professionalism in the catcher vessel fleet. Professionalism developed from commercial fishing experience also is likely to enhance vessel safety. Therefore, NOAA finds no violation of national standard 4 (see discussion of "fair and equitable" in response to comments 11 and 13).

Comment 15: The proposed regulations would violate Federal tax law because vessel owners are assumed to be "employers" and deckhands "employees."

Response: No such assumption is made. Vessel owners and lease holders are eligible for an initial allocation of QS and crew members are not eligible primarily because vessel owners and lease holders generally have a greater investment in the fisheries than do the crew members. The commenter does not specify how this allocation violates tax laws. NOAA finds no violation of U.S. tax laws on this point.

Comment 16: The IFQ system would be extremely detrimental to Alaskans residing in coastal communities. The halibut fishery is characterized by a large diversified fleet of relatively small vessels that are based in, and deliver their catch to, numerous ports within Alaska. Alaskan coastal communities

are economically dependent on this large fleet of small family-owned fishing vessels. The IFQ program would destroy the small-scale family fishing business in Alaska the same way big agribusiness is forcing the small family farms out of business. It would undermine the economic base of most of Alaskan coastal communities, deny access to citizens who live closest to the fishery resources, and put thousands of fishermen and shore plant workers along the Alaskan (Gulf) coast out of work. Seldovia will be finished as a fishing port if halibut and sablefish can't be landed there. Many years ago, the fleet was smaller and comprised of larger vessels based predominantly in the State of Washington. The IFQ plan is an attempt to tear the social fabric of Alaskan coastal communities and make the present culture fit the memories of the former fleet owners. Potential impacts of the IFQ plan on Alaska coastal communities involved in these fisheries dictate a need to do additional detailed studies before the plan goes into effect.

Response: The IFQ program is intended to achieve OY by resolving 10 conservation and management problems identified by the Council in 1989. Although the program will limit access to these fisheries, the Council incorporated measures to prevent undue disruption of the economic and social structure of Alaskan coastal communities. Landings of halibut and sablefish under the IFQ program can be made at any port. There is no requirement (except in § 676.14(e) pertaining to transshipment of processed IFQ fish) that prevents landing these species at Seldovia or any other port in or outside of Alaska. The potential effects of the IFQ program and alternatives were studied and taken into consideration by the Council and the Secretary. Social and cultural aspects of the halibut and sablefish fixed gear fisheries are considered and described in several sections of the FEIS. Most notably, the analysis of July 19, 1991, focused on the halibut fishery. Section 5.0 of that document was prepared by a social anthropologist and contained a detailed description of the social environment of the halibut fishery including present participation from coastal areas, historical fishing practices and dependence on the fishery by coastal communities, and details of native and subsistence fisheries. Specific demographic profiles of affected coastal communities are provided which address the relative economic importance of the halibut fishery to each community and the size,

composition, and stability of the resident work force relative to the fishery. The section concludes with an assessment that social and cultural benefits could be maximized under an IFQ program. Another one of the component analyses of the FEIS, dated March 27, 1992, also contains a section (3.0) devoted to assessment of potential coastal community impacts. This section describes the distribution of historical landings of halibut and sablefish relative to the distribution of harvesting privileges resulting from the IFQ program and the importance of these landings to each community relative to other species. This section also assesses the potential for QS to be transferred away from coastal communities. The assessment concludes that some net transfer of QS is likely to occur, but that overall, the IFQ program is expected to provide net benefits to rural coastal communities, Alaska, and the Nation (FEIS sec. 3.4). At the request of the Governor of Alaska, the Alaska Commercial Fisheries Entry Commission conducted an independent review of the IFQ program. That review concluded that fears of social disruption under the IFQ program are unfounded, and that rural coastal communities in Alaska are likely to realize benefits from the program. Additional social and economic analysis are not likely to substantially add to the understanding of the effects of this IFQ program on Alaska coastal communities. However, NOAA favors continued monitoring and analysis of the effects of the IFQ program during its implementation. Unanticipated injurious effects may be addressed by amending the IFQ program if necessary.

Comment 17: The IFQ program would give a disproportionate share of the resource to "non-Alaskan" fishermen precluding participation by the growing Alaska longline fleet. This will deny residents of Alaska communities the opportunity to fully diversify and develop their fisheries, creating financial hardship and adverse economic impacts.

Response: The IFQ program will distribute harvesting privileges among fishermen (vessel owners/lease holders) in proportion to their history of landings during the base period (1984-1990 for halibut and 1985-1990 for sablefish). In some areas, the amount of QS initially allocated to residents of Alaska will be larger than those to residents of other states, and in other areas the reverse will be true. Tables 1-4 in Appendix D to the FEIS dated September 15, 1992, quantitatively indicate the amounts of these proportions. For example, about 42 percent of the QS allocations for

sablefish in the Aleutian Islands subarea will go to residents of Alaska while 58 percent will go to residents of other states (Table 2). On the other hand, about 88 percent of the QS allocations for halibut in area 2C will go to Alaska residents, and only 12 percent will go to residents of other states (Table 1). This allocation reflects present participation in, and dependence on, the halibut and sablefish fisheries by species and area. Under this allocation scheme, residents from all states have an equal opportunity to diversify and develop their fisheries for halibut and sablefish.

Comment 18: The IFQ program could provide for more development of offshore processors which will reduce the raw fish tax revenues to Alaskan communities.

Response: Significant growth in offshore processing of halibut and sablefish is unlikely because catcher vessel QS cannot be transferred to freezer vessels. If any catcher vessel QS are used on a freezer vessel during a fishing trip, then all fish onboard during that trip must be unprocessed (§ 676.22(i)(3)). Conversely, Alaska raw fish tax revenue may increase under the IFQ program if the landed value of halibut and sablefish increases as expected.

Comment 19: Alaskan native people have not been able to fully develop their fisheries. Therefore, the Seldovia Village Tribe should be able to participate in the CDQ program. There is no reason for the CDQ program to be limited to western Alaska and prohibit natives along the central gulf coast from participating.

Response: The CDQ program is limited to western Alaska communities because the Council concluded that commercial marine fisheries could be developed in this area to the economic benefit of the participating communities and that commercial fisheries in these communities were undeveloped relative to other coastal communities in the State. A native organization in other parts of the State could acquire QS for use by its members. Catcher vessel QS used in this manner would have to be transferred to individuals. Current QS use limitations at § 676.22 (e) and (f), and the QS holder-on-board requirement at § 676.22 (c) and (i) would limit the manner in which QS held by native organizations is used. Nevertheless, the IFQ program could be used to facilitate development of Alaska native fisheries outside of the CDQ program.

Comment 20: The IFQ plan would deny the Huna Tlingit people of southeast Alaska the right to make a living by fishing as they have done for

many generations and will force more of them on welfare. These native Alaskans will not be able to compete with better financed fishermen for the purchase of QS.

Response: The IFQ program will not deny any native group participation and could be used to help develop native fisheries (see response to comment 19).

Comment 21: The IFQ proposal effectively locks out women and minorities from participation in the IFQ fisheries and locks in the white male club of vessel owners by effectively giving them ownership of the resource. The price of buying IFQs will be prohibitive for minority deckhands who have recently entered these fisheries although they are granted free to vessel owners. Therefore, the IFQ plan would violate the Alaska State Constitution, the U.S. Constitution, and the Magnuson Act.

Response: NOAA finds no violation of the Magnuson Act, the Halibut Act, or other applicable law, including any state constitution or the U.S. Constitution. There is no evidence in the record of discrimination against women or minorities. Although the cost of entering the IFQ fisheries by buying QS will be higher under the program than under open access management, the analysis demonstrates that implementation of the IFQ program will result in a net benefit to the United States. However, crew members may continue to work as crew members under the IFQ program with no obligation to purchase any QS.

Comment 22: The Council did not consider alternative management methods or alternative limited access methods other than IFQ variations after the 1989 draft SEIS for sablefish. Changed conditions in the fishery and socio-cultural environment require a new EIS before such a major Federal action could take place.

Response: The November 1989 analysis considered four alternatives for the fixed gear sablefish fishery: (1) Continued open access; (2) license limitation; (3) IFQ; and (4) annual fishing allotments. Based on this analysis, the Council determined that license limitation and annual fishing allotments were not reasonable alternatives for addressing the 10 problems identified by the Council. The Council then proceeded with a more in-depth analysis of various IFQ options as compared with the open access or status quo alternative. The same conservation and management problems identified in the sablefish fishery also are experienced in the halibut fishery. The Council decided to consider only IFQ alternatives as compared with the status

quo for the halibut fishery because it already had determined that license limitation and annual fishing allotments would not be feasible. In addition to the November 1989 analysis, FEIS component analyses in July 1991 and March 1992 included detailed descriptions of the social, cultural, and economic conditions of the fisheries. These conditions have not changed substantially since 1992.

Comment 23: Traditional management proposals have not been sufficiently considered as alternatives to the IFQ plan. There are simpler solutions to management problems in the halibut fishery (e.g., area registration, gear restrictions, quotas based on boat size, trip limits) that will allow everyone to participate in the fisheries. Other options for spreading out the fleet, such as trip limits, gear restrictions, and fleet platooning, should be considered first.

Response: The Council considered such traditional open-access management measures as alternatives to the IFQ program, but concluded that these measures did not offer long-term solutions to the conservation and management problems confronting these fisheries. For example, none of the measures cited by the commenter would resolve the fundamental problem of excessive fishing capacity in the halibut and sablefish fisheries.

Comment 24: Fishermen need to diversify their fishing practices to survive the current depressed market prices for salmon. The IFQ program will prevent diversification.

Response: NOAA understands that recent low market prices for salmon have been hurting the salmon fishery in Alaska. The solution to this problem may be in creating more market alternatives for salmon products rather than providing opportunity for salmon fishermen to enter already overcapitalized fisheries. Nevertheless, diversification into several different fisheries likely will remain as a common practice. The IFQ program does not prevent diversification. Fixed gear fishermen who have IFQ will be able to realize benefits from being able to land their incidental catches of halibut or sablefish instead of discarding these species. However, those fixed gear fishermen who do not have IFQ will not be allowed to harvest halibut and sablefish.

Comment 25: In its analysis, the Council makes few positive assertions in support of anticipated benefits; numerous caveats lead one to question whether there will be any real net benefits.

Response: No analysis is able to forecast future events with absolute

certainty. The FEIS does not attempt to make such a forecast, but instead documents that certain potential effects may occur if the assumptions used in the analysis are correct.

Analysts typically caution the reader about the results and conclusions because the assumptions eventually may not be correct. This inability to have perfect knowledge of the future does not make the analysis invalid.

Comment 26: The IFQ program violates the Magnuson Act because it fails to achieve OY.

Response: As discussed above, the OY from the fixed gear fisheries for sablefish and halibut is achieved through the reduction of bycatch and discard waste of fish, increased prevention of overfishing, and enhanced economic and social benefits to the Nation (FEIS sec. 6.0). Despite the fact that the IFQ program does not change the specified amount of fish that may be harvested each year, benefits to the Nation from harvesting that amount of fish are increased.

Comment 27: Procedural errors were made that confused and shortened the public comment period. Notice of availability of the supplemental EIS for comment at the Council level incorrectly advised the public that the time for addressing comments to the Council had expired before the documents were officially released. Further, Magnuson Act procedure was violated by not providing a full 45 days for public comment from the date of publication of the proposed rule notice. The Secretary did not make the plan amendments available to the public on the receipt date; Council staff did not release them until November 18, 1992. Allowing 60 days for public comment should have resulted in a comment deadline of January 18, 1993, not January 11, 1993. Generally, notices and deadlines for public comment and public testimony opportunities occurred during openings for the sablefish and halibut fisheries which prevented many people who would be affected by the proposal from fully participating in the policy-making process.

Response: Three different documents were available for public comments at different times during the development and Secretarial review of the IFQ program. These include the draft and final EIS, the FMP amendment text, and the proposed implementing rules. NOAA finds no errors with respect to providing sufficient opportunity for public comment on any of these documents (see response to comment 43).

Comment 28: National standard 4 of the Magnuson Act and the substantially

similar provisions of the Halibut Act are violated because the IFQ program is not reasonably calculated to promote conservation. As a biological conservation measure, quota share programs have proven ineffective and, in some cases, counterproductive. There will be increased pressure on managers to keep total catch limits high so that persons vested with harvesting rights will be able to pay off the debt of acquiring QS. Less efficient fishermen who retire from the halibut and sablefish fisheries will increase pressure on other fish stocks still under open access management. The potential biological harm from temporarily suspending halibut prohibited species catch (PSC) limits, under reporting, discards, and highgrading are not fully assessed and could negate any conservation benefits.

Response: The promotion of biological conservation under the IFQ program should be considered in comparison with biological conservation under current open access management. Under the current regime, fishermen are inspired to maximize their harvest of halibut or sablefish as fast as possible before fishery managers close the open fishing season. Large amounts of fish may be killed but not harvested in this race due to lost or excessive amounts of fishing gear that is set but not retrieved. More halibut and sablefish are wasted when they are caught incidental to the harvest of other species but must be discarded because the season for halibut and sablefish is closed. In addition, harvested halibut must occasionally be returned to the sea because they have been mishandled and are rejected by processors as inferior product. These sources of fishing mortality are often not quantified or counted toward the overall catch quota but may have a negative effect on stocks.

The IFQ program will significantly reduce these sources of fishing mortality because fishing will be conducted over a longer period with less waste. Fishermen will have no incentive to set more gear than they can retrieve, and fewer gear conflicts will result in less lost fishing gear. Halibut and sablefish caught incidental to the harvest of other species may be landed on unused IFQ. Discarded bycatch of IFQ species caught with fixed gear will be minimized because of the economic incentive to acquire IFQ at least sufficient to cover its retention and landing. Fishermen seeking the highest value for their product will take more time to properly clean and store fish on ice or process it immediately.

The potential for underreporting of IFQ harvests and highgrading are often

cited as biologically detrimental aspects of IFQ-style management programs. Underreporting and highgrading are discussed in detail in the FEIS at Appendix E (pp. 2-7). NOAA recognizes that underreporting will not be completely prevented, but a planned increased enforcement and monitoring effort coupled with severe penalties for gross underreporting is likely to minimize this potential source of biological damage to the stocks. Highgrading, the substitution of large high-valued fish for harvested small low-valued fish, is not expected to be a major threat because of increased enforcement and because a relatively small market price difference between small and large fish will reduce the profitability of highgrading and, therefore, the incentive to discard harvested fish. Generally, NOAA expects substantially less unreported fishing mortality under the IFQ program than under open access management.

Comment 29: The vast majority of technical comments and public opinions expressed to the Council were ignored by the Council. Something is wrong (with the IFQ program) when 75 to 85 percent of all responses are opposed to it. The IFQ program will not result in a better managed fishery and safer fishing conditions. It is advocated by a group of greedy individuals so that they can control a fishery that belongs to all the people. There have always been too many fishermen chasing too few fish. Sometimes this results in hurting the resource, but this is not the case with halibut which has been well managed.

Response: Over the 3 years that the Council had the IFQ program under consideration, it received thousands of oral and written comments that expressed support or opposition. The Secretary also received many pro and con comments on the IFQ issue before and during the Secretarial review period. The Council also received reports and advice from its industry advisory panel and scientific and statistical committee, and reviewed analyses and staff reports on the potential effects of the IFQ program as compared with the open access and other alternatives. After considering all of these comments, reports, recommendations, and analyses, the Council concluded that the IFQ program would result in better management of the fisheries and benefits to the Nation. The Secretary, after reviewing the record of comments, reports and analyses, agreed with the Council and approved the Council's IFQ recommendation.

Comment 30: Reducing the number of vessels in the fishery will not necessarily increase the length of fishing seasons since 20 percent of the vessels take 85 percent of the fish. If the bottom 80 percent of the fleet leaves the fishery there would be only a minimal increase in the length of openings.

Response: The IFQ program allows an IFQ permit holder to harvest halibut and sablefish at any time during the season prescribed at § 676.23. This is true regardless of the number of vessels in the fleet. No specific fleet size or reduction goal is established by the IFQ program. Instead, fishermen who have QS will harvest IFQ fish with fixed gear at various times of the year based on their assessment of the market for those species and other factors.

Comment 31: Four different sets of public comments (3 to the Council and 1 to the Governor of Alaska) indicate strong opposition to the IFQ plan from Alaskan residents and support from non-Alaska residents. Opposition comments from Alaskan addresses ranged between 59 percent and 98 percent of all comments received while supportive comments from non-Alaskan addresses ranged between 70 percent and 96 percent. This suggests that the plan discriminates between residents of different states in violation of national standard 4.

Response: These statistics do not indicate discrimination prohibited by national standard 4. State of residence is not a factor for the allocation of QS. Similarly situated residents of all states are treated equally under the IFQ program.

Comment 32: The proposed rule would exceed the permitting authority allowed by the Magnuson Act. The proposed rule provides for IFQ permits to be issued to persons, but the Magnuson Act allows permitting only of vessels or the operators of vessels. "Persons" are not vessels and they are not required to be operators of vessels.

Response: The Magnuson Act, at section 303(b)(10), provides authority to prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery. NOAA has determined that IFQ permits may be issued to owners of vessels as opposed to operators of vessels.

Comment 33: The proposed rule would violate the U.S. Constitution at Article I, section 9, paragraph 6 because it would require vessels bound for another state to enter and clear at one of several ports in Alaska.

Response: This clause of the U.S. Constitution is as follows: -

No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

NOAA has modified the regulation by including the port of Bellingham, Washington, as a designated port. Thus, vessels bound for Washington are not "obliged to enter, clear, or pay duties in another state." Vessels bound for states other than Alaska or Washington should contact the NOAA Office of Enforcement to make other arrangements (see response to comment 49).

Comment 34: Transfers of QS by inheritance are of limited use if the person who inherits it does not also receive IFQ based on the QS, according to §§ 676.21 and 676.22. This is tantamount to inheriting a home and being prevented from using it to live in, to rent, or for other purpose except to sell it to a restricted class of persons. This would be an unfair restriction on the use of personal property.

Response: All transfers of QS must be approved by the Regional Director according to the procedure prescribed at § 676.21(e) before they can be used to harvest IFQ fish. This provision is necessary to assure that QS use limitations and other requirements of the Council's IFQ policy are not violated. The regulations do not prevent the transfer of QS by operation of law, but the use of such QS through the annual allocation of IFQ must be consistent with the regulatory requirements to achieve the conservation and management objectives of the IFQ program. The personal property nature of QS and IFQ is addressed in the response to comment 91.

Comment 35: The IFQ plan will add costs to the halibut fishery that will hurt the international competitiveness of American-caught fish.

Response: The IFQ program will likely add value to halibut products because catching and processing will proceed at a more deliberate pace than under the current 1-day seasons. In addition, a longer season for halibut under the IFQ program will enable the marketing of higher valued fresh fish over a longer, more predictable period of the year. These features should enhance the competitiveness of halibut harvested in and off of Alaska in domestic and international markets (FEIS sec. 2.2.2).

Comment 36: The conflict of interest by several Council members who voted

on the IFQ issue questions the legal authority of the Council. The composition of the Council is not fair and balanced as required by the Magnuson Act.

Response: The Council is legally constituted under the Magnuson Act. Section 302(b) of the Magnuson Act authorizes the appointment of voting members who are knowledgeable of the fisheries of concern to the Council by virtue of their occupation, training, or expertise.

Comment 37: NMFS does not have adequate funding to enforce the IFQ plan. The cost of providing minimum enforcement of the program will be significantly more than the present cost of enforcing traditional management measures for the halibut and sablefish fisheries. The Council did not make an informed decision regarding the enforcement costs of the IFQ program because neither the Council nor the public had an adequate analysis of enforcement costs.

Response: NOAA estimates that administrative and enforcement costs will be increased by about \$2.7 million annually, and there will be an additional 1-time implementation cost of about \$1.9 million (FEIS sec. 6.1). The Council was aware of these approximate costs when it decided to recommend the IFQ program to the Secretary. An implementation plan was prepared by NMFS, in consultation with an interagency and industry work group, for presentation to the Council at its December 1991 meeting prior to the Council decision on IFQ management. The implementation plan is section 5.0 of the FEIS. Monitoring and enforcement issues are discussed in that plan, and costs are estimated. This was the best information available to NMFS and the Council on implementation costs at that time. In approving the IFQ program, the Secretary accepted the responsibility to carry it out.

Comment 38: Analysis of the overall administration of the IFQ program was inadequate. NOAA did not develop an adequate explanation of the appeals process, application and initial allocation process, or the general complexity and cost of the bureaucracy needed to administer the IFQ program. The Council did not have an adequate analysis of the administrative and enforcement costs or of comparable implementation costs of alternatives to the IFQ program.

Response: A group of state and Federal fishery managers, enforcement personnel, and representatives of the fixed gear fishing industry met several times during the period September–November 1991, to discuss the details of

IFQ implementation; if it were approved by the Council and Secretary. An implementation plan, drafted by NMFS, was the product of that group. The implementation plan was presented to the Council at its December 1991 meeting prior to the Council's decision to recommend the IFQ program to the Secretary. The group also made recommendations to the Council on ways to make the IFQ program more practicable. The implementation plan is contained in section 5.0 of the FEIS. Such plans are not required under the Magnuson Act or any other law, and are not usually submitted with FMP amendment documents for Secretarial review. However, the implementation plan was helpful to the Council and the Secretary in indicating the potential administrative complexity and cost of the IFQ program before they took final action. To this extent, NOAA finds that the implementation plan is an adequate description of the overall administrative process. The appeals process is discussed in the plan (FEIS sec. 5.2.5). Regulations implementing the appeals procedure will be the subject of a future rulemaking notice. However, paragraph (e) of § 676.20 provides guidance for appeal of initial allocations and is changed from the proposed rule in that there will be no resubmitted applications.

Comment 39: NOAA did not provide the Council or the public with relevant information regarding the effectiveness of administration and enforcement of the surf clam/ocean quahog ITQ program. A memorandum on this subject was produced in February 1992 which would have been useful to the Council staff in the preparation of its analysis dated March 27, 1992, and to the public in commenting to the Council prior to its reconsideration of the IFQ program in April 1992.

Response: The surf clam/ocean quahog ITQ program review performed by the Northeast Region, NMFS, early in 1992 was of little relevance to the halibut and sablefish IFQ program. The two programs are significantly different in design and administration. These differences stem from major differences between the respective fisheries. A comparative analysis is outside the scope of this response; however, interested persons are referred to proposed and final rule notices published respectively on February 1, 1990; 45 FR 53342, and June 14, 1990, at 55 FR 24184.

Comment 40: The Council is not clear about its goals for the IFQ program. Apparently, the Council is not totally satisfied with the potential socio-economic impacts of the program

because it began work on amending the program before the program completed Secretarial review.

Response: The Council's objectives are clearly specified in the November 1989 analysis. In that document, and in subsequent documents (most recently at FEIS sec. 2.1), the Council identifies 10 conservation and management problems in the fixed gear fisheries for halibut and sablefish. NOAA expects any complex fishery management program to undergo periodic review and change as experience with the IFQ program suggests refinements. The fact that such refinements were not known at the beginning of the planning process does not indicate confusion regarding goals and objectives.

Comment 41: The Council failed to provide the public with an adequate and complete analysis of the benefits and costs of the IFQ program and of its potential social impacts. A social impact assessment would have demonstrated significant negative social impacts on Alaskan coastal communities from the IFQ program.

Response: The FEIS analyses prepared by the Council fully assess the potential benefits and costs of the IFQ program and its potential social impacts. A summary of the potential benefits and costs is in FEIS section 6.0, which estimates quantified annual benefits to be in the range of \$30.1 million to \$67.6 million. Quantified annual costs for administration are estimated to be about \$2.7 million. This results in a conservative benefit-cost ratio of about 10 to 1. Non-quantified benefits and costs also are discussed. NOAA finds that the analysis of benefits and costs in the FEIS is adequate. Significant negative social impacts on Alaskan coastal communities are doubtful (see responses to comments 5, 16, and 17).

Comment 42: The Assistant Administrator for Fisheries, NOAA, is incorrect in his initial determination that the IFQ proposal is not a major rule under Executive Order 12291. The total estimated annual benefits (sic) are in excess of \$100 million, and a regulatory impact analysis should be prepared.

Response: Executive Order 12291 requires the preparation of a regulatory impact analysis for "major rules." Among the criteria for determining whether a rule is a "major rule" is its likelihood of resulting in an annual effect on the economy of \$100 million or more. An RIR was done as part of the FEIS and it is summarized in section 6.0 of the FEIS. The RIR concludes that the IFQ program would have an effect on costs, prices, competition, employment, investment, and productivity, but that it is anticipated that these effects

combined would not amount to \$100 million or more annually. The RIR estimates that quantifiable annual benefits would be in the range of \$30.1 million to \$67.6 million. Annual administrative and enforcement costs are estimated to be about \$2.7 million with an additional one-time implementation cost of about \$1.9 million. Therefore, NOAA determined that this is not a "major rule."

Comment 43: The public comment period should be extended to allow for adequate public review.

Response: As described in the preamble to the proposed rule, the Council has discussed limited entry options for various fisheries since the late 1970s and, for the sablefish fishery in particular, since 1985. Through April 1992, the issue of limited entry for the sablefish or halibut fisheries has been on the Council agenda for 27 meetings, and every meeting of 1988 through April 1992. All Council and committee meetings at which this subject was discussed were publicized, open to the public, and most provided opportunity for public comment. In addition, the Council chose to follow a full EIS-procedure under the National Environmental Policy Act (NEPA) for this issue, in part to enhance opportunity for public participation. This procedure provided for public scoping meetings and comment periods on several draft analyses and the FEIS. After receipt of the proposed IFQ program by the Secretary, a notice of availability was published on November 3, 1992 (57 FR 49676), and the proposed implementing rule was published on December 3, 1992 (57 FR 57130; corrected at 57 FR 61870, December 29, 1992). The comment period ended on January 11, 1993, which provided sufficient time for public review and comment. NOAA concludes that the opportunity for public review and participation in the IFQ decision-making process was adequate in light of extensive public discussion of this issue at Council meetings and compliance with requirements of the Magnuson Act and other applicable laws (see response to comment 27).

Comment 44: The proposed IFQ plan is not consistent with several sections of the Magnuson Act. Specifically, the plan violates several national standards (section 301), it does not include an adequate fishery impact statement in violation of section 303(a)(9), and it does not properly address the provisions of section 303(b)(6).

Response: Section 7.0 of the FEIS provides a summary of consistency with the Magnuson Act and other applicable laws. Consistency with each national

standard is addressed in this section and above in this rule. Magnuson Act section 303(b)(6) requirements are addressed in section 7.1.2 of the FEIS and above in this rule. The primary focus of the analysis in the FEIS is the potential effect of the IFQ program (and alternatives) on participants in the halibut and sablefish fisheries in compliance with the fishery impact statement requirement of the Magnuson Act at section 303(a)(9). Section 4.0 of the FEIS assesses the possible effects on non-IFQ fisheries, recreational fisheries, and fisheries in areas managed by adjacent Regional Councils. After reviewing these documents, NOAA determined that the IFQ program complies with the Magnuson Act and other applicable laws.

Comment 45: The proposed rule at § 676.16(h) (formerly § 676.16(g)) would prohibit the discard of Pacific cod and rockfish taken by vessels in the IFQ program. This requirement could cause a biological conservation problem because the bycatch allowances for rockfish are not high enough to prevent area quotas for some species of rockfish to be exceeded. The regulations should be changed to require the retention of only the natural or background bycatch of rockfish. Also, an overage provision for rockfish, similar to that for IFQ halibut, may be needed to avoid mandated waste.

Response: The prohibition on discarding Pacific cod or rockfish that are taken incidental to the harvest of IFQ halibut or sablefish applies only if Pacific cod or rockfish are not otherwise required to be discarded by other State and Federal regulations or inseason orders (see response to comment 78(a)).

Comment 46: The proposed rule at § 676.17(b) would establish a system that makes IFQ holders accountable for small overages of IFQ. It is not clear, however, who would be accountable for overages of leased IFQ. Would the holder of QS on which the IFQ is based be penalized or the person who leased the IFQ?

Response: The Regional Director would deduct an amount equal to the overage from IFQ allocated in the year following determination of the overage. This overage adjustment will apply to any person to whom the affected IFQ is allocated in the year the adjustment is made. For example, fisherman A transfers sablefish IFQ to fishermen B in 1995 through an approved lease of QS. Fisherman B lands sablefish that year that exceeds the leased amount by 3 percent. If this fact is determined by the Regional Director in 1996, then the IFQ allocated to fisherman A in 1997 will be reduced by 3 percent, assuming he

made no other transfers of QS. If fisherman A sold all of his QS to fisherman C in 1996, then fisherman C would realize the reduced IFQ in 1997.

Comment 47: The halibut QS use limit and vessel limit in regulatory area 2C should be the same one-half percent of the total halibut QS for that area. The proposed rule (at § 676.22(f)(1)) would establish the personal use limit at one percent and the vessel limit at one-half percent (§ 676.22 (h)(1)).

Response: NOAA agrees that the halibut QS use limit in area 2C by a person and the vessel harvest limit should be consistent. A 1 percent harvest limit per vessel in area 2C also is consistent with the text of the Council's IFQ motion, which indicates that the one-half percent limit expressed in the proposed rule was in error. Therefore, in § 676.22(h)(1), the harvest limit of IFQ halibut applicable to vessels in area 2C is changed from 0.5 to 1 percent of the total halibut catch limit for that area.

In addition, to further clarify the restrictions under paragraph (h), language has been added to paragraph (h)(3) stating that two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

Comment 48: An exception to the requirement for catcher vessel QS holders to be onboard the vessel during fishing operations is provided at § 676.22(i)(1) to individuals who receive an initial allocation of catcher vessel QS. This contradicts the Council's stated goal of maintaining the current owner-operator character of the halibut and sablefish fleets. Although this exception does not apply to the eastern GOA, in other areas it would allow initial QS recipients to hire skippers and function as absentee-owners. This is not consistent with the Council's policy.

Response: The Council's basic policy is to require catcher vessel QS holders to be onboard during fishing operations and sign required landing reports. The Council provided for an exception to this policy in its motion language and FMP amendment text for persons who receive initial catcher vessel QS for use outside the two areas described in the responses to comments 60 and 68. As defined, "persons" includes individuals, corporations, partnerships, and other entities. Therefore, the exception, as it applies to individuals, is at § 676.22(i)(1), and at § 676.22(j)(1) as it applies to corporations and partnerships. This policy responds to public concern about substantial change in the current owner-operator character of the fixed gear fishery and the fear that large firms that use hired skippers may acquire catcher vessel QS. However,

many individual fishermen operate their vessels as corporations or partnerships for financial, liability, and taxation reasons. The exception is intended to prevent severe disruption of current fishing practices. The Council was aware that such an exception deviated from its basic policy by allowing hired masters to operate vessels that use catcher vessel QS. It is not expected to allow for unintended changes in the character of the fleet because the exception is not transferrable, and it expires when corporations or partnerships undergo a "change." The term "change" is defined at § 676.22(j)(2). Eventually, as the individuals and firms that received initial allocations are replaced by new ones, all catcher vessel QS will be transferred to individuals in keeping with the Council's basic policy.

Comment 49: The list of primary ports in § 676.17(a)(4) should be expanded to include the Washington ports of Bellingham and Seattle. A large segment of the halibut fleet is based in the State of Washington and has a long history of delivering products to these ports.

Response: NOAA agrees. Bellingham, Washington, has been designated a primary port. Vessels bound for Washington or other States must submit a check-out report to NMFS before departing waters in or adjacent to the State of Alaska. The check-out report must include the estimated weight of IFQ sablefish and IFQ halibut onboard, and the expected date and time that the vessel will be presented to NMFS enforcement officers or enforcement aides in Bellingham for clearance. Bellingham is selected because of its high volume of halibut landings and its proximity to the U.S./Canada border.

Comment 50: Would a catcher-processor be allowed to process at sea halibut or sablefish that are harvested under the vessel's IFQ or purchased from other catcher vessels?

Response: A vessel that is used to process some or all of its catch during any fishing trip is defined as a "freezer vessel" in § 676.11. A catcher-processor would be allowed to process at sea IFQ halibut or IFQ sablefish providing the vessel harvested these fish against QS assigned to vessel category "A" (the freezer vessel category). Although IFQ halibut could be processed by freezing and removing the head, it could not be otherwise disfigured in a manner that prevents determination of the minimum size (see § 301.12).

The transfer of any IFQ species from the vessel that harvested such fish is defined as an "IFQ landing." A landing of IFQ species to any vessel would require that the receiving vessel have a

permitted registered buyer onboard and be capable of transmitting the IFQ landing report required at § 676.14(b). A minimum of 6 hours prior notice must be given by the operator of the vessel making an IFQ landing (see § 676.14(a)). In addition, the vessel making the landing may be required to obtain a clearance at a primary port listed in § 676.17(a) prior to landing, depending on the location of the vessel to which IFQ species will be landed. Hence, if a catcher vessel making an IFQ landing and a catcher-processor which received the landing comply with these and other applicable laws, then the catcher-processor would be allowed to process the landed IFQ species.

Comment 51: The application for an initial allocation of QS should be announced in industry publications in addition to the Federal Register. Federal Register publications are the most cumbersome and confusing forms of communication on earth. In addition, a 180-day application period may not be long enough if it coincides with the primary fishing period of April through September.

Response: Although official notice of the QS application period will be given in the Federal Register, NOAA will alert the fishing industry through more widely read publications and news announcements. In addition, NOAA will schedule the application period, at least in part, during fall or winter months when most of the fixed gear fishing fleet is not active.

Comment 52: Restrictions on leasing QS at § 676.21(d) are necessary to prevent absentee QS holders, to keep QS in the hands of active fishermen, and to prevent a stagnant market for QS that could result in prohibitively high costs for entry. For these reasons, there should be no provision (§ 676.21(f)) to allow leasing 10 percent of a QS.

Response: The Council heard the arguments for and against leasing QS. The Council decided to recommend no restriction on leasing freezer vessel QS but to prohibit leasing of catcher vessel QS except during a 3-year trial period when up to 10 percent of a person's catcher vessel QS may be leased. The limited leasing of catcher vessel QS was intended by the Council to allow fishermen more flexibility in planning their fishing operations and was not expected to result in abandonment of the fishery to absentee QS holders. In its review of the Council recommendations on leasing QS, NOAA found no inconsistency with the Magnuson Act, Halibut Act, or other applicable laws.

Comment 53: Requiring catcher vessel QS holders to be onboard is an important provision necessary to ensure

that QS stay in the hands of active fishermen. Temporary exceptions to this rule for extreme personal injury should be stringent to prevent QS holders using this provision to get around the leasing prohibition.

Response: Emergency waiver of requirements for an individual IFQ card holder to be onboard during fishing operations and sign the IFQ landing report is provided at § 676.22(d). These requirements may be waived only for the IFQ halibut and IFQ sablefish retained on the fishing trip during which an extreme personal emergency occurred that prevented the IFQ card holder from complying with § 676.22(c). Use of IFQ held by an injured or deceased IFQ permit/card holder on subsequent fishing trips would require transfer approval as prescribed at § 676.21(e).

Comment 54: What happens to a person's QS when they die? Can it be leased while their estate is being resolved or temporarily used by an heir? At what age may a person take on the responsibility of owning QS?

Response: When a QS holder dies, that person's QS would be transferred by the laws of succession. Notification of such transfers by operation of law would have to be sent to the Regional Director as prescribed at § 676.21. After determining that a person is the lawful holder of QS received by operation of law, that person may subsequently seek approval to use, lease, sell, or otherwise transfer QS within the limitations of the regulations. There is no provision for temporarily using QS before use, lease, or other subsequent transfer of the QS that was transferred by operation of law has been formally approved by the Regional Director. No age criteria are prescribed for receiving or using QS. Anyone capable of satisfying the QS-holder-on-board requirements for catcher vessel QS at § 676.22 (c) and (i) could use such QS.

Comment 55: The cost of the CDQ program to QS holders would be substantial because they would receive less QS than they otherwise would without the CDQ program. Any additional costs incurred to implement and administer the CDQ program should be borne only by the CDQ recipients.

Response: The Magnuson Act does not authorize charging CDQ program implementation costs to CDQ recipients.

Comment 56: The wording at § 676.20(a)(1)(iii) is vague regarding evidence of a verbal vessel lease which is common practice in the catcher vessel fleet. One recommended form of documenting such vessel leases is to determine who paid the crew members and, therefore, was responsible for

issuing them their Federal income tax form 1099.

Response: NOAA agrees that language in the proposed paragraph regarding Federal income tax documents is vague, but limiting acceptable documentation to a specific tax form, such as Form 1099, does not improve the paragraph. Therefore, Federal income tax documents are deleted from § 676.20(a)(1)(iii) as acceptable evidence of a vessel lease, for purposes of initial allocation to vessel lease holders. This language was included in the proposed rule in response to fishing industry concerns about documenting the existence of a vessel lease. Some fishermen argued that vessel lease holders would be responsible for mailing IRS Form 1099 to the crew and that this would demonstrate the fact that persons issuing such forms were lease holders. This is a vague standard because persons hired by a vessel owner may submit this form to the IRS on behalf of the vessel owner. The final rule deletes this evidence of a vessel lease. The option of an after-the-fact statement from the vessel owner and lease holder attesting to the existence of a lease remains for persons who did not have a written vessel lease agreement. Agreement should be reached between former vessel owners and lease holders to draft and sign such statements when there was no previous written lease.

Comment 57: The definition of "freezer vessel" should be based on the performance of a vessel during any fishing trip. This would allow freezer vessels to use catcher vessel QS for sablefish when they are not operating as freezer vessels.

Response: In § 676.11, "freezer vessel" is defined as any vessel that is used to process some or all of its catch during any fishing trip. Fishing "trip" also is defined in § 676.11. Hence, operating as a freezer vessel depends on how the vessel handles its catch during a fishing trip. Note, however, that a freezer vessel that operates as a catcher vessel during a trip for purposes of using sablefish catcher vessel QS, is still a "processor vessel" under §§ 672.2 and 675.2 because this definition depends on the capability of a vessel to process groundfish regardless of whether it actually processes fish on any fishing trip (see also change 2 under "Changes from the Proposed Rule in the Final Rule" above).

Comment 58: The Council did not intend to allow catcher vessel IFQ for halibut to be used on freezer vessels. The provision at § 676.22(i)(3) to allow catcher vessel IFQ to be used on freezer vessels was intended to apply only to sablefish. A new prohibition should be

added at § 676.16 to say it is unlawful to use halibut catcher vessel shares on a vessel which has, or will, during the current year of participation, operate as a freezer vessel.

Response: NOAA agrees that the IFQ motion approved by the Council specifically states that sablefish catcher vessel QS may be used on a freezer vessel providing no frozen product of any other species is onboard at the same time. The regulation at § 676.22(i)(3) more broadly allows for halibut catcher vessel QS to be used on a freezer vessel in the same manner. This allows for a bycatch of halibut on such vessels to be retained and landed in compliance with the requirement to land all fish unprocessed. The broader application of this regulation could reduce discard waste of halibut. This interpretation of the Council's motion does not require vessels operating as freezer vessels to land halibut if they have catcher vessel halibut IFQ onboard. NOAA understands that the Council did not want to require vessels operating as freezer vessels to have IFQ for all of their halibut bycatch because this would create an economic incentive for freezer vessel owners to acquire catcher vessel QS. This is why the discard prohibition at § 676.16(l) is specific to catcher vessels. Finally, another part of the Council's motion states that "fish" harvested with catcher vessel QS may not be frozen onboard the vessel using those QS. The non-specific "fish" in this case indicated to NOAA that a broader interpretation of the provision to use catcher vessel IFQ on freezer vessels operating as catcher vessels would be consistent with Council intent while allowing for less discard waste of halibut.

Comment 59: Exactly what is "QS?" The preamble to the proposed rule suggests that QS is related to a person's catch history expressed in pounds, but the regulatory text implies that QS is a percentage.

Response: In § 676.11, "QS" is defined as a permit, the face amount of which is used as a basis for the annual calculation of a person's IFQ. This is a change from the definition of QS in the proposed rule that stated it was an amount of sablefish or halibut. This change is made because the proposed rule incorrectly implies that QS is expressed in volumetric terms. However, the units of a QS permit are simply "QS." A QS is converted into pounds of IFQ in the annual IFQ calculation. A QS is based on qualifying poundage of halibut or sablefish plus or minus any transferred amounts. Qualifying poundage is calculated for each qualified person who harvested

either IFQ species with fixed gear while the person owned or leased the vessel that made the landings during the base period (1984-1990 for halibut and 1985-1990 for sablefish). This calculation is done separately for each regulatory area. For example, if a qualified person's highest total landings of halibut in area 2C during the halibut base period is 20,500 pounds, then that person would receive an initial allocation of 20,500 QS. If that person subsequently sells 3,250 QS and later purchases 5,000 QS, then that person would hold 22,250 QS of halibut in area 2C. The amount of IFQ that will stem from this QS in any year will depend on two other variables for this area, the QS pool and the catch limit for halibut prescribed by the IPHC. Although it is true that dividing any person's QS by the QS pool for an area would result in a ratio, QS is not expressed as a percentage because the QS pool may vary from year to year. This is particularly likely as disputes over initial allocations of QS are resolved, but could continue thereafter as a result of enforcement actions that sanction QS. It would be difficult for fishermen to trade portions of a percentage that is annually changing. Expressing QS as a whole number should facilitate the transfer of QS as envisioned by the Council. The QS pool will be fixed each year on January 31 for purposes of calculating each IFQ for that year. Activity in transfers of QS and IFQ is expected to be heightened in January and February as fishermen plan their operations for the coming IFQ fishing season.

Comment 60: The definition of "IFQ crew member" at § 676.11 is limited to "individuals" and catcher vessel QS may be transferred only to IFQ crew members according to § 676.21(b). This would prevent corporate "persons" that receive an initial allocation of catcher vessel QS from acquiring more QS. This limitation was not intended by the Council. Also, the crew member definition should be more specific about experience in the harvesting of fish. Five months of experience as a marine engineer, cook, or processing crew member was not supposed to qualify someone for "IFQ crew member" status.

Response: NOAA agrees that the proposed rule at § 676.21(b) is inconsistent with Council intent to allow "persons" that are not "individuals" to acquire catcher vessel QS if they received an initial allocation of catcher vessel QS. However, this intent does not apply in IFQ regulatory area 2C for halibut, nor does it apply east of 140° west longitude for sablefish (see response to comment 68).

Therefore, this paragraph is changed to add the provision that catcher vessel QS for use outside the regulatory areas specified above may be transferred to a person that received an initial allocation of catcher vessel QS. This change makes this paragraph more consistent with § 676.22(j) which provides for corporate "persons" that received an initial allocation of catcher vessel QS to acquire more QS for use outside the regulatory areas specified above in the name of the corporation or partnership instead of an individual. This change also clarifies the Council's intent to provide an exception to the basic requirement that such QS must be transferred to individuals as a protection against corporate buy out of catcher vessel QS. The definition of "IFQ crew member" at § 676.11 specifically states that experience must be as part of the harvesting crew (see response to comment 79).

Comment 61: The proposed rule preamble text regarding the calculation of initial QS could be misinterpreted to mean that fishermen simply total the highest catches over 5 years and all areas. The Council intended that these calculations be area-specific.

Response: The proposed rule preamble states that "each initial QS calculation would be specific to a regulatory area for which a catch limit of halibut or fixed gear sablefish is specified" (57 FR 57134, column 2, line 23). Moreover, the regulatory text at § 676.20(b) clearly states that initial QS is calculated "in each regulatory area."

Comment 62: The proposed rule preamble and proposed regulations do not fully explain the vessel category assignments of QS. It should be made clear that the assignment scheme is based on the number of vessels on which landings of fixed gear groundfish and halibut were made during a person's most recent year of participation. Also, the rule should clarify vessel category assignments if landings were made in more than one vessel category during the most recent year of participation or if no sablefish or halibut were landed that year.

Response: The proposed rule preamble refers the reader to Figures 2a and 2b in section 5.0 of the FEIS. These figures graphically describe the decision process effecting vessel category assignments. This decision process is described in regulatory text at § 676.20(c). However, the proposed rule was not clear about the assignment of QS to vessel categories when two or more vessels in different categories would be assigned QS. It also neglected the possibility that none of a person's vessels harvested halibut or sablefish

with fixed gear during the person's most recent year of participation. Therefore, this section is changed as follows: First, the definition of "participation" that was at paragraph (8) is moved to the introductory text of paragraph (c) and revised to define "the most recent year of participation." Second, the text of paragraphs (6), (7), and (8) is changed, and a new paragraph (9) is added, to clarify that vessel category is not a factor in determining whether a person qualifies for QS. Instead, the assignment of QS is made to a vessel category after qualification for QS is determined, based on the vessel that person used in that person's most recent year of participation. Third, paragraphs (6) and (7) are revised to more clearly describe vessel category assignments if, in the most recent year of participation, a qualified person used more than one vessel in different categories, or that person used one vessel in one category for halibut and another vessel in a different category for sablefish. Finally, paragraph (8) was changed, and paragraph (9) added, to more clearly explain the assignment of QS to vessel categories in the event that no halibut or sablefish were landed in the most recent year of participation. These changes are necessary to clarify the vessel category decision process.

Comment 63: The proposed rule is ambiguous about the disposition of landings from a vessel made by someone other than the QS applicant. If the QS applicant is not able to get a confidentiality waiver from that individual, would the applicant be credited with those landings even though he could not personally claim them on his initial QS application?

Response: Initial allocations of QS will be made based on legal landings recorded on Federal weekly production reports required by §§ 672.5 and 675.5, or recorded on fish tickets required by the laws of the States of Alaska, Washington, Oregon, or California. Different confidentiality protections apply to each of these reports. For example, section 303(d) of the Magnuson Act prohibits NMFS from releasing catch and production data reported in weekly production reports in a manner that directly or indirectly discloses the identity or business of the person who submitted the report. NMFS may release these catch and production data to the submitter of the weekly production report (i.e., the vessel operator and the vessel owner), both of whom are responsible for the submission of these reports under Federal fishery regulations.

State laws regarding the confidentiality of fishery data apply to

the release of catch and landings data recorded on state fish tickets. For example, the confidentiality of data recorded on State of Alaska fish tickets must be maintained pursuant to Alaska Statutes 16.05.815. The State's Department of Law has concluded that these data may not be released to a vessel owner or lease holder unless (a) the vessel owner or lease holder recorded the landing on a State fish ticket, or (b) the vessel owner or lease holder obtains a waiver of confidentiality from the individual who recorded the landings on the fish ticket.

Due to the various confidentiality protection afforded by state and Federal law, it is possible that a QS applicant will be eligible for an initial allocation of QS based on legal landings recorded or submitted to NMFS or to a state agency by a person other than the applicant. Under such circumstances, confidentiality laws will prevent NMFS from crediting those landings data to the QS applicant without a written confidentiality waiver signed by the submitter.

Comment 64: The proposed rule preamble and regulatory text at § 676.20(d)(2) indicate that initial allocations of QS will be based on uncontested catch and vessel ownership or lease data. It is possible that the ultimate resolution of contested data could affect the vessel category assignment of the original uncontested data. How would this be resolved?

Response: Each allocation of QS will be assigned to a vessel category as prescribed at § 676.20(c). The potential of a person receiving an initial allocation of QS in more than one vessel category is addressed in that paragraph. This regulation makes no provision for changing the vessel category assignment of QS after it has been issued because such an event was not contemplated by the Council in its motion. Unique vessel category assignment problems will be considered on a case-by-case basis and assignments may be appealed.

Comment 65: The IFQ program approved by the Council contained a provision for overages but none for underages. Adding a harvest underage (§ 676.17(b)) to the following year's IFQ was discussed by the Council and rejected due to biological concerns.

Response: NOAA agrees that large amounts of underages in any year could provide for a total IFQ harvest in excess of the fixed gear TAC. At the extreme, NOAA would have to limit the reallocation of underages if overfishing were threatened. Therefore, §§ 676.17(b) and 676.20(f)(1) are changed to delete authority to reallocate unharvested amounts of IFQ less than 5 percent of

the amount specified under the IFQ permit. As originally proposed, amounts of IFQ less than 5 percent of the amount specified under the IFQ permit could be reallocated to the following year. This was intended to complement the reverse provision of subtracting up to 5 percent of an IFQ overage from the allocation in a succeeding year and to reduce overages. Adding large amounts of unharvested IFQ to a succeeding year's total IFQ allocated could result in a more serious biological problem than subtracting overharvested IFQ. Unharvested amounts of IFQ in any year or area will be foregone in subsequent years or other areas.

Comment 66: The proposed rule would not allow a QS owner to sell all QS in any year in which it was leased.

Response: No part of any QS can be transferred at once to different persons. A QS transfer would not be approved if the person transferring it did not currently hold it. Leased QS is held by the lease holder, not the original QS holder, until the lease expires. However, a transfer of QS to one person could be made effective immediately after the expiration of a lease to a different person.

Comment 67: The Council intended the ownership caps to apply to QS and IFQs, but the proposed rule would allow a person to acquire QS up to the ownership limit regardless of the amount of IFQ it represents. The Council understood that ownership of QS up to the 1 percent limit (for sablefish) could result in more than 1 percent of the IFQ for an area in subsequent years. This could result from variance in the QS pool or the area TAC or both. The excess IFQ in such cases should be usable providing that the QS and IFQ limits were not exceeded in the year they were acquired. However, excess IFQ should not be issued if the QS on which it is based is acquired through inheritance or court order.

Response: The rule differs from the language of the Council's motion with respect to personal limits on QS or IFQ. This difference was explained in the preamble to the proposed rule (under "Limits on QS Use" at 57 FR 57137). Briefly, it is neither expedient nor practical for the Secretary to impose a limit on the amount of QS that a person "owns" or "holds" as contemplated by the Council. This is because some transfers will occur by operation of law that are not approved by the Regional Director. However, the Regional Director will control the "use" of QS to harvest IFQ fish through the issuance of an IFQ permit. Therefore, the rule indirectly implements the Council's limits on "owning" QS by imposing a limit on

"using" QS. In practice, the QS use limitations prescribed at § 676.22 (e) and (f) are governed by the amount of approved QS relative to the QS pool for an area or combined areas. To this extent NOAA notes that proposed § 676.22(e) incorrectly specifies the sablefish QS use limit as 1 percent of the combined sablefish TAC for the GOA and BSAI areas. The limit should be 1 percent of the combined total sablefish QS for the GOA and BSAI areas to be consistent with the Council's motion and amendment text, with the use limit for the area east of 140° west longitude, and the halibut QS use limits. This mistake in the proposed rule is corrected by adding text in the first sentence of § 676.20(f) limiting the assignment of IFQ to the QS use limitations specified at § 676.22 (e) and (f). This change clarifies that the QS use limitations will be governed by the issuance of IFQ on approved amounts of QS that are within those limitations unless excess amounts were received by the QS holder in the initial allocation.

Approved amounts of QS will be issued all of the IFQ due from that QS up to the prescribed limits. The only exception is that an initial allocation of QS that exceeds a use limit will be issued additional IFQ based on that part of the initially allocated QS that is over the limit. Changes in the QS pool may affect QS use, but changes in the TAC will not. For example, sablefish QS (not initially allocated) at the 1 percent limit one year could be fully used by having an IFQ permit issued based on the full amount of QS. If the QS pool is decreased in the following year, then the sablefish QS, unchanged from the previous year, will exceed the 1 percent limit. An IFQ permit would be issued on 1 percent of the QS, and the excess QS over 1 percent would not be "funded" with IFQ that year. Changes in the QS pool from year to year, however, are likely to be less pronounced than changes in the TAC. Sablefish QS holdings at or near the use limits may result in sablefish IFQ that is more or less than 1 percent of the TAC (or of the total IFQ) in any given year. Hence, if a QS holding within use limits yields an IFQ that is excess to 1 percent of the TAC, that IFQ would still be available to harvest by the holder of the QS on which the IFQ is based. However, IFQ would not be issued for transferred QS that has not been approved by the Regional Director or QS in excess of the use limitations (unless received in the initial allocation).

Comment 68: An exception to the requirement for catcher vessel QS holders to be onboard the vessel during fishing operations is provided at

§ 676.22(i)(1). This exception would allow an individual who receives an initial allocation of catcher vessel QS to be represented onboard by a hired skipper. The exception does not apply to individuals who receive an initial allocation of halibut in area 2C or sablefish east of 140° west longitude. The rule should clarify that it also does not apply to corporations or partnerships that receive initial QS in these areas. Also, the rule should clarify that corporations and partnerships that receive initial QS for these areas must have any additional QS in an individual's name and that individual must be onboard the vessel during harvesting and landing of IFQ species.

Response: The exception to the catcher vessel QS-holder-onboard requirement at § 676.22(i) is applied to corporations and partnerships at § 676.22(j). NOAA agrees that explanatory language in the Council's IFQ motion and amendment text indicate that the exception does not apply to additional catcher vessel QS of halibut in area 2C or sablefish east of 140° west longitude. Therefore, § 676.22(j) is changed to require corporations and partnerships to receive transferred catcher vessel QS of halibut in area 2C or sablefish east of 140° west longitude only in the name of an individual. This change clarifies that the provisions for catcher vessel QS use by corporations and partnerships apply only to initial allocations of halibut QS in area 2C and to initial allocations of sablefish QS in the area east of 140° west longitude. Transfers of additional QS within these areas must be to an individual as required by § 676.21(b) and be used pursuant to § 676.22 (c) and (i).

Comment 69: The provision to eliminate the fixed gear sablefish reserve was not addressed by the Council in its plan amendment language.

Response: Although the Council's IFQ motion and plan amendment text were silent on using the reserve, the language of both documents refers to determining the IFQ by multiplying the QS/(QS pool) ratio to the fixed gear TAC. In the BSAI area, the TAC for any species or gear group subdivision of a species is the TAC that is annually recommended by the Council and specified by the Secretary pursuant to § 675.20(a)(2). Initially, 15 percent of each TAC is placed in a reserve which is not designated by species (§ 675.20(a)(3)) so there is no "sablefish reserve" per se. The reserve is used during the fishing year to account for uncertainty in biological estimates and fishing operations. The amount available for

fishing after subtraction of the reserve is the initial TAC and is specified annually (e.g., 58 FR 8703, February 17, 1993). NOAA interpreted the Council motion and plan amendment text to mean the full TAC, without deduction for the reserve, because the text used "TAC" not "initial TAC." This interpretation is reasonable because any reapportionment of the reserve to fixed gear sablefish during the fishing year would require a mid-year allocation of IFQ. Such mid-year allocations would be disruptive to the fishing and business plans of sablefish fishermen.

Comment 70: Regulations regarding permits at § 676.13(a) should include a requirement that the IFQ permit and IFQ card correspond to the same allocation to prevent someone from using a permit and card issued to different people. Also, a statement should be added to § 676.13(b) stating that permits will identify the initial allocation status of the permit holder. This would assure that IFQ corresponding to initially allocated QS for halibut in area 2C, for example, may be harvested and landed by hired skippers.

Response: IFQ permits and cards may be issued to different persons. For example, an IFQ permit holder may want to use a hired skipper or crew to catch and land IFQ fish on the permit holder's allocation. In this case, the permit holder would request NMFS to issue additional IFQ cards to those specified individuals. Each additional card, however, would be coded so that landings made with those cards would be tied to one IFQ allocation. Additional coding on an IFQ card would indicate whether it was tied to an initial allocation and therefore eligible for the QS-holder-onboard exemption at § 676.22(i)(1).

Comment 71: In § 676.14(d), does "holding a valid IFQ permit and IFQ card" mean that the same person's name would be on each? The Council did not want to prohibit hired skippers from undertaking dockside sales.

Response: No. The same person's name does not have to be on the IFQ permit and the IFQ card. There is no limit on the number of IFQ cards that could be issued to separate individuals to harvest halibut and sablefish against the IFQ specified under a single IFQ permit. Hence, hired vessel masters would be issued an IFQ card based on the IFQ permit of the vessel owner. Halibut and sablefish landed with an IFQ card would be credited to the associated IFQ permit.

Comment 72: The prohibition at § 676.16(h) (formerly § 676.16(g)) should be more explicit. It should say it is

unlawful to: "Discard Pacific cod and rockfish when any IFQ card holder onboard holds unused sablefish or halibut IFQ for that vessel category and the area in which the vessel is operating."

Response: In the final rule, § 676.16(g) is redesignated § 676.16(h) and revised pursuant to comment 78. The suggested change is not necessary because the revised paragraph prohibits the discard of Pacific cod or rockfish that are taken when IFQ halibut or IFQ sablefish are onboard a vessel. Further, the harvest of IFQ halibut or IFQ sablefish in an area or vessel category other than that for which an IFQ card holder has authority to harvest would violate § 676.22(a). Hence, § 676.16(h) would not apply to an IFQ card holder who is involved in fixed gear fishing that results in the catch of Pacific cod or rockfish from a vessel and in an area other than that specified under his IFQ permit. In this case, he would be required to discard any bycatch of halibut or sablefish.

Comment 73: At § 676.17(a)(1), a requirement to have a valid IFQ card with unused IFQ should be added.

Response: NOAA agrees and has changed this paragraph to require a person seeking a vessel clearance under § 676.17(a)(1) to have valid IFQ card or cards. This additional requirement is consistent with possession of a valid IFQ permit. The requirement to have "IFQ that is equal to or greater than all IFQ sablefish and IFQ halibut onboard" is the same as having unused IFQ because IFQ is decreased by the amount of halibut or sablefish landed.

Comment 74: A transfer of QS should be disapproved, under § 676.21(e), if it would result in an amount of IFQ that exceeds the use limits based on the current year TACs. Also, approving a transfer and then disallowing the use of the QS is illogical.

Response: The IFQ program implementing rules make a necessary distinction between QS and IFQ. Basically, an annual allocation of IFQ to any person is based on the QS held by that person on January 31 of that year (§ 676.20(f)(2)), to the extent that the QS held is within QS limits; use limits to a QS holder are not based on the current year TACs (see response to comment 67). A person can increase his or her IFQ within a year by receiving an approved transfer of IFQ. This can also be done by transferring QS on which the transferred IFQ is based or by leasing IFQ within the limits prescribed at § 676.21. However, QS could be transferred without transfer of its associated IFQ. For example, a fisherman may have completely used his IFQ by June of one year and then

transferred his QS to another fisherman later the same year. The fisherman receiving such QS would not be allocated IFQ associated with the transferred QS until the following year. A decision to approve or disapprove a QS transfer in this case could not be based on the resulting amount of IFQ because the IFQ does not exist in the current year; it would not be realized by the QS holder until the year following approval of the QS transfer. In a different scenario, QS could be transferred by operation of law. Issuance of IFQ associated with that QS (if any) would not occur until the Regional Director approves the transfer for purposes of harvesting halibut or sablefish pursuant to § 676.21(e). This independent handling of QS and IFQ provides an effective means of implementing the QS ownership and holding limitations prescribed at § 676.22. Paragraph (c) of § 676.21 prevents QS from being used for fishing prior to the Regional Director's approval if the transfer occurs by operation of law, and has been rewritten to clarify this restriction in reference to paragraph (e) of this section. For administrative efficiency, all transferred QS will be controlled in the same manner (i.e., through the issuance of IFQ) because the only way for QS to be used to harvest halibut or sablefish is to have the associated IFQ (see response to comment 67).

Comment 75: An additional criterion for transfer approval should be added to § 676.21(e)(1) to prevent resale/buyback arrangements designed to circumvent anti-leasing provisions. The criterion would stipulate that the person applying to receive catcher vessel QS had not previously transferred QS to the same person applying to relinquish it.

Response: No change is made based on this comment. The suggested requirement would unnecessarily constrain the market for QS and add complexity that could slow transfer approval. The prevention of leasing can be accomplished more simply by careful monitoring of QS transfers over time. If additional information about QS transfers is needed to prevent leasing, it can be requested without changing the regulations under § 676.21(e)(1)(vii).

Comment 76: At § 676.24(j)(5) (formerly § 676.25(j)(5)), landings of CDQ halibut or sablefish should be made by a person with a valid CDQ card and only to a registered buyer.

Response: NOAA agrees and this paragraph (which was changed to § 676.24(j)(5); see change 16 above) is changed to clarify that CDQ halibut or sablefish must be landed by a person with a valid CDQ card and to a person

with a valid registered buyer permit. This change corrects an editorial oversight in the proposed rule. In addition, the same exceptions for dockside sales and outside landings as are provided at § 676.14(d) are provided for CDQ halibut or sablefish in § 676.24(j)(5).

Comment 77: The proposed regulations regarding sablefish would not apply in State waters. This should be made more explicit. In particular, they should state that sablefish fishing in Prince William Sound and waters of Southeast Alaska would be exempt from the Federal IFQ program and that the State is not relinquishing management authority over fisheries that may develop in other State waters. In addition, State regulations allow the retention of sablefish incidentally harvested by drift gillnet gear in Cook Inlet and other places. The proposed rules would require such sablefish to be treated as prohibited species. Although the incidental catch of sablefish while salmon fishing is not likely, existing State regulations allow for retention while the proposed rules would not. There are other potential inconsistencies relating to the possession of sablefish with an IFQ card in inside versus outside waters.

Response: NOAA agrees that regulations implementing the IFQ program with regard to sablefish do not apply in State internal waters and the adjacent territorial sea (State waters) to persons who do not have an IFQ permit described at § 676.13. However, the regulations in part 676 apply to all persons with current IFQ permits even when they operate within State waters. This clarification is made by revising the definitions of "IFQ sablefish" and "IFQ regulatory area" at § 676.11 and by adding text to §§ 676.12(c) and 676.13(a) relative to fishing within State waters. Drift gillnet gear is not included in the definition of "fixed gear" at § 676.11, so sablefish harvested in State waters by a person with this gear would not be subject to IFQ program rules regardless of whether that person held an IFQ permit.

Comment 78: Alaska Department of Fish & Game (ADF&G) is concerned about how the proposed bycatch allowances and season structure will affect other fisheries managed by either ADF&G or NMFS. These concerns are as follows:

(a) Prohibiting the discard of Pacific cod or rockfish may preempt existing State regulations regarding harvest allowances for these species. It should be more clear that the bycatch, directed fishing allowances, or annual harvest

limits set by either ADF&G or NMFS cannot be exceeded.

(b) The sablefish bycatch allowance of 4 percent may have to be adjusted upward to prevent waste.

(c) The proposed sablefish season of March 1 through November 30 would not provide adequate protection for spawning sablefish stocks. Also, sablefish from internal waters could be still on the outside grounds early in the year. This suggests that early-year harvests could reduce later harvests of sablefish in State waters. ADF&G recommends a sablefish season of May 15 through November 30. This was the season for offshore sablefish prior to implementation of the Magnuson Act. It would avoid overlap with sablefish and halibut spawning periods, reduce the potential of double-harvesting sablefish populations from internal waters, and reduce the likely high bycatch of halibut during an early-season sablefish fishery.

(d) If establishing the halibut season on an annual basis is left to the IPHC, there is a potential for different seasons for both species. This seems contrary to the intent of minimizing bycatch problems.

Response: (a) NOAA agrees that retention of Pacific cod or rockfish while fishing in State waters should not be required in contravention of State regulations. Section 676.16 is changed to expand the exceptions to the prohibition on discarding fish to include State requirements in redesignated paragraphs (h) and (l). Paragraph (h) prohibits the discard of Pacific cod or rockfish taken incidental to the harvest of IFQ fish to prevent wasting these species. Paragraph (l) prohibits the discard of halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ card holder onboard has unused IFQ for these species in the area and vessel category in which the catcher vessel is operating. Both of these paragraphs provide exceptions to these discard rules in the event that other Federal regulations require discarding of these species for biological conservation purposes.

(b) Directed fishing standards for sablefish caught with fixed gear are specified at §§ 672.20(g)(4) and 675.20(h)(4). When directed fishing is prohibited, amounts of sablefish on a vessel in excess of prescribed amounts would constitute a violation of the prohibition. This management tool is commonly used in-season to close an open access fishery when the TAC for sablefish is nearly exhausted. Under the IFQ program, however, the directed fishing season for sablefish would remain open during the dates prescribed

at § 676.23(b). Sablefish caught with fixed gear at other times during the year could be retained by IFQ holders within the "bycatch allowances" specified in §§ 672.20(g)(4) and 675.20(h)(4). Other catches of sablefish with fixed gear would have to be discarded. NOAA perceives no need at this time to adjust these bycatch limits for sablefish as they are unlikely to allow for any more waste than is occurring already under open access management. To clarify this point, however, § 676.23(b) references §§ 672.20(g) and 675.20(h) and is changed to provide specifically for retention of sablefish up to prescribed limits during periods when directed fishing is prohibited.

Paragraph (a), in regards to halibut, references §§ 672.20(e) and 675.20(c) and states that catches of halibut by fixed gear taken at times other than those specified at 50 CFR part 301 must be treated as prohibited species.

(c) Harvesting sablefish during their spawning period is not necessarily harmful to the stock providing that such harvesting does not result in recruitment overfishing. Another argument against harvesting during or immediately after winter spawning is that the fish are in poor physical condition and product yield and value is less than if harvesting were delayed until summer and fall months. The IFQ program will allow fishermen to time their harvesting according to market demand. If sablefish harvesting in the first 2 months of the season produces a low-valued product, then it is likely that few fishermen will participate in the fishery at that time. Although some fish tag recovery studies indicate migration of sablefish between EEZ and State waters in southeast Alaska, it is not clear that allowing fishing in the EEZ before May 15 will cause significant harm to sablefish fisheries in State waters later in the year. The inclusion of halibut in the development of the sablefish IFQ program was specifically intended to resolve a potential bycatch problem. Fishermen with IFQ for both species will be able to retain and land both species regardless of their target species. Hence, the IFQ program should minimize halibut bycatch wastage.

(d) Although it is true that halibut bycatch will be minimized only if the IPHC prescribes a compatible season for halibut fishing in and off of Alaska, NOAA is hopeful that the IPHC will take this action. The IPHC extended the season for the halibut fishery in area 2B in and off of British Columbia in response to a similar individual quota program implemented by Canada. NOAA is not changing the fishing season for halibut in this rule to prevent

conflict with the fishing seasons prescribed by the IPHC as required by the section 5(c) of the Halibut Act.

Comment 79: Regarding the definition of an "IFQ crew member," it may not be possible to determine the months of actual experience a person has accumulated from State records. In addition, the time requirement should be consistent throughout the rules (5 months at § 676.11 and 150 days at § 676.21(e)(2)(i)). Delete the words "at sea" from § 676.21(e)(2)(i) as this may prevent some participation in some fisheries that do not occur at sea. The rules should clarify what experience, in addition to actual harvesting, will qualify as crewing experience. For example, would preparing the vessel or gear, traveling to and from fishing grounds, tendering, working as a spotter pilot, piloting a vessel, acting as a skipper, or operating fishing gear qualify as harvesting crew experience?

Response: NOAA agrees and has clarified the definition of "IFQ crew member" by changing the minimum experience period from 5 months to 150 days. Although the Council's motion states the period in months, the same period in days is preferred because it is more specific, and makes the definition consistent with § 676.21(e)(2)(i). In addition, the kind of activities that would be done by "harvesting crew" are clarified. Examples of activities not considered work of a harvesting crew are added to the definition. The phrase "at sea" is deleted from § 676.21(e)(2)(i) to clarify that harvesting crew experience in a U.S. commercial fishery that does not occur "at sea," for example, in lakes or internal waters, would qualify for purposes of the IFQ crew member definition.

Comment 80: Regarding the proposed recordkeeping and reporting requirements, several inconsistencies with existing State regulations are noted. Reporting the landing of IFQ fish would be required within 6 hours, but the State requirement is within 7 days. The State does not require shipment reports as proposed by the IFQ regulations. Dockside sales of IFQ fish would require a buyers permit, but State regulations allow any permitted fisherman to sell unprocessed fish at the dock.

Response: NOAA perceives no conflict between these more restrictive Federal regulations on the reporting of IFQ fish and the existing State reporting requirements. The recordkeeping and reporting requirements of the IFQ program are not intended to preempt State reporting requirements, and are designed to adequately monitor IFQ landings and assure the integrity of the

program. NOAA is hopeful that the State and NMFS will develop procedures to minimize duplication in satisfying required reports. As such, the State may realize a benefit in better quality landings data submitted more quickly than under current procedures.

Comment 81: It is not clear whether the vessel check-out requirement at § 676.17(a) is in addition to, or substitute for, State requirements at 5 AAC 39.130 to report exports of unprocessed fishery resources.

Response: The vessel check-out requirement at § 676.17(a) is in addition to other reports and requirements that constitutionally may be imposed by State law.

Comment 82: The IFQ regulations should clarify that requirements to have an IFQ permit and a registered buyer permit are in addition to State requirements concerning permits for fishermen, buyers, and processors of fish.

Response: The permit requirements at § 676.13(a) are in addition to other requirements that constitutionally may be imposed by State law.

Comment 83: Language in § 676.24(a)(1) (formerly § 676.25(a)(1)) limits the eligibility of communities for the CDQ program to those that are "proximate to" an IPHC area. The State understands that this is in reference to the boundary of a particular management area and not a requirement that communities be proximate to the Bering Sea coast. As such, the communities listed in Table 1 of the proposed regulations are qualified to participate in the program. The IPHC management area that each eligible community qualifies for is that area in which the community either: (a) Lies between the points where the management area boundary intersects the coastline; or (b) is within 10 miles from the point where the management area boundary intersects the coastline, if the community lies outside the management area.

Response: The State's understanding is correct.

Comment 84: There appears to be no reason to require implementation of the CDQ program for halibut and sablefish to coincide with full implementation of the IFQ program. Development of the CDQ program could be constrained if it were to wait for completion of all IFQ administrative procedures. Could the CDQ program begin in 1993?

Response: Implementation of the CDQ program in 1993 would be administratively difficult for several reasons. First, the sablefish CDQ program requires (§ 676.24(b) (formerly § 676.25(b))) notice and comment on the

specific amounts of the sablefish CDQ reserve in the proposed and final harvest specifications published pursuant to § 675.20(a). These specifications for 1993 already have been published (57 FR 57718, December 7, 1992, and 58 FR 8703, February 17, 1993). Second, the halibut fishing periods prescribed at 50 CFR 301.7 are based on an open access management regime that is not relevant to a CDQ management regime. Changing these fishing periods for 1993 would require an extraordinary meeting of the IPHC and another Federal Register publication. Third, control of the halibut and sablefish CDQ programs would be exercised through the issuance of CDQ permits and CDQ cards (§ 676.24(j) (formerly § 676.25(j))). This control mechanism is designed to work with the IFQ permit and card system. NOAA has not yet fully developed either of these systems. Finally, the Council clearly intended that the CDQ program be implemented simultaneously with the IFQ program. Therefore, the CDQ program will be implemented concurrently with overall implementation of the IFQ program.

Comment 85: The proposed rule at § 676.24(b) (formerly § 676.25(b)) limits a sablefish CDQ allocation to any one applicant to a maximum of 12 percent of the total CDQ for all subareas. The Council's motion applied this restriction to any eligible community. It would be desirable to maintain the existing CDQ groupings that evolved under the pollock CDQ program first implemented in 1992. With no more than five or six CDQ group applications, the most that could be allocated under the proposed 12 percent limit would be 72 percent of the sablefish CDQ. The State recommends changing the rule to allow one applicant group to receive up to 33 percent of the total sablefish CDQ allocation, and that this provision be combined with the original Council proposal to limit any one community to no more than 12 percent of the total sablefish CDQ.

Response: After implementing the pollock CDQ program (57 FR 54936, November 23, 1992), NOAA agrees that limiting a CDQ allocation to any applicant to 33 percent of the total sablefish CDQ for all subareas would be more consistent with the pollock CDQ program (see § 675.27(c)(1)). However, it would be practically impossible to assure that no one community received more than 12 percent of the total sablefish CDQ when that community was grouped with other communities in receiving a CDQ allocation of up to 33 percent of the total. The approved FMP amendment text would limit any

western Alaska community to no more than 12 percent of the total sablefish CDQ. Under a literal interpretation of this text, it is conceivable that eight communities that may form a single group under the pollock CDQ program could receive virtually all of the sablefish CDQ. NOAA deviated slightly from this interpretation in the proposed rule by suggesting a 12-percent limit for any one applicant to simplify the accounting of sablefish landed against a CDQ allocation. For the reasons explained in the comment, this approach may not be ideal. Nevertheless, NOAA is not authorized to deviate substantially from the approved FMP amendment text. The Council could recommend another FMP amendment to the Secretary if this issue becomes a significant management problem in the future.

Comment 86: The proposed IFQ program will place increased demands on the State Commercial Fisheries Entry Commission (CFEC) for individual catch data and vessel ownership records. The CFEC's ability to respond to these requests has weakened in recent years due to budget reductions.

Response: NOAA intends to establish a unified database that includes all relevant catch and vessel ownership records on which the initial allocation of QS will be based. Cooperation with the CFEC and other state and Federal agencies will be necessary to establish this data set. After it is established, all queries should be directed to the IFQ program manager, Alaska Region, NMFS. Corroborating data from the State's fish ticket archives may be requested by fishermen. The State will be expected to respond to such requests as possible within its personnel and budget resources.

Comment 87: The State has a strong interest in collecting certain types of data on fish landings through its fish ticket system. These data are important for social and economic analyses. It is important that the IFQ program not interfere with the collection of these data. Further, monitoring the regional distribution of QS holdings is important because of concerns about social and economic impacts. The CFEC monitors permit transfers under the Alaska limited entry program because of these concerns and regularly reviews transfers to track changes in the residence status of permit holders. NMFS should monitor transfers of QS in similar ways.

Response: Implementation of the IFQ program should not interfere with the collection of fish ticket data by the State. NOAA is aware of the need to monitor the transfer of QS between rural and urban areas, and intends to develop

a QS transfer approval system that will provide useful data in response to social and economic impact concerns.

Comment 88: The major concern of the State is that the proposed IFQ program could lead to excessive consolidation of fishery access privileges and speculative investment in, and absentee-ownership of, QS by non-fishermen. These outcomes could cause substantial harm to Alaskan fishermen, shore-based processing industry, and coastal communities. For these reasons, the State considers the restrictions on transferability and use of QS to be essential to the success of the program.

Response: The limitations on QS use, QS and IFQ transfer, and the requirement for catcher vessel QS holders to be onboard during fishing operations are expressly intended to prevent the outcomes of concern to the State.

Comment 89: The North American Free Trade Agreement (NAFTA) appears to override the Council's intent to limit participants in the proposed halibut and sablefish IFQ program to U.S. citizens. Will Canadian or Mexican corporations be allowed to purchase halibut and sablefish QS under NAFTA? The Canadian IQ program allows foreign ownership of Canadian fishing rights because investment by Canadian corporations is not limited by a citizenship restriction. Will the United States reciprocate by relaxing the proposed citizenship requirements in the IFQ program?

Response: The U.S. citizenship requirements of the IFQ program will not be affected by NAFTA. The agreement includes an exception for the United States regarding fishing in U.S. waters.

Comment 90: The IFQ regulations should not discourage individuals from owning their vessels as solely-owned corporations for business reasons. As proposed, an individual who qualifies for an initial allocation of catcher vessel QS as an individual, but who later incorporates as a solely-owned corporation, would not be able to take advantage of the IFQ holder-on-board exception at § 676.22(i)(1) because the corporation now owns the vessel and not the individual. In addition, the same individual would not be able to transfer his QS to his solely-owned corporation because of the transfer restrictions at § 676.21. The rule should be modified to allow a solely-owned corporation to act as an individual for purposes of these sections.

Response: NOAA agrees that initial allocations of catcher vessel QS, as proposed, were too constraining and has

changed § 676.21(b) to allow individuals who receive an initial allocation of catcher vessel QS to transfer that QS to their solely-owned corporation. This will provide an individual who qualifies for an initial allocation of catcher vessel QS and subsequently forms a solely-owned corporation to enjoy the same benefits of being incorporated as the Council intended for corporations or partnerships that receive an initial allocation of catcher vessel QS. This change is consistent with the Council's intent and does not substantively change the effect of the rule because solely-owned corporations will be subject to the limitations of § 676.22(j) in the same manner as any other corporation or partnership that receives an initial allocation of catcher vessel QS. Note that § 676.22(j) also is changed by this action to prevent corporations from acquiring additional catcher vessel QS for halibut in area 2C or sablefish east of 14° west longitude (see response to comment 68). Hence, any corporation or partnership may receive transferred QS for these species in these areas only in the name of an individual, regardless of whether the corporation or partnership received an initial allocation as provided in § 676.21(b).

The basic policy regarding initial allocations of catcher vessel QS recognized the fact that many individuals who own and operate fishing vessels in the halibut and sablefish fisheries are incorporated for legitimate business reasons. Initial allocation to such persons as corporate entities was considered to be consistent with current practice in the fishery, providing that subsequent transfers of catcher vessel QS to a person who did not receive an initial allocation of catcher vessel QS, or to any person in IFQ regulatory areas 2C and east of 140° west longitude, were to individuals and also that a change in a corporate entity resulted in a transfer of its catcher vessel QS to an individual. This was to protect against a corporate buy out of a fishery that is characterized by small, family owned-and-operated fishing businesses. NOAA sees little distinction between such small family-owned businesses and solely-owned corporations.

NOAA does not agree, however, that § 676.22(i)(1) should be changed to accommodate solely-owned corporations. The exception provided to individuals by this paragraph is also provided to corporations by § 676.22(j). This paragraph accommodates, not discourages, solely-owned corporations or any other corporate entity or partnership in those areas of the fishery other than IFQ regulatory areas 2C and

east of 140° west longitude. Eventually, however, all such corporate entities that have catcher vessel QS must transfer it to an individual as required by § 676.22(j) as they acquire additional QS in area 2C or east of 140° longitude, and as they change through the addition of new corporate shareholders or partners. This requirement implements the policy of all catcher vessel QS ultimately being in the hands of individuals instead of corporations, and having those individuals onboard vessel at all times when fishing for and landing IFQ species.

Comment 91: What type of ownership interest is created by the IFQ plan, and what is the estimated value of that interest?

Response: The IFQ regulations allocate transferrable harvest privileges in the form of QS and IFQ in the halibut and sablefish fixed gear fisheries. The QS and IFQ may be held, used, purchased, sold, or otherwise transferred in accordance with the implementing regulations. However, these regulations do not convey property rights in the fishery resources, and cannot legally because no property rights can accrue until halibut or sablefish are reduced to one's possession by capture. Furthermore, the IFQ program is not irreversible. The Council and the Secretary have the statutory responsibility to conserve and manage these fisheries, and may modify or even terminate this program as necessary to meet that responsibility. Thus, the QS and IFQ allocated in accordance with these regulations is not necessarily permanent, and is subject to future regulatory changes that could result in diminution or even negation of QS and IFQ market value. As such, the QS and IFQ are temporary revokable permits that authorize the holder to participate in the fixed-gear fisheries for halibut and sablefish so long as the IFQ program remains in effect. Consequently, the IFQ program does not establish an entitlement to QS and IFQ, which, if "taken" by the Government, requires just compensation under the Fifth Amendment to the U.S. Constitution.

The market value of QS is difficult to predict because of unknown variables that will affect that value. For example, the market value could be affected by annual fluctuations in halibut and sablefish quotas, changes in market prices for halibut and sablefish, and future regulatory actions that could diminish or even negate the value of the QS and IFQ, and the public's perception of the duration of the program. In economic terms, the price that a fisherman is willing to pay for QS will

be no more than the net present value of its expected future earnings (minus fishing costs).

Comment 92: In describing various constraints of the proposed rule, public comment was specifically requested on 7 different types of restrictions. These restrictions would generally limit the economic efficiency of the fishing fleet operating under the IFQ program, and the Secretary expressed particular interest in the need or efficacy of the proposed restrictions. Such restrictions include QS use limitations (§ 676.22 (e) and (f)), vessel harvest limits (§ 676.22(h)), the catcher vessel QS holder-on-board requirement (§ 676.22(i)), and vessel category limitations (§ 676.16(o)). The Secretary also requested comment on whether the proposed 180-day QS application period was a reasonable length of time. Several letters of comment responded to these specific points. All of the comments supported the measures as proposed. Generally, they claimed that the restrictions were needed to mitigate the economic and social disruption that could occur under an untested or unrestricted IFQ program. Comments expressed the desire to maintain the basic character of the fixed gear fleet as being comprised mostly of small, owner-operator vessels, and prevent excessive consolidation. Comments also cited the need to maintain traditional relationships between vessel owner, crew, and processor, and to provide opportunity for crew members to move up to be a vessel owner. The restrictions would satisfy these needs, and losses in economic efficiency are outweighed by gains in social stability.

Response: NOAA notes these comments. No changes are made with respect to the proposed restrictions.

Classification

NOAA determined that Amendments 15 and 20 to the FMP and the companion regulatory amendment to effect the IFQ program for the Pacific halibut fishery in and off of Alaska are necessary for the conservation and management of the fixed gear sablefish and halibut fisheries in and off of Alaska. This final rule implementing Amendments 15 and 20 is published under section 305(a)(1) of the Magnuson Act that requires the Secretary to publish regulations that are necessary to carry out a plan or plan amendment. The Secretary has determined that Amendments 15 and 20 are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary has determined also that the companion regulatory amendment to implement the

IFQ program for the Pacific halibut fishery in and off of Alaska is consistent with the Halibut Act and other applicable laws.

An FEIS for the amendments was filed with the Environmental Protection Agency; a notice of its availability was published on December 11, 1992 (57 FR 58805). The FEIS includes a regulatory impact review cost-benefit analysis. A copy of the FEIS and cost-benefit analysis may be obtained from the Council (see ADDRESSES).

A regulatory flexibility analysis was prepared that describes the effects this rule will have on small entities. This analysis is contained in the FEIS. Based on this analysis, the Secretary concluded that this rule will have a significant economic impact on a substantial number of small entities. A summary of this determination is contained in the proposed rule (57 FR 57130, December 3, 1992).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) that have been approved by OMB. The estimated response time for each collection-of-information required during the 2-year implementation period is expected to be 5.5 hours for the QS application, 4 hours to file an appeal on a QS application, and 2 hours for an IFQ crew member eligibility application.

The estimated response time for each collection of information during each year after the implementation period is 1 hour for notification of inheritance of QS, 2 hours for the application for transfer or lease of QS/IFQ, 2 hours for the corporate/partnership or other entity transfer application, 0.5 hours for the registered buyer application, 0.1 hour for the dockside sale receipt, 0.1 hour for prior notice of landing, 0.1 hour permission to land IFQs at any time other than 06:00-18:00, 0.1 hour for the vessel clearance application, 0.2 hour for the IFQ landing report, 0.1 hour for a transshipment notice, and 0.2 hour for the shipment or transfer report.

Additional costs to the public totaling \$150,000 for the implementation period and \$225,000 for each subsequent year are proposed for the IFQ program.

The estimated response time for each information requirement of the CDQ portion of the IFQ program will be approximately 160 hours per CDP, 40 hours for each annual report, 40 hours for each final report, and 10 hours for each amendment to a CDP.

These reporting burdens include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS, Fisheries Management Division, Alaska Region, P.O. Box 21668, Juneau, AK 99802, and to OMB, Paperwork Reduction Project (OMB control numbers 0648-0272 (IFQs for Pacific Halibut and Sablefish in the Alaska Fisheries) and 0648-0269 (Western Alaska CDQ Program)), Washington, DC 20503.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

The final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Regional Director determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

The Regional Director has determined that fishing activities conducted under this final rule will not affect any endangered or threatened species listed under the Endangered Species Act (ESA) in any manner not already considered in the formal consultations conducted on the BSAI FMP and fishery (April 19, 1991), the 1992 BSAI TAC specifications (January 21, 1992), and Amendment 18 to the BSAI FMP (March 4, 1992) and the informal consultations conducted regarding the impacts of the 1993 BSAI TAC specifications on Steller sea lions (January 20, 1993) and the impacts of the 1993 BSAI and GOA groundfish fisheries on listed species of salmon (April 21, 1993) and listed species of seabirds (U.S. Fish and Wildlife Service, February 1, 1993; clarified February 12, 1993). Therefore, NMFS has determined that no further consultation, pursuant to section 7 of the ESA, is required for adoption of this final rule.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Parts 672, 675, and 676

Fisheries, Reporting and recordkeeping requirements.

Dated: November 1, 1993.

Nancy Foster,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 204, 672, and 675 are amended and 50 CFR part 676 is added as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. In § 204.1(b), the table is amended by adding the following entries, in numerical order, to read as follows:

§ 204.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

50 CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
676.13	-0272
676.14	-0272
676.17	-0272
676.20(d)	-0272
676.20(e)	-0272
676.21(e)	-0272
676.21(f)	-0272
676.24(d)	-0269
676.24(g)	-0269

PART 672—GROUND FISH OF THE GULF OF ALASKA

3. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. Section 672.3 is revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the

EEZ of the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 620, 675, and 676.

(d) *Limited access.* Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 part 229.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. Section 675.3 is revised to read as follows:

§ 675.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska are set forth at 50 CFR parts 620, 672, and 676.

(d) *Limited access.* Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 part 229.

7. In § 675.20, the introductory text of paragraph (a)(3) is revised to read as follows:

§ 675.20 General limitations.

(a) * * *

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category, except the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category, except the hook-and-line and pot gear allocation for sablefish, is apportioned between DAH and TALFF. The reserve is not designated by species or species group, and any amount of the reserve may be apportioned to a target species, except

the hook-and-line gear and pot gear allocation for sablefish, or the "other species" category, provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

8. A new part 676 is added to chapter VI of 50 CFR to read as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

Subpart A—Moratorium on Entry [Reserved]

Sec.
676.1–676.9 [Reserved]

Subpart B—Individual Fishing Quota General Provisions

- 676.10 Purpose and scope.
- 676.11 Definitions.
- 676.12 Relation to other laws.
- 676.13 Permits.
- 676.14 Recordkeeping and reporting.
- 676.15 Vessel and gear identification.
- 676.16 General prohibitions.
- 676.17 Facilitation of enforcement and monitoring.
- 676.18 Penalties.

Subpart C—Individual Fishing Quota Management Measures

- 676.20 Individual allocations.
- 676.21 Transfer of QS and IFQ.
- 676.22 Limitations on use of QS and IFQ.
- 676.23 IFQ fishing season.
- 676.24 Western Alaska Community Development Quota Program.
- 676.25 Determinations and appeals.

[Reserved]
Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Subpart A—Moratorium on Entry [Reserved]

§§ 676.1–676.9 [Reserved]

Subpart B—Individual Fishing Quota General Provisions

§ 676.10 Purpose and scope.

(a) Subparts B and C of this part implement the individual fishing quota management plan for the commercial fisheries that use fixed gear to harvest sablefish (*Anoplopoma fimbria*) and Pacific halibut (*Hippoglossus stenolepis*).

(b) Regulations in subparts B and C of this part govern the commercial fishing for sablefish by vessels of the United States using fixed gear within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority. Regulations in subparts B and C of this part also govern the commercial fishing for sablefish with fixed gear in waters of the State of Alaska adjacent to the

Bering Sea and Aleutian Islands management area and the Gulf of Alaska provided that such fishing is conducted by persons who have been issued permits under § 676.13 of this part. The regulations in this part do not govern commercial fishing for sablefish in Prince William Sound or under a State of Alaska limited entry program.

(c) Regulations in subparts B and C of this part govern the commercial fishing for Pacific halibut by vessels of the United States using fixed gear in Convention waters described in 50 CFR part 301 that are in and off of the State of Alaska.

§ 676.11 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR 301.2, 620.2, 672.2, and 675.2, except as otherwise noted, the terms in this part have the following meanings:

Catcher vessel, as used in this part, means any vessel that is used to catch, take, or harvest fish that are subsequently iced, headed, gutted, bled, or otherwise retained as fresh fish product onboard during any fishing year, except when the freezer vessel definition applies during any fishing trip.

Community Development Plan (CDP) means an economic and social development plan for a specific Western Alaska community or group of communities that is approved by the Governor of the State of Alaska and recommended to the Secretary under § 676.24 of this part.

Community Development Quota (CDQ) means a western Alaska CDQ for Pacific halibut or sablefish that is assigned to an approved CDP.

Community Development Quota Program (CDQ program) means the Western Alaska CDQ Program implemented under § 676.24 of this part.

Dockside sale means the transfer of IFQ halibut or IFQ sablefish from the person who harvested it to individuals for personal consumption, and not for resale.

Fixed gear means:

(1) With respect to sablefish harvested from any reporting area of the Gulf of Alaska, all hook-and-line gear as that term is defined at § 672.2 of this chapter and, for purposes of determining initial allocation, all pot gear used to make a legal landing as that term is defined at § 676.20(a)(1)(v) of this part;

(2) With respect to sablefish harvested from any reporting area of the Bering Sea and Aleutian Islands management area, all hook-and-line gear as that term is defined at § 675.2 of this chapter and all pot gear; and

(3) With respect to Pacific halibut harvested from any IFQ regulatory area, all fishing gear comprised of lines with hooks attached, including setline gear as that term is defined at 50 CFR part 301.

Freezer vessel means any vessel that is used to process some or all of its catch during any fishing trip.

Governor means the Governor of the State of Alaska.

Halibut CDQ Reserve means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program.

Harvesting or to harvest, as used in this part, means the catching and retaining of any fish.

IFQ crew member means any individual who has at least 150 days experience working as part of the harvesting crew in any United States commercial fishery, or any individual who receives an initial allocation of QS. For purposes of this definition, "harvesting" means work that is directly related to the catching and retaining of fish. Work in support of harvesting but not directly involved with harvesting is not considered harvesting crew work. For example, searching for fish, work on a fishing vessel only as an engineer, or cook, or work preparing a vessel for a fishing trip would not be considered work of a harvesting crew.

IFQ halibut means any Pacific halibut (*Hippoglossus stenolepis*) that is harvested with fixed gear in any IFQ regulatory area.

IFQ landing, as used in this part, means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish.

IFQ regulatory area, as used in this part, means:

(1) With respect to IFQ halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E defined at 50 CFR part 301; and

(2) With respect to IFQ sablefish, any of the three regulatory areas in the Gulf of Alaska defined at § 672.2 of this chapter, and any subarea of the Bering Sea and Aleutian Islands management area defined at § 675.2 of this chapter, and all waters of the State of Alaska between the shore and the inshore boundary of such regulatory areas and subareas, except waters of Prince William Sound and areas in which sablefish fishing is managed under a State of Alaska limited entry program.

IFQ sablefish means any sablefish (*Anoplopoma fimbria*) that is harvested with fixed gear either in the EEZ off Alaska or in waters of the State of Alaska by persons holding an IFQ permit, but does not include sablefish harvested in Prince William Sound or

under a State of Alaska limited entry program.

Individual means a natural person who is not a corporation, partnership, association, or other such entity.

Individual fishing quota (IFQ) means the annual catch limit of sablefish or halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the total allowable catch of sablefish or halibut.

IPHC means the International Pacific Halibut Commission.

Person, as used in this part, means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

Quota share (QS) means a permit, the face amount of which is used as a basis for the annual calculation of a person's IFQ.

Sablefish CDQ Reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the Bering Sea and Aleutian Islands management area for which a sablefish TAC is specified.

Trip, as used in this part, means the period of time from when a vessel commences fishing until either the vessel enters or leaves an IFQ regulatory area, or the commencement of an IFQ landing, whichever occurs first.

United States citizen, as used in this part, means:

(1) Any individual who is a citizen of the United States at the time of application for QS; or

(2) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

§ 676.12 Relation to other laws.

(a) **Foreign fishing.** Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) **Halibut fishing.** Additional regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR part 301.

(c) **Domestic fishing for groundfish.** Additional regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 672 and 675, respectively, and at 50 CFR part 620. Persons fishing for

sablefish in the territorial sea and internal waters of the State of Alaska also should consult pertinent regulations of the State.

§ 676.13 Permits.

(a) **General.** (1) In addition to the permit and licensing requirements prescribed at 50 CFR parts 301, 672, 675, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have onboard:

(i) A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit-holder and a copy of the most recent accompanying statement specifying the amount of each species that may be harvested during the current IFQ fishing season; and

(ii) An original IFQ card issued by the Regional Director.

(2) Any person who receives IFQ halibut or IFQ sablefish from the person(s) that harvested the fish must possess a registered buyer permit, except under conditions of paragraphs (a)(2)(i), (ii), or (iii) of this section. A registered buyer permit also is required of any person who harvests IFQ halibut or IFQ sablefish and transfers such fish:

(i) In a dockside sale;

(ii) Outside of an IFQ regulatory area;

or

(iii) Outside the State of Alaska.

(b) **Issuance.** (1) IFQ permits and cards will be renewed or issued annually by the Regional Director to each person with approved QS for IFQ halibut or IFQ sablefish allocated in accordance with § 676.20 of this part. Each IFQ permit issued by the Regional Director will identify the permitted person and will be accompanied by a statement that specifies the amount of IFQ halibut or IFQ sablefish that person may harvest from a specified IFQ regulatory area using fixed gear and a vessel of a specified vessel category. Each IFQ card issued by the Regional Director will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ.

(2) Registered buyer permits will be renewed or issued annually by the Regional Director to persons that have a registered buyer application approved by the Regional Director.

(c) **Duration.** (1) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the

amount specified under the permit, or until it is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures). An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures), or cancelled on request of the IFQ permit holder.

(2) A registered buyer permit authorizes the person identified on the permit to receive or make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the registered buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures).

(d) *Alteration.* No person may alter, erase, or mutilate any IFQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated is invalid.

(e) *Transfer.* The IFQ permits issued under this section are not transferable except as provided under § 676.21 of this part. The IFQ cards and registered buyer permits issued under this section are not transferable.

(f) *Inspection.* (1) A legible copy of any IFQ permit issued under this section must be carried onboard the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained onboard. Except as specified in § 676.22(d) of this part, an individual that is issued an IFQ card must remain onboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card until all such fish are landed, and must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, NMFS enforcement aide, or registered buyer.

(2) A legible copy of the registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer or NMFS enforcement aide.

(g) *Permit sanctions.* Procedures governing permit sanctions and denials are found at 15 CFR part 904, subpart D.

§ 676.14 Recordkeeping and reporting.

In addition to the recordkeeping and reporting requirements specified in 50 CFR parts 301, 672, and 675, the following reports are required.

(a) *Prior notice of IFQ landing.* The operator of any vessel making an IFQ landing must notify the Alaska Region, NMFS, no less than 6 hours before landing IFQ halibut or IFQ sablefish,

unless permission to commence an IFQ landing within 6 hours of notification is granted by an authorized enforcement officer. Such notification of IFQ landings must be made to the toll-free telephone number specified on the IFQ permit between the hours of 06:00 and 24:00 Alaska local time. The notification must include the name and location of the registered buyer(s) to whom the IFQ halibut or IFQ sablefish will be landed and the anticipated date and time of landing.

(b) *IFQ landing report.* Registered buyers must report their IFQ landings in the manner prescribed on the registered buyer permit within 6 hours after all such fish are landed and prior to shipment or departure of the delivery vessel from the landing site.

(1) IFQ landings may be made only between the hours of 06:00 and 18:00 Alaska local time unless permission to land at a different time is granted in advance by a NMFS enforcement officer or NMFS enforcement aide. An IFQ landing may continue after this time period if it was started during the period.

(2) All IFQ landings and all fish retained onboard the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized law enforcement officers, NMFS enforcement aides, or observers.

(3) Information contained in a complete IFQ landing report shall include the date, time, and location of the IFQ landing; the names and permit numbers of the IFQ card holder and registered buyer; the product type landed; and the fish product weight of sablefish and halibut landed.

(c) *Shipment report.* All registered buyers, other than those conducting dockside sales, must report their shipments or transfers of IFQ halibut and IFQ sablefish. A Shipment Report must be submitted for any shipment or transfer of IFQ halibut or IFQ sablefish to any location other than the location of the IFQ landing. Such reports must be submitted to the NMFS, Alaska Region, prior to shipment or transfer, in a manner prescribed on the registered buyer permit. Shipment Reports must specify the species and product type being shipped, the number of shipping units, fish product weight, the name of the shipper and receiver, the name and address of the consignee and consignor, the mode of transportation, and the intended route.

(1) A registered buyer must assure that shipments of IFQ halibut or IFQ sablefish from that registered buyer in Alaska or in any IFQ regulatory area to a destination outside Alaska or outside an IFQ regulatory area do not commence

until the Shipment Report is received by the Alaska Region, NMFS.

(2) A registered buyer must assure that a copy of the Shipment Report or a bill of lading that contains the same information accompanies the shipment to all points of sale in Alaska and to the first point of sale outside of Alaska.

(d) *Dockside sales and outside landings.* (1) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct dockside sales of IFQ halibut or IFQ sablefish to persons who have not been issued registered buyer permits. The person making such an IFQ landing must submit an IFQ landing report in the manner prescribed in paragraph (b) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested. A receipt that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the sablefish or halibut transferred must be issued to all individuals receiving IFQ halibut or IFQ sablefish through a dockside sale.

(2) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct IFQ landings outside of an IFQ regulatory area or the State of Alaska to a person who does not hold a registered buyer permit. The person making such an IFQ landing must submit an IFQ landing report in the manner prescribed in paragraph (b) of this section.

(e) *Transshipment.* No person may transship processed IFQ halibut or IFQ sablefish between vessels before providing at least 24-hours advance notification to a NMFS enforcement officer that such transshipment will occur. No person may transship processed IFQ halibut or IFQ sablefish between vessels at any location outside the boundaries of a primary port listed in § 676.17 of this part.

(f) A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer or NMFS enforcement aide for a period of 3 years.

§ 676.15 Vessel and gear identification.

Regulations pertaining to vessel and gear markings and limitations are set forth in 50 CFR part 301, 672.24, and 675.24.

§ 676.16 General prohibitions.

In addition to the prohibitions specified in §§ 620.7, 672.7, and 675.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to submit, or submit inaccurate information on, any report,

application, or statement required under this part;

(b) Intentionally submit false information on any report, application, or statement required under this part;

(c) Retain halibut or sablefish caught with fixed gear without a valid IFQ permit and without an IFQ card in the name of an individual onboard;

(d) Except as provided at § 676.17 of this part, retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is operating, and that is currently held by all IFQ card holders onboard the vessel;

(e) Possess, buy, sell, or transport IFQ halibut or IFQ sablefish harvested or landed in violation of any provision of this part;

(f) Make an IFQ landing without an IFQ card in the name of the individual making the landing;

(g) Possess on a vessel or land IFQ sablefish concurrently with non-IFQ sablefish, except that CDQ sablefish may be possessed on a vessel and landed concurrently with IFQ sablefish;

(h) Discard Pacific cod or rockfish that are taken when IFQ halibut or IFQ sablefish are onboard unless Pacific cod or rockfish are required to be discarded under §§ 672.20 or 675.20 of this chapter or unless, in waters within the State of Alaska, Pacific cod or rockfish are required to be discarded by laws of the State of Alaska;

(i) Transfer QS or IFQ (other than by operation of law) without the prior written approval of the Regional Director;

(j) Harvest on any vessel more IFQ halibut or IFQ sablefish than are authorized under § 676.22 of this part;

(k) Make an IFQ landing other than directly to (or by) a registered buyer;

(l) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ card holder onboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating unless discard:

(1) Of halibut is required under 50 CFR part 301;

(2) Of sablefish is required under 50 CFR 672.20 or 675.20 or, in waters within the State of Alaska, discard of sablefish is required under laws of the State of Alaska; or

(3) Of halibut or sablefish is required under other provisions of this part;

(m) Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided at § 676.14(a) of this part;

(n) Sell or otherwise transfer catcher vessel IFQ except as provided at § 676.21 of this part;

(o) Operate a vessel as catcher vessel and a freezer vessel during the same fishing trip;

(p) Participate in a Western Alaska Community Development Quota program in violation of § 676.24 of this part, submit information that is false or inaccurate with a CDP application or request for an amendment, or exceed a CDQ as defined at § 676.11 of this part; and

(q) Violate any other provision of this part.

§ 676.17 Facilitation of enforcement and monitoring.

In addition to the requirements of §§ 620.8 and 676.14 of this chapter, an IFQ landing must comply with the provisions described in this section.

(a) *Vessel clearance.* Any person that makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must be a registered buyer, obtain pre-landing written clearance of the vessel on which the IFQ halibut or IFQ sablefish are transported to the IFQ landing location, and provide an estimated weight of IFQ halibut and IFQ sablefish onboard to the clearing officer. For vessels obtaining clearance at a port in Alaska, clearance must be obtained prior to departing waters in or adjacent to the State of Alaska. For vessels obtaining clearance at a port in Washington or another state, the vessel must report to NMFS, Alaska Region, the estimated weight of the IFQ halibut and IFQ sablefish onboard and the intended date and time the vessel will obtain clearance at the port in Washington or another state. Such reports must be submitted to NMFS, Alaska Region, prior to departing waters in or adjacent to the State of Alaska, and in the manner prescribed by the registered buyer permit.

(1) Any person requesting a vessel clearance must have valid IFQ and registered buyer permits and one or more valid IFQ cards onboard that indicate that IFQ holdings are equal to or greater than all IFQ halibut and IFQ sablefish onboard, and must report the intended date, time, and location of IFQ landing.

(2) Any person granted a vessel clearance must submit an IFQ landing report, required under § 676.14 of this part, for all IFQ halibut, IFQ sablefish, and products thereof that are onboard the vessel at the first landing of any fish from the vessel.

(3) A vessel seeking clearance is subject to inspection of all fish, log books, permits, and other documents

onboard the vessel, at the discretion of the clearing officer.

(4) Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by NMFS enforcement officers at any of the following primary ports (geographic location descriptions reserved):

Akutan
Bellingham
Cordova
Craig
Dutch Harbor/Unalaska
Excursion Inlet
Homer
Ketchikan
King Cove
Kodiak
Pelican
Petersburg
St. Paul
Sand Point
Seward
Sitka
Yakutat

(b) *Overages.* Any person allocated IFQ must not harvest halibut or sablefish using fixed gear in any amount greater than the amount indicated under that person's current IFQ permit. Any person that harvests IFQ halibut or IFQ sablefish must hold sufficient unused IFQ for the harvest before beginning a fishing trip. Any IFQ halibut or IFQ sablefish that is harvested or landed in excess of a specified IFQ will be considered an "IFQ overage." In addition to any penalties that may be assessed for exceeding an IFQ, the Regional Director will deduct an amount equal to the overage from IFQ allocated in the year following determination of the overage. This overage adjustment to the annual IFQ allocation will be specific to each IFQ regulatory area for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an overage. In addition, the landed value of overages of the amount specified under the IFQ permit of 5 percent or more shall be subject to forfeiture. Unharvested amounts of IFQ in any year or IFQ regulatory area will not be reallocated.

§ 676.18 Penalties.

Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson Act or Halibut Act or any regulation issued under the Magnuson Act or Halibut Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act or Halibut Act, to part 621 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to

permanent or temporary sanctions to QS and associated IFQ.

Subpart C—Individual Fishing Quota Management Measures

§ 676.20 Individual allocations.

The Regional Director shall annually divide the total allowable catch of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to 50 CFR part 301, 672.20 and 675.20, minus the CDQ reserve, among qualified halibut and sablefish quota shareholders, respectively.

(a) *Initial allocation of quota share (QS).* The Regional Director shall initially assign to qualified persons halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories.

(1) *Qualified person.* As used in this section, a "qualified person" means a "person," as defined in § 676.11 of this part, that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person is a qualified person also if (s)he leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year. A person who owns a vessel cannot be a qualified person based on the legal fixed gear landings of halibut or sablefish made by a person who leased the vessel for the duration of the lease. Qualified persons, or their successors-in-interest, must exist at the time of their application for QS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his interest in the dissolved partnership or corporation. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining whether a person is a qualified person.

(i) A QS qualifying year is 1988, 1989, or 1990.

(ii) Evidence of vessel ownership shall be limited to the following documents, in order of priority:

(A) For vessels required to be documented under the laws of the United States, the U.S. Coast Guard abstract of title issued in respect of that vessel;

(B) A certificate of registration that is determinative as to vessel ownership; and

(C) A bill of sale.

(iii) Evidence of a vessel lease shall be limited to a written vessel lease agreement or a notarized statement from

the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect.

(iv) Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(v) As used in this section, a "legal landing of halibut or sablefish" means halibut or sablefish harvested with fixed gear and landed in compliance with state and Federal regulations in effect at the time of the landing. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of halibut or sablefish harvested, the IPHC regulatory area or groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting. State catch reports are Alaska, Washington, Oregon, or California fish tickets. Federal catch reports are weekly production reports required under §§ 672.5(c) and 675.5(c) of this chapter. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered in determining qualification to receive QS, nor in calculating initial QS.

(2) *Vessel categories.* Vessel categories include:

(i) Category A—freezer vessels of any length;

(ii) Category B—catcher vessels greater than 60 feet (18.3 meters) in length overall;

(iii) Category C—catcher vessels less than or equal to 60 feet (18.3 meters) in length overall for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) in length overall for halibut; and

(iv) Category D—catcher vessels that are less than or equal to 35 feet (10.7 meters) in length overall for halibut.

(b) *Calculation of initial QS.* The Regional Director shall calculate the halibut QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of halibut in each IPHC regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The Regional Director shall calculate the sablefish QS for any qualified person in each IFQ regulatory area based on that person's highest total legal landings of sablefish

in each groundfish reporting area for any 5 years of the 6-year sablefish QS base period 1985 through 1990. The sum of all halibut QS for an IFQ regulatory area will be the halibut QS pool for that area. The sum of all sablefish QS for an IFQ regulatory area will be the sablefish QS pool for that area. Each initial QS calculation will be modified to accommodate the CDQ program prescribed at § 676.24 of this part.

(c) *Assignment of QS to vessel categories.* Each qualified person's QS will be assigned to a vessel category based on the length overall of vessel(s) from which that person made fixed gear legal landings of groundfish or halibut in the most recent year of participation and the product type landed. As used in this paragraph, "the most recent year of participation" means the most recent of four calendar years in which any groundfish or halibut were harvested using fixed gear, as follows: Calendar year 1988, 1989, or 1990; or calendar year 1991 prior to September 26, 1991.

(1) A qualified person's QS will be assigned to vessel category "A" if, at any time during his/her most recent year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(2) A qualified person's QS will be assigned to vessel category "B" if, at any time during his/her most recent year of participation, that person's vessel was greater than 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(3) A qualified person's sablefish QS will be assigned to vessel category "C" if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(4) A qualified person's halibut QS will be assigned to vessel category "C" if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters), but greater than 35 feet (10.7 meters), in length overall and did not process any groundfish or halibut caught with fixed gear.

(5) A qualified person's halibut QS will be assigned to vessel category "D" if, at any time during his/her most recent year of participation, that person's vessel was less than or equal to 35 feet (10.7 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(6) A qualified person's QS will be assigned to each applicable vessel category in proportion to the landings of

halibut or sablefish made by that person if, at any time during their most recent year of participation, that person used more than one vessel in different categories.

(7) A qualified person's QS for both species will be assigned to the vessel category in which groundfish were landed in the most recent year of participation if, at any time during that year, that person landed halibut in one vessel category and sablefish in a different vessel category.

(8) A qualified person's halibut QS will be assigned to the vessel category in which groundfish were landed, or vessel categories in proportion to the total fixed gear landings of groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of halibut.

(9) A qualified person's sablefish QS will be assigned to the vessel category in which halibut and groundfish were landed, or vessel categories in proportion to the total fixed gear landings of halibut and groundfish, if, at any time during the most recent year of participation, that person's vessel(s) makes no landing(s) of sablefish.

(d) *Application for initial QS.* Upon request, the Regional Director shall make available to any person an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current state and Federal confidentiality rules, and that are available to the Regional Director at the time of the request. An application period of no less than 180 days will be specified by notice in the Federal Register and other information sources that the Regional Director deems appropriate. Complete applications received by the Regional Director will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(1) Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Director. If additional data presented in an application are not consistent with the data compiled by the Regional Director, the applicant will be notified of insufficient documentation. The applicant will have 90 days to submit corroborating documents (as specified at paragraph (a)(1) of this section) in support of his/her application or to resubmit a revised application. All

applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to a notice of insufficient documentation.

(2) Uncontested data in applications will be approved by the Regional Director. Based on these data, the Regional Director will calculate each applicant's initial halibut and sablefish QS, as provided at paragraph (b) of this section, for each IFQ regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an IFQ regulatory area to the respective QS pool for that area.

(3) Any applicant's catch history or other data that are contested by the Regional Director or another applicant will prevent approval of QS amounts that would result from the contested data until discrepancies are resolved. Amounts of QS will not be added to the QS pool for any IFQ regulatory area until they are approved by the Regional Director.

(e) *Appeal of initial allocation.* Initial action on allocation of QS must be appealed, pursuant to § 676.25 of this part, within 90 days of the date any allocation is issued or denied following the process described in paragraph (d) of this section.

(f) *Annual allocation of IFQ.* The Regional Director shall assign halibut or sablefish IFQs to each person holding approved halibut or sablefish QS, respectively, up to the limits prescribed at § 676.22 (e) and (f) of this part. Each assigned IFQ will be specific to an IFQ regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified IFQ regulatory area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Director within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violating rules of this part.

(1) The annual allocation of IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the total allowable catch of halibut or sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska Community Development Quota Program) and that person's QS divided by the QS pool for that area. Overages will be subtracted from a person's IFQ pursuant to § 676.17 of this part. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_{a} - CDQ\ reserve_{a}) \times (QS_{pa} / QS\ pool_{a})] - \text{coverage of } IFQ_{pa}$$

(2) For purposes of calculating IFQs for any fishing year, the amount of a person's QS and the amount of the QS pool for any IFQ regulatory area will be the amounts on record with the Alaska Region, NMFS, as of noon, Alaska local time, on January 31 of that year.

(3) The Regional Director shall issue to each QS holder, pursuant to § 676.13 of this part, an IFQ permit accompanied by a statement specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of that year. Such IFQ permits will be sent by certified mail to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

(g) Quota shares allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the "takings" provision of the Fifth Amendment of the U.S. Constitution. Rather, such quota shares or permits represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson Fishery Conservation and Management Act and other applicable law.

§ 676.21 Transfer of QS and IFQ.

Any person that is allocated QS or IFQ, either initially or by subsequent approved transfer, may sell, lease, or otherwise transfer all or part of their QS or IFQ to another person only in accordance with the transfer restrictions and procedures described in this section.

(a) The QS and IFQ assigned to any vessel category is not transferrable to any other vessel category.

(b) The QS assigned to any catcher vessel category may be transferred only to individuals who are U.S. citizens and IFQ crew members or to persons that receive an initial allocation of catcher vessel QS, except that only individuals may receive transferred catcher vessel QS for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° west longitude. An initial allocation of catcher vessel QS to an individual may be transferred to a solely-owned corporation that is owned by the same individual.

(c) The Regional Director must be notified of any transfer of QS or IFQ by inheritance, court order, security agreement, or other operation of law. Any person that receives QS in this

manner may not use the IFQ resulting from it to harvest halibut or sablefish with fixed gear without first obtaining the approval of the Regional Director under paragraph (e) of this section. Any person that receives QS in this manner may apply to transfer QS to an eligible applicant subject to the transfer restrictions and procedures described in this section.

(d) Transfers of catcher vessel QS approved by the Regional Director cannot be made subject to a lease or any condition of repossession or resale by the person transferring QS except as provided for leasing in paragraph (f) of this section or by court order or as part of a security agreement. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(e) *Transfer procedure.* The transfer of QS or IFQ shall not be effective for purposes of harvesting halibut or sablefish with fixed gear until a transfer application is approved by the Regional Director. The Regional Director shall provide a transfer application form to any person on request. Approved transfers will change the affected persons' QS or IFQ accounts on the date of approval, and the persons applying for transfer will be given notice of the transfer approval, and IFQ permits if necessary, by mail posted on the date of approval unless another communication mode is requested on the transfer application. Applicants whose transfers were not approved will be similarly informed of the reason for disapproval.

(1) *Transfer approval criteria.* A transfer of QS or IFQ for purposes of harvesting halibut or sablefish with fixed gear will not be approved until the Regional Director has determined that:

- (i) The person who is applying to transfer QS or IFQ is the same person who received the QS or IFQ either by initial allocation or subsequent approved transfer, or is a person who legally acquired the QS through inheritance, court order, security agreement, or other operation of law;
- (ii) The person applying to receive transferred QS or IFQ has a transfer eligibility application, containing currently accurate information, approved by the Regional Director;
- (iii) The proposed transfer will not cause the person who would receive QS to exceed the use limits specified at § 676.22 of this part;
- (iv) Both persons have their notarized signatures on the transfer application form, unless the transfer is by inheritance, court order, security agreement, or other operation of law;

(v) There are no fines, civil penalties, or other payments due and owing or outstanding permit sanctions resulting from Federal fishery violations involving either person;

(vi) The person applying to receive transferred QS or IFQ currently exists; and

(vii) Other pertinent information requested on the transfer application form has been supplied to the satisfaction of the Regional Director.

(2) *Transfer eligibility application.* All persons who apply to receive QS or IFQ by transfer must have a transfer eligibility application, containing currently accurate information, approved by the Regional Director. The Regional Director shall provide a transfer eligibility application form to any person on request. Applicants may request either an Individual IFQ Crew Member Eligibility Application or a Corporate/Partnership or Other Entity Eligibility Application. Persons who are not individuals must resubmit a transfer eligibility application if there is a change in the corporation or partnership as described in § 676.22 of this part. Approved transfer eligibility applicants will be informed by certified mail of their transfer eligibility. A disapproved transfer eligibility application will be returned to the applicant with an explanation of why the application was disapproved. Reasons for disapproval of a transfer eligibility application may include, but are not limited to:

- (i) Fewer than 150 days of experience working as an IFQ crew member;
- (ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.11 of this part;
- (iii) An incomplete eligibility application; or
- (iv) Fines, civil penalties, or other payments due and owing or outstanding permit sanctions resulting from Federal fishery violations.

(f) *Leasing QS (applicable until January 2, 1997).* A person may transfer by lease no more than 10 percent of his/her total catcher vessel QS for any IFQ regulatory area to one or more other persons for any fishing year. A QS lease shall not have effect until approved by the Regional Director. The Regional Director shall change QS or IFQ accounts affected by an approved QS lease transfer and issue any necessary IFQ permits. Approved QS leases must comply with all transfer requirements specified in this section. Applications to transfer by lease QS that is under sanction will not be approved. All lease transfers will cease to have effect on December 31 of the year for which they are approved.

§ 676.22 Limitations on use of QS and IFQ.

(a) The QS or IFQ specified for one IFQ regulatory area and one vessel category must not be used in a different IFQ regulatory area or vessel category, except as provided in paragraph (i)(3) of this section.

(b) Halibut IFQ must be used only to harvest halibut with fishing gear authorized at 50 CFR part 301. Sablefish fixed gear IFQ must not be used to harvest sablefish with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area of the Gulf of Alaska.

(c) Any individual who harvests halibut or sablefish with fixed gear must:

- (1) Have a valid IFQ card;
- (2) Be aboard the vessel at all times during fishing operations; and
- (3) Sign any required fish ticket or IFQ landing report for the amount of halibut or sablefish that will be debited against the IFQ associated with their IFQ card.

(d) The requirement of paragraph (c) of this section for an individual IFQ card holder to be onboard during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or IFQ sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use.* No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent (0.01) of the combined total sablefish QS for the Gulf of Alaska and Bering Sea and Aleutian Islands IFQ regulatory areas, unless the amount in excess of 1 percent (0.01) was received in the initial allocation of QS. In the IFQ regulatory area east of 140° west longitude, no person, individually or collectively, may use more than 1 percent (0.01) of the total amount of QS for this area, unless the amount in excess of 1 percent (0.01) was received in the initial allocation of QS.

(f) *Halibut QS use.* Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

- (1) One percent (0.01) of the total amount of halibut QS for IFQ regulatory area 2C;
- (2) One-half percent (0.005) of the total amount of halibut QS for IFQ regulatory areas 2C, 3A, and 3B, combined; and
- (3) One-half percent (0.005) of the total amount of halibut QS for IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E, combined.

(g) If transferred QS would result in an IFQ that is greater than the use limits specified in paragraphs (e) and (f) of this section, then any necessary adjustment to the IFQ account based on such QS will be issued for only the maximum IFQ allowed under these limits.

(h) *Vessel limitations.* (1) No vessel may be used, during any fishing year, to harvest more than one-half percent (0.005) of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that, in IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent (0.01) of the halibut catch limit for this area; and

(2) No vessel may be used, during any fishing year, to harvest more than 1 percent (0.01) of the combined fixed gear TAC of sablefish for the Gulf of Alaska and Bering Sea and Aleutian Islands IFQ regulatory areas, except that, in the IFQ regulatory area east of 140° west longitude, no vessel may be used to harvest more than 1 percent (0.01) of the fixed gear TAC of sablefish for this area.

(3) A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

(i) *Use of catcher vessel IFQ.* In addition to the requirements of paragraph (c) of this section, catcher vessel IFQ cards must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who receives an initial allocation of catcher vessel QS does not have to be onboard and sign IFQ landing reports if that individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of catcher vessel QS for halibut in IFQ regulatory area 2C or for sablefish QS in the IFQ regulatory area east of 140° west longitude, and this exemption is not transferable.

(3) Catcher vessel IFQ may be used on a freezer vessel, provided no frozen or otherwise processed fish products are onboard at any time during a fishing trip on which catcher vessel IFQ is being used. A catcher vessel may not land any IFQ species as frozen or otherwise processed product. Processing of fish on

the same vessel that harvested those fish using catcher vessel QS is prohibited.

(j) *Use of catcher vessel IFQ by corporations and partnerships.* A corporation or partnership that receives an initial allocation of catcher vessel QS may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. This provision is not transferable and does not apply to catcher vessel QS for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° west longitude that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 676.21(b) of this part and be used pursuant to paragraphs (c) and (i) of this section.

(1) A corporation or partnership, except for a publicly-held corporation, that receives an initial allocation of catcher vessel QS loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph, "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Director must be notified of a change in a corporation or partnership as defined in this paragraph within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph, is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) Catcher vessel QS and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 676.21 of this part, before it may be used at any time after the effective date of the change.

§ 676.23 IFQ fishing season.

(a) The fishing period(s) for IFQ halibut are established by the IPHC and are specified at 50 CFR part 301. Catches of halibut by fixed gear at times other than during the specified fishing periods must be treated as prohibited

species as prescribed at §§ 672.20(e) and 675.20(c) of this chapter.

(b) Directed fishing for sablefish using fixed gear in any IFQ regulatory area may be conducted at any time during the period from 00:01 Alaska Local Time on March 1 through 24:00 Alaska Local Time on November 30. Catches of sablefish by fixed gear during other periods may be retained up to the directed fishing standards specified at §§ 672.20(g) and 675.20(h) of this chapter if an individual who holds a valid IFQ card and unused IFQ is onboard when the catch is made. Catches of sablefish in excess of the directed fishing standards and catches made without IFQ must be treated in the same manner as prohibited species.

§ 676.24 Western Alaska Community Development Quota Program.

(a) *Halibut CDQ Program.* The Secretary will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in this paragraph for use as a CDQ. Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible western Alaska community in accordance with a CDP approved by the Governor in consultation with the Council and approved by the Secretary. The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each area:

(1) In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nautical miles from the point where the boundary of the IPHC regulatory area intersects land.

(2) In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in IPHC regulatory area 4C.

(3) In IPHC regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC regulatory areas 4D and 4E.

(4) In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC regulatory area 4E. A trip limit of 6,000 pounds (2.7 metric tons) will apply to halibut CDQ harvesting in IPHC regulatory area 4E.

(b) *Sablefish CDQ Program.* In the notices of proposed and final harvest limit specifications required under § 675.20(a) of this chapter, the Secretary will specify 20 percent of the fixed gear allocation of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under § 675.24(c) of this chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of specific western Alaska communities in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. The Secretary will allocate no more than 12 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

(c) *State of Alaska CDQ responsibilities.* Prior to granting approval of a CDP recommended by the Governor, the Secretary shall find that the Governor approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. The hearing(s) on the CDP do not have to be held on the actual documents submitted to the Governor under paragraph (d) of this section. Such hearing(s) must cover the substance and content of the proposed CDP in such a manner that the general public and the affected parties have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notice of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notice of the hearing, all materials in possession of the State of Alaska that are pertinent to the hearing(s) and that may be released under State and Federal confidentiality laws. The Governor must include a transcript or summary of the public hearing(s) with the Governor's recommendations to the Secretary in accordance with this section. At the same time this transcript is submitted to the Secretary, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of Secretarial review under paragraph (e) of this section.

(d) *CDP application.* The Governor, after consultation with the Council, shall include in his written findings to the Secretary recommending approval of a sablefish/halibut CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss

the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the criteria set out in paragraph (f)(2) of this section. Applications for a CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) The goals and objectives of the CDP;

(ii) The allocation of sablefish or halibut CDQ requested for each subarea defined at § 675.2 of this chapter and for each IPHC regulatory area;

(iii) The length of time the CDQ allocation will be necessary to achieve the goals and objectives of the CDP, including a project schedule with measurable milestones for determining progress;

(iv) The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies);

(v) Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate;

(vi) Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources;

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations;

(viii) A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries; and

(ix) A description of short-term and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest the CDQ allocation;

(ii) Description of the target market for sale of products and competition existing or known to be developing in the target market;

(iii) Description of business relationships between all business

partners (i.e., persons who have a financial interest in the CDQ project), if any, including arrangements for management, audit control, and a plan to prevent quota overages;

(iv) Description of profit sharing arrangements;

(v) Description of all funding and financing plans;

(vi) Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties;

(vii) A budget for implementing the CDP;

(viii) A list of all capital equipment;

(ix) A cash flow and break-even analysis; and

(x) A balance sheet and income statement, including profit, loss, and return on investment on all business ventures within the previous 12 months by the applicant and/or the managing organization.

(3) *Statement of managing organization's qualifications.*

(i) Statement of the managing organization's qualifications includes information regarding its management structure and key personnel, such as resumes and references;

(ii) Description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages; For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and would meet the following criteria:

(A) Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community;

(B) Documentation of a legal relationship between the CDP applicant and the managing organization that clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application (e.g., proven business experience as shown by a balance and income statement, including profit, loss, and the return on investment on all business ventures within the previous 12 months by the management organization).

(e) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the community

eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary shall then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the community eligibility conditions and evaluation criteria under paragraph (f) of this section and other applicable law, including the Secretary's reasons for approval. Publication of the decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP, and the availability of the findings will appear in the Federal Register. The Secretary will allocate no more than 12 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A community may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per community will be accepted.

(2) If the Secretary finds that the Governor's recommendations for halibut and sablefish CDQ allocations are not consistent with the criteria set forth in these regulations and disapproves the Governor's recommendations, the Secretary shall so advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the Federal Register. The CDP applicant may submit a revised CDP to the Governor for submission to the Secretary. Review by the Secretary of a revised CDP application will be in accordance with the provisions set forth in this section.

(f) *Evaluation criteria.* The Secretary will approve the Governor's recommendations for halibut and sablefish CDPs if the Secretary finds the CDPs are consistent with the requirements of this part, including the following:

(1) Each CDP application is submitted in compliance with the application procedures described in paragraph (d) of this section;

(2) Prior to approval of a CDP recommended by the Governor, the Secretary will review the Governor's findings as to how each community(ies) meet the following criteria for an eligible community in paragraphs (f)(2)(i), (ii), (iii), and (iv) of this section. The Secretary has determined that the communities listed in Table 1 of this section meet these criteria; however, communities that may be eligible to submit CDPs and receive halibut or sablefish CDQs are not limited to those listed in this table. For a community to

be eligible, it must meet the following criteria:

(i) The community must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering sea. A community is not eligible if it is located on the coast of the Chukchi Sea or the Gulf of Alaska even if it is within 50 nautical miles of the baseline of the Bering Sea;

(ii) The community must be certified by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) to be a native village;

(iii) The residents of the community must conduct more than one-half of their current commercial or subsistence fishing effort in the waters surrounding the community; and

(iv) The community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The communities of Unalaska and Akutan are excluded under this provision;

(3) Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP;

(4) Each CDP application demonstrates that its managing organization can effectively prevent exceeding the CDQ allocation;

(5) The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDQ application, and have the ability to successfully meet the project milestones and schedule;

(ii) The managing organization has an adequate budget for implementing the CDP, and that the CDP is likely to be successful;

(iii) A qualified applicant has submitted the CDP application and that the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community; and

(iv) That the following factors have been considered:

(A) The number of individuals from applicant communities who will be

employed under the CDP, the nature of their work, and career advancement;

(B) The number and percentage of low-income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP;

(C) The number of communities cooperating in the application;

(D) The relative benefits to be derived by participating communities and the specific plans for developing a self-sustained fisheries economy; and

(E) The success or failure of the applicant and the managing organization in the execution of a prior CDP (e.g., exceeding a CDQ allocation or any other related violation may be considered a failure and may result in partially or fully precluding a CDP from a future CDQ allocation);

(6) For purposes of this paragraph (f), "qualified applicant" means:

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities) that is making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDQ project, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application;

(7) For the purpose of this paragraph (f), "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address; and

(8) If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(g) *Monitoring of CDPs.* (1) Approved CDPs for halibut and sablefish are required to submit annual reports to the Governor by June 30 of the year following CDQ allocation. At the conclusion of a CDP, a final report will be required to be submitted to the Governor by June 30 of the final year of CDQ allocation. Annual reports for CDPs will include information describing how the CDP has met its

milestones, goals, and objectives. The Governor will submit an annual report to the Secretary on the final status of all concluding CDPs, and recommend whether allocations should be continued for those CDPs that are not yet concluded. The Secretary must notify the Governor in writing of receipt of the Governor's annual report, accepting or rejecting the annual report and the Governor's recommendations on the continuance of CDPs. If the Secretary rejects the Governor's annual report, the Secretary will return the Governor's annual report for revision and resubmission to the Secretary.

(2) If an applicant requests an increase in an existing halibut or sablefish CDQ allocation, the applicant must submit a new CDP application for review by the Governor and approval by the Secretary as described in paragraphs (d) and (e) of this section.

(3) Amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and the Secretary before any change in a CDP can occur. The Governor may recommend to the Secretary that the request for an amendment be approved. The Secretary may notify the Governor in writing of approval or disapproval of the amendment. The Governor's recommendation for approval of an amendment will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If the Secretary determines that the CDP, if changed, would no longer meet the criteria under paragraph (f) of this section, the Secretary shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, amendments are defined as substantial changes in a CDP, including, but not limited to, the following:

(A) Any change in the relationships among the business partners;

(B) Any change in the profit sharing arrangements among the business partners, or any change to the budget for the CDP; or

(C) Any change in management structure of the project, including any change in audit procedures or control.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) Description of the proposed change, including specific pages and text of the CDP that will be changed if the amendment is approved by the Secretary; and

(B) Explanation of why the change is necessary and appropriate. The explanation should identify which

findings, if any, made by the Secretary in approving the CDP may need to be modified if the amendment is approved.

(h) *Suspension or termination of a CDP.* (1) The Secretary may, at any time, partially suspend, suspend, or terminate any CDP, upon written recommendation of the Governor setting out his reasons, that the CDP recipient is not complying with the regulations of this part. After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination of a CDP, the Secretary will notify the Governor in writing of approval or disapproval of the Governor's recommendation. In the event of approval of the Governor's recommendation, the Secretary will publish an announcement in the Federal Register that the CDP has been partially suspended, suspended, or terminated along with reasons therefor.

(2) The Secretary also may partially suspend, suspend, or terminate any CDP at any time if the Secretary finds a recipient of a CDQ allocation pursuant to the CDP is not complying with the regulations of this part or other regulations or provisions of the Magnuson Act or other applicable law or if the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area is amended. Publication of suspension or termination will appear in the Federal Register along with the reasons therefor.

(3) The annual report for multi-year CDPs, which is required under paragraph (g) of this section, will be used by the Governor to review each CDP to determine if the CDP and CDQ allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to the Secretary that the CDP be partially suspended, suspended, or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons therefor, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation. The Secretary will publish a notice in the Federal Register that the CDP has been suspended or, with reasons therefor, terminated.

(i) *Compensation for CDQ allocations.*

(1) The Regional Director will compensate persons that receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, and 3B. This compensation of halibut QS from areas 2C, 3A, and 3B will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

(2) The Regional Director will compensate persons that receive a reduced sablefish QS in any Bering Sea and Aleutian Islands IFQ regulatory area because of the sablefish CDQ program by taking sablefish QS from the IFQ regulatory areas of the Gulf of Alaska and allocating it in proportion to the loss suffered by persons in the BSAI area. Such additional compensation of sablefish QS will be allocated in proportion to the amount of sablefish QS foregone due to the CDQ allocation authorized by this section.

(3) Compensation of halibut and sablefish QS foregone due to the CDQ program will occur only in the first year of fishing under the IFQ program, and determination of persons and the amounts to be compensated will be based on the QS pool for all areas as of noon, Alaska local time, on January 31 of the first year of fishing under the IFQ program.

(j) *Limitations on use of CDQ.* (1) Fishing for CDQ halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in 50 CFR part 301. Fishing for CDQ sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ directed fishing may occur only during the IFQ fishing season specified in § 676.23 of this part.

(2) *CDQ permits.* The Regional Director will issue a CDQ permit to the managing organization responsible for carrying out an approved CDQ project. A CDQ permit will authorize the managing organization identified on the permit to harvest halibut or sablefish with fixed gear from a specified area. A copy of the CDQ permit must be carried on any fishing vessel operated by or for the managing organization, and be made available for inspection by an authorized officer. Each CDQ permit will be non-transferable and will be effective for the duration of the CDQ project or until revoked, suspended, or modified.

(3) *CDQ cards.* The Regional Director will issue CDQ cards to all individuals named on an approved CDP application.

Each CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut or sablefish for debit against its CDQ allocation.

(4) No person may alter, erase, or mutilate any CDQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated will be invalid.

(5) All landings of halibut or sablefish harvested under an approved CDQ project must be landed by a person with a valid CDQ card to a person with a valid registered buyer permit, and reported as prescribed in § 676.14 of this part. Dockside sales and outside landings of halibut and sablefish under an approved CDQ program also may be made in compliance with § 676.14(d) of this part.

TABLE 1 to § 676.24—Communities Initially Determined To Be Eligible To Apply for Community Development Quotas

Aleutian Region

1. Atka
2. False Pass
3. Nelson Lagoon
4. Nikolski
5. St. George
6. St. Paul

Bering Strait

1. Brevig Mission
2. Diomedes/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay

1. Aleknagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek

11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

§ 676.25 Determinations and appeals. [Reserved]

[FR Doc. 93-27128 Filed 11-8-93; 8:45 am]
BILLING CODE 3510-22-P

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 821185-3021; LD. 110493A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that incidental catches of Pacific cod be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the total allowable catch (TAC) for Pacific cod in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 7, 1993, until 12 midnight A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT:

Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a), the final 1993 initial specifications (58 FR 8703, February 17, 1993) and subsequent reserve release (58 FR 14172, March 16, 1993) established the TAC specification for Pacific cod in the BSAI as 164,500 metric tons. The directed fishery for Pacific cod was closed on May 11, 1993 (58 FR 28522, May 14, 1993). The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Pacific cod in the BSAI has been reached. Therefore, NMFS is requiring that further catches of Pacific cod in the BSAI be treated as a prohibited species in accordance with § 675.20(c), and is prohibiting its retention effective from 12 noon, A.l.t., November 7, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 675.20.

List of Subjects in CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 4, 1993.

David S. Crestia,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-27514 Filed 11-4-93; 12:22 pm]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director



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February 4, 1994

Steve Pennoyer, Director
NMFS-Alaska Region
P.O. Box 21668
Juneau, Alaska 99802-1668

Dear Steve:

Clem Tillion, Linda Behnken, Chris Oliver and I talked to you Wednesday about the owner-onboard issue as it relates to east of 140°W for sablefish and to Area 2C for halibut. The final sablefish/halibut IFQ rules at 676.22(i) require the catcher vessel QS holders to be onboard when the associated IFQs are being used. Sections 676.22(i)(1) and (2) have the combined effect of exempting initial individual recipients from the owner-onboard provision for all areas except for east of 140°W and in 2C. Section 676.22(j) goes on to exempt initial recipient corporations and partnerships of the owner-onboard rule until the organization changes.

The combined effect of those sections has resulted in the situation where some potential QS holders believe that if they form a corporation and apply for QS under the corporate name they will be exempt from the owner-onboard rule when the program commences in 1995. Needless to say, this runs counter to the Council's intent that the fleet in Southeast remain owner-operated. To correct this situation, perhaps the regulations could be changed in 676.22(i)(2) to state that the exemption does not apply to individuals or corporations established after the date of final Council action. Alternately, it could be defined as of September 25, 1991, to be consistent with the cutoff date for vessel class designation in 676.20(c). Also, the Council clarified in December 1993 that solely owned corporations in Southeast should have the same requirements as individuals in using catcher vessel QS/IFQs.

In this letter, I also want to recap Council clarifications at their December 1993 meeting. The Council requested NMFS to amend the plan or regulations as necessary to:

1. Add to 676.20(a)(iii) other evidence of a lease including: (1) cancelled checks or receipts for IPHC or CFEC permits; (2) IRS tax forms showing a business deduction for the lease; and (3) 1099 tax forms for any crew. Presentation of such evidence would be considered presumptive for determining that such a lease existed.
2. Clarify 676.22(i)(3) to prohibit the use of halibut catcher vessel IFQ on freezer vessels. Sablefish catcher vessel IFQ could still be used on freezer vessels. Concerning this issue, I understand that the industry implementation group is asking the Council to reconsider this prohibition.

Steve Pennoyer
February 4, 1994
Page 2

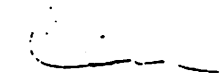
3. Clarify in 676.22(i)(3) that vessel size categories apply regardless of whether the sablefish catcher vessel IFQ is used on a freezer or non-freezer vessel.
4. Change the CDQ limitation in 676.24(b) from 12% to 33% for any one applicant.
5. Clarify regulations (676.24(i)(4)?) so that CDQ compensation in the GOA for sablefish is based on the average sablefish TAC for 1988-1990.
6. Clarify 676.22(i)(3), and other definitions as appropriate, so that rockfish and Pacific cod bycatch could be retained and frozen and such activity would not disallow the use of catcher vessel sablefish IFQ on the freezer vessel. Perhaps this could be attained by changing (3) to read: "Catcher vessel IFQ may be used on a freezer vessel, provided no frozen or otherwise processed [IFQ] fish products are onboard. . ."

And several other items: The Council's final motion prohibited discard of catcher vessel IFQ fish unless required by law. This is embodied in 676.16(l). The Council also intended to prohibit discard for CDQ-caught fish, but I do not see that prohibition explicitly in the regulations. Do we need to add it? Second, the definition of fixed gear in 676.11 does not include jig gear, and we may want to change the referenced groundfish regulations to include that gear type as has been recommended by the industry IFQ implementation team. Third, I noted that 676.24(a)(3) for IPHC Area 4D states that communities in or proximate to IPHC Areas 4D and 4E (meaning, I guess, within 10 nm of where the IPHC boundary intersects land as in 676.24(a)(1)) can participate in the 4D CDQ fishery. The Council originally stated just "in" and not "proximate to." Maybe this makes little practical difference but I thought I would mention it.

And finally, Steve, the Council in April still needs to come back to the issue of clearances for vessels landing IFQ fish outside Alaska per 676.17(a). NOAA GC has been requested to provide the Council with possible solutions to this issue that would not violate other Constitutional law.

Thanks for your attention to the issues raised above.

Sincerely,



Clarence Pautzke
Executive Director

cc Clem Tillion
Linda Behnken

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NANAIMO, B.C.

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SITKA, AK

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INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA

AND THE UNITED STATES OF AMERICA

JAN 19 1994

January 12, 1993

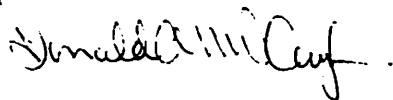
Clarence Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Clarence:

It has been brought to our attention that the Council is considering a regulatory amendment allowing freezer vessels with catcher vessel IFQ to process and freeze their bycatch of Pacific cod and rockfish.

The Commission staff is concerned that this will further complicate the enforcement of the IFQ fishery. Halibut could be illegally processed, hidden or marked as the bycatch species. The Commission cannot support the amendment unless NMFS is confident they can positively identify the species of the frozen product and can monitor its unloading along with their other enforcement duties.

Sincerely yours,



Donald A. McCaughnan
Director

DAM:hg
cc: Linda Behnken, ALFA

Report to the Council
from
IFQ Industry Implementation Workgroup

January 4, 1994

The Workgroup met on December 6 prior to the December meeting in Seattle to provide the Council with an initial report on the provisions of the Final Rule for the sablefish/halibut IFQ program. The Group met once again on January 4, 1994 in Juneau to further discuss some of these same issues, and other additional issues relating to the regulations implementing the IFQ program. The following persons were in attendance:

Linda Kozak, KLVOA
John Bruce, DSFU
Steve Meyer, NMFS Enforcement
Jay Ginter, NMFS
Don Iverson, Jubilee Fisheries
John Woodruff, Icicle Seafoods
Jack Knudsen, FVOA
Shawn Carey, NMFS - Ram Division
Perfenia Pletnikoff, CBSFA

Elaine Dinneford, CFEC
Bill Anderson, USCG
John Lepore, NMFS
Jack Phillips, ALFA
Chris Oliver, NPFMC
Kris Norozs, PVOA
Phil Smith, NMFS - RAM Division
Bob Speed, NMFS - RAM Division
Mark Snigaroff, Pacific Associates

The Workgroup started the meeting by receiving a report from staff on Council actions from the December 1993 meeting. The discussions and recommendations of the Workgroup are summarized below, by major issue:

Recognition of Vessel Leases

NMFS staff explained that conclusive evidence of a lease would still be either a written contract or after the fact agreement, and that otherwise the burden of proof would be on the applicant to establish a lease. This verification may be accomplished via documentation which includes, but is not limited to license receipts, tax returns, and 1099 forms. This is summarized in Attachment 1. The group discussed the possibility that the application and appeals process will be complicated if all permit holders apply for QS even if they were not the vessel owner or a legitimate lease holder. A motion passed with no objections that the Group recommend to the Council that no further changes be made to the lease provisions, noting that the application packages, which reflect Council action from December of 1993, have already been distributed by NMFS.

Use of Halibut Catcher QS on Freezer Vessels

The Group discussed the Council's action which reaffirmed their earlier intent that halibut catcher vessel QS not be allowed to be used on freezer vessels. The Group felt that this decision, in addition to creating discards, could create considerable problems for some vessels. For example, some vessels will be allocated their QS as freezer category, because they operated as such in their most recent year of eligibility (perhaps using plate freezers for cod), but do not typically operate as such while halibut fishing. Therefore, they would be precluded from acquiring additional halibut catcher vessel QS in the future (very little halibut freezer QS will be in existence), thereby hamstringing their operations. A motion was passed with no objection that the Group recommend that the Council reconsider this issue.

Related to this is the issue of P. cod and rockfish retention and the definition of freezer vessel and fishing trip. A motion passed with no objection that the definition of fishing trip be altered to be the period of time when a vessel commences fishing until it makes an IFQ landing and, further, that the definition for freezer vessel be made consistent with the Council's intent that P. cod and rockfish must be retained and could be frozen, as long as nor IFQ product is processed (frozen) on a given trip.

CDQ Compensation

The Group heard that the Council will be using the average of the 1988, 1989, and 1990 TACs (as opposed to the 1994 TAC) for purposes of calculating the CDQ compensation. The only clarification requested by the Group is whether this is intended for the Eastern Bering Sea area only, or for the Aleutian Islands area as well. The assumption is that it would be for both.

Other CDQ Considerations

There was a discussion of the general structure and nature of the CDQ program, noting that the sablefish/halibut fisheries are very different than the pollock fisheries, though the programs are set up virtually identically. The consensus of the Group was that the CDQ program should reflect the intent of the Council that individual fishermen get directly involved as fishermen, rather than leasing their fish.

Definition of Fixed Gear

The Group heard a report from staff that the current groundfish regulations allowed for an allocation of sablefish between setline gear and trawl gear. This is somewhat inconsistent with the Council's intent that, under the IFQ program, other fixed gears could be utilized (jigging, troll gear, handline, etc.). The Group unanimously recommends that the technical amendment necessary be implemented; i.e., that the allocation be changed so that it is between fixed gear and trawl gear.

Corporation related issues

There was discussion of many facets of the use and transfer provisions as they relate to corporations. The only recommendation of the Group was that the solely owned corporation be subject to same restrictions as an individual, consistent with Council clarification in December 1993.

QS/IFQ Caps

There still appears to be confusion over the cap issue and whether persons would be issued IFQs for all of their QS holdings. The Group requests the Council to clarify whether they intended to have a cap on both the QS and the IFQ (eliminating the IFQ cap, while retaining the QS cap, seems to remedy most of the potential problem).

Vessel Clearance Issue

The Group heard from NOAA GC that no formal decision has been reached yet on the possible solutions to this issue (though it is expected that such a decision will be reached in time for this Council meeting). The Group recommends to the Council that, if NOAA GC approves, that clearance requirements be made by management area, with those areas to be determined with industry consultation. This passed 5-3. The Group did not necessarily support such requirements,

but would like the Council to consider this approach if they appear headed in that direction.

Related to this issue was a discussion of the hailing requirements, and that such requirements may carry no teeth if there are no specific requirements for the accuracy of these hail weights. The Group unanimously recommends that such a provision be included (i.e., that the landed weight be within some percentage of the hail weight) and that industry would recommend a specific percentage at a later date.

QS Qualification

The Group understands that a person qualifies for QS if they fished in any area in either 1988, 1989, or 1990, and that this would qualify them for any area in which they fished back to 1984 (1985 for sablefish). It was clarified that this is how NMFS would implement the program.

Block Plan

There was considerable discussion of the Block plan and the implications of such plan on transferability and ownership caps. For example, in Area 4A the maximum QS cap equals only 19,000 lbs. Additionally, all CDQ compensations in the GOA will be in Blocks. The Group wishes to convey concern that the Block system may be so restrictive, in certain areas, that the fishery participants will have difficulty operating under the system.

Implications of Death and Divorce

The Group discussed the implications of QS transfer in the case of death or divorce. For example, would QS from such be considered 'first' or 'second' generation, as there are restrictions placed on second generation QS? Would there be an allowance for such QS to be leased? The Group noted that many of these questions would be decided by operations of law, estate law, etc. and are beyond the authority of the Council or NMFS. No recommendation was made on this issue.

AGENDA C-1(g)
APRIL 1994

COMMISSIONERS:

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RICHARD ELJASON
SITKA, AK
RALPH G. HOARD
SEATTLE, WA
STEVEN PENNOYER
JUNEAU, AK
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February 18, 1994

Clarence Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Clarence:

The Commission (IPHC) held its annual meeting the last week of January in Bellevue, Washington. I have been asked to transmit to the North Pacific Fishery Management Council a number of issues that were addressed by the Commission and its conference board. Some of these issues fall under the Council's jurisdiction.

The Commission did not follow the advice of the Council in setting the date for the first halibut opening. The data on bycatch that you transmitted were in error. I enclose the correct figures which do not clearly demonstrate a bycatch savings when the halibut opening precedes the sablefish season. The Commission was persuaded by arguments of safety and fairness to the small boat fleet and set an opening date of June 6.

Under any IFQ system, some underage and overage of both IFQs, and the overall catch limit, is inevitable. The U.S. plan has an overage system in place under the current IFQ regulations but as it is currently specified this system could result in exceeding the catch limit and as a result might be in conflict with Commission regulations.

The Commission recommends that the Council consider an underage/overage plan that not only deducts overage but allows vessels to carry over a percentage of their IFQ to the following year. The Commission believes the Canadian underage/overage plan has been successful and the Council should consider this plan when developing the final IFQ system for Alaska. A copy of this plan is enclosed.

The conference board supported the following two resolutions presented by the North Pacific Longline Association. The Commission took no action on these resolutions and they are forwarded to you for your information.

Clarence Pautzke
February 18, 1994
Page 2

It is hereby RESOLVED that

1. The IPHC should request that NMFS immediately prepare an emergency rule to be effective by June 1, 1994, apportioning 5% of the BSAI fixed gear halibut PSC to the second trimester of 1994, and apportioning any halibut PSC left after the first trimester to the third trimester; and that
2. The IPHC recommend that NMFS begin preparation of a permanent regulatory amendment allowing for the free apportionment of BSAI fixed gear halibut PSC among trimesters (eliminate current requirement that any PSC be apportioned to the "next season" in a given year), to be effective by January 1, 1995.

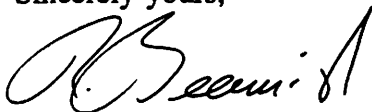
It is hereby RESOLVED that

1. The IPHC should recommend implementation of the 100% observer requirement in Area 517;
2. The IPHC should recommend that all bottom trawling be prohibited in Area 517 until the 100% observer requirement is in effect; and
3. Failing adoption of 1. or 2. above, the IPHC should recommend that NMFS consider alternative measures including time area closures composed of BSAI Areas 517, 518, and 519 which could be closed to bottom trawling (mid-water trawling only).

The Commission realizes that there are many things to consider in managing groundfish and the Council has both jurisdictional authority and a great deal of expertise in this area. We would request, however, that wherever possible, the Council give high priority to halibut bycatch reduction in its groundfish management decisions.

Accurate observer data are fundamental to bycatch management. The Commission urges the Council to maintain the present quality of this program and where practical increase the coverage.

Sincerely yours,



Richard J. Beamish
Chairman

enclosures

9. CARRYOVER OF QUOTA OVERAGES AND UNDERAGES

The Halibut Advisory Board has worked closely with DFO and the IPHC to develop procedures which allow for small carryover of annual IVQ underages or overages. The rules for carryover of IVQ underages or overages are:

1. Licensed halibut vessels landing up to 10% or 400 pounds (which ever is greater) over the vessel's remaining halibut IVQ may keep the proceeds from the overage but will have the equivalent poundage of the overage subtracted from the vessel's IVQ for the following year.
2. Licensed halibut vessels landing more than 10% or 400 pounds (which ever is greater) over the vessel's remaining IVQ may keep the proceeds from the landed weight of the first 10% or 400 pounds of overage and must relinquish to the Crown the remainder. Furthermore, the total poundage of the overage (the 10% or 400 pounds plus the extra) will be subtracted from the vessel's IVQ in 1994. The vessel owner therefore pays a penalty for exceeding the vessel's remaining IVQ by more than 10% or 400 pounds. He relinquishes money to the Crown plus he has the vessel's IVQ reduced by the full amount of the overage in the following year.
3. Licensed halibut vessels at the end of the season that are 10% or less under the vessel's total IVQ will have the equivalent poundage of the underage added to the vessel's IVQ in the following year.
4. Licensed halibut vessels at the end of the season that are more than 10% under the vessel's total IVQ will have the equivalent poundage for 10% of the vessel's 1993 IVQ added to the vessel's 1994 IVQ and will forgo the remainder.
5. All weights are fresh dressed head off weights as calculated by the Port Validator at the time of the validation.
6. The carryover of underages or overages expires at the end of the year following the underage or overage by the licensed halibut vessel (i.e. IVQ underages and overages can not be carried over more than one year).

Relinquishment of Claim cheques for Halibut and Rockfish overages should be addressed to the Receiver General for Canada and mailed to:

Halibut Coordinator
Department of Fisheries and Oceans
Station 420
555 West Hastings Street
Vancouver, B.C., V6B 5G3

**Information on halibut bycatch relative to the opening dates for the
sablefish hook-&-line fishery and halibut fishery in the Gulf of Alaska**

	1990	1991	1992	1993	1994
Halibut Opening Date (Areas 2C, 3A, 3B)	May 1	May 7	June 8	June 10	?
Gulf of AK Sablefish Opening Date	April 1	May 15	May 15	May 15	May 18
Halibut Bycatch Mortality	1,111 mt (1.84 mill. lbs)	984 mt (1.63 mill. lbs)	806 mt (1.33 mill. lbs)	1,187 mt (1.97 mill. lbs)	--
Sablefish Catch	24,500 mt	22,100 mt	19,200 mt	22,400 mt	25,500 mt (TAC)

G. Williams, IPHC
January 26, 1994

COMMISSIONERS:

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February 16, 1994

APR - 8 1994

COPY

Mr. Steven Pennoyer
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

Dear Steve:

Over the past several months, there have been several IFQ issues that have concerned our staff, some of which have been brought to you and/or your staff's attention. After my staff talked with Jay Ginter on some of the issues, it was suggested that I consolidate our concerns in one letter, making them available to you prior to the next Council meeting.

Most of our concerns can be stated by listing our comments on the latest version of the IFQ plan for halibut and sablefish (58FR59375) dated November 9, 1993. The list is as follows:

676.11 - Definitions

The definition of "Trip" on page 62 is unclear and might be more clearly defined as: "Trip, as used in this part, means the period of time from when a vessel commences fishing in an IFQ regulatory area until either the vessel leaves the IFQ regulatory area and/or commences an IFQ landing.

Also, under definitions, we feel there is merit in including a definition for the term "Groundfish" which would clarify the precise meaning of this term in later parts of the document, and in particular in the paragraphs regarding the assignment of QS commencing on page 70.

676.14 - Record keeping and Reporting

(A) In the last sentence, it would be useful to IPHC if the notification also included the vessel name, ADF&G number, vessel's hail (estimated catch), regulatory area, and IFQ permit number. This would assist us in planning our field priorities.

(B) We are confused by the term "delivery vessel". Is this the catching vessel, or a vessel transporting landed product from some other port? Also, is landing site a plant's dock or is it the town in which the plant is located?

(B)(2) States, "all landings and all fish retained onboard the vessel making an IFQ landing are subject to verification, inspection, and sampling". Although it has been explained to us that personal use fish will be included as part of the IFQ, it is not explicitly stated where the poundage of personal use fish will be recorded. We think it would be helpful to clarify this. Also, we feel that reference to "IPHC personnel" should be included in this paragraph.

Mr. Steven Pennoyer
February 16, 1994
Page 2

(B)(3) We would like to see vessel name, ADF&G number, and regulatory area included in the landing report. This would make it easier for us to compare landings with fishing logs.

676.17 - Facilitation of Enforcement and Monitoring

(B) Overages

As noted in the Commission letter to the Council, with any IFQ fishery, there will be underages and overages on an individual level as well as on the overall catch limit. If the U.S. IFQ plan allows a 5% overage on individual IFQs, with no similar underage, there will always be an incentive to exceed the IFQ. The Council should consider adopting an underage/overage plan similar to the Canadian plan which has been successful in staying close to the overall catch limit. An important point to remember is that the Canadian underage/overage plan is based on the poundage remaining at the start of the fishing trip, not on the annual IVQ (or IFQ).

676.20 - Individual Allocations

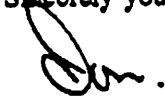
(v) on the bottom of page 69 and top of page 70. Evidence of legal landings should also include Federal Catch Reports from British Columbia. Many legal landings are made in Prince Rupert, and occasionally in Vancouver. Also, be aware that the data base includes some landings not documented by fish tickets that IPHC knows to be valid based on other data sources.

We are assuming that only QS or IFQ from one regulatory area can be fished during one trip. It is important for IPHC to be able to associate the total landed pounds with a single regulatory area. If trips from two regulatory areas were landed at one time it would be difficult to accurately determine how many pounds came from each. The accuracy is important in the IPHC stock assessment.

Also, the Commission staff can not support an amendment to the plan allowing freezer vessels with catcher vessel IFQ to process and freeze their bycatch of Pacific cod and rockfish unless NMFS is confident they can positively identify the species of the frozen product and can monitor its unloading along with their other enforcement duties.

As previously stated, this is a reiteration of our concerns, as it was felt it would benefit you to have them available in one document.

Sincerely yours,



Donald A. McCaughran
Director

cc: Jay Ginter ✓
Phil Smith

**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration***National Marine Fisheries Service**P.O. Box 21668**Juneau, Alaska 99802-1668*

March 15, 1994

Dr. Donald A. McCaughran, Director
International Pacific Halibut Commission
P.O. Box 95009
Seattle, Washington 98145-2009

Dear Don,

Thank you for your comments and questions on the individual fishing quota (IFQ) implementing rules. The final rules implementing the IFQ program were published in the Federal Register on November 9, 1993, at 58 FR 59375. The following response to your specific comments refers to sections and paragraphs in that document.

1. Definitions.

A. Trip. The definition of "trip" at § 676.11 was discussed at the December, 1993, meeting of the North Pacific Fishery Management Council (Council) in Seattle. At that meeting, we discussed the difficulty of enforcing § 676.22(i)(3), which allows catcher vessel IFQ to be used on freezer vessels, with the current "trip" definition. The Council recommended a change to this section and to the "trip" definition. The catcher vessel/freezer vessel issue likely will be revisited by the Council at its April, 1994, meeting. We will initiate a regulatory amendment to make appropriate changes after that meeting. Presently, we are inclined to change the meaning of "trip" to the period of time from when a vessel commences fishing until the commencement of an IFQ landing. This would improve enforcement of the prohibition against using catcher vessel IFQ on a freezer vessel trip when frozen or processed fish products are on board.

B. Groundfish. "Groundfish" is defined at §§ 672.2 and 675.2. This definition, and others, are incorporated in the IFQ regulations by reference under § 676.11.

2. Record keeping and reporting.

A. At its meeting in April, 1994, the Council will likely discuss proposed IFQ regulation changes other than those brought up at its meeting in December, 1993. The question



of adding a hail weight requirement at §§ 676.14(a) and 676.17(a) is one of the regulatory issues we hope to discuss. Identification of the IFQ regulatory area from which the harvest was made and the vessel also may be useful, but such additions to the prior notification requirement may change our information collection budget. We would have to carefully weigh the utility of the additional information against the burden of collecting it.

- B. The term "delivery vessel" in § 676.14(b) refers to the vessel that makes an IFQ landing. Based on the definition of "IFQ landing," this is the vessel that makes an IFQ harvest and delivers it to a registered buyer. Basically, this paragraph requires an IFQ landing report before the landed fish are shipped or the delivery vessel can leave the dock or location where the landing was made. We can clarify "delivery vessel" and "landing site" if NOAA General Counsel and NMFS Enforcement find that these terms are likely to cause enforcement difficulties.
- C. The regulations at § 676.14 do not distinguish between personal use fish and fish retained for other purposes. All harvested IFQ halibut and sablefish must be reported. Also note that the IFQ reporting and recordkeeping requirements are in addition to those required in parts 301, 672, and 675. We will consult with NOAA General Counsel to determine the necessity of explicit reference to personal use fish in this section. We agree that "IPHC personnel" should be included at section § 676.14(b)(2) since this paragraph contemplates biological sampling in addition to inspections for law enforcement purposes. We will add this to our list of regulatory changes to review with the Council in April.
- D. The information required under § 676.14 is in addition to those required in parts 301, 672, and 675. The reason we did not include vessel identification and IFQ regulatory area information is because these data are collected under other state and federal requirements.

3. Facilitation of enforcement and monitoring. We agree with your position that underages should be provided for along with overages at § 676.17(b). Although an underage provision was in the proposed IFQ rule, we deleted it from the final rule because we received a comment that the Council had explicitly decided against allowing for underages. We have this issue on our list of regulatory changes to review with the Council in April. Your testimony to the Council at that time may be helpful.

4. Individual allocations. For purposes of calculating initial allocations of QS, evidence of legal landing of halibut or sablefish is defined under § 676.20(a)(1)(v) to be those that comply with existing state and Federal landing requirements at the time of the landing. If a State of Alaska fish ticket or a Federally required report were made of Canadian landings, then

such landings would be considered "legal." The question is not whether Canadian landings from U.S. fishers occurred, but whether they were reported as required. Ultimately, the legality of any such landings may be reviewed during appeal.

5. Limitations on use.

- A. Section 676.22(a) prohibits the use of an IFQ specified for one regulatory area in a different area. However, fishing in more than one regulatory area during a trip when IFQ for the separate areas are being used is not prohibited. State fish tickets or Federal production reports require accurate information on the area in which IFQ species are harvested. The IPHC needs accurate information on the area of harvest for its stock assessment work, however, these data should be forthcoming from the fishery without imposing a landing requirement between fishing trips in different areas.
- B. Under provisions at § 676.22(i)(3), freezer vessels using catcher vessel IFQ must not have frozen or otherwise processed fish products on board. In December, 1993, the Council acted to change this prohibition to apply only to IFQ species. The Council's rationale was that freezer longliners with markets for frozen Pacific cod or rockfish should be allowed to continue freezing these products if and when they use catcher vessel IFQ to harvest and hold on ice their harvest of IFQ halibut or sablefish. After consulting with NMFS Enforcement, we find that this provision would impose an unacceptable enforcement burden. Therefore, we will be recommending against this action when the Council revisits this issue at its April, 1994, meeting. However, we see no enforcement reason to allow catcher vessel IFQ for sablefish to be used on board a freezer vessel and not make the same allowance for halibut. This issue is related to the "trip" definition discussed in 1.A. above.

I appreciate the time that your staff has invested, and will continue to invest, in reviewing the IFQ regulations and bringing to our attention potential management problems.

Sincerely,



Steven Pennoyer
Director, Alaska Region

ACCESS UNLIMITED, INC.

Strategic Fishing Alternatives

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April 7, 1994

Mr. Phil Smith, Director
Restricted Access Management Division
P.O. Box 21669
Juneau, Alaska 99802

Dear Phil:

As you are aware, Access Unlimited, Inc. has been providing assistance to fishermen and vessel owners who are applying for halibut and/or sablefish quota shares. During conversations with our clients, a number of questions continually arise that we believe need to be addressed and clarified. The purpose of this letter is to identify those issues and request clarification.

1. There are many questions concerning "leases" and "successors-in-interest". The lack of a clear definition for both terms has generated substantial confusion. Many individuals believe they did not engage in a "lease", although they may have entered into a verbal or written commitment regarding how the quota share that would be earned during the time period would be allocated. In fact, literally hundreds of people had "agreements" which they didn't consider as a lease arrangement, yet which appear to fall clearly within the Council description of a lease.

Does any agreement between the parties constitute a lease? An encompassing definition would be very helpful to the industry since many are hesitant to claim they had a lease when, in their perspective, they only had an agreement.

Two general examples come to mind that have a bearing on this issue:

Example 1: A father and son had an informal agreement that the son would fish the father's vessel for halibut each year so that the son wouldn't have to switch gear on his own vessel. After the Secretary approved the halibut and sablefish IFQ system, the father concluded that the son should receive all of the quota shares because the son had paid all of the bills, including insurance, associated with the vessel's halibut fishing. Additionally, as noted above, the son operated the vessel at all times when halibut was being fished. There was, however, no written or un-written lease agreement. Does this qualify under the lease provision?

If the answer is no, why not?

If the answer is yes, the following questions arise:

Mr. Phil Smith, Director
 April 8, 1994
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- How do they document the "lease"?
- The decision by the father to reward the quota shares to the son occurred after the Secretary approved the program. In that sense, the father's decision is a retroactive adjustment to the working agreement between father and son. Since no one could be sure that an IFQ system would be implemented, many of the agreements entered into did not specify or address the issue of who gets quota share. Are retroactive agreements acceptable? If so, are there any limitations? What type of documentation is necessary? Is a retroactive agreement, approved by the parties in interest, an acceptable lease agreement?

Example 2: A father owned a vessel until 1987. His sons operated the vessel for halibut and sablefish. The sons paid all of the bills and were responsible for paying the father a percentage of the gross sales. In 1987 the sons formed a corporation and bought the vessel from the father. The sons indicate they have been told that the only way they will receive the quota share for their harvests that occurred prior to 1987 will be to sign an affidavit that a lease existed. If they don't provide the appropriate document, those shares will be lost since the father does not meet the eligibility requirements for the qualifying years.

Since they didn't have a written or verbal lease, but meet all of the conditions, do they qualify under the lease provisions? If so, how do they document the lease?

2. There are also many questions concerning a "successor-in-interest". What is the definition of a successor-in-interest? Does the definition include past partners, or new partners of a partnership? Does it apply to individuals?

In your letter of April 8 to the qualified applicants, you state "[a]lso, 'successors-in-interest' to partnerships that owned or leased vessels upon which qualifying landings were made may likewise be eligible for Quota Share." The caveat "may" should be defined. Under which circumstances would these successor-in-interest be eligible? Under what circumstances would they not? Additionally, the letter references only to "partnerships." Why only partnerships? Why not all entities?

Example 3: A group of four fishermen formed a partnership to harvest halibut and sablefish. The partnership was dissolved in 1987 when one of the partners bought the other partners out. The remaining partner continued to fish halibut and sablefish during the qualifying years. Does that individual receive quota share for the harvests that occurred prior to 1987? Does he receive all of the quota share, or a portion? If a portion, is it the portion represented by his ownership interest? What documentation, if any, is required?

Example 4: A fisherman who qualifies for quota share dies before the quota shares are issued. The fisherman did not have a corporation. In his will, the deceased fisherman had named his spouse as the sole recipient of his worldly goods. Are the quota shares issued to his spouse, or to the estate? In the event

Mr. Phil Smith, Director
April 8, 1994
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there is no named inheritor for the quota share, we assume they are issued to the estate.

It is our recommendation that the successor-in-interest issue be defined further and, if necessary, Council action be taken to address this issue. It is imperative that with the many different scenarios present, everyone is clear on what is or what is not a lease or partnership. A simple affidavit assigning shares to another qualified party would be very appropriate in our opinion.

The definitions of a lease and a successor-in-interest are extremely important for tax purposes. Although, in example 1 above, the father could transfer the quota shares to his son after he receives them, the transaction is a taxable event. For successors-in-interest, the issue of whether the quota share passes to the spouse or the estate of a deceased recipient also has tax ramifications.

3. Who is the owner of a boat and the subsequent quota shares resulting from that ownership in a community property state? This may appear to be a simple question; however, in the event of a pending divorce, the ownership of the vessel may be in contest. In the case where a divorce settlement has not been reached and the ownership of the vessel is contested, to whom is the quota share issued?

4. We understand that if NOAA/NMFS is unable to make a final decision as to the disposition of contested quota shares prior to the opening of the fishery in 1995, those quota shares will not be issued until a decision on disposition is reached. We also understand that NMFS intends to distribute the poundage represented by the unreleased shares to the fleet proportional to the size of the issued quota share prior to the start of the season.

We believe there will be a significant number of appeals, and seriously question whether there will be sufficient personnel and time available to resolve the questions through the appeals process prior to the start of the 1995 season. Any distribution of contested quota share prior to the start of the season will disenfranchise the holder of the contested quota share if disposition is reached during the year; conversely, the lack of distribution could result in unharvested quota share.

We raise this issue in order to highlight what may become a problem during 1995 if the appeals process becomes bogged down due to lack of personnel, or the number and complexity of appeals. We realize this is a very difficult issue, but suspect that those individuals who run the risk of foregoing their season due to a slower-than-anticipated appeals process will be extremely upset -- particularly if the appeals process extends beyond 1995.

As one suggestion, we propose that NOAA/NMFS establish a mid-year point at which time those contested quota shares that realistically will not be available for harvest by September (for example) be distributed to the fleet. Conversely, those contested quota shares that will realistically have passed through the appeals process by September would not be distributed to the fleet. Other approaches to address this problem certainly exist.

Mr. Phil Smith, Director
April 8, 1994
Page 4

5. Another issue deals with the authority of a lending or financing entity to place restrictions upon the use or sale of quota share that they may finance. For example, does an organization that agrees to finance the purchase of quota share have the legal authority to require that the associated harvest be delivered to a specific facility for sale and/or processing as a condition of the financing? Similarly, does the financing entity or organization have the legal authority to require that quota shares they financed be offered for sale to individuals of their choice as a condition of the financing?

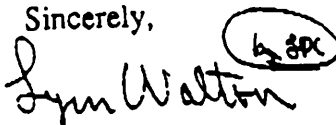
These are important questions since many groups are attempting to develop financing programs that will ensure halibut and sablefish will be delivered to a local processing facility, or that the subsequent transfer of the financed quota share would go to a member of the organization.

6. Lastly, we understand that several financial institutions have indicated that they will need access to a record of liens, if any, against quota shares as a prerequisite to financing the purchase of additional quota shares. We note in your letter of March 16 to Mr. Tremaine that "NMFS will not establish an 'official register' . . . nor will we seek a contractor to do so." As stated in your letter, NOAA GC has "determined that filings under the Uniform Commercial Code should be 'adequate' to protect the interests of those who are accepting Quota Share as collateral for loans."

With this letter, we are requesting that NMFS and NOAA CG reconsider this decision. For many fishermen, financing is critical to the acquisition of additional quota shares; and, additional quota shares are critical to the ability of many fishermen to maintain or establish an economically viable operation. We have been advised that lending institutions must have reasonable access to lien information before they can consider providing financing. The absence of that information will require the institution to conduct its own lien search, which will be costly and time consuming. The end result will be a marked reduction in the ability of fishermen to obtain financing, a significant increase in the length of time before financing could become available to fishermen, and a much more conservative lending policy than otherwise would be adopted.

We greatly appreciate your efforts and those of your staff to ensure that his program progresses smoothly. Thank you in advance for your response to this letter. Please reply to our Juneau office.

Sincerely,



Lynn Walton
President

cc: North Pacific Fishery Management Council
NOAA General Counsel



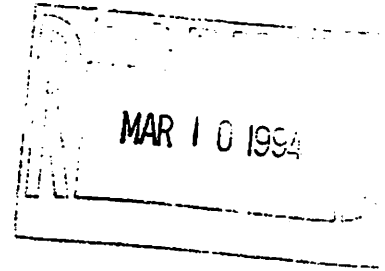
Klawock Cooperative Association

AGENDA C-1(i)
APRIL 1994

P.O. Box 112
Klawock, Alaska 99925
(907) 755-2265

"Site of the First Salmon Cannery Built in Alaska"

March 3, 1994



Mr. Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Request for an item on the April 17, 1994 North Pacific
Fisheries Management Council (NPFMC) Meeting Agenda:
Proposals for Gulf of Alaska CDQ Program

Dear Mr. Lauber:

The Klawock Cooperative Association ("Tribal Council") believes that Community Development Quota (CDQ) programs are an integral part of enlightened fisheries management in the waters off of Alaska. We strongly support the Western Alaska CDQ programs established in sablefish, pollack, and halibut fisheries of the Bering Sea.

The Tribal Council requests that the North Pacific Fisheries Management Council include on the agenda for its April meeting an item permitting consideration of amendments to the Gulf of Alaska fisheries management to establish a CDQ program for the benefit of Southeast Alaska coastal villages. Building on the council's extensive work crafting CDQ programs in the Bering Sea ground fish fisheries, and in light of the inherent regulatory advantages of implementing a CDQ program together with the new individual fishing quota (IFQ) limited access management regime, the Tribal Council requests that the council consider the tribe's proposals for a groundfish CDQ program in the Gulf of Alaska as soon as reasonably possible.

Thank you for considering the tribe's request to have its proposal placed on the agenda of the upcoming NNPFMC meeting. The Tribal Council looks forward to the opportunity to present the council with the documentary evidence and analysis that support together with specific regulatory proposals for council consideration in advance of its April meeting.

Sincerely yours,

A handwritten signature in cursive script that reads "Roseann Demmert". The signature is written in black ink and is positioned above the printed name and title.

Roseann Demmert
PRESIDENT

DISCUSSION PAPER

**CDQ Compensation Formula
for the
Sablefish & Pacific Halibut IFQ Program**

Prepared by
National Marine Fisheries Service
Alaska Region

April 1994

EXECUTIVE SUMMARY

This document provides information on the use of various base year periods in the Community Development Quota (CDQ) compensation formula for the Individual Fishing Quota (IFQ) program for Pacific halibut and sablefish. It was produced in response to a request by the North Pacific Fishery Management Council (Council) to see data pertaining to this issue.

First, the document provides a brief overview of the purpose of the CDQ compensation formula. Second, the document describes the methodology of this formula. Third, the document provides an example of how this formula will operate. Finally, the document provides data on several different base year periods for the Pacific halibut and sablefish fisheries.

The information in this document is intended to assist the reader in deciding which base year period should be used for calculating CDQ compensation. The data in Tables B through I provide an indication of the variations in quota share (QS) and resulting IFQ depending on which base year period is used in the compensation formula. This data should be viewed as approximations, the actual values will vary as the QS pool changes. Another important factor that will affect the outcome is the number of significant digits carried by values used in the calculation.

After a decision is made on which base year period(s) to use for the CDQ compensation formula a regulatory amendment will be developed incorporating that decision.

OVERVIEW

The CDQ compensation formula was designed to compensate persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas resulting from allocations of those fishery resources to the CDQ program. Compensated persons are those who are initially issued QS in CDQ areas. This one-time compensation adjustment will be in the form of QS in each of the non-CDQ areas.

The CDQ compensation formula will affect all persons who are initially issued QS, including those persons who did not historically participate in the Pacific halibut or sablefish fisheries in CDQ areas. The Council intended that all persons who are initially issued QS share the burden of compensating persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas. This is accomplished by distributing the burden of compensation among all persons that are initially issued QS by reducing their harvest privilege by a fixed percentage. Even persons who receive compensation QS will share the burden of compensation.

The amount of compensation QS a person receives will equal the reduction in the amount of harvestable fishery resources in a CDQ area minus the fixed percentage reduction shared by all persons who are initially issued QS. Persons eligible for compensation will receive a portion of the total amount of compensation QS from each non-CDQ area. The portion from each non-CDQ area will be proportional to the size of the QS pool of

that area. For example, a person who is eligible for compensation QS for halibut will receive the greatest amount of compensation QS from area 3A, which has the largest QS pool, and the least amount from area 4A, which has the smallest QS pool.

METHODOLOGY OF THE CDQ COMPENSATION FORMULA

The following narrative describes how the CDQ compensation formula operates. First, (1) add the CDQs from all management areas to calculate total CDQs, (2) add the TACs from all management areas to calculate total TAC, and (3) divide the total CDQs by the total TAC. This provides the proportion of the total TAC going to the CDQ program.

Second, multiply the proportion of the total TAC going to the CDQ program (calculated above) by the TAC for each management area. This provides the total pounds of fish used for CDQ compensation in that management area. In areas with CDQs, the CDQ compensation is a portion of the loss due to CDQs that will not be compensated by QS holders in non-CDQ areas.

Third, divide the original QS for each management area by the part of the TAC that will not be used for compensation in that area. This provides the QS per pound of non-compensating TAC.

Fourth, multiply the part of the TAC in each area that will be used for compensation by the QS per pound of non-compensating TAC for that area. This provides the number of QS created and used for compensation in that area.

Fifth, (1) add up, for each person with QS in a CDQ area, the total lost IFQs to CDQs in all areas and then (2) divide the total lost IFQs for each person by the total lost IFQs for all persons. This provides the proportion of the new QS in each area that the person receives in compensation.

Sixth, and finally, multiply the proportion of the new QS in each area that the person receives in compensation by the number of new QS available for compensation in each area. This provides the number of QS a person receives as compensation in each area.

EXAMPLE OF A CDQ COMPENSATION CALCULATION

For example, if a person was initially issued 5000 QS for Pacific halibut in regulatory Area 4E, he/she will have that entire QS amount transferred into CDQ compensation QS. This is because 100 percent of the TAC of Pacific halibut in regulatory Area 4E is allocated to the CDQ program. To figure how much CDQ compensation QS the person will receive in one of the non-CDQ areas (Area 2C is used in this example):¹

¹PLEASE NOTE: The following example uses data that may be changed before the one-time CDQ compensation QS adjustment, including the base year period (for this example the 1994 TAC) and QS pools (based on the information currently available to NMFS). The QS pools, and therefore the resulting CDQ compensation QS, may be different than in this calculation once all applications have been received by NMFS and the QS pool is set. Similarly, which base year period is finally chosen will affect the result. Although the eventual calculation may employ different numbers, the methodology of the calculation is accurately portrayed by this example.

(a) Multiply the quota share in the CDQ area, 5000, by the quota share pool in the non-CDQ area, 57575315. The resulting product is 287876570000.

(b) For each CDQ area, multiply the TAC by the percentage amount that will be allocated to CDQs. Sum the resulting products. The resulting sum is 1180000.

(c) Divide the resulting sum in (b) by the TAC for all CDQ and non-CDQ areas, 46400000. The resulting quotient is 0.025431034.

(d) Subtract the resulting quotient in (c) from 1. The resulting difference is 0.974568966.

(e) Divide the resulting quotient in (c) by the resulting difference in (d). The resulting quotient is 0.026094647.

(f) Divide the TAC for the CDQ Area, 100000, by the quota share pool in the CDQ area, 165417. The resulting quotient is 0.604532786.

(g) Subtract the resulting quotient in (c) from the percentage amount that will be allocated to CDQs in that area. The resulting difference is 0.974568966.²

(h) Add all the TACs of the CDQ areas. The resulting sum is 3600000.

(i) Multiply the resulting sum in (h) with the resulting quotient in (c). The resulting product is 91551.7224.

(j) Subtract the resulting product in (i) from the resulting sum in (b). The resulting difference is 1088448.278.

(k) Divide the resulting difference in (g) by the resulting difference in (j). The resulting quotient is 0.000000895.

(l) Multiply the following four numbers: the resulting product in (a); the resulting quotient in (e); the

²Be careful not to confuse this resulting difference with the resulting difference in (d). In this example they happen to be the same number because the percentage amount that will be allocated to CDQs in Area 4E is 100 percent, making the number that the resulting quotient is subtracted from 1, the same number used in (d). If another area is used, for example Area 4B, where the percentage amount is 20 percent, the resulting quotient would be subtracted from 0.2, making the resulting difference in (d) different than the resulting difference in (g).

resulting quotient in (f); and the resulting quotient in (k). The resulting product is 4064.439284. This product, when rounded to the nearest whole number, 4064, represents the amount of CDQ compensation QS a fisher would receive in Area 2C for the 5000 QS in Area 4E.

This process would be repeated for each non-CDQ area. The only number that would need to be changed is the quota share pool of the non-CDQ area in (a).

BASE YEAR PERIOD

The selection of which base year period to use for the CDQ compensation formula will affect how much compensation QS each person will receive in non-CDQ areas to replace QS lost in CDQ areas. It will also affect how much all persons must contribute for that compensation. The numerical value of the base year period used in the CDQ compensation formula is the TAC (or the mean of the several TACs) for that time period. Table A shows the differing compensation rates according to various base year periods used in the CDQ compensation formula described above. Note that the compensation rates listed in Table A are different for halibut and sablefish when the same base year period is used.

TABLE A

BASE YEAR PERIOD	SABLEFISH COMPENSATION RATE (IN %)	HALIBUT COMPENSATION RATE (IN %)
1991	3.36	1.94
1994	1.93	2.33
1988-90	3.03	1.71
1988-94	2.81	2.05
1992-94	2.30	2.50

The amount of compensation QS each person will receive for reductions in harvestable fishery resources in CDQ areas by IFQ is directly proportional to the compensation rate. A lower numerical value for the compensation rate produces a smaller quantity of compensation for each person who will be issued QS for those reductions. A lower numerical value also means that each person's contribution to the compensation would be less. The median compensation rate for halibut (2.05%) is determined by using 1988-94 as the base year period. Similarly, the median compensation rate for sablefish (2.81%) is determined by using the same base year period, 1988-94.

Tables B through E show the different amounts of compensation QS for halibut in Area 2C, 3A, 3B, and 4A, respectively, if a person was issued 5000 QS for halibut in Area

4E. Tables F through I show the different amounts of compensation QS for sablefish in the Southeast Outside (SO), West Yakutat (WY), Central Gulf (CG), and the Western Gulf (WG) areas, respectively, if a person was issued 50000 QS for sablefish in the Bering Sea area. The resulting IFQ pounds from compensation QS for halibut and sablefish reflects what a person would have received if the most recent TAC (1994) was used in the QS to IFQ conversion formula.³

³There is a potential for confusion between a person's compensating IFQ, which is the IFQ amount used to back calculate the amount of CDQ compensation QS, and the resulting IFQ from the CDQ compensation QS. A person's compensating IFQ will be calculated by using the chosen base year period. This ensures that a person who will receive CDQ compensation QS contributes the same percentage amount to the CDQ program as all other persons who are initially issued QS. The resulting IFQ of the CDQ compensation QS, however, will be calculated by using the same TAC as is used for calculating all other QS, the TAC of the current fishing season. This is true because once the CDQ compensation QS has been issued to qualifying persons who are initially issued QS, CDQ compensation QS and QS will be indistinguishable.

TABLE B

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN AREA 4E	COMPEN- SATION QS IN AREA 2C	RESULTING IFQ LBS. IN AREA 2C
1991	1.94	5000	3911	747
1994	2.33	5000	4066 ⁴	777
1988-90	1.71	5000	3349	640
1988-94	2.05	5000	3954	756
1992-94	2.50	5000	4696	897

TABLE C

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN AREA 4E	COMPEN- SATION QS IN AREA 3A	RESULTING IFQ LBS. IN AREA 3A
1991	1.94	5000	11915	1766
1994	2.33	5000	12388	1836
1988-90	1.71	5000	10203	1512
1988-94	2.05	5000	12046	1785
1992-94	2.50	5000	14306	2120

⁴The difference between this amount (4066) and the amount derived from the CDQ compensation formula example earlier in this paper (4064) is most likely due to using different estimates of the quota share pool and retaining a different number of significant digits during the calculation. The number of significant digits retained during the calculation, which will be performed by a computer at the Alaska Region, makes a difference in the final compensation QS amount.

TABLE D

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN AREA 4E	COMPEN- SATION QS IN AREA 3B	RESULTING IFQ LBS. IN AREA 3B
1991	1.94	5000	3408	272
1994	2.33	5000	3544	282
1988-90	1.71	5000	2919	233
1988-94	2.05	5000	3446	275
1992-94	2.50	5000	4092	326

TABLE E

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN AREA 4E	COMPEN- SATION QS IN AREA 4A	RESULTING IFQ LBS. IN AREA 4A
1991	1.94	5000	890	122
1994	2.33	5000	926	127
1988-90	1.71	5000	762	105
1988-94	2.05	5000	900	124
1992-94	2.50	5000	1069	147

TABLE F

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN BS AREA	COMPEN- SATION QS IN SO AREA	RESULTING IFQ LBS. IN SO AREA
1991	3.36	50000	2775	679
1994	1.93	50000	456	112
1988-90	3.03	50000	2001	490
1988-94	2.81	50000	1745	427
1992-94	2.30	50000	1021	250

TABLE G

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN BS AREA	COMPEN- SATION QS IN WY AREA	RESULTING IFQ LBS. IN WY AREA
1991	3.36	50000	2223	460
1994	1.93	50000	365	76
1988-90	3.03	50000	1603	332
1988-94	2.81	50000	1398	290
1992-94	2.30	50000	818	170

TABLE H

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN BS AREA	COMPEN- SATION QS IN CG AREA	RESULTING IFQ LBS. IN CG AREA
1991	3.36	50000	4672	898
1994	1.93	50000	767	147
1988-90	3.03	50000	3369	648
1988-94	2.81	50000	2938	565
1992-94	2.30	50000	1719	330

TABLE I

BASE YEAR PERIOD	COMPEN- SATION RATE (IN %)	ORIGINAL QS IN BS AREA	COMPEN- SATION QS IN WG AREA	RESULTING IFQ LBS. IN WG AREA
1991	3.36	50000	1449	183
1994	1.93	50000	238	30
1988-90	3.03	50000	1045	132
1988-94	2.81	50000	911	115
1992-94	2.30	50000	533	67

The halibut data has less over-all variance in resulting IFQ pounds because the variance between its compensation rates is less than that of sablefish. Other factors, such as size of the QS pool and the amount of initially issued quota share that must be compensated, also contribute to the variances. Table E, for example, contains halibut data for a person who will be compensated in Area 4A (relatively small QS pool) for 5000 QS in Area 4E. The difference between the resulting IFQ pounds when using the highest compensation rate (2.50%) and the lowest (1.71%) is 42 pounds. Table H, on the other hand, which contains sablefish data for a person who will be compensated in the Central Gulf area (relatively large QS pool) for 50000 QS in the Bering Sea area, shows a difference of resulting IFQ pounds between the highest compensation rate (3.36%) and the lowest (1.93%) of 751 pounds.

The over-all difference between the highest and lowest compensation rate for a person who will be compensated for 5000 QS for halibut in Area 4E in resulting IFQ pounds for all areas is 1000 pounds (3490 minus 2490). The median compensation rate would yield a resulting IFQ total of 2940 pounds. The over-all difference between the highest and the lowest compensation rate for a person who will be compensated for 50000 QS for sablefish in the Bering Sea area in resulting IFQ pounds for all areas is 1855 pounds (2220 minus 365). The median compensation rate would yield a resulting IFQ total of 1397 pounds.

CONCLUSION

The base year period(s) chosen will affect the amount of compensation received by individuals who's harvest privileges have been reduced by the CDQ program. This choice will also affect the contribution of each individual who is initially issued QS.

Although both groups will be affected by the choice, the effects will be more obvious to individuals being compensated than to individuals contributing because their contributions will be distributed throughout the QS pool. This distribution will make the contribution per individual nearly imperceptible.

Another consideration is that CDQ compensation QS will lose its distinguishing identity on issuance. It will be treated like other QS for purposes of transfer and will be subject to the Modified Block proposal if the proposal is approved by the Secretary of Commerce.

Finally, it is important to clarify that the data in Tables B through I are approximations, the exact amount of compensation QS and resulting IFQ will be slightly different because the QS pool is not in final form and the calculation will be performed by a computer program that is using a floating decimal and does not perform rounding until the entire calculation is complete.

4E Halibut Compensation Example				
QS Pool	165,417			Compensation
Quota Shares	5,000	Compensation		Paid if 10,000
Base Period	Base Lbs.	Rate	LBS.	Pre-Comp. IFQs
91	100,000	1.94	2,907	194
94	100,000	2.33	3,022	233
88-90	100,000	1.71	2,490	171
88-94	107,143	2.05	2,940	205
92-94	116,667	2.50	3,490	250
Bering Sea Sablefish Compensation Example				
QS Pool	14,741,721			Compensation
Quota Shares	50,000	Compensation		Paid if 10,000
Base Period	Base Lbs.	Rate	LBS.	Pre-Comp. IFQs
91	3,418,000	3.36	2,220	336
94	595,000	1.93	365	193
88-90	3,270,000	3.03	1,602	303
88-94	2,398,286	2.81	1,397	281
92-94	1,186,667	2.30	817	230

DRAFT IFQ PROGRAM REGULATION CHANGES

April 15, 1994

Jay J. C. Ginter
 Limited Access Planning Branch
 Fisheries Management Division, Alaska Region, NMFS

This report describes the current status of FMP and regulatory amendments prescribed for the IFQ program since its final implementing rule was published on November 9, 1993, and since the Council reviewed the final rule at its December, 1993, meeting.

This report has three parts. Part A describes regulatory actions that have been published or are close to publication. Part B describes changes that were considered by the Council at its December meeting, but need further consideration before proposed rules can be drafted and published. Finally, Part C describes some regulatory changes that have been suggested, but have not yet been considered by the Council.

Part A: Current Regulation Changes

1. Appeals regulations (regulatory amendment)
 - Proposed rule published February 9, 1994.
 - Comment period ended March 28, 1994 -- no comments received.
 - Final rule documents are being drafted.
 - Target publication date for final rule is May 31, 1994; effective June 30, 1994.

2. CDQ reserve limitation (plan amendment)
 - Approved by Council in December, 1993.
 - If approved, this action would change the limit on how much of the CDQ reserve could be allocated to any one CDQ applicant from 12 percent to 33 percent.
 - Intent is to assure that the halibut-sablefish CDQ program operates under the same CDQ allocation limitations as the pollock CDQ program, and avoid breaking up existing CDQ organizations.
 - Proposed rule documents are under review in Region
 - Target publication date is May 2, 1994; comment period to run through mid-June.

3. Block proposal (plan amendment)
 - Approved by Council in September, 1993.
 - If approved, this action would require QS which will result in less than 20,000 pounds of IFQ in the first year if the IFQ program to be non-divisible, i.e. all such QS must be transferred as a single unit or block, and would limit the number of blocks that could be held by any person.
 - Intent is to limit the extent of consolidation in the fleet under the IFQ program thereby preserving traditional characteristics of the fishery.
 - Delay due to time required to complete a supplemental analysis on the potential effects of the block proposal on transferability of some blocks and on CDQ compensation.

- Proposed rule documents are under review in Region
 - Target publication date is May 2, 1994; comment period to run through mid-June.
4. Vessel lease clarification (regulatory amendment)
 - Approved by Council in December, 1993.
 - Intent is to improve ability of persons with non-written lease agreements to demonstrate their qualification for an initial allocation.
 - Change would clarify what would be considered to be "conclusive" evidence of a vessel lease, but does not prohibit consideration of non-conclusive evidence.
 - This proposed change is incorporated in the CDQ limitation plan amendment (A.2. above).
 5. Restrict the use of catcher vessel QS by solely owned corporations (SOC) in SE (area 2C for halibut and east of 140° W. long.) to the same requirements as individuals (regulatory amendment).
 - Approved by Council in December, 1993.
 - Intent is to prevent individuals who receive an initial allocation of catcher vessel QS in SE from taking advantage of the hired master allowance provided to corporations that receive an initial allocation of catcher vessel QS in SE.
 - Change would close a loophole that exists for a SOC in SE Alaska which provides it with two benefits under § 676.22(j) that would not have been allowed under § 676.22(i). These are the use of a hired master to fish the initial allocation of QS and the ability to acquire additional QS the IFQ of which could be fished by a hired master. These benefits that are allowed to corporations and to individuals but are explicitly denied to individuals in SE by § 676.22(i)(2).
 - This proposed change is incorporated in the block proposal plan amendment (A.3. above).
 6. Other regulatory amendments incorporated in the block proposal amendment (A.3. above).
 - (a) Clarification of transfer regulations at § 676.21.
 - (b) Correction of an error at § 676.21(f) to allow leasing of QS for three years as specified by Council instead of two years.
 - (c) Deletion of § 676.22(g) to avoid redundancy and misconception of an "IFQ cap."

Part B: Proposed Changes Needing Further Consideration

1. Use of catcher vessel IFQ on freezer vessels. Council acted in December, 1993, to:
 - (a) Prohibit use of catcher vessel IFQ for halibut on freezer vessels;
 - (b) Clarify that use of sablefish catcher vessel IFQ on freezer vessels is restricted by size class;
 - (c) Prohibit use of catcher vessel IFQ for sablefish on any vessel with frozen or otherwise processed IFQ product on board (this would allow retention and freezing of rockfish or Pacific cod, for example); and
 - (d) revise the definitions of "catcher vessel," "freezer vessel," and "trip."

Intent: To clarify that an exception to use catcher vessel IFQ for sablefish on freezer vessels does not extend to use of catcher vessel IFQ for halibut on freezer vessels, but that freezing non-IFQ species in such situations is permissible. Further, to clarify that the use of sablefish catcher vessel IFQ on freezer vessels is limited by the length specifications for vessel categories B and C.

Key Points:

- This suite of changes would require an FMP amendment because the existing FMP text explicitly prohibits the use of sablefish catcher vessel IFQ on a vessel that has frozen product of "any species," but if changed, would apply to just IFQ species.
- No halibut could be retained on a freezer vessel that was using catcher vessel sablefish IFQ, regardless of whether freezer or catcher vessel halibut IFQ were onboard. The EA/RIR analysis for this change would assess the potential deadloss of halibut that would result from this change and economic benefits foregone.
- Changes to the definitions for "catcher vessel," "freezer vessel," and "trip" would be necessary to clarify that "freezer vessels" remain as such for the year and do not change into "catcher vessels" when catcher vessel IFQ for sablefish is used on board.
- The freezer vessel definition would become more consistent with the "processor vessel" definition in the groundfish regulations which is based on the capacity to process and not on whether processing is done on any given trip.
- The change in the "trip" definition closes a potential loophole that would have allowed a freezer vessel to begin a new trip by crossing a regulatory area boundary.

Reconsideration of actions (a) and (c):

- Justification for treating catcher vessel IFQ for sablefish and halibut differently continues to be problematic in light of potential discard of halibut that otherwise could be landed with IFQ; reconsideration of this provision is requested.
- Prohibiting the processing of non-IFQ species on a freezer vessel that is using catcher vessel IFQ (as currently provided at § 676.22(i)(3)) may facilitate enforcement.
- Reversing the recommendation on these two points would allow use of catcher vessel halibut and sablefish IFQ on board a freezer vessel provided no frozen product of any species is on board the vessel when catcher vessel IFQ is being used. This would require no change in FMP text; actions (b) and (d) would be regulatory amendments.

2. CDQ compensation formula. Council requested in December, 1993, an analysis of the potential effects of using 1994 TAC or an average of the TACs in 1988, 1989, and 1990 or some other years in the CDQ compensation formula.

- A discussion paper on this subject is attached at this agenda item.
- The year 1994 was mentioned in this regard only in the preamble to the final rule. However, an explanation of how the CDQ compensation formula would work is recommended by GCAK. This would change the regulatory text at § 676.24(i).

- After selecting a preferred alternative, a regulatory amendment will be prepared to clarify the CDQ compensation process.

Part C: Other Suggested Changes

1. **Primary ports at § 676.17(a):**
 - (a) Add geographic location descriptions.
 - (b) Require primary port clearance only for landings outside the US; delete Bellingham.
 - (c) Require IFQ landings made in Canada to be made at specified Canadian ports (e.g. Vancouver, Prince Rupert).
 - (d) Require estimated weights of IFQ harvests on board when clearing at a primary port outside of Alaska to be within a specified percentage of actual landed weight.
2. **Underages and overages at § 676.17(b):**
 - Providing for under harvests within 5 percent of an IFQ to be carried over to a succeeding year in addition to subtracting over harvests from an IFQ in a succeeding year may reduce the incentive to over harvest an IFQ.
 - This change would be a FMP amendment.
3. **Reporting:**
 - (a) Add requirement to hail an estimated weight of IFQ fish harvested when giving prior notice of landing as required at § 676.14(a).
 - (b) Add IPHC biologists to list of persons authorized at § 676.14(b)(2) to verify, inspect, and sample all fish retained onboard a vessel making an IFQ landing.
 - (c) Add requirement to distinguish between halibut and sablefish harvests intended for "personal use" and that intended for sale in landing report.
4. **Halibut PSC limit:**
 The halibut PSC limit applicable to longliners could be a problem under the IFQ program. Fishermen without adequate amounts of IFQ to cover their halibut bycatch may be forced into early use of their sablefish IFQ to avoid being closed by the PSC limit. Preventing a race for fish, or PSC, is an objective of any IFQ program. The IFQ Implementation Group recommended a temporary (two years) exemption of the longline fishery from the halibut PSC limit. This regulatory change has not yet been made, however.
5. **"Fixed gear" definition:**
 - Current FMPs allocate sablefish TAC only between trawl gear and hook-and-line gear (or pot gear in the BSAI), however IFQ amendment specifically provided for other fixed gears (e.g. jig and troll gears) to participate in the IFQ program.
 - A FMP amendment would be required to allow jig and troll gear, or any other fixed gear to be used to harvest sablefish.

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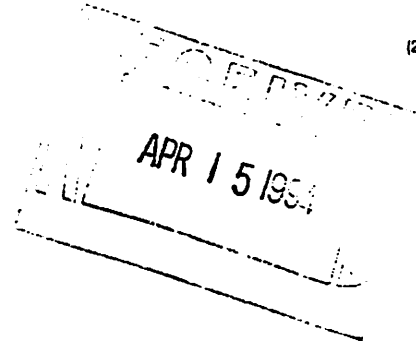
AGENDA C-1
APRIL 1994
DC Supplemental

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April 12, 1994



Dr. Clarence Pautzke, Chairman
North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Clarence:

The IPHC staff has reviewed the IFQ implementing rules and has worked closely with NMFS staff to insure that the system meets our data requirements and works as efficiently as possible. We have made several suggestions, some of which may require Council action. We are uncertain which suggestions require Council action and which may be implemented directly by NMFS, so we have addressed all our recommendations to the Council.

Our recommendations are listed by stating our comments on the latest version of the IFQ rule (58FR59375) dated November 9, 1993. The list is as follows:

Section 676.14 - Record Keeping and Reporting.

The present rule for prior notice of IFQ landings (part A) only requires permit number and landing information to be reported. We think that vessel identification, regulatory area, and hail weight should be added. Although this additional information will increase the amount of data collected, it could possibly assist NMFS enforcement, and will assist IPHC in efficiently scheduling the sampling of the vessels to collect data necessary for stock assessment.

"IPHC personnel" should be added to the list of personnel inspecting and sampling IFQ landings in part (B)(2). We have discussed this with NMFS and they agree that this is necessary for IPHC to conduct its responsibilities.

Vessel identification and regulatory area should also be added to the (B)(3) landing report (debit card system) because the IFQ is linked to the regulatory area and the vessel size class. We realize this information will be available on fish tickets, but correlating fish ticket information with landing reports requires an additional step which occurs long after the fact, and will hinder tracking and enforcement of catch by area. Also, we understand that NMFS is concerned about the duplication of efforts, and although initially there would be a duplication of information, the Commission staff hopes that eventually the landing catch information could be obtained through the debit card systems and fish tickets could possibly be eliminated.

Dr. Clarence Pautzke
April 12, 1994
Page 2

We would also like to see a hail out requirement incorporated into the program similar to the one that is presently in effect in the Canadian system. In Canada, vessels are required to hail out 24 hours prior to setting gear. This allows DFO monitors, enforcement officers, and IPHC samplers to anticipate future activity. The useful hail out information is: permit number; vessel identification; regulatory area; expected landing port, dealer and date. We have not officially discussed the details with NMFS but understand this could add additional costs. We believe these costs should be small and the additional information available with a hail out requirement would make our sampling program more efficient and would also assist the fishing industry in spreading landings and more efficiently marketing the product.

The hailing out could be done with the presently planned toll-free telephone number used for notification of the IFQ landing. The regulatory area would be binding but the sale information could be changed at the time of hail in. The current IFQ enforcement plan is to have plant inspections, with vessels subject to citation if unloading is occurring without hailing in. We believe that a hail out system would add another level of checks to the enforcement program.

The industry could also benefit from a hail out program. The hail out data can be summarized and made available in a timely manner. This summary enables fishermen and buyers to estimate future short term landings and arrange their fishing or purchasing activities accordingly. In Canada, the summarized data are made available through a telephone hotline. There is a small charge per call, enabling some cost recovery of the hotline. A hail out system would require some additional computer programming to receive and summarize the data, but the toll-free telephone line will be in place and the additional cost might be small.

We recommend that the Council incorporate a hail out system into the IFQ program as it would be of direct benefit to enforcement, would facilitate the IPHC sampling program which is vital for stock assessment, and would provide a valuable planning tool for industry.

Section 676.17 -- Facilitation of Enforcement and Monitoring

We believe the proposed IFQ rule should include provisions for a small carryover for fishermen landing less than the IFQ (underage), along with the current provisions for deducting overages in part (B). We are in agreement with NMFS on this issue and understand it will be part of the regulatory changes discussed at the April Council meeting. The Commission staff is concerned that the overage system proposed under IFQ regulations could result in consistently going over the catch limit and might be in conflict with Commission regulations.

Dr. Clarence Pautzke
April 12, 1994
Page 3

The IFQ regulations as written state that any IFQ halibut landed in excess of a person's current IFQ permit will be considered an "IFQ overage". While the amount of the overage will be deducted from the following years IFQ allocation, a person can receive the landed value of any overage that does not exceed their IFQ permit by more than 5 percent. The IFQ regulations also state that unharvested amounts of IFQ in any year will not be reallocated. The Commission staff believes that with this plan there will always be an incentive to exceed the IFQ.

We recommend an underage and overage plan similar to the plan the Commission passed for the Canadian IVQ fishery. The Canadian underage/overage plan appears to be working well and allows for an overage computed as a percentage of the poundage available to be harvested at the commencement of a vessels last trip (see attached sheet for details of the Canadian plan).

Section 676.22 - Limitations on use.

We are concerned that IFQ from different regulatory areas can be fished for in one trip. We recommend that fishing be allowed in only one regulatory area during a single trip. Our concern is for the accurate recording of catch for each regulatory area. Once the fish is mixed on the vessel it would be difficult to accurately report pounds harvested from each regulatory area. We are also concerned that vessels could intentionally misreport catch for two regulatory areas when in fact only one area was fished. NMFS agrees that accurate information on regulatory area is necessary but suggests that data obtained on fish tickets will be sufficient. We think it will not be possible to get accurate data by regulatory area if the fish is mixed on the vessel.

We also suggest that all halibut should be unloaded and weighed, and that personal use fish be differentiated from the commercial landings on the card swipe system. Without a clear and definitive report of personal use fish, there will be an increased opportunity for misreporting. The Canada system requires that all fish, sold or for personal use, be weighed and recorded. NMFS is checking with NOAA General Counsel on this issue but we think the rule needs to state explicitly that personal use and commercial fish be weighed and recorded separately.

Thank you for the opportunity to comment on the IFQ implementation rules. An IPHC staff member will be available at the Council meeting to answer questions on this issue.

Sincerely yours,



Donald A. McCaughran
Director

Encl.

cc: Steve Pennoyer
Jay Ginter

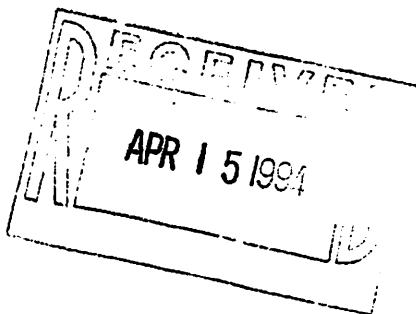
9. CARRYOVER OF QUOTA OVERAGES AND UNDERAGES

The Halibut Advisory Board has worked closely with DFO and the IPHC to develop procedures which allow for small carryover of annual IVQ underages or overages. The rules for carryover of IVQ underages or overages are:

1. Licensed halibut vessels landing up to 10% or 400 pounds (which ever is greater) over the vessel's remaining halibut IVQ may keep the proceeds from the overage but will have the equivalent poundage of the overage subtracted from the vessel's IVQ for the following year.
2. Licensed halibut vessels landing more than 10% or 400 pounds (which ever is greater) over the vessel's remaining IVQ may keep the proceeds from the landed weight of the first 10% or 400 pounds of overage and must relinquish to the Crown the remainder. Furthermore, the total poundage of the overage (the 10% or 400 pounds plus the extra) will be subtracted from the vessel's IVQ in 1994. The vessel owner therefore pays a penalty for exceeding the vessel's remaining IVQ by more than 10% or 400 pounds. He relinquishes money to the Crown plus he has the vessel's IVQ reduced by the full amount of the overage in the following year.
3. Licensed halibut vessels at the end of the season that are 10% or less under the vessel's total IVQ will have the equivalent poundage of the underage added to the vessel's IVQ in the following year.
4. Licensed halibut vessels at the end of the season that are more than 10% under the vessel's total IVQ will have the equivalent poundage for 10% of the vessel's 1993 IVQ added to the vessel's 1994 IVQ and will forgo the remainder.
5. All weights are fresh dressed head off weights as calculated by the Port Validator at the time of the validation.
6. The carryover of underages or overages expires at the end of the year following the underage or overage by the licensed halibut vessel (i.e. IVQ underages and overages can not be carried over more than one year).

Relinquishment of Claim cheques for Halibut and Rockfish overages should be addressed to the Receiver General for Canada and mailed to:

Halibut Coordinator
Department of Fisheries and Oceans
Station 420
555 West Hastings Street
Vancouver, B.C., V6B 5G3



March 31, 1994

Chairman Rick Lauber
North Pacific Fishery Management Council
P.O. Box 103136 DT
Anchorage, Alaska 99510

Chairman Rick Lauber:

The below listed fishermen's organizations would like the North Pacific Fishery Management Council to consider relaxing a halibut ownership and use restriction in the Bering Sea under agenda item C-4(a), at the April Council meeting.

The current regulations restrict second generation ownership to one-half of one percent of the Bering Sea TAC. (This amounts to 26,500 pounds based on the 1994 TACs). The current regulation also restricts the amount of fish that can be harvested in the Bering Sea district to 1 percent per vessel of the Bering Sea TAC, even for those receiving initial allocations. We request the following option be examined.

1. Drop the ownership and use restrictions in the Bering Sea and allow the existing ownership cap of 1/2 percent use and ownership restrictions, which currently applies to all IPHC areas collectively, to be the restraining regulation for all areas combined. This would limit the halibut ownership and poundage that can be landed by any single vessel to 1/2 percent of the total halibut TACs for all IPHC areas in Alaska. The additional burden in the Bering Sea would be dropped.
2. Permit a vessel and its ownership to harvest up to the initial allocation received in the Bering Sea even if that amount exceeds the current Bering Sea use restriction, of no more than 1 percent of the Bering Sea combined TACs being landed on a single vessel.
3. Increase the limitation on ownership in the Bering Sea to 3 percent of the Bering

Sea combined TACs, but not to exceed the existing 1 percent restriction that affects all areas.

The reason for the requested change is as follows:

a. Now that people are getting their poundage and QS, it has become obvious that a person or entity that receives greater than approximately 53,000 pounds (1 percent of the 1994 combined Bering Sea TACs), will not be able to fish the poundage on their own vessel. The current use restriction only allows 1 percent to be landed on any one vessel from the Bering Sea. There is no grandfather provision for initial recipients with respect to this restriction. Many vessel owners fished extensively in the Bering Sea instead of fishing in the Gulf of Alaska and now will have to purchase a second vessel or lease a second vessel to harvest their earned IFQs.

b. The ownership restriction on new QS owners will be set at 1/2 of a percent of the total halibut TACs in the Bering Sea. This amounts to about 26,500 pounds. This amount is insufficient to justify the expense to travel to areas in the Western Aleutians and Bering Sea to harvest. The existing cap of no more than 1/2 percent ownership for all IPHC areas should be an adequate restriction to accommodate excessive ownership issues.

c. If the current ownership restriction stands for second generation owners based on the current Bering Sea combined TACs for halibut, there would eventually be 212 QS owners, which is greater than status quo. This amount is insufficient to attract an adequate crew and cover the cost of a fishing trip.

Mr. Chairman, based on these comments we request that you and the council consider the above options to change the ownership and use restrictions in the Bering Sea area, relative to halibut QS/IFQs.

Sincerely,

Linda Kozak
Kodiak Longline Vessel
Owners Association

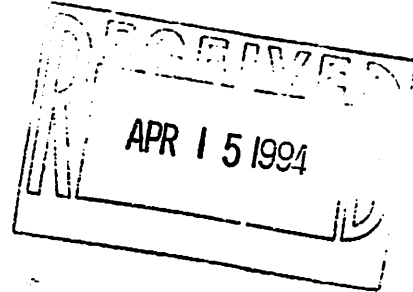
Eric Olson
Fishing Vessel Owners Association
Eric Olson, President

John Bruce
Deep Sea Fishermens Union of the Pacific
John Bruce, Manager

CENTRAL BERING SEA FISHERMEN'S ASSOCIATION
1500 W. 33RD, Suite 110 Anchorage, Alaska 99503
(907) 279-6566 FAX (907) 279-6228

April 13, 1994

Rick Lauber, Chairman, NPFMC
PO Box 103136
Anchorage, Alaska 99510



Dear Mr. Lauber,

RE: Halibut/Sablefish IFQ Regulations, 50 CFR 676.24

We note that the final rule for the Halibut Sablefish IFQ Program is adopted. The regulations were adopted while our organization was preoccupied meeting the requirements of the CDQ Program for pollock. Our comments relate to these implementing regulations (50 CFR 676.24), which we hope to see clarified by the Council or the federal government, in the interest of efficiency and common sense, fairness and equity, and to prevent further confusion of the legal type. As in the past, CBSFA is bringing its problems first to the NPFMC.

The North Pacific Fishery Management Council manages fisheries on a species by species basis. Although all fisheries are part of one plan, each commercially important species receives its own consideration from NPFMC. During Council discussion of Comprehensive Rationalization alternatives, at the January, 1994 meeting, debate and actions identified over and over the basic differences that exist between fisheries, and how the conduct of each requires special solutions in management. This is probably as it should be, for the present, since the commercial take of species vary as to time and areas, historical use, and gear type used, and in terms of the number and type of vessels that participate.

We do not think that anyone could rationally argue that the halibut fisheries in the Bering Sea are the same as the pollock fisheries in the Bering Sea.. Therefore we are puzzled as to why the final regs printed for the halibut/sablefish CDQ program are exact replicas of the regulations for the pollock CDQ program. Our recollection of the debates on halibut/sablefish CDQ indicated that the Council went to some length to make allocation decisions by specific area, at least occasionally in the enactment process, making specific reference to the communities within the specific areas.

This is in direct contrast to a other Community Development Program that was perpetrated at 50CFR 675.27, as a part of enacting the NPFMC's Amendment 18 to the Bering Sea FMP. This program made a major allocative decision between industry groups

(inshore and offshore), and in the process declared a corollary Community Development Quota Program, which afforded 55 communities an opportunity to be part of the pollock fishery in a State managed allocative paper derby to see who had the "best" plan. 7.5% of the pollock TAC was authorized to be set aside for this purpose. We are happy to say, CBSFA managed to secure, or hold onto, a small portion thereof. The point here is that the NPFMC did not make direct allocative decisions between the 55 communities it made eligible for the benefits of pollock TAC under Amendment 18. It decided, for better or worse, to leave that decision to the State of Alaska. Under halibut/sablefish however, NPFMC did make direct, region specific halibut allocations.

This basic difference between the two CDQ programs means much to our local fishermen and CBSFA's long extended and expensive efforts to obtain expansion of local halibut fisheries, and to be treated as equals. Specifically, under the Halibut/Sablefish regulations, and aside from usual difficulties in communicating with the State of Alaska, CBSFA foresees some difficulty in designing a halibut program for our fishermen on the basis of the copied pollock CDQ regs. Here are a few of the specific questions and examples for which we seek solutions from NPFMC or government:

1. How does a CDQ become an IFQ for our fishermen? Local fishermen in St. Paul were led to believe the halibut to be received under the CDQ Program would be an increase in local quotas, which the record will demonstrate, our Pribilof fishermen have sought for many years. However, what we see in the IFQ regs is a program that converts our CDQ fishing rights into a conditional privilege dependent on State of Alaska consent, the quality of our grantwriting ability, and whatever poverty test the State of Alaska decides to adhere to annually, formally or informally, in making its allocative decisions.

This is viewed in stark contrast to the limited earned IFQs of our fishermen, which thankfully will be like the rest of the fishing fleet's, a true ownership stake in the fishery from which our fishermen can derive self-esteem, and limited self-sufficiency. Our question is how can these CDQs, under the subject given program, transition to real time IFQ rights in the fishery for fishermen who have had historically limited opportunities? Is this or is this not the intent of the program? We request that the Council please clarify the intent of the program. If it is the intent of the program that Western Alaskan fishermen who have been denied opportunity over the years transition into real fishermen, then we would like the regulations to reflect how CDQ quota can somehow be parceled out or transitioned to individual fishermen, as real IFQs.

2. By the time St. George and St. Paul this summer have CDQ fishing rights to halibut in 4C allocated by the State between themselves, and the locally earned IFQ quota is taken into account, we calculate that St. Paul will have an extra 100-120 thousand pounds (55 mt) of halibut to split among our existing 18-20 vessels, plus any new entrants. Already CBSFA has encountered (and documented to the State) the financing difficulties

and resistance to new loans from the banking community. The reason cited is that limited halibut quantities under both the old and new regimes for St. Paul Island does not provide enough halibut to justify loans for new vessels, or to sustain refinances of existing vessels.

A potential solution to the shortage might be to use pollock CDQ fisheries revenues to purchase additional IFQs in our area 4C, so that local fisheries participation can continue to grow. This however, will prove from difficult to impossible for two reasons:

First, the limited CDQ pollock allocation we received limits revenues available in a community that finds it increasingly necessary to host the service needs and social impacts of the fish processing industry. Community pollock allocations, as we all know, were for some reason not made on the basis of regional fishing impacts or geographical proximity to resources.

Second, and even more critical, is the fact that even if we had pollock CDQ funds that we could dedicate to 4C halibut IFQ purchases, we would not be able to use them in our fishery because of the vessel class restrictions in the IFQ program. Outside fishermen (non-4C fishermen) who retain IFQ in 4C are in larger vessel categories, and regulations at 676.20 prohibit transfer between vessel classes. Will a waiver of regulations be available for vessel class restrictions if we purchase IFQs for 4C from outside fishermen? How do these regulations provide for or identify procedures for such a waiver? Being that we are a small vessel fishery in a region of very small quota, why not allow such transfers between classes in 4C?

3. The regulations contain numerous other demeaning and ridiculous references all apparently designed to underscore government oversight of Aleut fishing rights both as a community and as individual fishermen. To name a few, these include requirements that we identify the nature of the business relationships and profit sharing between partners, description of markets, relationships between partners, audit controls, JV arrangements, etc. (at 676.24(d)(2)i-vi), and report any time there are changes in these. The stifling oversight provides in theory that State and federal monitoring will oversee any changes in these, and render qualitative evaluations of our group fishing. We can assure the Council that St. Paul fishermen, like any other fishermen, are quite capable of knowing whether things are going well, without the help of State bureaucrats in Juneau. How is CBSFA to stay on top of the changes in relationships and nature of business of each of its 18-20 individual vessels? Why is the rest of the IFQ program not subjected to the same requirements?

4. Similarly, at 676.24 (d)1(iii-iv) the goals and objectives of the halibut fishery and employment and employee hours/schedules are to be identified. What fisherman from Seattle has been asked to describe the hours of employment he will generate from his IFQ for halibut? Do fishermen from Seattle have to identify their goals and objectives before

receiving their permanent fishing rights to resources off our shores in the Bering Sea? Is not the goal off all fishermen to harvest fish for fun and profit? We are not sure about the experiences of other CDQ groups, but for the Pribilofs, we can state assuredly that government oversight of this nature definitely is not the road to self-sufficiency in fisheries, or any other endeavor for that matter. Check the historical record of the administration of the Pribilof Islands. Oversight has never been in scarce supply, but self-sufficiency has been thwarted at every turn "administratively".

By the time all the paperwork and oversight is completed this summer, there will be 55 communities in Western Alaska competing for about 2% of the halibut quota in the North Pacific and Bering Sea, and a similiar limited % of sablefish. We will all be comparing and evaluating goals, defending our mission statements, measuring our paper stacks, and criticizing each other before the State, while the rest of the world walks off with 98% of the halibut resource for life. The only industry being promoted and propagated in this program is the bureaucracy of the State of Alaska, the continued confusion and obfuscation of sincere and honests efforts to get a fair opportunity to fish, and the State's further and continuous intrusion into the lives of its citizens. We submit to the Council that this industry is already flourishing in Alaska, and in no need of assistance from the NPFMC or anyone else.

Most insulting of all, after adopting all this patronizing regulation, is the requirement to show how the community will become "self-sufficient in fisheries" as a result of CDQ participation. If anything at all results of these regulations it will be to so completely confuse and frustrate our fishermen and the other CDQ communities, that they will abandon altogether their desires to fish, and turn matters over to lobbyists, lawyers and consultants who will preside over paper fishery empires in the Bering Sea from portaphones in Juneau, Alaska. St. Paul Island fishermen do not wish to become wards of the State of Alaska. We want the opportunity to be like other fishermen, and not set aside as a special classification of second class fishermen smothered in paperwork.

CBSFA respectfully requests of the NPFMC that the entire matter of the CDQ program be thoughtfully reviewed by the Council, with proper deference to the individual fisheries in question and consideration of how CDQ fisheries will merge into the overall fisheries, the appropriateness of the developments taking place, and the extent to which real fisheries development is the goal of the program. We believe that the State of Alaska's administration has failed to focus properly on the program, as a fisheries program for fishermen who have been systematically excluded from the fishery, viewing it instead as a social program substitute, and the experimental playground of would-be social engineers.

We think the equity and fairness issues of the program have been lost in the grantsmanship boondoggles, the discriminatory poverty tests, and continued political machinations that the program has been subjected to. As residents of the Bering Sea for

thousands of years, Aleuts should not have to qualify for fish by measuring their status on the misery index vis-a-vis their Bering Sea neighbors, or comparing their need or situation to others in dissimilar geographical circumstances. There is a resource allocation and splitting of Bering Sea resources taking place in the halls of NPFMC, and we should view it for what it is. As residents of the Bering Sea for many centuries, we are entitled to a share, and a reasonable share. The Council is likewise held to a standard in the Magnuson Act that resource allocations in limited access programs be fair and equitable. We believe that to meet that standard, that there cannot be two different classes of quota, and two different classes of fishermen.

No one in Washington or Oregon or Southeast Alaska has to describe the misery of their conditions, and how they will solve their social problems with fish in order to obtain permanent rights to the fish. No fisherman in Seattle has to look forward to community fisheries success (one could surely argue that Seattle has prospered as a community in fisheries) as a one way ticket out of their permanent resource ownership rights. The Magnuson Act obliges the NPFMC to fairness and equity. The qualitative differences in the type of resource access that exists under existing partitions made with respect to the resources of the Bering Sea, are indicative of something other than fairness and equity to all parties involved. The discriminatory methods adopted to define resource access for Bering Sea communities raise significant legal questions. We do not believe that grouping of all the Bering Sea Natives into a cutthroat competition for a minute share of the resources, while the majority of the resources are spirited off by Seattle fishermen and fishing corporations, is fair and equitable.

As with other resource extractions that take place on land, the granting of rights of extraction of Bering Sea resources to US citizens brings with it the burden of addressing the impacts to the local areas where the resources are extracted. The rights of access and share in the case of Pribilovians is obligated as well under the Fur Seal Act Amendments of 1983.

We truly hope the NPFMC can add some fairness and sensitivity into this program, and make necessary adjustments to regulations, particularly as pressure mounts to parcel off crab and cod resources. We also urge the Council to be sensitive regarding the equity and appropriateness of the allocative decisions it makes in the Comprehensive Rationalization process, as we fear that both comprehensiveness and rationality will fall quickly under the IFQ steamroller that is positioned outside the door of the Council meeting room.

Thank you for the opportunity to comment.

Perfenia Pletnifoff, Jr., Vice President
Central Bering Sea Fishermen's Association

**CC. Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
WAFDA
Rolland Schmitten, NMFS**



UNITED STATES DEPARTMENT OF COMMERCE
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April 18, 1994

TO: North Pacific Fishery Management Council

FROM: Lisa L. Lindeman
 Alaska Regional Counsel *Lisa Lindeman*

SUBJECT: Secretary of Commerce's Authority to Implement
 Regulations Under the Magnuson Fishery Conservation and
 Management Act and the Northern Pacific Halibut Act

The North Pacific Fishery Management Council has requested a legal opinion regarding the Secretary's authority to modify limited access plans adopted by the Council.

The roles of the Secretary and the Council in the fishery management process are distinct. The Council recommends fishery management plans (FMPs) and amendments to the Secretary. The Secretary reviews FMPs and amendments on an individual basis for determining consistency with the national standards and other applicable law. If the Secretary determines a FMP is consistent with the national standards and other applicable law, he is required to implement the FMP according to its terms. The Secretary, however, has broad authority to implement FMPs through regulations that do not conflict with specific provisions of the FMP.

The individual fishing quota program for the halibut and sablefish fisheries off Alaska was promulgated pursuant to the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773, (Halibut Act) and the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson Act). This legal opinion will address the Secretary's general authority under each of these statutes.

Halibut Act

The International Pacific Halibut Commission (IPHC) and the Secretary have primary responsibility for managing the halibut fishery under the Halibut Act and the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, as amended (Convention).

The Regional Fishery Management Councils may develop regulations for the halibut fishery within United States waters that are consistent with IPHC regulations. Regulations developed by the



Regional Fishery Management Councils may only be implemented with the approval of the Secretary.¹

Magnuson Act

The Magnuson Act establishes a multi-step process for the development and implementation of fishery management plans or plan amendments.

In general, Councils are responsible for the initial development of a fishery management plan.² The Secretary may develop fishery management plans in some circumstances. 16 U.S.C. 1854(c). However, "the Secretary may not include in any fishery management plan, or any amendment to such plan, prepared by him, a provision establishing a limited access system described in section 303(b)(6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council." 16 U.S.C. 1854(c)(3).

The Councils submit fishery management plans or plan amendments

¹ "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 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 allocations 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 requires an excessive share of the halibut fishing privileges: Provided, That the Regional Council may provide for the rural coastal villages of Alaska the opportunity to establish a commercial halibut fishery in areas in the Bering Sea to the north of 56 degrees north latitude during a 3 year development period." 16 U.S.C. 773c(c).

² "Each Council shall, in accordance with the provisions of this Act-- (1) prepare and submit to the Secretary a fishery management plan with respect to each fishery (except as provided in section 304(f)(3)) within its geographical area of authority that requires conservation and management and, from time to time, such amendments to each plan as are necessary." 16 U.S.C. 1852(h).

to the Secretary, who determines whether the plans or plan amendments are consistent with the Magnuson Act and other applicable law.³ If a fishery management plan or plan amendment is not disapproved within 95 days,⁴ the fishery management plan is approved. 16 U.S.C. 1854(b)(1).

The Secretary has broad authority to implement fishery management plans. The Secretary can issue and modify regulations he deems necessary to carry out the fishery management plan as long as the regulation is not precluded by an explicit provision of the fishery management plan.⁵

cc: Jay S. Johnson
Margaret Frailey Hayes
Steven Pennoyer

³ "After the Secretary receives a fishery management plan, or amendment to a plan, which was prepared by a Council, the Secretary shall-- ... (B) immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law." 16 U.S.C. 1854(a)(1).

⁴ Revised plans or amendments must be disapproved within 60 days. 16 U.S.C. 1854(b)(3)(D).

⁵ "The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment..." 16 U.S.C. 1855(a). "The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act." 16 U.S.C. 1855(d).



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
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AGENDA C-1
APRIL 1994
Supplemental

April 15, 1994

MEMORANDUM TO: North Pacific Fisheries Management Council

FROM: Philip J. Smith *Philip J. Smith*
Chief, Restricted Access Management

SUBJECT: Implementation of the Pacific halibut and sablefish Individual Fishing Quota (IFQ) Program

This Memorandum will bring you up-to-date on the efforts that we have undertaken to implement the IFQ program. As I stated during the December meeting, it remains our goal to have the program up and running by next spring ('95). At this point, no major impediments to achieving that goal have been encountered.

APPLICATIONS ACTIVITY

As you know, there is a two-step applications process:

First, each potential applicant was sent a Request for Application packet, containing the necessary forms to provide us with the information that we need to prepare an individualized application in both the halibut and sablefish fisheries. This packet was mailed in late December, 1993.

Second, upon receipt of the Request for Application forms, we prepare an individualized application and mail it to the applicant with specific instructions for completing the application. The applicant then completes the three-part application, signs and dates it, and returns it to NMFS/RAM for processing.

The following numbers display specific applications activity through April 8, 1994 (unless otherwise noted):

Activity	Numbers (comments)
Requests for Application: Mailed	8,582 (6,908 halibut; 1,674 sablefish)
Requests for Application: Returned	4,435 (3,513 halibut; 922 sablefish)
Requests for Application: "Undeliverable"	900 (approximate)
Requests for Application: Re-mailed (new addresses)	246
Halibut Applications: Mailed	3,114
Halibut Applications: Returned	1,000+ (hand-counted estimate)
Sablefish Applications: Mailed	768 (as of Wednesday, April 10)
Sablefish Applications: Returned	



Since we are about one-half of the way through the application period (which expires on July 15), we are becoming concerned that some eligible applicants may not file their applications in a timely manner. Therefore, we have undertaken a number of activities to induce potential applicants to submit their Requests for Application, as displayed below. We have:

- * mailed a post card to every potential applicant (i.e., those who received the initial Request for Application mailing), reminding them of the need to complete and return their Request(s);
- * purchased newspaper advertisements in all major coastal daily and weekly papers, with publication commencing in mid-March and continuing through the end of May;
- * prepared and distributed public service announcements (PSA's) for distribution to coastal radio stations;
- * appeared on radio "talk shows" and in newspaper interviews to help get the word out on the necessity of timely filing applications; and,
- * discussed deadlines and the need to submit the Requests for Application at every appropriate opportunity.

With respect to Requests for Application that have been returned as "undeliverable," we have:

- * attempted to obtain more recent addresses from the State Commercial Fisheries Entry Commission and, where such addresses have been found, have forwarded the Request for Application packets to the new addresses;
- * reviewed telephone listings, by community, to seek better addresses for the materials that have been returned;
- * hand-carried the "undeliverable" Requests for Applications to the various communities in which we have conducted workshops, in an attempt to make contact with the potential applicant (or with someone who knows the potential applicant); and,
- * re-mailed them with 1st Class postage (on the theory that many who did not originally receive the packets may now be back in Alaska; if not, 1st Class postage will insure that, if possible, the packets will be forwarded).

IMPLEMENTATION "CHALLENGES"

Some difficulties with implementing the applications and initial issuance phases of this program were anticipated. These included the vessel lease provision (i.e., how a lessee could demonstrate eligibility in the absence of a contemporary document recording the terms of a vessel lease), the confidentiality of fish ticket landings data (on which basis QS will be computed), and the "successor-in-interest" provisions (by which an applicant is allowed to gain eligibility for initial issuance of QS). Other challenges were apparently not anticipated, but have, nonetheless, arisen.

Each is discussed below:

Leasing:

Under the terms of the program, a person may be eligible to apply for QS if that person leased a vessel that participated in the fishery during the qualifying years. The final rule provides that persons in that situation, in order to demonstrate their eligibility, may present: (1) a copy of the lease itself, or (2) a statement signed by both the lessor and lessee attesting to the existence of a lease arrangement during the relevant year(s). Those who claim "oral lease" arrangements who can not now locate (or can not convince) the vessel owner to memorialize that arrangement, are allowed to challenge the presumption that no lease existed by submitting evidence in support of their claim.

We have experienced few problems with these procedures. Most lessees have been able to obtain an affidavit from the vessel owner attesting to the existence of a lease arrangement during the relevant year(s). Those who have not (fewer than 30, as of last week) have submitted evidence that, if it remains unchallenged, appears on its face to be sufficient to rebut the presumption that no vessel lease existed.

In short, we are not encountering significant problems with the ambiguities of the lease provisions. Though more complex and contentious situations may present themselves, I do not feel that they will impede program implementation.

Confidentiality:

Under certain state and federal laws, catch information is confidential to the person who held permits and completed fish tickets, unless that person has waived that confidentiality. Since, under the IFQ program, eligibility for QS extends to vessel owners or lessees (as opposed to permit holders) and QS is based upon pounds of halibut or sablefish harvested during certain years, it was anticipated that the confidentiality restrictions could cause considerable problems with implementation.

We have not found that to be the case. Of the applications received so far, more than 80% have been from owner-operators. Further, an applicant's signature on the Request for

Application forms constitutes a waiver of confidential fish ticket information and NMFS/RAM may, as a result of receiving that waiver, display the information to the eligible applicant(s). Also, most permit holders who have signed fish tickets, but who are not eligible to apply, have cooperated and signed waivers. Finally, most owners have their own records of landings activities aboard their vessels, especially if another person was operating the vessel as a hired master.

There may be a few instances in which the confidentiality restrictions result in an eligible applicant being denied some or all of the QS to which s/he would otherwise, in the absence of such restrictions, be entitled; however, we have not yet encountered such a situation.

Successors-in Interest:

The program rules provide that "eligible applicants" include persons that owned or leased a vessel during one or more of the qualifying years OR the "successors-in-interest" to such persons. These rules were designed to insure that (for instance) individuals who held an interest in a dissolved partnership or who were shareholders of a dissolved corporation would currently be eligible for the QS that would have been issued to the eligible entity were it still in existence.

Some eligible applicants, for their own reasons, wish to "assign" their QS to another person. For example, if an applicant has sold a vessel to another person with the understanding that, together with the vessel purchase, the seller was also conveying any "IFQ rights" that may result from prior fishing activities on the vessel, s/he may now wish to honor that agreement by requesting that NMFS/RAM issue the QS to the new owner. Other examples are numerous. A number of applicants, and/or their representatives, have asked whether the "successor-in-interest" rule gives them the authority to make such an assignment and, having exercised that authority, if RAM will perform in accordance with the eligible applicant's wishes.

We have told them "no." We have tried to make it clear that, under the limits of authority provided by the Council and the Secretary, an eligible applicant may not assign eligibility to receive the QS upon initial issuance. Those eligible applicants who have entered into agreements to convey QS to another person may honor those agreements by using the transfer procedures in the Final Rule, but only after the QS has been issued.

Applicants' Declaration of the Nature of their Business Entity:

The Final Rule requires that a person must exist at the time of its application for QS. Further, "person" is defined as a Corporation, Partnership, Individual, etc. There is no requirement that the person must have existed as of, or prior to, some specific past date. The RAM Division is implementing the applications and issuance procedures in accordance with these directives. This has led some to become concerned that individuals seeking QS in Southeast Alaska might, therefore, incorporate or form a partnership prior to submitting their

application for QS as a way to "get around" the prohibition against hiring a master to fish the IFQ resulting from the QS initially issued to such an entity in Southeast Alaska.

Our data do not demonstrate that this phenomenon is occurring with any frequency. NMFS/RAM mailed 2,337 Requests for Applications to potential applicants for Southeast Alaska Quota Shares. The "identity" of the addressees was derived from the Commercial Fisheries Entry Commission vessel and permit files. Of the addressees, 2,240 were mailed to individuals, 40 to estates of deceased fishermen, 56 to corporations, and 1 to a partnership. As of April 8, 1,501 Requests for Application had been returned, including 1,454 identifying themselves as individuals, 20 identifying themselves as representatives of an estate, 22 identifying themselves as corporations, and 5 identifying themselves as a partnership. These data are displayed below:

Applicant "Identity"	Mailed to:	Returned From:
Individual	2,240	1,454
Estate	40	20
Corporation	56	22
Partnership	1	5

From these data, it does not appear that there is any significant trend of individuals incorporating or forming partnerships to thwart the owner-on-board restrictions that govern initial issues of QS in the Southeast Alaska fisheries. It has been suggested, however, that those who have not yet returned their Request(s) for Application may be waiting to see if the Council imposes new use restrictions on IFQ resulting from the QS before deciding how to order their private business affairs.

Advise to the Public:

As noted above, the Final Rule provides that "evidence" of an oral vessel lease may consist of a statement, signed and sworn to by both parties, attesting to the fact of the lease agreement at some prior time. NMFS/RAM staff (including myself) have advised potential applicants accordingly (i.e., that they may now execute a sworn statement attesting to the nature of a past agreement). Since those past agreements were (typically) not written down, some have interpreted our advice to mean that they may now fabricate or invent an arrangement that did not, in fact, exist. Such is not the case, of course. In fact, in virtually all communications with the public regarding the nature of information or evidence provided to NMFS/RAM in support of an application, we have vigorously admonished applicants to tell the truth.

Further, in order to insure that staff are most circumspect in their representations, we have formally (by memorandum, letter, E-mail and other means) admonished them to stress to applicants the imperative of veracity in representations to NMFS.

Finally, the Office of the Regional Director has undertaken an independent inquiry into allegation(s) that RAM staff may have intentionally encouraged potential applicants to claim the benefits resulting from prior business relationships that did not, in fact, exist. When that inquiry is completed, we will take whatever steps are indicated to comply with its findings, conclusions, and directives or recommendations.

PUBLIC INFORMATION

We have made a significant effort to help "spread the word" on the program and to respond directly to the questions and concerns of applicants and potential applicants. In addition to setting up a toll-free number (1-800-304-4846) and responding to hundreds of telephone inquiries, we have also engaged in a series of Town Meetings/Workshops in a number longline ports, including:

Community	Date(s) of Meeting	Activity	Attendance (Estimated)
Ketchikan	3/7/94	Public Workshop	35
Wrangell	3/8.94	Public Workshop	45
Petersburg	3/9/94	Public Workshop	75
Sitka	3/10/94	Public Workshop	100
Cordova	3/16/94	Public Workshop	30
Kodiak	3/17 - 21/94	Public Workshops (2)	70
		Booth at Fish Expo	150
Anchorage	3/21/94	Public Workshop	7
Seward	3/22/94	Public Workshop	20
Kenai/Soldotna	3/23/94	Public Workshop	35
Homer	3/24/94	Public Workshop	125
Seattle	3/31/94	Public Workshop	50
"	4/1/94	Individual Assistance	12
Craig/Klawock	4/4/94	Public Workshop	40
Juneau	4/13/94	Public Workshop	25
Haines	4/18/94	Public Workshop	?? (not yet held)
Kake	5/4/94	Public Workshop	?? (not yet held)

We are also considering requests for such workshops from other sources, particularly in Western Alaska, where there appears to be confusion regarding the IFQ program (generally) and its relationship to the CDQ program (specifically).

Finally, the Aleutians East Borough has hired two people to assist Borough residents with the QS applications process. Those individuals attended the Kodiak workshops and have visited our offices in Juneau for training. Within the past couple of weeks they have conducted workshops and provided applications assistance in such locations as Sand Point, King Cove, Nelson Lagoon, etc.

REGULATORY ISSUES EFFECTING PROGRAM IMPLEMENTATION

Jay Ginter will update the Council on regulatory issues.

STAFFING

The RAM Division is now fully staffed with the personnel we need to carry out the applications processing tasks. The Appeals Officer position is currently being advertised, and I anticipate no problem with retaining a qualified individual by the time that applicants for QS begin to file their appeals of RAM staff denials.

CONCLUSION

As you can see from the above, the RAM Division has been fully occupied with the many tasks necessary to implement this program. Barring unforeseen problems, I still feel confident that we can continue to move forward and to have folks fishing with IFQs next spring.

I will be in attendance at the Council meeting, at least through Wednesday, April 20, and am available to respond to any questions that you may have about this report or other RAM Division activities.

Thank you for your continuing interest.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
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AGENDA C-1
APRIL 1994
Supplemental

April 15, 1994

Ms. Lynn Walton, President
Access Unlimited, Inc.
c/o 116 Gold Street
Juneau, Alaska 99801

Dear Lynn,

Thank you for your April 8, 1994, letter in which you raised a number of issues regarding the implementation of the Pacific halibut and sablefish Individual Fishing Quota (IFQ) program. I appreciate your interest in those issues and hope that this letter adequately addresses your concerns.

This letter will respond to each identified issue, question, and suggestion raised in yours, as follows:

ISSUE NUMBER 1:

There are many questions concerning "leases" and "successors-in-interest"...Many individuals believe they did not engage in a "lease", although they may have entered into a verbal or written commitment regarding how the quota share that would be earned during the time period would be allocated. In fact, literally hundreds of people had "agreements" which they didn't consider as a lease arrangement, yet which appear to fall clearly within the Council description of a lease.

Q. Does any agreement between the parties constitute a lease?

A. No. If the parties to the agreement do not believe they engaged in a "lease" during the relevant time periods, they should not so allege. As you know, the RAM Division cautions all parties to avoid fraud in their representations.

Example 1: *A father and son had an informal agreement that the son would fish the father's vessel for halibut each year so that the son wouldn't have to switch gear on his own vessel. After the Secretary approved the halibut and sablefish IFQ system, the father concluded that the son should receive all of the quota shares because the son had paid all of the bills, including insurance, associated with the vessel's halibut fishing. Additionally, as noted above, the son operated the vessel at all times when halibut was being fished. There was, however, no written or un-written lease agreement.*



Q. Does this constitute a lease agreement?

A. No. If, as the example premises, ...there was... no written or un-written lease agreement, then there was no lease agreement and the parties to whatever the business arrangement may have been are cautioned not to fabricate such an agreement after the fact.

The larger issue raised by your example is "What constitutes a 'lease' under the Final Rules for the IFQ program?" Unfortunately, the Rule is silent with respect to a definition. Sec. 676.20(a)(1) states:

"...A person is a qualified person also if (s)he leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year..."

Additionally, Sec. 676.20(a)(1)(iii) states:

"...evidence of a lease shall be limited to a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years..."

[emphasis supplied]

From this language, we can only infer that the Council and the Secretary intended a "lease" to be whatever the parties to the business agreement honestly believed it to be during the time in question. Further, by providing that conclusive evidence of a vessel lease could include "...a notarized statement...attesting to the existence of a vessel lease agreement..." the Final Rule clearly discourages in-depth examinations of such agreements after they have been submitted to NMFS/RAM. In short, absent some reason to question the veracity or the authenticity of the parties' representations on their notarized statement, the RAM Division will take the parties' representations at face value.

The issue is also somewhat confused by grammar and semantics. The word "lease" is both a noun and a transitive verb. To the Question: "Did you have a vessel lease?" a respondent may well say "no" because there was no contemporary document on which the terms and conditions of the business relationship were recorded. However, to the Question: "Did you lease the boat?" the same respondent may answer "yes," owing to the nature of the understanding, at the time in question, between the vessel owner and the respondent. Therefore, when advised to "memorialize your lease in an affidavit" in order to establish qualifications for QS under the IFQ program, the respondent may well be placed in a quandary; to wit: "I didn't have a 'lease' and now they're telling me to say I was 'leasing' the boat." Our solution to

this potential misunderstanding is to be extremely careful in the choice of words that are used to provide advice to applicants -- and we are.

Additional questions under your "Issue Number 1" are premised on the possibility that I would have answered "yes" to the first one. Nevertheless, for clarity's sake, I will address them:

Q. How do they document the lease?

A. As noted, they may not document a business arrangement that did not exist.

Q. Are retroactive agreements acceptable?

A. No. However, an agreement that, in fact, existed at a point in time may be memorialized by affidavit.

Q. What type of documentation is necessary?

A. As noted, an affidavit bearing the signatures of both (all) parties to a business arrangement is not only "acceptable" for purposes of the program, but it is dispositive of the fact(s) alleged (unless, that is, NMFS/RAM has reason to believe that the parties are fraudulently misrepresenting the facts).

Q. Is a retroactive agreement, approved by the parties in interest, an acceptable lease agreement?

A. If, in fact, a lease agreement existed between the parties during the time in question, and if the parties voluntarily choose to memorialize the existence of that agreement by submitting an affidavit attesting to the nature of the relationship in effect during that time, then the affidavit is sufficient evidence of the facts as alleged.

Example 2: A father owned a vessel until 1987. His sons operated the vessel for halibut and sablefish. The sons paid all of the bills and were responsible for paying the father a percentage of the gross sales. In 1987 the sons formed a corporation and bought the vessel from the father. The sons indicate they have been told that the only way they will receive the quota share for their harvests that occurred prior to 1987 will be to sign an affidavit that a lease existed. If they don't provide the appropriate document, those shares will be lost since the father does not meet the eligibility requirements for the qualifying years.

Q. Since they didn't have a written or verbal lease, but meet all of the conditions, do they qualify under the lease provisions? If so, how do they document the lease?

A. If, upon reflection, the parties can not honestly characterize the nature of the business relationship between the father and the sons as a "lease" (or partnership) arrangement, they should not so allege at this time. In that case, as premised, those shares will be "lost." However, if they can honestly characterize the nature of their business relationship as a "lease" (or partnership) arrangement, they may document their understanding with an affidavit signed by all parties.

ISSUE NUMBER 2:

There are also many questions concerning a "successor-in-interest."

Q. What is the definition of a successor-in-interest?

A. The Final Rule provides no definition. As a practical matter, and for purposes of the IFQ program, the RAM Division is defining a "successor-in-interest" as a person who held an interest in a prior business entity (that owned or leased a vessel during the QS qualifying or base years) and whose interest remains following the demise of that entity. In other words, in order to succeed to the interest of an qualifying business entity, a person must have held an interest in the entity and the entity may no longer exist.

Q. Does the definition include past partners, or new partners of a partnership?

A. Yes and no! A person that held a partnership interest in a qualifying partnership may, upon the demise of the partnership, succeed to the benefits that the partnership would have been eligible to receive were it still in existence. However, a "new" partner that had no interest in a qualifying partnership, may not, as an individual, receive QS. If the "partnership" still exists, then the "new" person benefits only to the extent that the currently existing partnership receives QS upon initial issuance.

Q. Does it apply to individuals?

A. Yes, provided that the individual had an interest in a qualifying partnership and that the partnership no longer exists.

"...you state: 'successors-in-interest' to partnerships that owned or leased vessels upon which qualifying landings were made may likewise be eligible for Quota Share." The caveat "may" should be defined.

Q. Under which circumstances would these "successors-in-interest" be eligible?

A. In the circumstances described above.

Q. Under what circumstances would they not?

A. If, for instance, an individual joined a partnership following the qualifying years (say, in 1991 or 1992) and the partnership dissolved prior to the QS application period. In that case, the individual would not be qualified as a "successor-in-interest" since the individual had no interest in the partnership during the qualifying years.

Q. Additionally, the letter references only to "partnerships." Why only partnerships? Why not all entities?

A. Technically, it would apply to all qualifying entities that have dissolved prior to submitting their application for quota share. The purpose of the letter that gives rise to the question was to remind applicants of their responsibility to present only truthful information on their applications. Since the question of whether or not the truth is being told arises most frequently with respect to lease arrangements and dissolved partnerships, those relationships were specifically referenced in the letter.

Information on "successors-in-interest" is contained on page 8 of the Application Information that accompanies all applications for QS. That information acknowledges the difficulty of establishing a clear guideline to apply to all situations and urges applicants with specific questions about their specific concerns to contact our office.

Example 3. A group of four fishermen formed a partnership to harvest halibut and sablefish. The partnership was dissolved in 1987 when one of the partners bought the other partners out. The remaining partner continued to fish halibut and sablefish during the qualifying years.

Q. Does that individual receive quota share for the harvests that occurred prior to 1987?

A. Yes, but only if (s)he can demonstrate at least a partial interest in the vessel upon which the landings, during those QS base years, were made. Presumably, (s)he would be able to do so as a result of his/her partial ownership of the vessel.

Q. Does he receive all of the quota share, or a portion? If a portion, is it the portion represented by his ownership interest?

A. The answer to the first question is, "it depends." The applicant will receive QS as a result of activities aboard the vessel(s) owned by the partnership, but only in proportion to the applicant's interest in the vessel during the time the partnership existed.

Q. What documentation, if any, is required?

A. To demonstrate his/her entitlement to QS during the years in which the partnership existed (and had an interest in a vessel on which qualifying landings were made), the applicant should submit contemporary documents (partnership agreement, dissolution agreement, etc.) that demonstrate the nature and the amount of the applicant's interest in the partnership. Failing that, the applicant and the other partners may, by affidavit, memorialize the nature of their business relationship during the relevant time(s) and the terms of the dissolution of that relationship. Additionally, of course, each person that succeeds to the interest of the prior entity must make separate application for quota share.

Example 4. A fisherman who qualifies for quota share dies before the quota shares are issued. The fisherman did not have a corporation. In his will, the deceased fisherman had named his spouse as the sole recipient of his worldly goods.

Q. Are the quota shares issued to his spouse, or to the estate? In the event there is no named inheritor for the quota share, we assume they are issued to the estate.

A. Assuming that the will is not contested and has been approved by the court, the quota shares will issue to his named heir (in this case, the spouse). In the absence of a will, the estate is the recipient. In either case (the spouse or the estate receiving the QS), the QS issues by operation of the "successor-in-interest" provisions of the Final Rule.

Comment/Recommendation: It is our recommendation that the successor-in-interest be defined further and, if necessary, Council action be taken to address this issue. It is imperative that with the many different scenarios present, everyone is clear on what is or what is not a lease or partnership. A simple affidavit assigning shares to another qualified party would be very appropriate in our opinion.

Response: Though it may have been helpful to have been provided with more specific definitions of various terms within the Final Rule, for their own reasons the Council and the Secretary apparently chose not to provide those definitions; further, terms such as those you mention defy, at least to an

extent, any definition that will remove all ambiguities attendant to them (for instance, recall the December meeting of the Council when Council members encountered great difficulty in deciding what evidence of a "lease" would be sufficient to establish a presumption that a lease existed when the vessel owner alleges otherwise).

It is, or should be, axiomatic that no certain set of principles, no matter how carefully codified, will be sufficiently precise and unambiguous to fairly govern all of the possible permutations in the business relationships between vessel owners, vessel operators, crew members, spouses, and others with a demonstrable financial interest in an Alaskan fishery.

The suggestion that the Council may wish to revisit these terms and to provide specific definitions to them may have merit; however, I should make it absolutely clear that any substantive changes to the Final Rule that are intended to govern eligibility to apply for quota share and/or initial issuance of quota share will result in a delay in program implementation.

The suggestion that NMFS/RAM should allow an applicant to execute a "simple affidavit" to assign quota shares to another party has already been analyzed. In my February 15, 1994, letter to attorney Joe Sullivan, the issue was addressed as follows:

...You suggest that the term ("successor-in-interest") includes any person(s) to whom a qualified person assigns its eligibility to receive the initial allocation of quota share. For the reasons discussed below; I do not agree that (the) proposal is the most reasonable interpretation of the term.

The regulation in question is codified at 50 CFR Section 676.20(a)(1) and provides that the Regional Director shall initially assign quota share to qualified persons. A qualified person is one "...that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year." The regulation further provides that "qualified persons, or their successors-in-interest, must exist at the time of their application for quota share."

Since the term "successor-in-interest" is not given a regulatory definition, it must be interpreted within the context of the IFQ regulations.

Section 676.20(a) provides that the Regional Director will allocate quota share to qualified persons. The term "successor in interest" appears only in Section 676.20(a)(1), which states that qualified persons, or their successors-in-interest, must exist at the time they

make application for quota share. This construction indicates to me that the initial allocation of quota share is to be made to the qualified person, *unless that person no longer exists*, in which case the successor-in-interest to the qualified person may be issued the quota share.

This regulatory language clearly implies that a qualified person and a qualified person's successor-in-interest cannot each exist at the same time. If the Council and the Secretary had intended to allow qualified persons still in existence to assign eligibility for initial issuance of quota share, they would have made that intent explicit by providing (for instance) that the Regional Director shall initially assign quota share to qualified persons, or to any other person to whom the qualified persons assigned their eligibility. I do not feel that their failure to so provide was the result of inadvertence or oversight.

Likewise, (the) proposed interpretation of the regulations appears to be inconsistent with policies expressed in other parts of the IFQ regulations. For example, (the) proposed interpretation would seem to allow *de facto* transfers of quota shares between qualified persons and their assignees without regard to the transfer and use restrictions set out in Sections 676.21 and 676.22. Under this interpretation, several qualified persons might assign their quota share eligibility to a single assignee, thereby allowing that assignee to obtain, by initial issuance, more quota share in an IFQ regulatory area than the regulations would allow to be transferred to the same person after initial issuance. Clearly, this result was neither intended nor anticipated by the Council or the Secretary.

[emphasis in original]

Also, and as noted above, if the Council wishes to revisit this issue and to provide new regulatory recommendations to the Secretary regarding eligibility for initial issuance of quota share, they should be aware of the effects of that action on program implementation. If substantive changes are made, it could well be necessary to conduct a new applications process, thereby delaying program implementation for at least another year.

Comment: The definitions of a lease and a successor-in-interest are extremely important for tax purposes.

Response: How eligible applicants and initial issuees of quota share choose to order their private business affairs is not, and can not be, a concern of NMFS.

ISSUE NUMBER 3:

Q. Who is the owner of a boat and the subsequent quota shares resulting from that ownership in a community property state? This may appear a simple question; however, in the event of a pending divorce, the ownership of the vessel may be in contest. In the case where a divorce settlement has not been reached and the ownership of the vessel is contested, to whom is the quota share issued?

A. The first level of inquiry to address this question is the Official NMFS IFQ Record, compiled from data sets supplied by various government agencies. Both the "vessel file" supplied by the Commercial Fisheries Entry Commission (CFEC) and the NMFS "permit file" provide the name(s) of the person(s) claiming ownership of the vessel during the year for which the license was issued.

The Official Record establishes a presumption as to the ownership of a vessel during a given year. However, any party with a colorable interest in the vessel may apply and challenge that presumption by asserting a claim of ownership (and a claim of quota share that may result from that ownership). In those instances in which such competing claims have been made, it will be our practice to deny the disputed quota share as to both applicants. Either or both may then appeal that determination.

As you can imagine, these conflicts may well be contentious and difficult; however, absent some agreement between the parties, the Appeals Officer and the Regional Director must issue a final decision on the disposition of the quota share, following which a party that is still aggrieved by the decision may further appeal to the U.S. District Court.

The Alaska Supreme Court discussed the issue of "marital partnerships" with respect to commercial fishing enterprises in a 1985 decision governing the evaluation of claims to "points" toward permit issuance under the Alaska limited entry program [Chocknock and Andrew v. State Commercial Fisheries Entry Commission, 679 P.2d 669 (3/15/85)]. I commend this case to your attention, as it may provide some guidance in certain circumstances.

ISSUE NUMBER 4:

Comment(s): ...quota shares will not be issued until a decision on disposition is reached...NMFS intends to

distribute the poundage represented by the unreleased shares to the fleet proportional to the size of the issued quota share prior to the start of the season.

...distribution of contested quota share prior to the start of the season will disenfranchise the holder of the contested quota share if disposition is reached during the year; conversely, the lack of distribution could result in unharvested quota share.

...we propose that NOAA/NMFS establish a mid-year point at which time those contested quota shares that realistically will not be available for harvest by September (for example) be distributed to the fleet. Conversely, those contested quota shares that will realistically have passed through the appeals process by September would not be distributed to the fleet. Other approaches to address this problem certainly exist.

Response: You are correct in noting that determination of poundage (as represented by IFQs) will only occur annually, prior to the season. The determination of a person's IFQ harvesting privilege is a function of the amount of quota share (QS) held by the person, the size of the Quota Share Pool (QSP), and the Total Allowable Catch (TAC). Simply stated (without inclusion of the CDQ adjustment formula and accounting for reductions resulting from seasonal "overages"), the equation is as follows:

$$QS/QSP \times TAC = IFQ$$

Since the QSP is the sum of all the issued QS in any given regulatory area, and since each person's IFQ is determined by the relationship between those two elements of the formula (multiplied by the TAC), it is simply neither possible nor practicable to recompute every person's IFQ every time the QSP changes as a result of issuance of previously-contested QS. Therefore, we can only compute and issue IFQ on an annual basis.

However, the problems you describe as resulting from this element of the program may not be as severe as you fear. For one thing, the only QS that will not be issued pending adjudication will be the QS that is contested. If an applicant has demonstrated eligibility for any amount of QS, that amount will be issued and not withheld pending a determination on the disputed balance. We expect that most appellants, therefore, will only be appealing decisions regarding a certain percentage of QS, not the entire amount.

Also, the Final Rule contains no provisions under which applicants may claim that "special" or "unavoidable" circumstances thwarted their participation in the fishery(ies) during the relevant years. As a result, most of the issues that will be presented for adjudication should be fairly straightforward.

Further, there are no provisions for the issuance of "interim quota share" to those whose claims are pending adjudication. Therefore, there will be no advantage for an applicant to engage in "delaying tactics."

Whether these three elements of the program will effectively mitigate the concerns that you raise remains to be seen. It is still too early to predict, with any certainty, what the volume and complexity of the appeals under the program will be, but we do not expect to be overwhelmed.

Meanwhile, as you urge, we will continue to seek "other approaches" to address the concerns that you raised -- your suggestions would be most welcome.

ISSUE NUMBER 5:

Q. ...does an organization that agrees to finance the purchase of quota share have the legal authority to require that the associated harvest be delivered to a specific facility for sale and/or processing as a condition of the financing? Similarly, does the financing entity have the legal authority to require that quota shares they financed be offered for sale to individuals of their choice as a condition of the financing?

A. Nothing in the Final Rule appears to prohibit such private agreements. In fact, transfers of quota share pursuant to the terms of a security agreement are specifically exempted from language that places limits on the conditions attached to transfers. Section 676.21(d) of the Final Rule provides: "Transfers of catcher vessel QS approved by the Regional Director cannot be made subject to a lease or any conditions of repossession or resale by the person transferring QS except as provided for leasing in paragraph (f) of this section or by court order or as part of a security agreement." [emphasis supplied]

Notwithstanding this response, however, I would suggest that any party that is contemplating a financing scheme that contains the provisions you suggest would be wise to seek counsel prior to finalizing and executing such agreements.

ISSUE NUMBER 6:

...we are requesting that NMFS and NOAA GC reconsider (the decision that NMFS/RAM will not establish an 'official register')...

Answer: Your request is duly noted and will be forwarded to appropriate officials for a response.

CONCLUSION:

Thank you for the care (and the cordiality) with which you phrased your questions and concerns. The issues you have identified are real, and are certainly receiving our attention. Unfortunately, many of them arise from the "nature of the beast" and there are no clear-cut or easily implemented answers. In particular, those issues arising out of definitions (i.e., what is a "partnership" or a "lease" or a "successor-in-interest?") can not be resolved in one way to govern all possible situations that may arise.


Therefore, we must address each situation on a case-by-case basis as it arises. We have attempted to provide assistance to all who have called and requested it, and will continue to do so. Though some situations are particularly challenging and create some anxiety among the applicants and their representatives, it is our observation at this point that there is no situation that can not be resolved.

As was well known at the outset of its implementation, the IFQ program is comprised of many, complex, elements. In some instances, the lack of clarity in the Final Rule may result in an eligible applicant experiencing a delay in the issuance of some (or all) of the QS that s/he has a reasonable expectation of receiving. However, as noted above, "fixing" the problem by attempting to provide a working definition that satisfies an applicant in one situation may result in creating additional problems for applicants who find themselves in different situations.

Finally, I hope this response has been helpful. Needless to say, we will continue this dialog as implementation of the program progresses.

Thanks, again, for your interest.

Sincerely,



Philip J. Smith
Chief, Restricted Access
Management Division

cc: North Pacific Fishery Management Council
NOAA General Counsel

April 17, 1994

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THE REAL ISSUE: is not IFQ's or Limited Access! It's proper management and our right to our resources. The National Marine Fisheries Service; NMFS through the North Pacific Council; NPC has limited access into our fisheries. Their reasoning has been quoted :There are too many fishermen and not enough fish." They have therefore concluded that the elimination of people is the first effective tool.

Regional shellfish Biologist, Al Kimpker, has stated that "Limited entry is only of an effect if it limits the amount of participants down from the current participating level." He encourages entrants and free enterprise.

The Alaska Board of Fisheries, Carl Rosier has stated that he was disappointed with the current Limited Entry of dungeness crab in Kachemak Bay, because it did not limit the amount of participants down to what he thought was good from 105 to 50. This type of elimination is wrong. The Alaska Constitution states that in considering Limited Entry, the Board of Fisheries must include current participation, economic dependence, and the past four years with the maximum number of people.

Laws were changed to allow Limited Entry to take place. The Alaska Constitution Natural Resources VIII section 5, stated that no resource could be privatized. It was later changed with section 15 stating "except in the case of Limited Entry". Why was this Law put in effect in the first place? What affects did it have on the state of Alaska and its people? Fish traps were the reason, because of the control that a few individuals had on the resource and the affect that it had on many other people. The same concerns were expressed by you

through % caps and American ownership. Just look at our canneries. Most of them are owned by foreign investors. What makes you think foreign ownership will not occur in the IFQ plan? We better think real hard before we privatize our resource and amend the Magnuson Act.

Limited Entry of itself did not change the problem with over harvesting the resource. Other management tools had to be put in place. As stated before in the Constitution, Limited Entry into a resource had to include those dependent on the resource with current participation. Even with limiting the amount of people, the vessels will still have the capability of over harvesting the resource. In most areas the amount of permits increased, leading the Regional Biologist to impose the greatest effective tool of management that I know of - GEAR RESTRICTIONS.

The Council will still have to restrict the gear and reduce the quotas, or we will see further collapses. In this process, be careful on eliminating people. Other nations have done this with great atrocities occurring. But if some on the Council want to do what other nations are doing, I do not see how we will avoid this. I will do everything in my power to stop the elimination of people and to make sure you impose the right management tool of gear restriction.

The way the State of Alaska is dealing with the Area M False Pass fisheries should be looked at also. The Chum Salmon caps were going to be lowered to 300,000 fish. If the NPC treated the Trawl fisheries in the same way as the State, one would not see this toleration of bycatch continuing and it being shipped to food banks. One would see closures as the Area M fleet has with the change of gear. Why are we not seeing this in the trawl fleet?

We have seen the salmon industry increase from 40 million to 150 million fish runs. The Department of fish and Game has managed these resources better than the Federal Government by maintaining current biomasses and escapments to ensure them with using boat restrictions, gillnet lengths, seine net lengths, even the troll fleet reductions.

Trolling and jigging, one of the cleanest fisheries in the world, produce the highest quality as well as the highest price. There is no expansion of these gear types except in the BSAI area for cod, with a 2% allocation. Why are they not being expanded or encouraged by

the council? The jig fisheries is just on the verge of expansion. The salmon fleet had to diversify and go halibut fishing, and now many of the long liners need to diversify. Where will they go if you limit access into all the fisheries?

Why do you persist in this manner with disregard for the laws which are so relevant before you? You have even talked about changing those LAWS to pursue this agenda that you have. "Whatever the council says is law." This was a quote from the representation from the Secretary of Commerce which was immediately addressed by the Chairman. No we have laws that tell the council how to act and to make sure they proceed in fairness. We have a check and balance system that goes all the way to our United States Constitution.

The State of Alaska has been through this process. Will you learn from them? I have seen them make our salmon fisheries healthy, yet deplete our biomass of crab, shrimp and herring. We have seen depletion in these stocks state wide from exploitation rates being too high. But they have learned from their mistakes, having applied them to the crab fleet, and other fisheries in the state. They have reduced the exploitation rates some, but not enough. We better study this and not waste time on non relevant studies. The over harvesting has not been the fishermen but the NPC and the State of Alaska setting the quotas too high. When will you learn to follow the law and maintain an optimum yield?

The crab fleet has the cleanest fisheries that is occurring in the state of Alaska. Tanner crab fishing on the King crab grounds have had no King crab in our pots. Our cod bycatch has been reduced down to one fish in every seven pots with a two pound average on the fish. We have to use fishpots to catch cod to ensure we have enough bait.

There are several fisheries that are not Limited Entry (the clam, sea urchin, herring and crab fisheries) except in Southeast and Kachemak Bay for Crab. The Bering Sea and Bristol Bay crab do have a moratorium. But they are being managed with gear restriction and have produced extreme safety. In the St. Matthew and Pribolof Island Red and Blue crab fisheries we are anchoring up each day and letting our gear soak. The recent safety regulations by the United States Coast Guard have helped tremendously, not IFQ's. The last one is the herring fisheries in Bristol Bay and the Alaska Pen. which are not closed to open access but are regulated by gear and timed

openings. This is a race for the fish that you will never stop for the time to harvest the row occurs only at a certain time.

Even with IFQ's you will not stop this race. Hopes, theories and saying what this physician thinks won't work. You do not know for certain! Facts are in history. If you do not act, disaster will befall on many people.

The CDQ program requirements are less with no historic or current participation with only economic hardship considered. Well I can tell you we meet that criteria already. The National Standard Act tells us we need to treat all people fairly. Yet with IFQ's people who are currently fishing are being eliminated.

The State of Alaska still did not see into the future and we now know of the problem with the allocation of subsistence and commercial fishing on the Kenai River. The Federal Government recently took over subsistence management on federal lands. I believe that the Supreme Court of Alaska made the right ruling with not having a rural preference. Are you seeing ahead into the future for problems? Are you considering sport and subsistence use growing the future? Apparently not with the sport fisheries for halibut.

Unless the NPC gives their full attention to management tools that have proven themselves, we will continue to see the collapse of our fisheries. Here is an example of procrastination. The Marine Mammal Protection Act that had an extension till April 1st, is now being pushed back to May 1. Our senator is delaying fines that would be imposed on the fleet for the accidental killing of marine mammals. They were given this extension in the first place to close areas down, which they have and to change the gear that is fishing destructively around these animals.

This delay will not be tolerated any longer! It is proof that our officials and leaders are influenced by money and not by protecting our resource or the people.

In the Economic Assessment, we see statements such as management tools have been tried, and they have failed. They are not telling the truth. I encourage you to try gear restriction today before you try anything else. They work. They are effective, and they do not discriminate. Why do you fail to proceed?

We have seen gear that is destructive, such as tangle nets and dragging for crab which were shut down. The High Seas Gillnets were just finally restricted, saving many of our animals and fish. If you do not stop the destructive gear in time, we will continue to see our resources decline and shut down never being able to recover again. Subsistence has even shut down in some areas.

It has been said it is a privilege to fish and not a right. Well you are right, but you have used that to say, "We are the ones who will say who has that right." NO that right was fought for by men and women who gave up their lives and pursuits to give us FREEDOM. We all have the right to fish. You will not limit people who are currently fishing, and I am confident the judge will not allow you to. I have the right to drive a vehicle. Until I do something to violate my right, you can not take that privilege away from me. If I drink and drive or speed in a reckless manner, then you can for I have forfeited by rights.

Dividing up the Quota and giving it to individuals is a dangerous thing to do. I have read that you can rescind or revoke at any time the IFQ's with out just compensation. I have read that our Senator said, "It would be cheaper to buy back all the False Pass Salmon permits that it would be to ship salmon to the Interior villages." He is right. The state has that power, maybe not the money. The Eminent Domain Law states that once something is privatized, it can be taken back with just compensation. Our Federal Government prints money so easily, they could regain control of the resource "Common Property" "tragedy of the commons" and return our nation that was founded on freedom back to a socialistic nation. Be very careful in making something that is public private. If you keep it as a public resource and manage it with gear restriction and fines to eliminate those who abuse the resource, we will be protected. You will have preserved our FREEDOM

You have compared the IFQ's with other nations, but they are more socialistic in government where the people have been accustomed to living under oppression and forced to live unproductive lives. The fear of foreign government systems competing with our private sector is great. Bob Green at the Dept. of Forestry told me of the competition for bidding logging on Government land. It is hard for the small company to compete with the large ones yet it is still open to the public to bid. The fish farms are a scare to the public. Yet we have seen the Norwegian Government step in and help the bankrupt

companies. Now the fish farms are in fewer hands. True, it's hard to compete with foreign government money. But the free enterprise system has made America the nation that is today. Let us feel the pressure hardship causes. We will rebound! That's America if one person goes through hardship, it affects us all.

With IFQ's, hardship comes only to a few and economic gain to but a few. The anti trust law states that no monopoly shall be created. I do not care how small of a % cap you put in place. It is still a monopoly. Several initial recipients will receive over a 1% quota with the CDQ program receiving up to 7% of the quota. This should be a clear violation of the IFQ program and cause the Council to rethink what is going on.

Here are my recommendations. Instead of limiting people, limit the gear. This needs to be substantial in fisheries where extreme by catch is occurring. Cod ends need to be reduced down to 2-4 ton cod ends in the trawl fisheries. If this fails to reduce bycatch then dragging needs to be eliminated in those fisheries where bycatch, is too great. Long line from 40-100 skates of gear down to 20-25 skates with a hook per foot restriction of 4 feet in the cod fisheries and eight feet in the halibut. With these in place, when bycatch occurs, it will be in a smaller percentage allowing the fleet to move. Decreasing bycatch as of this date should not be credited to better fishing, but to the depressed stocks. If the NMFS and North Pacific Council are serious in upholding the law, then they will implement these restrictions before IFQs.

The danger in limiting the fisheries now and setting in place historic gear types is that you will have a harder time changing them later on. Look at the State of Alaska in the salmon fisheries. Seine and gillnet fish are of lower quality than that of troll caught fish. But it would and could not be changed because of the dependence that has been created by the gear types.

I talked with the Regional biologist in Kodiak and found out that the NPC is on a 14 year build up of the rockfish. They were depleted by the Russian and Japanese drag and longline fleets. Why not leave room for the jig fisheries when they come back to their historic biomass? The sole fishery could be done by crab boats. The dungeness fishermen could harvest them quite efficiently. Leave room for the future of our resources! Let the fleet go through the

hard times ahead! Then watch us diversify and see the free market work again!

I talked with David Witheral, and he told me bycatch was justified in this manner. The economic loss that occurs to direct fisheries is justified because of the economic gains it creates for the other user group. The only way this would be changed would be to prove to the NPC that one could change the gear and still harvest the same X \$ amount of fish in a given year. We can change the gear type, but you would have to allow more people into those fisheries. then over the next 10 years, you would see a quality product being produced with the local gear sales and boat supplies increasing. There would be more growth for our economy. The theory for IFQs are less boats less men working more time. This will lead to decreased safety. No one that I know wants to spend more time at sea. Have you been to a Boat Show lately? There are not many gear or boat sales.

Treating bycatch in this manner is inconsistent with the Magnuson Act, in that one must include economic, biological, and social conditions. Bycatch has lead to the closure and collapse of many fisheries. The greatest offender of gear is the trawl gear, then longline. The most effective and cleanest are pots and jigs.

The Council is justifying bycatch at the expense of others and causing collapse and closures to subsistence. They should surely justify the elimination of destructive non targeting gear that not only destroys the resource but also habitat.

In the IFQs for halibut, sablefish economic assessment you justify the loss of jobs and income to those who lose out by saying, "The economic gains of 150,000 or more to my income justifies you having to change your occupation and live in poverty. If you can justify that, you surely can justify the saying, "We will include every current participant restrict the gear, with all the economic gains being divided between each person according to their ability and knowledge to produce the fish." Be careful in how you proceed!

To all of you on the Council who benefit from IFQ' or would know of one who would. You may think you are safe from a collapse or from danger from the system you created. But as you take it away from the people, it can be taken away from you or us. If however; you leave it in the publics hands, it will never be taken from you. Your

share may decrease, but you will still have the privilege that was earned for you.

Thank you for reading this letter, and if you have any questions, please call me to clarify your thoughts or talk with me during the meetings.

David Hillstrand

Excerpts from IFQ discussions from April 1994 mtg

Motion on freezer boat definition:

Linda Behnken: I'm shooting for clarity and simplicity in our definition and in trying to go back to the final rules, and what I would propose is that we strike the definition that currently defines freezer boat on an annual or historic basis, recognizing that it's pretty inappropriate, pretty unworkable, and instead define freezer boat or catcher boat on a trip-by-trip basis, and use the definition of freezer boat which is currently in the regs, later on that states that a freezer boat is any vessel that has frozen or processed harvested product on board during a fishing trip.

Question: IFQ product, or just product?

Behnken: Product. I would keep it at product. If I could speak to that. . . I think as we get into this program and realize the complexity of it, both from a monitoring, enforcement, plain understanding of the rules, I think we'll realize that we need to keep it as simple as possible. We started off with this concept that there were freezer boats and there were catcher boats and that they could stay separate, and as the people who implemented went through the program it became pretty clear that that that was not possible, that the only way to define a freezer boat, any catcher boat, is on a trip-by-trip basis whether or not they were processing product. If we start clouding it up by saying, well, you can be freezing your halibut but not your sablefish, you can be using catcher boat sablefish but not freezer halibut, you can be freezing your bycatch, I think we're going to run in to all kinds of enforcement problems given that this program is based on shorebased monitoring and is a largely unobserved fleet. So, I think to be consistent with the intent, what we started on this program, to be consistent with the need for simplicity and clarity, that we should stick with what's in the regs in that respect.

Hegge: Linda, I can certainly agree with you on the IFQ product on board. We had an Enforcement Committee meeting and the general feeling in there was that non-IFQ product did not present an enforcement problem. I guess that leaves me with is there a conservation problem with freezing non-ifq product on board, or some other problem that you could point out that would cause that restriction.

Behnken: I would just note that right now the rules allow people to come in an offload product and to not even hail in until they're ready to unload IFQ product and that a vessel can come in with boxes of fish that are marked P. cod, marked rockfish, marked whatever you want, and ship them out and then it's a lot harder to monitor filets in the filet stage, in a frozen box, than it is to monitor roundfish. A halibut that's undressed looks like a halibut, so does the sablefish. Once you start filleting fish at sea I think we lose the control we need to have over this program. But I think maybe more importantly is that we started off with maintaining certain characteristics of this fleet, which was an owner-operated shorebased fleet, and the farther we stray from that the farther we stray from the intent of this program. And I have some real problems with that. I think as Wally pointed out before, this was a package we put together, and the more we change those kinds of things in it, the more we stray from what the people who helped develop this package supported when we developed it.

Hegge: Linda, there's nothing in here that would allow people without a rule change to filet their halibut. They still have to bring them in in an unmutated condition; that's the way the halibut regulations have been, and I don't see any change. The other product, it would take a substantial change in vessels, small vessels in particular, to freeze their P. cod which would make up a substantial part of their halibut fishery and still have room for halibut, keeping several holds on board, one iced, one frozen. As far as the concealing the identity of fish, that's digging a hole that enforcement would love to bury them in. That may be going on now, but we certainly all want to see somebody that would do that type of a criminal activity prosecuted, and I don't see that really coming into play here on this issue.

Lauber: Further discussion on the motion; are you ready for the question?

Pennoyer: Would you repeat the motion, please?

Pautzke: You'd strike the freezer vessel definition that's right now currently based on an annual basis and switch it to a trip basis, and it would be a freezer vessel that had any frozen product on board during that trip.

Behnken: Can I add one point to that. This would allow a vessel that was not freezing during that trip to be using either sablefish catcher boat quota shares or halibut catcher boat quota shares. As long as they're not freezing they can use either halibut or sablefish catcher boat quota shares.

Pennoyer: They would have to retain and deliver fresh or discard any rockfish or cod they caught then.

Behnken: They would have to retain; our rules don't allow discard. . .

Pennoyer: O.K., so they'd have to retain it.

Alverson: I'd move to amend that in addition to this. . .I assume the motion is to create a regulation that's going to come back to us in June?

Behnken: It basically sticks with what's in the plan but eliminates the conflicting definition of a freezer vessel.

Alverson: But when are we going to take final action on something like this? This. . .

Lauber: This is it. Because there are two definitions, which is confusing, and she is just going basically with one of the definitions.

Jay Ginter: I have a question for clarification to me. In the definition in the regulations, freezer vessel is defined as any vessel that is used to process some or all of its catch during a fishing trip. So that is a trip-specific definition. Now, it says 'process.' We have in the groundfish regulations defined process as meaning including freezing, that it also includes salting and cooking and that kind of thing. I guess what I want to know is, how does the motion differ from what we have here?

Behnken: That's basically the definition that I'm shooting for. Only, it's defined on a trip-by-trip basis. If you are not freezing product, you are not a freezer vessel and you can use catcher vessel quota share of either species. If you are freezing product, you can't be using catcher boat quota share of either species.

Lauber: Does that clarify it, Mr. Ginter?

Ginter: Well, I guess it clarifies that, as I see it, that's what the regulations provide for now and I'm guess I'm confused as to what you want changed.

Pennoyer: Well, the regulations provide now to use catcher boat halibut on board; I thought. . .

Ginter: Yes, in the definition section we have the freezer vessel definition that I just read, and that's what the motion pertains to. In 676.22(i)(3), the regulation provides for catcher vessel IFQs to be used on board a freezer vessel provided not frozen or otherwise processed fish products are no board at any time during fishing trip on which the catcher vessel IFQ is being used. Processing the fishing on the same vessel that harvested those fish using catcher vessel IFQ quota share is prohibited. --on a trip-by-trip basis.

Pennoyer: So, again for clarification, that's both halibut and sablefish and the way it reads right now is you just can't freeze rockfish or cod at the same.

Ginter: You can't freeze any other species.

Pennoyer: But it does include both halibut and sablefish on board, catcher boat shares?

Ginter: Yes, that's what the current regulation provides for. Now, the December action of the Council would have changed that to apply only to halibut and it would have allowed the freezing of other, non-IFQ, species.

Behnken: Maybe that's all clear. It's just that there two reg amendments we started that changed all that and made things totally confusing, and I think this gets back to a pretty clear-cut definition.

Alverson: Well, that's where we're at, is what Jay's saying.

Behnken: That's right.

Lauber: So, you think that by passing this motion we do nothing more than do what you think we're already doing. But if we want to make sure, that somebody doesn't have a higher GS than you do wants to think about that differently, that we wouldn't do any great harm as far as you're concerned if we passed this motion.

Ginter: That's correct.

Pennoyer: Mr. Chairman, it does change one thing, and that is, in December you adopted an amendment that would have allowed the freezing of other species on board, so you are changing your current recommendation to us, you are not changing what's currently in the rules.

Behnken: There were two reg amendments that we addressed in December. One involved the freezing of other species while you're using catcher boat share, and the other involved the halibut freezer boats being not allowed to catcher boat quota share, but sablefish could, and it was a quagmire.

Pennoyer: And you're reversing both of them.

Behnken: Right.

Pereyra: Ron (Hegge), in a sablefish operation, and you were using catcher boat sablefish shares, if you were prevented from freezing incidentally-caught other species on board, would this contribute to additional wastage in your estimation.

Hegge: Probably wouldn't be so much wastage; it would certainly be a devaluation.

Pereyra: Well, that's a wastage, economic wastage.

Hegge: Thornyheads is a very good example. They're probably more valuable than the black cod in a fresh frozen state. Delivered shoreside they're quite invaluable. Maybe they're worth more now, I don't know.

Behnken: I guess I'd have to argue that a little bit, I've been on trips where we're receiving 80 cents a pound for idiots delivered fresh, with blackcod, which certainly in the kind of quality shape that they could be under a quota share program and there may be a time in the future that we feel we can allow that kind of processing of some kind of product, but I just feel that up until the time when we try this program out, to be loosening up regulations

is a mistake from an enforcement perspective and from a sort-of keeping-the-record-straight perspective.

Pennoyer: Unfortunately I couldn't attend the enforcement committee meeting, but Mr. Hegge said they had presentations from our enforcement people that this wasn't a problem, and I'm not clear whether it is or it isn't right now. Ms. Behnken has made a strong pitch on bring boxes of frozen product on board early and then not reporting your delivery until later, and so forth, but apparently that's the same discussion you had on Sunday, so I don't know whether we need to get Passer or Meyers up here to comment on that or not, but I'm not clear whether it's an enforcement problem or not.

Hegge: I'd rather defer to Capt. Anderson since I'm kind of involved in this debate. Maybe he can explain it from the Coast Guard point of view, or Steve, either one.

Anderson: Yes, I'll take a crack at it, Mr. Chairman. I think we used the term. . .it's not a significant law enforcement problem, and I want to underscore the word significant. Sure, if you had just fresh fish, . . .[couldn't understand]. . .on one boat and no frozen product of other specie, that's probably an easier enforcement framework to deal with. However, when we look at the word significant, I think we've got some other issues that are more important that we're trying to address on the enforcement end of it. When you look at frozen product mixed with fresh fish, we deal with that problem now. If it was a significant and a huge enforcement problem now, why would anybody even go and try and acquire or have catcher vessel sablefish if all they had to do was go out and catch all they wanted and freeze it and mix it in with their P. cod and market it? . . .tape switchover, some comments lost. . .crewmen that have done boardings on foreign longliners and gone down and found big halibut tucked away in the hold and seize boats. It is an enforcement problem, it's an enforcement problem that we are capable, I think, of dealing with. We've talked to NMFS enforcement on this and I think it's one that we're prepared to work with. When you look at the opportunity to come in and offload, say, you're frozen product first, and then hail and say now I'm going to offload my catcher vessel sablefish, I mean, there's other ways to skin a cat, such as maybe we ought to be calling for a hail-in for all landings by boats that have IFQ product on board, I mean if you're coming in you're going to offload the other first, fine, you announce that you're coming to offload fish so at least we know there's fish moving at the dock where there are IFQ product on board, and I think there's other ways to address that.

Alverson: Well, I need a clarification, Steve. What we have passed to day, as I understand it, you're preparing some regulation to be implemented that we voted on in December that allows catcher blackcod IFQ to be landed on a boat that is freezing rockfish and cod. The only thing that. . .is for something similar to be done with catcher halibut.

Pennoyer: Before we wrap ourselves around the motion, if Ms. Behnken's motion was voted down, what you'd have would be the. . .I guess you'd have a prohibition. . .we would proceed with the amendment. . ., I guess you'd have a prohibition. . .we'd proceed with the amendment which you had before, I guess, which would be a prohibition on halibut and allowing the other species to be frozen on board. So, if you want halibut. . .neither of these situations is completely going to do it. Ms. Behnken's motion would allow for halibut catcher boat shares on boat but prohibit frozen other species; the motion you passed in December would do the opposite - it would allow for the other species to be frozen on board but would prohibit halibut, so, somehow you have to get the motion back amended in the direction you want to go, and I'm not sure what that is yet.

Behnken: Just briefly, with all due respect to enforcement, I've run this by a lot of fishermen who think there's grounds for concern. There's a lot more incentive to under-report under an IFQ program and with respect to Mr. Pennoyer's comments, I think what we did in December was to try to get back to where we started, of freezer vessels shall not use catcher boat quota share, and then we said, well, you know when P. codder are out there, what if they catch sablefish and, well, O.K., we said we'll let them keep sablefish, but we don't want to have waste. So we gave freezer vessels the right to release halibut; they could either keep them if they had freezer

vessel halibut or they could release them. And that provision was all in keeping with trying to maintain the shorebased nature of this fishery. So, I think there's two issues. One is the enforcement which causes me a lot of concern, and the other is maintaining sort of where we started, with maintaining the nature and characteristics of this fishery, and I think the way we sort of wrestled with that in December clouded the whole issue and by going back to what's in the plan, is remaining consistent with what we developed with the help of a whole bunch of people from the industry who are not at the table any more.

Mace: I can appreciate Linda's concern about the enforcement issue, but I'm not convinced that that is overriding. I think that that type of regulation would impose a economic inefficiency on the fleet and I don't think this Council wants to be aiming in that direction. Further, I think that the position of an IFQ quota on the part of a vessel is a strong incentive for that vessel to operate in a very legal manner because there's more than the vessel involved, there's a tremendous and value in that IFQ quota, and as long as you've got one crew member on board, you've got potential for that information to get out. We hear it all the time, people are displeased with the owner or the skipper and come in and make some reports and eventually that's going to come before the enforcement people, so I just had to build in inefficiencies with type of regulation.

Hegge: I think that my comments on it would lean more towards the fresh vessels, I guess, when you look at the sablefish fishery; the freezer vessels don't have a problem with this anyway, they can freeze it onboard, they're freezing their other product, they're already covered. If you look at the thornyheads that I mentioned, the boat isn't going to set up a export program over a few hundred or 500,000 pounds of thornyheads, but he could bring them into a shorebased plant in a fresh-frozen condition that both of them would profit more on. It would enable the fisherman to increase the value of his trip and I think it would give the plant a better product. It certainly looks like it has the possibility to enhance the value of the fishery, and that's the only reason I'm supporting it. I think as far as the freezer vessel, they're not going to be involve in it anyway, or the larger freezer vessel.

Lauber: Ready for the question? Call the roll.

Pennoyer: Mr. Chairman, . . . O.K., I guess if we vote it down, we're back to the amendment we had in December at the moment, which is frozen product on board but no halibut, and I'm ready for the roll.

Lauber: Call the roll.

Vote:	<u>Yes</u>	<u>No</u>
	Behnken	Dyson
	Rosier	Mace
	Samuelsen	Freeman
	Lauber Pennoyer	
		Pereyra
		Alverson

Hegge abstained.
Motion failed.

Meeting recessed for the evening.