


MEMORANDUM

TO: Council, AP, and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: June 20, 1991

SUBJECT: Sablefish Management

ACTION REQUIRED

- (a) Receive NMFS report on enforcement and implementation of the proposed IFQ program.
- (b) Consider approval of individual fishing quota system (Preferred Alternative) for Secretarial review.

BACKGROUND

(a) NMFS Report

In April the Council requested NMFS to bring back to the June meeting a report on the details of how an IFQ system would be implemented, a summary of enforcement considerations, and estimates of the costs of implementing and enforcing such a program. A written report prepared by NMFS is included in your notebook as Item C-1(a). An oral report is also available.

(b) Approval of Preferred Alternative

Also in April, the Council approved the Supplemental analysis to the SEIS/RIR/IRFA for fixed gear sablefish management for a 30-day public review period. The document was released on May 14, 1991 and the official public review period ended on June 14, 1991. Written comments received include specific references to the analysis document as well as general comments pertaining to the acceptability of an individual fishing quota (IFQ) system compared to continued open access. These written comments were mailed to all Council family members on June 12 and June 17. Additional comments received after the deadline have been placed in the "Late Comment" notebook per Council policy.

The original SEIS (November 1989) compared the status quo (open access) with license limitation, annual fishing allotments, and individual fishing quotas. The Supplement of April, 1991, further discusses the IFQ alternative versus open access and analyzes the four alternative IFQ programs under consideration. These programs have different options concerning qualifying years for initial allocation, transferability, vessel class restrictions, and community development considerations. There also is an optional set-aside of TAC which could be used for an open access fishery, bycatch, or community development. The alternative IFQ programs are outlined in item C-1(b).

The Council has noticed the public that they intend to be able to choose from among the options within each IFQ alternative when fashioning the final preferred alternative. For this reason, the Supplement attempts to analyze the range of possible effects resulting from various combinations of the provisions of each of the listed alternatives. Item C-1(c) is the Executive Summary from the analysis. Council staff will provide a report on the results of the analysis to help the Council through the decision making process.

If the Council approves a sablefish IFQ program at this meeting, the Preferred Alternative would be held until after the September, 1991 meeting for submission for Secretarial approval. After the Council chooses its halibut IFQ alternative in September, the sablefish and halibut preferred alternatives would be forwarded to the Secretary in a single package. Our original schedule called for Council approval of draft regulations in September, however, in item C-1(a) NMFS recommends we wait until December.

JUNE 17, 1991

NMFS REPORT TO THE COUNCIL

INDIVIDUAL FISHING QUOTA (IFQ) PROGRAM IMPLEMENTATION FOR THE
HALIBUT AND SABLEFISH FISHERIES OFF ALASKA

Assuring efficient and effective implementation of a sablefish and halibut IFQ program with which there is general compliance is going to be a major task for the Alaska Region.

- It will require substantial investment to set up and maintain - estimated annual administrative costs are slightly less than one million dollars.
- It must be carefully planned to be done correctly from the outset - with a substantial budget and public confidence at stake, we cannot afford to act too hastily to meet a desirable but unrealistic deadline.
- The fishing industry should have ample time to plan their operations under an IFQ program and to understand the new rules before the program begins.

Despite a long history of study and discussion of IFQ programs by the Council, there has been little focus on the intricacies of implementing an IFQ program such that the desired effects are realized. Reasons for this include:

- The lack of a specific preferred alternative being identified by the Council;
- The lack of experience with implementing large scale IFQ programs in the U.S. under the Magnuson Act;
- Analytical effort has been focused on theoretical benefits and costs of various alternatives;

RECOMMENDATION

Create two ad hoc groups: (1) a longline industry advisory group organized by the Council with, say 21, representatives of sablefish and halibut longline vessel owners, and (2) a technical work group organized by the Alaska Region

- The IFQ technical team would be composed of data base

managers, computer programmer/analysts, fishery management, legal and enforcement experts.

- Two end products of the technical group would be (a) an implementation plan and (b) draft proposed rules to carry out the Council's preferred alternative.
- The industry advisory committee would interact with the technical team to advise them on the practicability and acceptability of elements of the implementation plan.
- The purpose of the industry advisory committee would be to find the best way to carry out the Council's preferred alternative; not to debate the IFQ principle.

TIMING

The current schedule for Council action on the sablefish preferred alternative in June 1991 and the halibut preferred alternative in September 1991 would be unchanged. However, Council review and action on draft proposed rule text would have to be delayed until its December 1991 meeting.

- At its June meeting, the Council would decide on a preferred alternative for a sablefish IFQ program, and adopt the above recommendation.
- During July, the Council staff would begin recruiting for and organizing the industry advisory group; the Alaska Region would begin the same for the technical work group.
- The technical work group could meet first in August and begin a rough implementation plan that would detail all aspects from initial allocation through enforcement and penalties. Examples of issues include how IFQ program requirements would interface with existing reporting and observer requirements, how sablefish and halibut management areas can be merged, how catch data can be verified and IFQ transfer requirements simplified.
- In late August or early September, the industry advisors could review the first cut implementation plan and give initial criticisms to the technical team in a joint meeting.
- At its September meeting, the Council would decide on a preferred alternative for the halibut IFQ program, and

check progress on the implementation plan. It is possible, but not likely, that proposed regulations implementing the plan could be prepared at this time.

- Most likely, during October the technical and industry groups would continue refining the implementation plan and begin drafting of proposed rule language could begin.
- November meetings of the technical and industry groups would reach final agreement on the implementation plan and review draft proposed rule language.
- At its December meeting the Council would review and consider adopting the implementation plan and draft proposed rules for submission to the Secretary along with final FMP amendment language and supporting analyses. Analytical work already done would not have to be changed and re-issued for public comment providing there are no radical changes to the preferred alternatives.

PRELIMINARY ENFORCEMENT PLAN

Assuring compliance may be the most difficult part of implementing a sablefish/halibut IFQ program especially given the current level of available enforcement, size of the halibut fleet, value of the product, the geographic distribution of potential landing sites, and international treaty obligations that allow for direct export to Canada. Without broad acceptance and compliance by vessel owners and operators, any individual quota program will fail to produce the desired economic and social benefits, and could lead to biological overfishing of the resource. Of equal importance in designing an effective IFQ monitoring and enforcement plan is assuming realistic personnel and funding requirements.

Although these factors seem to suggest that nothing short of an enforcement officer monitoring every unloading of halibut will assure the necessary compliance, this level of enforcement is neither necessary or practical. The success of an IFQ program for the sablefish and halibut longline fisheries will depend instead on the risk of suffering severe penalties if violations are discovered, the likelihood of being caught and the benefits that will accrue to the fishery if all participants adhere to the rules. Hence, to a large extent successful compliance will depend on the understanding and cooperation of the fishermen who have the most to gain from a successful IFQ program.

Potential landing requirements

- All buyers of sablefish and halibut at the first point of sale would be licensed. Fishermen could sell these fish only to licensed buyers. Public sales directly by the fisherman who caught it would require special permitting.
- Halibut and sablefish landings at 10 primary ports would not require advance notice, but landings at an additional 10 to 15 secondary ports would require a minimum 24-hour advance notice of landing.
- Fishing vessels would be prohibited from landing or unloading their catch at sea unless the fishing vessel is first inspected at a designated port and the receiving vessel is licensed as a first-point-of-sale buyer.
- Fishing vessels landing or unloading in any state other than Alaska or in any foreign nation (including transshipment to foreign cargo vessels) would be required to first clear through a designated port such as Kodiak or Ketchikan.

Potential open access enforcement

- All landings by non-IFQ holders would be required to be at licensed halibut buyers in either primary or secondary ports.

Potential reporting requirements

- Initial reporting of all landings and sales would require electronic reporting via quota card and telephone lines. This would immediately identify the vessel, vessel owner, port of landing, amount of unharvested quota, and would instantly deduct amount landed from outstanding quota.
- Current State of Alaska fish tickets, Federal fishing logbook and processor reports, and IPHC logbooks may be modified to serve as follow-up "paper trail" documentation on all landed halibut.
- Current observer program also could be expanded to collect biological and fishery data on large vessels at sea and at landing sites.

Potential personnel requirements

- The NMFS enforcement staff would be increased by 24 uniformed Federal enforcement officers (FEOs) who would be stationed at the 10 primary ports of landing.
- Enforcement at secondary and other ports would be done by unannounced visits by FEOs and special agents.
- Enforcement staff based at Alaska Region headquarters in Juneau would be expanded by the addition of three special agents who would focus on individual quota cases would also be needed.
- The NMFS Alaska Region also would be expanded by the addition of three positions for computer programmer or systems analyst and data entry clerks. These positions would be especially important during the initial allocation phase of the IFQ program.
- NOAA, General Counsel for the Alaska Region (GCAK) would expand its staff by one or two additional staff attorneys and an additional law clerk to prosecute IFQ violations, law suits and appeals.

Penalties.

Violation of an IFQ or other rules implementing the IFQ program for the sablefish and halibut fishery would be prosecuted under the Halibut Act, the Magnuson Act, and other applicable law. The Magnuson Act describes prohibited acts, civil penalties, criminal offenses, and civil forfeitures in sections 307-310 (16 USC 1857-1860). A specific schedule of penalties for IFQ enforcement purposes would be developed by NOAA, General Counsel in consultation with NMFS enforcement. The penalty schedule would be designed in such a manner that a definite economic incentive would exist to comply with the IFQ regulations. Violation of IFQ program regulations could cause severe penalties including but not limited to potential forfeiture of catch, gear and vessels, and sanctions on all or part of a QS or IFQ.

PRELIMINARY ESTIMATE OF IMPLEMENTATION COSTS

For purposes of this analysis, the costs of administering and enforcing any IFQ program are assumed to be primarily borne by the NMFS Alaska Region and NOAA General Counsel, Alaska Region (GCAK). Some administrative costs also may accrue to the ADF&G, the NMFS Central Office, the U.S. Coast Guard, and the IPHC. These costs, however, are assumed to be incidental to the normal interaction with the NMFS Alaska Region. The only exception to this would be in the operation of the appeals board. Another basic assumption used in this analysis is that none of the work

described above would be contracted to a private firm. Although this is an option available to the NMFS, at this time there is not enough information to determine contracting costs.

Administrative costs for initial allocation.

Design and approval of the QS application are assumed to be accomplished by existing staff. Assuming the printing and mailing of about 9000 applications at about \$.75 each, distribution of the applications is estimated to cost about \$6,750.

Personnel costs of advertising the application period and giving instruction and guidance to applicants could be met with existing Alaska Region staff. However, preparation, printing and mailing of an instruction pamphlet to accompany the application would impose administrative costs in addition to, and about equal to, the application itself. Six workshops to explain the IFQ program and assist applicants with their applications would require additional travel funds of about \$3,240 for one Alaska Region staff person.

The Alaska Region would need an additional data management specialist to query fish ticket and vessel ownership data bases in determining initial QS eligibility as applications are returned. Assuming one half year of a full time equivalent (FTE) GS-7, plus fringe benefits and cost of living allowance, this addition to the Alaska Region staff would cost about \$17,786. Office space costs for this additional staff person for one half year would cost another \$720. No new computer software is anticipated for this part of the program, but additional computer hardware for the additional staff is estimated to cost about \$5,400.

Summary of application costs:

printing/ mailing instructions	\$ 6,750
printing/ mailing application	\$ 6,750
travel expenses	\$ 3,240
personnel	\$17,786
office space	\$ 720
computer hardware	<u>\$ 5,400</u>
Total	\$40,646

Researching and copying archived fish tickets, if necessary, in preparation to filing an application also would impose a cost on either the State of Alaska Commercial Fisheries Entry Commission (the ultimate steward of Alaska Department of Fish and Game (ADF&G) fish tickets), or on the applicant. Currently, the Entry Commission provides a computer summary of landings data to permit holders whose permit number matches the permit number on a fish ticket for free or a nominal cost. To search fish ticket archives and copy an actual fish ticket, the Entry Commission

charges the requesting permit holder \$20 per hour. The average amount of time necessary to search for and copy fish tickets is estimated at about two hours per fish ticket, however, this time could be reduced when searching for multiple tickets. This cost is not strictly an administrative cost, however, since it would be borne by the applicant making a research request. Although the application procedure would not require copies of actual fish tickets to be submitted with an application, such documents would have to be submitted in support of an appeal or to rebut an audit that indicates significant discrepancy between claimed and recorded landings of sablefish.

Calculation of qualifying poundage and QS, and notice of initial allocation would require another one-half FTE data management specialist at the Alaska Region, including office space for one half year. This cost would be spent largely in performing audits of claimed landings on applications, and in calculating each eligible person's QS by management area. Certified (return receipt) postage at \$2.29 each for 9000 initial allocation notices also would be an additional one-time cost of \$20,610. No new computer software is anticipated as necessary for this part of the initial allocation process, and the same hardware used for the application process would be used for auditing applications and calculating QS.

Summary of QS calculation and initial allocation notice costs:

mailing	\$20,610
personnel	\$17,786
office space	<u>\$ 720</u>
Total	\$39,116

Costs of operating the administrative appeals board would be directly related to the degree to which grounds for appeals are limited. If the Council and Secretary choose to allow "hard luck" appeals to credit lost fishing, then the number of cases the appeals board would have to adjudicate would likely expand and its costs would be higher than if the policy were to allow exclusion of one year or more from the QS calculation.

Assuming that the Council and Secretary choose not to allow "hard luck" appeals, staffing the appeals board is estimated to require the state agencies and NMFS each the equivalent of one quarter of one GS-12 level staff. If such staff already exist and their work load could absorb this additional appeals board work, then no new personnel costs would be necessary. If new staff are required to meet this need, then the two Alaska members (one from ADF&G and one from the Alaska Region) would cost about \$27,300 and the Washington and Oregon members would cost about \$22,500. These estimates include salaries and benefits and a generally higher pay scale of Alaska government employees. An estimated \$6,600 would be needed for travel expenses if the board were to

conduct only three hearings: two in Alaska and one in Washington. Office space and supplies are assumed to be pre-existing for these personnel.

Summary of appeals board costs:

personnel, WA and OR	\$22,500
personnel, AK and NMFS	\$27,300
travel expenses	<u>\$ 6,600</u>
Total	\$56,400

Initial allocation costs, therefore, are summarized as follows:

Application costs	\$40,646
QS calculation and notice	\$39,116
Appeals board	<u>\$56,400</u>
Total	\$136,162

Annual specification costs.

The additional cost of implementing this part of the IFQ program would not add significantly to overall costs. If personnel employed for QS and IFQ monitoring purposes could absorb the annual specification process without additional staff, then the administrative costs for this part of the program would be virtually nil. On an annual basis the work load involved in the annual specification process would likely require the services of one FTE data management specialist at the GS-7 level for one month which would cost an estimated \$2,964. Office space for this additional person would cost an additional \$120. No additional computer software or hardware would be necessary, however additional postage expenses may cost about \$2,916. In summary, assuming no absorption of these costs by other ongoing functions, annual expenses for this part of the implementation program would be:

personnel	\$2,964
office space	\$ 120
mailing	<u>\$2,916</u>
Total	\$6,000

Administrative costs of monitoring catches and transfers.

Monitoring the individual halibut and sablefish catches of potentially 9,000 quota holders and the expected transfer of QS and IFQ, would require the Alaska Region to substantially upgrade its current computer capability. Particular attention would be given to electronic forms of data transmission. Such upgrading would require about 6 months time of an additional computer systems analyst/programmer (1/2 FTE at the GS-13 level) and at least two additional data management specialists (2 FTEs at the GS-7 level). Including salaries and benefits the systems analyst/programmer would cost about \$37,518 per year and each

data management specialist would cost \$35,572 per year. Office space for each additional employee would add costs of about \$1,320 for the systems analyst/programmer and about \$1,440 for each data specialist. Additional computer hardware and software is roughly estimated to cost about \$108,000. Additional communication costs for postage, telephone and an additional fax machine are estimated at \$9,990.

Summary of monitoring costs:

computer hardware/software	\$108,000
personnel (1/2 GS-13 FTE)	\$ 37,518
personnel (2 GS-7 FTEs)	\$ 71,144
telephone and fax	\$ 7,560
office space	\$ 4,200
postage	<u>\$ 2,430</u>
Total	\$230,852

6.5.2 NOAA, General Counsel, Alaska Region (GCAK).

Additional legal work involving appeals, law suits, and prosecution of violations associated with the IFQ program is anticipated to require one additional staff attorney and a law clerk for GCAK. Assuming the staff attorney would be hired at the GS-13 level and the law clerk at the GS-7 level, salaries and benefits for these additional staff are estimated to cost about \$110,608. Additional office space would cost GCAK about \$4,080. Two new personal computers and associated peripherals are estimated at about \$8,640. No new computer software would be required.

In addition, the appeals board would likely need the legal services of GCAK at the rate of about one month of a grade GS-13 lawyer or a cost of about \$6,253. Again, this cost depends on whether existing GCAK legal staff could absorb appeals board work load.

The prosecution of IFQ violations would be largely dependent on access to bona fide fish tickets and documentation from other required reports. The NMFS, GCAK and ADF&G may have to arrange, at unknown cost, for a more efficient fish ticket retrieval system than currently exists.

Summary of GCAK costs:

personnel (1 GS-13 FTE)	\$ 75,036
personnel (1 GS-7 FTE)	\$ 35,572
computer hardware	\$ 8,640
appeals board services	\$ 6,253
office space	<u>\$ 4,080</u>
Total	\$129,581

NMFS Alaska Region Enforcement

Although individual quota programs theoretically decrease or eliminate the need for fishing seasons, time/area closures, gear restrictions and other measures designed to limit fishing efficiency, enforcement costs are not reduced but would be substantially increased. This is because enforcement monitoring on shore would increase while that at sea would remain unchanged. Therefore, the use of Coast Guard platforms is expected to continue at present levels. Monitoring compliance and bringing charges against violators of IFQ rules is expected to be the most costly part of carrying out any IFQ program.

Estimating these costs normally focuses on the marginal or incremental costs of enforcement, and assumes that current levels of enforcement are adequate for monitoring compliance of existing rules. The analysis then determines the extra cost of carrying out the proposed new program. In this instance, however, current levels of enforcement may not be adequate. In its review of FY-1992 funding and personnel needs for the NMFS, the National Fish and Wildlife Foundation (NFWF) found an acute lack of manpower and enforcement resources in Alaska. To maintain an appropriate level of on-shore compliance monitoring of existing regulations, the NFWF recommended an increased corps of 22 FEOs to be stationed in ten principal Alaskan fishery ports. Without these additional enforcement personnel, adequate enforcement of IFQ rules would be virtually impossible. However, it would be analytically incorrect to ascribe the total cost of fielding these additional personnel entirely to an IFQ program.

For budget estimating purposes, the NMFS enforcement office assumes an annual cost of \$75,000 for each FEO and \$100,000 for each special agent. These costs include salary, overtime, benefits, office space, support staff, training, transportation and equipment for a year. Based on these estimates, the addition of 24 FEOs to the Alaska Region, NMFS, would cost \$1,800,000 per year. The addition of three special agents would cost \$300,000 per year. Combined, these additional enforcement personnel are estimated to cost \$2,100,000. This may be the practical cost of enforcing an IFQ program for the sablefish and halibut fisheries since the current enforcement staff could not adequately monitor compliance without the addition of 24 FEOs, three special agents, and several support personnel.

The marginal cost of enforcing a halibut IFQ program would be much less, however. One approach to determining the marginal cost is to assume that a full staff of 24 FEOs would spend about 25 percent of their time monitoring compliance with IFQ rules. This is slightly more than the current enforcement effort to monitor compliance during several 24-hour halibut openings under open access management rules. This makes the marginal cost of the FEOs to be \$450,000. Further, assume that 100 percent of the

additional special agents' time would be spend investigating IFQ violations. Under these assumptions, the total marginal cost of enforcing the IFQ program would be \$450,000 for the FEOs plus \$300,000 for the special agents or \$750,000. Another approach would be to assume that the current enforcement staff should be augmented by 22 FEOs, at a cost of \$1.65 million, to enforce existing regulations, without any IFQ program. If this were done, then the marginal cost of enforcing the IFQ program would be equivalent to the cost of two additional FEOs plus three special agents, or \$450,000.

Implementation cost summary

By function, management, enforcement and GCAK costs can be summarized as follows:

	Marginal	Practical
Management Division		
- Initial allocation	\$136,162	
- Annual specification	\$ 6,000	
- Monitoring	\$230,852	
NOAA GCAK	\$129,581	
Enforcement	<u>\$750,000</u>	<u>\$2,100,000</u>
Total	\$1,252,595	\$2,602,595

Assuming that 1992 is the first year of implementing the halibut and sablefish IFQ program, but that fishing under it would not occur until 1993, administrative costs would be limited to those associated with initial allocation work and establishment of computer monitoring system. The former would include GCAK costs and the latter would include only those monitoring costs associated with computer hardware and software and the salary, benefits and office space costs of a systems analyst/programmer. Enforcement costs would not be included in the first year, but about half of the needed FEOs should be hired, trained, and posted to various Alaska ports during 1992 to assure a smooth transition to full implementation of the IFQ program the following year

First year (1992) cost summary:

initial allocation	\$ 136,162
monitoring system setup	\$ 230,852
GCAK	<u>\$ 129,581</u>
Total	\$ 496,595

Implementation costs in 1993, the first year of fishing under the IFQ program, would increase over the previous year's costs due to the inclusion of enforcement costs. However, major costs associated with initial allocation and setup of the monitoring

system would not be spent; the computer systems analyst-programmer is assumed to be unnecessary as existing staff would be able to make adjustments to programs as needed. GCAK costs are reduced by the value of one-time computer purchases made in the first year. Onboard or shore-based observers may be involved also with monitoring of IFQ catches and landings. The costs of observers, however, are not included in this analysis as they are assumed to be paid by participants in the fishery either directly or indirectly through an NMFS-administered observer program fee. The only administrative cost of such a program would be those in excess of the total user fees collected. Since such a program is not now in effect, this cost is not estimated.

Second year (1993) cost summary:

IFQ specification	\$ 6,000
monitoring	\$ 85,334
enforcement	\$ 750,000
GCAK	\$ 120,941
Total	\$ 962,275

In subsequent years, computer hardware and software purchases are assumed to be zero. Efficiencies under IFQ management will allow greater efficiencies in the monitoring system. Hence, monitoring personnel costs may be reduced to one full time data management specialist. The annual specification of IFQs also could be done by this staff. Enforcement and GCAK costs would be reduced only by amounts not spent for new computer hardware.

Subsequent years' cost summary:

IFQ specification and monitoring	\$ 52,762
enforcement	\$ 750,000
GCAK	\$ 120,941
Total	\$ 923,703

Time requirements.

Initial discussions with data management and program implementation professionals with the ADF&G, Alaska Limited Entry Commission, NMFS, and Council staff indicate that at least 14 to 16 months, from the date of Secretarial approval, would be necessary to accomplish the various hiring, systems design, programming, or contracting and testing tasks necessary to initiate the halibut IFQ program. During this time, workshops also would be held to explain details of the application procedure and rules effecting the IFQ program. The application period and initial allocation procedures could overlap the end of the system design period.

Time requirements to initially allocate halibut QS could take almost a year. The application period is contemplated to continue for up to 120 days from the effective date of final

implementing regulations. The Regional Director's notice of initial allocation would occur no later than 90 days after the end of the application period, and the appeals period would end no later than 90 days after the notice of allocation. Hence, the initial allocation program may not be completed until 300 days after the effective date of the final implementing regulations. In practice, however, these functions could be overlapped. That is, the Regional Director may issue notices of initial allocation on an as-calculated basis rather than wait until 90 days after the end of the application period to issue all notices at once. Likewise, applicants could file appeals immediately after receiving initial allocations rather than waiting to the end of the appeals period.

TABLE 1.3. ALTERNATIVE IFQ SYSTEMS FOR MANAGEMENT OF SABLEFISH FIXED GEAR FISHERIES OFF ALASKA

ALTERNATIVE 1 - is the status quo (open access).

ALTERNATIVES 2.1 through 2.4 - are variations of individual fishing quota (IFQ) systems being considered by the North Pacific Fishery Management Council

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4		
Gear and Areas	Fixed gear (pot and longline) sablefish fisheries in six sablefish management areas: Southeast Outside/East Yakutat, West Yakutat, Central Gulf, Western Gulf, Bering Sea, and Aleutian Islands.					
Shares and Quotas	Quota shares (QS) are a percentage of the fixed gear Total Allowable Catch (TAC) for a specific management area. An Individual Fishing Quota (IFQ) is the weight equivalent of the QS. It is also area specific. It will vary annually with changes in the fixed gear TAC for an area.					
Initial Assignment of Quota Shares	<p>Tentative schedule: After the application and appeals process in 1992, QS will be assigned for use in 1993. IFQs to be issued yearly to QS owners.</p> <p>Initial QS recipients will be owners or leaseholders of vessels that made fixed gear landings of sablefish during the qualifying period. They must be non-foreign, but otherwise are 'Persons' as defined by the Magnuson Act: any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being owned and controlled by a majority of U.S. citizens), and any Federal, State, or local government or governmental entity. Initial assignment would go to:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>ALTERNATIVE 2:</p> <p>Option 1: Vessel owner(s) only Option 2: Owner except when lease exists. Option 3: Unspecified split between owner and leaseholder.</p> </td> <td style="width: 50%; vertical-align: top;"> <p>ALTERNATIVES 3 - 5:</p> <p>Only one option: Vessel owner(s) unless qualified lease exists (bareboat charter). Qualified leaseholder would receive credit for landings.</p> </td> </tr> </table>				<p>ALTERNATIVE 2:</p> <p>Option 1: Vessel owner(s) only Option 2: Owner except when lease exists. Option 3: Unspecified split between owner and leaseholder.</p>	<p>ALTERNATIVES 3 - 5:</p> <p>Only one option: Vessel owner(s) unless qualified lease exists (bareboat charter). Qualified leaseholder would receive credit for landings.</p>
<p>ALTERNATIVE 2:</p> <p>Option 1: Vessel owner(s) only Option 2: Owner except when lease exists. Option 3: Unspecified split between owner and leaseholder.</p>	<p>ALTERNATIVES 3 - 5:</p> <p>Only one option: Vessel owner(s) unless qualified lease exists (bareboat charter). Qualified leaseholder would receive credit for landings.</p>					
Qualifying Period	To qualify for QS in an area, a 'Person' (owner or leaseholder) must have made fixed gear landings of sablefish in the area in at least one year during:					
	<p>ALTERNATIVE 2:</p> <p>1984 - 1989</p>	<p>ALTERNATIVE 3:</p> <p>1987 - 1989</p>	<p>ALTERNATIVE 4:</p> <p>1984 - 1990</p>	<p>ALTERNATIVE 5:</p> <p>Option 1: 1984 - 1990 Option 2: 1988 - 1990</p>		

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4
Initial QS Amount	<p>Initial QS is based on the sum of a 'Person's' recorded fish tickets, by area, for all vessels each 'Person' owned or held by lease for the combination of years below. This individual qualifying poundage would be divided by the total of all individuals' qualifying amounts in an area to obtain the QS in terms of a percentage of the fixed gear TAC for that area. Years with no landings would be counted as zero.</p>			
	Total of 6 years - 1984-1989	Option 1: all 6 years - 1984-1989 Option 2: 5 of 6 years - 1984-1989 Option 3: 4 of 6 years - 1984-1989	Best 5 of 7 years: 1984 - 1990	Option 1: same as alternative 4. Option 2: single best year from 1988 - 1990.
Emphasis on Recent Landings	Landings will be adjusted upward incrementally by 1%, 3%, or 10% each year from 1984-1989 when calculating initial QS.	No weighting of more recent landings.		
Vessel Category Designations	<p>Option 1. NO vessel categories. Option 2. Vessel categories as follows: 1. Less than 50' length overall. 2. 50' to 100' length overall. 3. Over 100' length overall.</p> <p>Each 'Person' would receive QS for the vessel category of their most recent landings within the qualifying period. If, in their most recent qualifying year, they owned or leased 2 or more vessels that landed sablefish, then their allocation would be for the category of their largest vessel.</p>	<p>Vessel categories as follows: 1. Less than 50' length overall. 2. 50' to 75' length overall. 3. Over 75' length overall. 4. All freezer boats regardless of size.</p>	<p>Vessel categories as follows: 1. Catcher vessels. 2. Freezer vessels.</p> <p>Landings calculated for each category. No size limitations for vessels. Catcher vessel fish cannot be frozen aboard vessel using IFQs. Freezer boat fish may be delivered fresh or frozen.</p>	<p>Option 1: NO vessel categories.</p> <p>Option 2: Vessel categories of: (a) Less than 60' length overall. (b) 60' and greater.</p>
Duration of Quota Share Program	<p>Harvest privileges may be subject to periodic change, including revocation, in accordance with appropriate management procedures as defined in the Magnuson Act. Ending the program would not constitute 'taking' and QS/IFQ owners would not be compensated.</p>			
	Option 1: No specified ending date. Option 2: Effective into perpetuity. Option 3: Effective for specified period (e.g. 5 or 10 years)	No specified ending date. The privileges are good for an indefinite period.		

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4								
Calculating IFQ Poundages	<p>IFQ poundage is obtained by multiplying the QS percentage times the fixed gear TAC for an area. Fixed gear TAC is a percentage of overall sablefish TAC. The fixed gear percentage varies by area:</p> <table border="0" data-bbox="783 337 1357 483"> <tr> <td style="padding-right: 20px;">Eastern Gulf:</td> <td>95% of area's total TAC</td> </tr> <tr> <td>Western/Central Gulf:</td> <td>80%</td> </tr> <tr> <td>Bering Sea:</td> <td>50%</td> </tr> <tr> <td>Aleutian Islands:</td> <td>75%</td> </tr> </table>			Eastern Gulf:	95% of area's total TAC	Western/Central Gulf:	80%	Bering Sea:	50%	Aleutian Islands:	75%	Same as Alternatives 2-4, except that 20% is subtracted off the fixed gear TAC for each area and assigned to the open access fishery described elsewhere in this table.
Eastern Gulf:	95% of area's total TAC											
Western/Central Gulf:	80%											
Bering Sea:	50%											
Aleutian Islands:	75%											
Transfer of QS/IFQs	<ul style="list-style-type: none"> * QS may be sold, and after two years, leased. * IFQs may be sold after two years. * Any 'Person' may control IFQs. Proof of citizenship or majority ownership and control may be required. 	<ul style="list-style-type: none"> * QS may be sold, but not leased. * IFQs cannot be sold. * Any 'Person' may purchase QS but, must own or be on board vessel using the QS/IFQs as crew or operator. 	<ul style="list-style-type: none"> * Freezer boat QS/IFQs: Fully saleable to any 'Person' (U.S. individual, partnership, corp., etc.). Leasable, but recipient must own vessel using IFQs or be on board as crew or operator. * Catcher Vessel QS/IFQs: Initial recipients can be 'Persons' and do not have to be on the vessel or sign the fish ticket to use the IFQs. Subsequent users must be (or designate within 90 days) a U.S. citizen as owner of the QS who must be on board the vessel using the IFQs and sign the fish ticket, unless an allowable lease exists. Then, the leaseholder must be a U.S. citizen and must be aboard and sign the fish ticket. No more than 50% of any person's IFQs may be leased except in cases of illness, injury, or emergency to be defined by NMFS. 	<ul style="list-style-type: none"> * QS/IFQs fully saleable, and: <ul style="list-style-type: none"> Option 1: leasable Any 'Person' may control IFQs. Proof of citizenship or majority ownership and control may be required. Option 2: non-leasable Any 'Person' may purchase QS, but must own the vessel the QS/IFQs will be used on, or must be on board the vessel using the QS/IFQs as crew or operator. 								

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4
Limitation on Holdings (own/control)	3% of TAC available to fixed gear off Alaska	2% limit of overall fixed gear TAC but, initial recipients of more than 2% may continue to own or control the excess, but not more.	3% limit, otherwise same as Alternative 3.	Same as Alternative 3. No more than 2% can be used on one vessel. Suboption under this alternative for a 1% cap on ownership.
General Provisions	<ul style="list-style-type: none"> * NMFS must approve QS/IFQ transfers based on findings of eligibility criteria before fishing commences. * Persons must control IFQs for amount to be caught before a trip begins. * QS and IFQs are specific to management areas and vessel categories (if used). * Hook-and-line or pot caught sablefish cannot be landed without IFQs except in open access fishery under Alternative 5. In Alternative 5, all catch would be counted against either IFQs or open access TAC, whichever is appropriate. * IFQs are not valid for sablefish caught by pot gear in the Gulf of Alaska, or by trawl gear anywhere. 			
Discards	No provisions for discards		IFQ users cannot discard legal sized sablefish	Discards permitted but count to TAC or IFQ. Any LL fishery that takes sablefish must control IFQs.
Open Access	No open access fishery			Up to 20% of TAC may be set aside for community quota, bycatch, or open access as described below.
Coastal Community Considerations	8% cap on total use by disadvantaged communities. Also limitations by area. Details of concept are in Attachment 1.	Same as Alternative 2 except limited to Port Graham and westward, and only the Governor of Alaska can recommend communities. See Attachment 2.	3% cap on use of any area's fixed gear TAC for disadvantaged communities such as Atka or Pribilofs.	<ul style="list-style-type: none"> * Each area's fixed gear TAC divided ?% IFQ and ?% open access. * IFQ holder for any area would not be permitted to fish any area's open access fishery except as noted. * Open access fishery managed by exclusive registration area (existing sablefish areas). * 4th quarter open access clean-up fishery open to any person or vessel if they do not own/control unused IFQs. Exclusive areas rescinded.

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4				
Administration	<p>* NMFS Alaska Regional Office would administer the program (Alternative 2 allowed this to be contracted to the State of Alaska).</p> <p>* Settlement of appeals disputes during the initial assignment process will be based on fact. Unsubstantiated testimony will not be considered. Leaseholders would have to come to the Appeals Board with verifiable ('certified' was used in Alternative 2) records and agreement of the owner of record of the vessel. Initial appeals would be heard by an Appeals Board composed of government employees rather than industry members. Subsequent appeals would go to NMFS Alaska Regional Director followed by appeals to Secretary of Commerce and then the court system.</p> <p>* Appeals could be brought forth based on the following criteria:</p> <table border="1" data-bbox="300 578 1917 935"> <tr> <td data-bbox="300 578 704 935"> <ol style="list-style-type: none"> 1. Errors in fish ticket information. 2. Documented leaseholder qualification. 3. Total vessel loss due to sinking, burning, or shipwreck, possibly with landings adjusted for the year of occurrence. 4. Problems caused by Exxon oil spill. </td> <td data-bbox="704 578 1108 935"> <ol style="list-style-type: none"> 1. Errors in records. 2. Documented leaseholder qualification. </td> <td data-bbox="1108 578 1513 935">Same as Alternative 3.</td> <td data-bbox="1513 578 1917 935">Same as Alternative 3.</td> </tr> </table>				<ol style="list-style-type: none"> 1. Errors in fish ticket information. 2. Documented leaseholder qualification. 3. Total vessel loss due to sinking, burning, or shipwreck, possibly with landings adjusted for the year of occurrence. 4. Problems caused by Exxon oil spill. 	<ol style="list-style-type: none"> 1. Errors in records. 2. Documented leaseholder qualification. 	Same as Alternative 3.	Same as Alternative 3.
<ol style="list-style-type: none"> 1. Errors in fish ticket information. 2. Documented leaseholder qualification. 3. Total vessel loss due to sinking, burning, or shipwreck, possibly with landings adjusted for the year of occurrence. 4. Problems caused by Exxon oil spill. 	<ol style="list-style-type: none"> 1. Errors in records. 2. Documented leaseholder qualification. 	Same as Alternative 3.	Same as Alternative 3.					
Unloading Provisions	No provisions.			<p>* All first point of sale purchasers of sablefish (processed or unprocessed) would be required to obtain a purchaser's license from NMFS.</p> <p>* Vessels may unload sablefish (processed or unprocessed) only in areas designated by NMFS. Prior notification of such offloading may be required by NMFS.</p>				
Program Financing	<p>* It is the Council's intent to find a way to finance the IFQ program without redirecting costs, possibly including a cost recovery program from QS/IFQ owners.</p>							

TABLE 1.3. ALTERNATIVE IFQ SYSTEMS FOR MANAGEMENT OF SABLEFISH FIXED GEAR FISHERIES OFF ALASKA

ALTERNATIVE 1 - is the status quo (open access).

ALTERNATIVES 2.1 through 2.4 - are variations of individual fishing quota (IFQ) systems being considered by the North Pacific Fishery Management Council

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4
Gear and Areas	Fixed gear (pot and longline) sablefish fisheries in six sablefish management areas: Southeast Outside/East Yakutat, West Yakutat, Central Gulf, Western Gulf, Bering Sea, and Aleutian Islands.			
Shares and Quotas	Quota shares (QS) are a percentage of the fixed gear Total Allowable Catch (TAC) for a specific management area. An Individual Fishing Quota (IFQ) is the weight equivalent of the QS. It is also area specific. It will vary annually with changes in the fixed gear TAC for an area.			
Initial Assignment of Quota Shares	<p>Tentative schedule: After the application and appeals process in 1992, QS will be assigned for use in 1993. IFQs to be issued yearly to QS owners.</p> <p>Initial QS recipients will be owners or leaseholders of vessels that made fixed gear landings of sablefish during the qualifying period. They must be non-foreign, but otherwise are 'Persons' as defined by the Magnuson Act: any individual who is a U.S. citizen, any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State but being owned and controlled by a majority of U.S. citizens), and any Federal, State, or local government or governmental entity. Initial assignment would go to:</p>			
	<p>Option 1: Vessel owner(s) only</p> <p>Option 2: Owner except when lease exists.</p> <p>Option 3: Unspecified split between owner and leaseholder.</p>	<p>Only one option: Vessel owner(s) unless qualified lease exists (bareboat charter). Qualified leaseholder would receive credit for landings.</p>		
Qualifying Period	1984 - 1989	1987 - 1989	1984 - 1990	<p>Option 1: 1984 - 1990</p> <p>Option 2: 1988 - 1990</p>

August 1991

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4
Initial QS Amount	<p>Initial QS is based on the sum of a 'Person's' recorded fish tickets, by area, for all vessels each 'Person' owned or held by lease for the combination of years below. This individual qualifying poundage would be divided by the total of all individuals' qualifying amounts in an area to obtain the QS in terms of a percentage of the fixed gear TAC for that area. Years with no landings would be counted as zero.</p> <p>Total of 6 years - 1984-1989</p>	<p>Option 1: all 6 years - 1984-1989 Option 2: 5 of 6 years - 1984-1989 Option 3: 4 of 6 years - 1984-1989</p>	<p>Best 5 of 7 years: 1984 - 1990 New option: Best 5 of 6 years 1985 - 1990</p>	<p>Option 1: same as Alternative 2.3 Option 2: single best year from 1988 - 1990.</p>
Emphasis on Recent Landings	<p>Landings will be adjusted upward incrementally by 1%, 3%, or 10% each year from 1984-1989 when calculating initial QS.</p>	<p>No weighting of more recent landings.</p>		
Vessel Category Designations	<p>Option 1. NO vessel categories. Option 2. Vessel categories as follows: 1. Less than 50' length overall. 2. 50' to 100' length overall. 3. Over 100' length overall.</p> <p>Each 'Person' would receive QS for the vessel category of their most recent landings within the qualifying period. If, in their most recent qualifying year, they owned or leased 2 or more vessels that landed sablefish, then their allocation would be for the category of their largest vessel.</p>	<p>Vessel categories as follows: 1. Less than 50' length overall. 2. 50' to 75' length overall. 3. Over 75' length overall. 4. All freezer boats regardless of size.</p>	<p>Vessel categories as follows: 1. Catcher vessels: 2 categories, < 60' and >= 60' (new option) 2. Freezer vessels.</p> <p>Landings calculated for each category. No size limitations for vessels. Catcher vessel fish cannot be frozen aboard vessel using IFQs. Freezer boat fish may be delivered fresh or frozen.</p>	<p>Option 1: NO vessel categories. Option 2: Vessel categories of: (a) Less than 60' length overall. (b) 60' and greater.</p>
Duration of Quota Share Program	<p>Option 1: No specified ending date. Option 2: Effective into perpetuity. Option 3: Effective for specified period (e.g. 5 or 10 years)</p>	<p>No specified ending date. The privileges are good for an indefinite period.</p>		

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4								
Calculating IFQ Poundages	<p>IFQ poundage is obtained by multiplying the QS percentage times the fixed gear TAC for an area. Fixed gear TAC is a percentage of overall sablefish TAC. The fixed gear percentage varies by area:</p> <table border="0" data-bbox="787 292 1372 446"> <tr> <td style="padding-right: 20px;">Eastern Gulf:</td> <td>95% of area's total TAC</td> </tr> <tr> <td>Western//Central Gulf:</td> <td>80%</td> </tr> <tr> <td>Bering Sea:</td> <td>50%</td> </tr> <tr> <td>Aleutian Islands:</td> <td>75%</td> </tr> </table>			Eastern Gulf:	95% of area's total TAC	Western//Central Gulf:	80%	Bering Sea:	50%	Aleutian Islands:	75%	<p>Same as other alternatives, except that 20% is subtracted off the fixed gear TAC for each area and assigned to the open access fishery described elsewhere in this table.</p>
Eastern Gulf:	95% of area's total TAC											
Western//Central Gulf:	80%											
Bering Sea:	50%											
Aleutian Islands:	75%											
Transfer of QS/IFQs	<ul style="list-style-type: none"> * QS may be sold, and after two years, leased. * IFQs may be sold after two years. * Any 'Person' may control IFQs. Proof of citizenship or majority ownership and control may be required. 	<ul style="list-style-type: none"> * QS may be sold, but not leased. * IFQs cannot be sold. * Any 'Person' may purchase QS but, must own or be on board vessel using the QS/IFQs as crew or operator. 	<ul style="list-style-type: none"> * Freezer boat QS/IFQs: Fully saleable to any 'Person' (U.S. individual, partnership, corp., etc.). Leasable, but recipient must own vessel using IFQs or be on board as crew or operator. * Catcher Vessel QS/IFQs: Initial recipients can be 'Persons' and do not have to be on the vessel or sign the fish ticket to use the IFQs. Subsequent users must be (or designate within 90 days) a U.S. citizen as owner of the QS who must be on board the vessel using the IFQs and sign the fish ticket, unless an allowable lease exists. Then, the leaseholder must be a U.S. citizen and must be aboard and sign the fish ticket. No more than 50% of any person's IFQs may be leased except in cases of illness, injury, or emergency to be defined by NMFS. 	<ul style="list-style-type: none"> * QS/IFQs fully saleable, and: <ul style="list-style-type: none"> Option 1: leasable Any 'Person' may control IFQs. Proof of citizenship or majority ownership and control may be required. Option 2: non-leasable Any 'Person' may purchase QS, but must own the vessel the QS/IFQs will be used on, or must be on board the vessel using the QS/IFQs as crew or operator. <p>New option: Freezer vessel QS may be sold or leased. Catcher vessel QS may be sold (with provisions listed), but not leased.</p>								

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4
Limitation on Holdings (own/control)	3% of TAC available to fixed gear off Alaska	2% limit of overall fixed gear TAC but, initial recipients of more than 2% may continue to own or control the excess, but not more.	3% limit, otherwise same as Alternative 2.2	One (1) % cap on ownership and no more than 1% can be used on any 1 vessel. Applies to EEZ over all and to each management area.
General Provisions	<ul style="list-style-type: none"> * NMFS must approve QS/IFQ transfers based on findings of eligibility criteria before fishing commences. * Persons must control IFQs for amount to be caught before a trip begins. * QS and IFQs are specific to management areas and vessel categories (if used). * Hook-and-line or pot caught sablefish cannot be landed without IFQs except in open access fishery under Alternative 2.4. In Alternative 2.4, all catch would be counted against either IFQs or open access TAC, whichever is appropriate. * IFQs are not valid for sablefish caught by pot gear in the Gulf of Alaska, or by trawl gear anywhere. 			
Discards	No provisions for discards		IFQ users cannot discard legal sized sablefish	Discards permitted but count to TAC or IFQ. Any LL fishery that takes sablefish must control IFQs.
Open Access	No open access fishery			Up to 20% of TAC may be set aside for community quota, bycatch, or open access as described below.
Coastal Community Considerations	8% cap on total use by disadvantaged communities. Also limitations by area. Details of concept are in Attachment 1.	Same as Alternative 2.1 except limited to Port Graham and westward, and only the Governor of Alaska can recommend. communities. See Attachment 2.	3% cap on use of any area's fixed gear TAC for disadvantaged communities such as Atka or Pribilofs.	<ul style="list-style-type: none"> * Each area's fixed gear TAC divided 7% IFQ and 7% open access. * IFQ holder for any area would not be permitted to fish any area's open access fishery except as noted. * Open access fishery managed by exclusive registration area (existing sablefish areas). * 4th quarter open access clean-up fishery open to any person or vessel if they do not own/control unused IFQs.

Provisions	ALTERNATIVE 2.1	ALTERNATIVE 2.2	ALTERNATIVE 2.3	ALTERNATIVE 2.4		
Administration	<p>* NMFS Alaska Regional Office would administer the program (Alternative 2 allowed this to be contracted to the State of Alaska).</p> <p>* Settlement of appeals disputes during the initial assignment process will be based on fact. Unsubstantiated testimony will not be considered. Leaseholders would have to come to the Appeals Board with verifiable ('certified' was used in Alternative 2.1) records and agreement of the owner of record of the vessel. Initial appeals would be heard by an Appeals Board composed of government employees rather than industry members. Subsequent appeals would go to NMFS Alaska Regional Director followed by appeals to Secretary of Commerce and then the court system.</p> <p>* Appeals could be brought forth based on the following criteria:</p> <table border="0" data-bbox="304 527 1519 883"> <tr> <td data-bbox="304 527 710 883"> <ol style="list-style-type: none"> 1. Errors in fish ticket information. 2. Documented leaseholder qualification. 3. Total vessel loss due to sinking, burning, or shipwreck, possibly with landings adjusted for the year of occurrence. 4. Problems caused by Exxon oil spill. </td> <td data-bbox="710 527 1519 883"> <ol style="list-style-type: none"> 1. Errors in records. 2. Documented leaseholder qualification. </td> </tr> </table>				<ol style="list-style-type: none"> 1. Errors in fish ticket information. 2. Documented leaseholder qualification. 3. Total vessel loss due to sinking, burning, or shipwreck, possibly with landings adjusted for the year of occurrence. 4. Problems caused by Exxon oil spill. 	<ol style="list-style-type: none"> 1. Errors in records. 2. Documented leaseholder qualification.
<ol style="list-style-type: none"> 1. Errors in fish ticket information. 2. Documented leaseholder qualification. 3. Total vessel loss due to sinking, burning, or shipwreck, possibly with landings adjusted for the year of occurrence. 4. Problems caused by Exxon oil spill. 	<ol style="list-style-type: none"> 1. Errors in records. 2. Documented leaseholder qualification. 					
Unloading Provisions	No provisions.			<p>* All first point of sale purchasers of sablefish (processed or unprocessed) would be required to obtain a purchaser's license from NMFS.</p> <p>* Vessels may unload sablefish (processed or unprocessed) only in areas designated by NMFS. Prior notification of such offloading may be required by NMFS.</p>		
Program Financing	<p>* It is the Council's intent to find a way to finance the IFQ program without redirecting costs, possibly including a cost recovery program from QS/IFQ owners.</p>					

(As approved in concept by the Council for further review)

In order to ensure that longline fishing vessels associated with eligible communities within the geographic jurisdiction of the Council, as designated, have reasonable access to and opportunity to develop substantial commercial fisheries under the authority of the Council, the Secretary may approve community development quotas in accordance with the following provisions.

1. A Governor is authorized to recommend to the Secretary that a community be designated as an eligible economically disadvantaged fishing community. To be eligible, a community must meet all of the following conditions:
 - (a) be located on the coastline at a site accessible to commercial fishing vessels and the sablefish fishing grounds;
 - (b) be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;
 - (c) have culturally and traditionally engaged in and depended upon fishing in the waters off its coast;
 - (d) have not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries because of a lack of sufficient funds for investment in harvesting or processing equipment; and
 - (e) have developed a fishery development plan approved by the Governor of the requesting State the includes arrangements to: (1) acquire or contract with U.S. fishing vessels and U.S. processing plants for the development of commercial sablefish fishing based primarily in the community or region; (2) provide employment of persons in the community and otherwise contribute to the economic development and improvement of the community as a whole; and (3) provide sufficient financing to implement the plan successfully.
2. Each Governor shall develop such recommendations in consultation with the North Pacific Fishery Management Council.
3. Each Governor shall forward any such recommendations to the Secretary, following consultation with the Council. Upon receipt of such recommendations, the Secretary may designate a community as an eligible economically disadvantaged fishing community if:
 - (a) the community meets the criteria set forth in (1) above; and
 - (b) the Secretary finds that the State has reasonable assurances that sufficient financing and other arrangements will be available to implement the plan successfully.
4. Not more than a total of 8% of the fixed gear total allowable catch of sablefish each year, determined on a management area basis, may be utilized in aggregate by designated eligible economically disadvantaged communities. No community may be designated as an eligible economically disadvantaged community for more than 10 consecutive or nonconsecutive years. Apportionment of Area IFQ to communities would not be greater than:

Bering Sea	10% of Area TAC	Central Gulf	5% of Area TAC
Aleutian Islands	10% of Area TAC	W. Yakutat	1% of Area TAC
Western Gulf	10% of Area TAC	E. Yak./S.E. Outside	1% of Area TAC

NOTE: When the motion to adopt the community concept failed in June 1990, it had been amended as follows:

1. Delete "within the geographic jurisdiction of the Council" in the first paragraph.
2. Delete first sentence of paragraph 4.
3. Reduce caps for Bering Sea, Aleutians and Western Gulf from 10% to 5%.

**Assistance for Economically Disadvantaged Fishing
Communities Under the Sablefish Management Plan**

In order to ensure that longline fishing vessels associated with eligible communities ~~within the jurisdiction of the Council~~, as designated, have reasonable access to and opportunity to develop substantial commercial fisheries under the authority of the Council, the Secretary may approve community development quotas in accordance with the following provisions.

1. ~~A~~ THE Governor OF ALASKA is authorized to recommend to the Secretary that a community be designated as an eligible economically disadvantaged fishing community. To be eligible, a community must meet all of the following conditions:
 - (a) Be located on the coastline WEST OF A LINE IMMEDIATELY TO THE EAST OF PORT GRAHAM AND ENGLISH BAY at a site accessible to commercial fishing vessels and the sablefish fishing grounds;
 - (b) No change
 - (c) No change
 - (d) No change
 - (e) Have developed a fishery development plan approved by the Governor of ~~the requesting state~~ ALASKA that . . .
2. ~~Each~~ THE Governor OF ALASKA . . .
3. ~~Each~~ THE Governor OF ALASKA . . .
4. No change

CITY OF CORDOVA, ALASKA

RESOLUTION 91-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA
SUPPORTING OPEN ACCESS IN THE SABLEFISH AND OTHER FISHERIES
IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

WHEREAS, THE North Pacific Fishery Management Council is developing detailed options for implementing a sablefish individual fishing quota (IFQ) system, and is also considering a moratorium on entry for all fisheries under Council jurisdiction; and

WHEREAS, the ability to participate in multiple fisheries and adapt to changing economic and resource conditions are vital characteristics of the Alaska fishing industry; and

WHEREAS, individual fishing quotas may deny the opportunity for residents of coastal communities to fully diversify and maximize their fisheries; and

WHEREAS, individual fishing quota programs under consideration provide for much of the resource to be allocated to non-resident users, excluding disproportionate numbers of Alaska fishermen and preclude participation by the growing Alaska longline fishing fleet; and

WHEREAS, the trend will be to process groundfish offshore which will minimize the raw fish tax to coastal communities and the state; and

WHEREAS, limited access programs restrict the free enterprise system by not allowing commercial fishermen to maximize their potential in the fishery; and

WHEREAS, limited access does not address several more fundamental management problems.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cordova, Alaska respectfully requests the Governor take whatever action is necessary to protect the rights of Alaska fishermen and to vigorously oppose any effort to implement limited entry in the sablefish and other fisheries in Alaska.

BE IT FURTHER RESOLVED that the North Pacific Fishery Management Council is respectfully requested to abandon their initiative to impose a moratorium on all fisheries under Council jurisdiction.

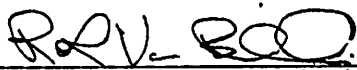
Resolution 91-47
Page 2

BE IT FURTHER RESOLVED the North Pacific Fishery Council is respectfully requested to not impose a sablefish IFQ system.

BE IT FURTHER RESOLVED the North Pacific Fishery Council is requested to continue the open access (status quo) management of the sablefish and other fisheries under Council jurisdiction.

AND, BE IT FURTHER RESOLVED that if the Council recommends the adoption of limited access in the groundfisheries, then the Secretary of Commerce is respectfully requested to reject their recommendation.

PASSED AND APPROVED THIS 21st DAY OF JUNE, 1991.



Mayor Robert Van Brocklin



City Clerk Lynda Plant

IFQ TESTIMONY
Kodiak Island Borough
NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL MEETING

ANCHORAGE - JUNE 25 - 28, 1991

The Kodiak Island Borough opposes the sablefish IFQ proposal. This management system would be disastrous for coastal Alaska.

The Magnusen Act permits the Council to consider a breadbasket of conservation, social, and economic considerations in deciding on how the fishery is to be managed. I would like to briefly address these factors.

Let's be honest. Conservation and management of the resource is not driving this IFQ system. By itself, IFQs do nothing to prevent against area pulse fishing, area pre-emption, or bycatch problems which are the real problems the Council should be spending time solving. Has the Council given up on resource management and opted for the political solution of fisherman management?

IFQ is an economic allocation, pure and simple. Certain segments of the fishing industry want an absolute private property right to the resource in order to increase their economic security and give them more control over marketing their harvest. This does

not translate into protection for the coastal fleet. The proposed system would set the stage for tremendous windfall profits for fishermen who may qualify for large IFQs without any commitment to continued active participation. We are going to have our own version of the "gentleman farmer", where a guy leases or sells his share without spending another minute behind the roller. This also creates an OPEC type monopoly of fish resources. Think about it. As consumers, do we want another OPEC deciding how much we pay for our food?

It gets worse. A freewheeling market-based IFQ system encourages the shift of fishing rights from the traditional fishermen to the corporation. Corporate fishing entities with deep pockets can bide their time and wait for the average fisherman to have a bad year, eventually buying up large blocks of IFQs from guys who need to feed their families today. If people don't think this can happen, they need to do a little research about what happened in the villages on Kodiak Island after the State of Alaska imposed license limitation on salmon. More than 50% of the Kodiak Salmon permit owners do not live on the Island today. And where do our young people get into the system? Will the fisherman of the future be only serfs fishing for the IFQ fuedal barons?

Finally, the Magnusen Act recognizes the importance of fishing to the social fabric of our nation's coastal communities and local fleets. In rural areas, such as Kodiak and the Aleutian

communities, fishing is the only game in town. It is our only source of real income and it is our preferred lifestyle. Without the ability for our fishermen to participate in all fisheries which take place off our shores, our communities cannot survive and we join the ranks of the other Alaskan "ghost towns" that you can readily see if you fly up and down the coast.

Is this the way the Council wants to shape the future of the fisheries for coastal Alaska?

To repeat, the Kodiak community opposes IFQs because the system would unravel the fabric of our society. We are deeply afraid that the Council will use the sablefish IFQ as the model for all species in the future. If the Council insists on pursuing this course, and we urge that you not, please incorporate a large open access pool from the quota to be allocated to non-IFQ participants on some kind of community or regional basis. We believe that such a pool should be at least fifty percent of the allocation of blackcod in the Gulf of Alaska. In addition, you should require that IFQ permit owners be on board at all times while the vessel is fishing. Fisherman should be the IFQ owners.

This is the only way that an IFQ system could even be remotely fair to coastal Alaska. If the proposal before you today is not altered along these lines to reflect the social and economic stake of coastal fleets and communities, your approval of this

first IFQ system will sound the death march of Alaskan participation in the groundfish industry.

By: Jack McFarland
Introduced: 02/15/90
Adopted: 02/15/90

**KODIAK ISLAND BOROUGH
RESOLUTION NO. 90-20**

**A RESOLUTION SUPPORTING CONTINUED OPEN ACCESS IN
THE SABLEFISH AND OTHER FISHERIES IN THE EXCLUSIVE
ECONOMIC ZONE OFF ALASKA**

WHEREAS, the North Pacific Fishery Management Council is developing detailed options for implementing a sablefish individual fishing quota (IFQ) system, and is also considering a moratorium on entry for all fisheries under Council jurisdiction; and

WHEREAS, the ability to utilize sablefish, halibut, and other fisheries species is important to the diversified economy of the coastal communities of Alaska; and

WHEREAS, the ability to participate in multiple fisheries and adapt to changing economic and resource conditions are vital characteristics of the Alaska fishing industry; and

WHEREAS, individual fishing quotas may deny the opportunity for residents of coastal communities to fully diversify and maximize their fisheries; and

WHEREAS, individual fishing quota programs under consideration provide for much of the resource to be allocated to non-resident users, excluding disproportionate numbers of Alaska fishermen and preclude participation by the growing Alaska longline fishing fleet; and

WHEREAS, limited access will prohibit maximum utilization of a natural resource by depriving crew members, processors and other support groups of full participation; and

WHEREAS, the trend will be to process groundfish offshore which will minimize the raw fish tax to coastal communities and the state; and

WHEREAS, limited access programs restrict the free enterprise system by not allowing commercial fishermen to maximize their potential in the fishery; and

WHEREAS, limited access does not address several more fundamental management problems;

NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that the Governor is respectfully requested to take whatever action is necessary to protect the rights of Alaska fishermen and to vigorously oppose any effort to implement limited entry in the sablefish and other fisheries in Alaska; and

BE IT FURTHER RESOLVED that the North Pacific Fishery Management Council is respectfully requested to abandon their initiative to impose a moratorium on all fisheries under Council jurisdiction; and

BE IT FURTHER RESOLVED the North Pacific Fishery Management Council is respectfully requested to not impose a sablefish IFQ system; and

BE IT FURTHER RESOLVED the North Pacific Fishery Council is requested to continue the open access (status quo) management of the sablefish and other fisheries under Council jurisdiction; and

BE IT FURTHER RESOLVED the North Pacific Fishery Council is requested to abandon all efforts to study, plan, encourage or implement limited access in the fisheries under Council jurisdiction.

BE IT FURTHER RESOLVED that if the council recommends the adoption of limited access in the groundfish fisheries, then the Secretary of Commerce is respectfully requested to reject this recommendation.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Robert A. Mosbacher, United States Secretary of Commerce; Dr. John A. Knauss, Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, U.S. Department of Commerce; Mr. Steve Pennoyer, Regional Director, Alaska Region, National Marine Fisheries Service, Juneau, AK; Dr. William W. Fox, Jr. Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA; Mr. Don Collinsworth, Chairman, and Mr. Clarence Pautzke, Executive Director of the North Pacific Fishery Management Council; Honorable Steve Cowper, Governor of Alaska; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and

the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and all members of the Alaska State Legislature.

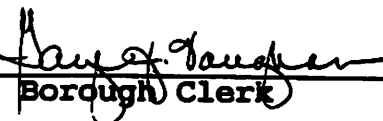
PASSED AND APPROVED THIS 15th DAY OF FEBRUARY, 1990.

KODIAK ISLAND BOROUGH


Borough Mayor


Presiding Officer

ATTEST:


Borough Clerk

June 23, 1991

NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL
P.O. BOX 103136
Anchorage, Alaska 99510

RE: IFQ

I. Introduction.

A. Myself, my husband, the other members of A.R.R.M.

- Steve and Trisha Gartland
- Chris and Lacey Berns
- John and Tracey Akers
- Skip and Elizabeth Bolton
- Bill and Carolyn Young (Who are here also)

I am sure that the members are aware of the letter writing campaign which we have tried to facilitate. (In Kodiak) The above mentioned group felt a responsibility to our community and to our industry to try to educate, inform and motivate those individuals which will be so strongly impacted by such a drastic management change to participate in the process of decision making.

The "Grass Roots" participants of this industry feel very distant and removed from the "Council Process". It is commonly stated that this process is basically a conduit for "Lobbying". The average, numerous day to day participants have become an obstacle to overcome, an opinion to circumvent. Fighting this kind of "lethargy" is difficult. But with an issue of this importance, it has to be done.

We feel that a certain level of recognition has been achieved, and we will continue in these efforts as long as there is a need.

II. Statement of Concern.

A. Purpose

The Magnuson Act states in SEC. 2(b)3 that one of the purposes in this Act is "To promote domestic commercial and recreational fishing under sound Conservation and Management Principles.

Conservation and management measures are named as component criteria in six of the seven stated NATIONAL STANDARDS of SEC. 301.(a)

The thing that struck me when reading these Standards is that the two are always mentioned together. CONSERVATION AND MANAGEMENT. Just by their constant association it is clear ~~xxxxxxx~~ that the Intent of the Act is that the two go together.

A. Purpose

This leads me to a question of this Council. Why are you attempting to separate the two. The proposed System of INDIVIDUAL QUOTAS may have attractive elements of ease in MANAGEMENT, But it has demonstrated over and over and over again that there is NO realistic element of Conservation. It is being documented as we speak.

I have here a copy of "The Fisherman" from Vancouver B.C. Article after article states the destructive nature of the Quota System, by people who are current participants in such a system.

This is not Hypothesis, this is not the CURRENT TREND IN ECONOMIC THEORY to these people. Its day to day existence and it is Failing.

An article in the April edition entitled "QUOTA QUAGMIRE" States, and I quote, "Any conservation benefit from QUOTAS is largely a myth."... property rights in the fisheries means that first priority is profit, not conservation." It further states that "the problems created by QUOTAS in New Zealand and on Canada's East Coast are too similar to dismiss as simple coincidence. Monitoring Stocks and Quotas has become next to impossible. Reducing Individual Quotas where stocks are weak becomes a political Nightmare."

THIS is the nature of the beast. Despite the different ~~NNN~~ NUTS AND BOLTS of this Council's Proposal and the different Nuts and Bolts of the various QUOTA SYSTEMS in place, the NATURE OF THE SYSTEM STAYS THE SAME.

So much for CONSERVATION. OH, the MANAGEMENT aspect will eventually be quite easy. There won't be enough left to argue about, at some point.

High grading, underreporting and stock devastation are fact.

I can not believe that the individual member's of this Council will continue to ignore these obvious and compelling problems. I understand that the "Political Realities" have a very potent impact on the decision making process; and I readily admit ignorance of the pertinent "leg rubbing and Backscratching" that's going on. But at some point you have to cut to the chase and call a spade a spade.

THIS SYSTEM is not applicable to the fishing industry. I know that there have been Economists invited to testify before this Council which stated the HYPOTHETICAL BENEFITS of such a system. Perhaps one of those individuals should have been Economist Shane Gustafson. Pertinent portions of his Thesis statement on TRANSFERABLE QUOTAS outline a "Host" of problems with the practical application of Shares. As demonstrated in New Zealand.

B. Standard

Along with CONSERVATION AND MANAGEMENT The Act also charges this Council with the need to "Promote efficiency in the utilization of fishery resources; except that no measure shall have economic allocation as its sole purpose".

Knowing that this proposals "sole purpose" is economic allocation, and proving it are two different things. Anyone who has dealt with a decent Attorney or a good Accountant knows that amazing things can be done with verbiage and numbers.

But the consolidation of shares into fewer and fewer hands is one of the only documentable "benefits" of the Quota system. If you call that a Benefit.

That this Council appears ready to literally "brush off" thousands of industry participants and ultimately the coastal communitie to which they are a vital part, amazes me.

I am aware of the measures which have been touted as "safe guards" within the I.F.Q. Menu. But putting them in, in no way assures that the Secretary of Commerce won't be obliged to take them out.

And the term "efficiency" seems to be used pretty loosly with these I.F.Q..proposals. What exactly do you call "Economic Efficiency".

There are obvious economic repercussions, that you can not possibly ignore. When this resource is in the hands of many it feeds and factors its way through the local communities and the States in which the participants live. Not just Alaskan, but Washington, Oregon and to some degree California. Those dollars pass through many hands, which is necessary. But take that same resource and concentrate it in the way that shares will and that "multiplier", that distribution of wealth is all gone.

It seems that we are ever trying to recreate the "Economic Wheel" here.

The Open Access system works. There is all this Screaming about Too many boats. The issue is not that there are too many boats, the issue is WHO the Open Access system will kick-out.

The "inefficient", the highly leveraged and those who need massive volumes are at largest risk and they know it. These finite resources will eliminate certain participants under the Open Access System. And those participants with the highest risk want you to stop the system before it stops them.

B. Standard.

Though this is strickly my opinion, I do not believe that it it should be the responsibility of this Council to try to guarantee "Profitability" to any user group; or to any individual within a user group.

As long as your allocations are based on the best scientific information available; responsive to the Conservation of the resource; and basically Fair ; You have done your job.

The Free Market will take it from there.

C. Corporate Structure

We are asking you NOT to move this industry out of the hands of its Historical type of participants.


Just the TERMINOLOGY of SHARES indicates its availability to the LARGE Corporate World. A World that contains incredibly creative individuals; Who are definitely not represented in this industry now.

Puts, Calls, Buying Short, Buying on the Margine and FUTURES are almost an art form to people that understand the nature of transferable "SHARES". We can not compete with that level of expertise; nor with kind of Financing available to them.

D. Closing

We are asking you all to just give the idea of QUOTA SHARES a RESOUNDING NO and get on with the Business of Conserving and Managing NO these resources with the Traditional Tools available to you; and let us get back to the Business of Fishing.

Thank You,


Lynn K. Langford-Walton

Enclosures

ROBINSON, BEISWENGER & EHRHARDT
Lawyers

35401 Kenai Spur Highway
Soldotna, Alaska 99669
(907) 262-9164

June 24, 1991

Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99501

**STATEMENT TO THE NORTH PACIFIC FISHERY MANAGEMENT
COUNCIL REGARDING THE ESTABLISHMENT OF INDIVIDUAL
FISHING QUOTAS
IN THE GULF OF ALASKA AND BERING SEA/ALEUTIAN
ISLANDS SABLEFISH FISHERIES**

My name is Arthur S. Robinson. I reside in Soldotna, Alaska. I am a commercial fisherman and an attorney. The comments I make here are made on behalf of the Kodiak Longline Vessel Owners Association (KLVOA). This association consist of longline vessel owners from Kodiak, Alaska who participate in the United States bottom fisheries in Alaska, including the sablefish fisheries. The association and its members are without doubt interested persons in the management and regulation of these fisheries.

. KLVOA strongly believes that at this time the status quo of sablefish management and regulations should be maintained. KLVOA is adamantly opposed to the Council adopting any of the four individual fishing quota (IFQs) limited access proposals, or any combination of such proposals now before the Council for consideration.

Several serious defects exist with these proposals. The IFQ limited access management is not necessary in order to achieve optimum yield in the United States sablefish fisheries off the coast of Alaska. The IFQ limited access proposals under consideration violate the common use and public trust doctrine of federal common law. There is no authority under the Magnuson Act for the establishment of an Appeals Board or appeals process to deal with persons aggrieved by exclusion from the sablefish fisheries because of denial of an IFQ. Finally, assuming that the Council could lawfully adopt an IFQ limited access system, the IFQ proposal which calls for the restriction of free transferability of quota shares impermissibly impedes on the alienation of property rights.

A. The Proposed IFQ Limited Access Systems Are not
Necessary To Achieve Optimum Sustained Yield
In The Sablefish Fisheries.

Arthur S. Robinson • Allan Beiswenger • Peter Ehrhardt

The underlying management concept of the Magnuson Act is found in the term "optimum sustainable yield." The concept is the foundation and cornerstone of the Congressional Findings and Statements of Policy and Purposes set forth in section 2 of the Magnuson Act. All of the specific criteria set forth in the act governing the promulgation of fisheries management plans and governing the review of such plans by the Secretary of Commerce, are designed to insure that the goal of optimum sustainable yield will be achieved.

Optimum sustainable yield (OSY) is a refinement of, and takes as a point of departure the concept of maximum sustainable yield (MSY). MSY is in essence the surplus production of a fishery; the safe upper limit of harvest which can be taken consistently year after year without diminishing the stock so that the stock is truly inexhaustible and perpetually renewable. MSY relates to the biological well-being of the fishery. It was the intent of Congress that MSY must be established for each managed species before intelligent decisions regarding optimization of fisheries can be achieved.

The concept of OSY is broader than the consideration of the fish stocks and takes into account the economic well-being of the commercial fishermen, the interest of recreational fishermen and the welfare of the nation and the consumers. Optimum sustainable yield must employ a well-understood and time proven concept of MSY as its basis while allowing for other relevant economic, social and ecological inputs. Any fishery management plan (FMP) and any regulations promulgated to implement such plan shall achieve on a continuing basis the optimum yield from each fishery.

The current FMPs for groundfish in the Gulf of Alaska, Bering Sea/Aleutian Islands have established the optimum yield from the groundfish fisheries. In the Gulf of Alaska the optimum yield specified in the FMP for groundfish is 116,000-800,000 metric tons(mt). In the Bering Sea/Aleutian Islands FMP for groundfish optimum yield is set equal to 85% of MSY for the target species and the other species categories for a range of 1.4-2.0 million mt to the extent it can be harvested consistently with the management measures prescribed in the FMP plus the the incidental harvest of nonspecified species. So far the upper limits of these optimum yields have not been reached, sustained or exceeded.

In the Council's Supplemental Environmental Impact Statement and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (SEIS and RIR/IRFA) of May 13, 1991 it

is stated that the proposed IFQ limited access systems do not change sablefish estimates of MSY or determinations of OY in the Gulf of Alaska or Bering Sea/Aleutian Islands sablefish fisheries. Nor is it explained why IFQ limited access is necessary in order to achieve OY. If the purpose of the proposed IFQ limited access is not designed in order to achieve OY, then this limited access system is not consistent with Congressional intent that a limited access system be necessary in order to achieve OY.

The current open access system does not frustrate achieving OY in the sablefish fisheries. Nor are the proposed IFQ limited access systems designed to achieve OY. The primary purpose of the proposed IFQ limited access systems is to increase profits of sablefish fishermen. While this is a noble concept it falls very short of the purpose of the Magnuson Act. The primary purpose of the act is to insure that the goal of optimum sustainable yield will be achieved. That is the cornerstone of Congressional policy and purpose for the Act. Unless it can be demonstrated that open access to the sablefish fisheries cannot achieve optimum yield already established in the applicable FMPs the adoption of a IFQ limited access system is unjustified and impermissible.

B. The Proposed IFQ Limited Access Systems Violate the Common Use and Public Trust Doctrine

The right which one individual has in common with every other individual in the community to take and use fish and game "ferae naturae" is one that has existed from the remotest times. At one time in England, after the Norman Conquest the right to take wild fish and game was claimed as a royal prerogative to the exclusion of the people. It was restored to them by the Barons at Runnymede in 1215 and was declared in the great charter which was wrestled away from King John. These rights were confirmed and established ever thereafter in England by acts of Parliament, and they have come down to us from the laws of England and are regarded as a common heritage of the English speaking people. This doctrine of common property has been confirmed by the United States Supreme Court since early American times and is deeply imbedded in American jurisprudence.. See Martin v. Waddel, [41 U.S.] 16 Pet 367, 10 L.Ed. 997; Geer v. Connecticut, 161 U.S. 519, 16 Sup. Ct. 600, 40 L.Ed. 793 (1896).

The common use right, which one individual of the whole community is entitled to enjoy as much as another, cannot be made by law the exclusive privilege of a single person or corporation or any special group or number people upon terms and conditions that do not apply to the whole people alike. Common use implies that common property resources, like wild

fish and game, are not the subject of exclusive grants or special privileges as was so frequently the case in Medieval royal tradition.

The government does not stand in the same position as the owner of a private game preserve and its pure fantasy to talk of "owning" wild fish, birds or animals. Neither the States nor the Federal Government, any more than a hopeful fishermen or hunter has title to these creatures until they are reduced to possession by skillful capture. Douglas v. Seacoast Products Inc., 431 U.S. 265, L.Ed 2d 304, 97 S.Ct. 1740 (1977). The doctrine of common use imposes upon the Federal Government a trust duty to manage, the fish, wildlife and water resources of the United States for the benefit of all its people in common. While the government, holding title to wild fish and game, so to speak in trust for every individual member of the community, may pass laws to regulate the rights of each individual in the manner of taking and using the common property, this must be done upon the same terms and conditions to all the people. No exclusive or special privileges or immunities can be conferred.

The concept of granting to individuals IFQs in the nature of private property rights implies that the government owns the sablefish. This is simply not the case. The government doesn't have ownership or property rights to grant to any individual or group of individuals. Therefore, individual persons cannot obtain any private property rights to wild fish. The government cannot grant exclusive or special rights and privileges to fishermen. The only justification for a law or regulation restricting the common right of individuals to take wild fish and game is the necessity for protecting the same from harm or extinction, and thus to preserve and perpetuate to the individual members of the community the inalienable rights which they have had from time immemorial.

The wild fish within the exclusive economic zone (EEZ) belong to the people of the United States in their collective sovereign capacity and it is not subject to private ownership nor the granting of exclusive or special private property rights. When the government undertakes to regulate or restrain the individual in his rights as a member of the national community to enjoy the right to take and use common property of all, it must do so upon the same terms to all members of the community alike. The proposed IFQ limited access systems do not attempt to do this. Rather, they are designed to create closed classes of individual vessel owners or leaseholders with exclusive or special privileges to harvest sablefish, which are the common property of all.

These proposals will not, and rightfully should not, withstand the scrutiny of the common use and public trust doctrine so deeply imbedded in our law as to be said to be our common heritage.

C. The Magnuson Act Makes No Provision For The Council Or the Secretary of Commerce to Establish An Appeals Board To Resolve IFQ Disputes.

It appears to be the intent of the proposed IFQ systems to put in place an Appeals Board to adjudicate grievances of persons either excluded from receiving a quota share or IFQ, or receiving a share less than what the person believes is equitable.

While not conceding that either Congress, the Council or the Secretary of Commerce has the power to grant exclusive or special fishing rights in waters under United States jurisdiction, the Magnuson Act simply does not authorize the Council or the Secretary to establish an Appeals Board or an appeals process to deal with persons aggrieved by denial of an IFQ or the amount of IFQ granted. Without express authority in the act for the creation of such a board or process, setting forth the standards to be use to adjudicate such claims, no authority exist to do so.

While the Secretary and the Council may have broad discretion in fashioning regulations to accomplish the goals of the Magnuson Act, no such discretion exist for the establishment of quasi-adjudicatory powers to hear and decide appeals from persons aggrieved by the denial or inequitable distribution of quota shares or IFQs. Congress has not given such authority to either. Until such time that Congress does no such appeals process shall be lawful.

Without a duly authorized administrative appeals process the only recourse an aggrieved person has is through the courts. Pursuant to the Magnuson Act the district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of the act. See 16 USC §1861.

D. Restrictions On The Transferability Of Qs or IFQs

Again while not agreeing that IFQ system are permissible in light of the common use and public trust doctrines, once a quota share or IFQ is given it becomes a persons personal property and like all personal property it is freely transferable. Placing undue and burdensome restrictions on the free transferability of Qs or IFQs would violate the due

process and just compensation clauses of the Fifth Amendment to the United States Constitution.

No person may be denied their property without due process of law and any governmental taking of property must be accompanied by just compensation. What these propositions imply is the freedom of use and transferability of property interests. To restrict alienation or transfer of a person's property interest is to trample upon a basic fundamental right.

Some of the proposed limits and restrictions placed on QS and IFQ ownership, such as limit on total amount of QS or IFQ an individual may own, no transferability for two years, no leasing, no sale, etc. frustrates the property interest involved and creates severe tension with the constitutional guarantees of free alienation. Further, these proposed restrictions on transferability impede the overall goal of putting QSs and IFQs in the hands of persons most likely to actively participate in the fishery.

On the other hand without severe restrictions on the ownership of QSs or IFQs there is a high risk that these property interest may become concentrated in the hands of a few at the expense of the many. This undoubtedly would lead to the more larger and powerful persons or companies controlling the greatest amount of the harvest and the smaller harvester being left out. Eventually a very few would have excessive shares of the sablefish harvest to the detriment of the smaller harvesters.

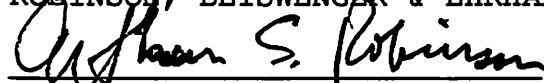
CONCLUSION

In conclusion I wish to say that the IFQ limited access proposals before the Council for consideration do not appear to be lawful under either the Magnuson Act's purpose of achieving optimum yield or the common use and public trust doctrines. For these reasons none of the four proposals or any combination of them should not be adopted. Further, if any one of them is adopted care must be taken to see to it that free transferability of the property shares is as unrestricted and unlimited as possible to avoid constitutional challenge to unlawful restriction on free alienation of property interest.

Lastly, should an IFQ system of some kind be adopted it must be noted that neither the Council nor the Secretary of Commerce has the authority to adjudicate appeals from

aggrieved persons who believe that they were unfairly excluded or inequitably treated in the distribution of Qs or IFQs.

Sincerely,
ROBINSON, BEISWENGER & EHRHARDT



ARTHUR S. ROBINSON
Attorney at Law

Alaska State Legislature

Chairman
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Committee

Legislative Council

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Representative Eugene Kubina

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21 June 1991

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council

Chairman Lauber and members of the NPFMC:

Since my schedule would not allow me to attend your Anchorage meeting in person, Cordova Mayor Bob Van Brocklin has offered to read this letter on my behalf.

It is my conviction that a decision at this time by the Council to recommend a quota system for sablefish, or any other bottomfish, is premature. Given the economic upheavals the Alaska salmon industry is currently undergoing, any initiative that severely restricts the opportunity for Alaskan fishermen and land based fish processors to diversify, could spell disaster for our coastal communities in the years to come.

I realize that the Council has been looking at this issue for a considerable length of time and there is a desire to move forward to expedite this issue. Regardless, there are new factors to be considered and a decision now would be precipitous. For instance, how well are individual fishing quotas (IFQ) working in those countries that have implemented such a system? There appear some indications to the negative.

Secondly, will IFQs accelerate the trend toward the harvesting of Alaskan resources by outside interests? Again, there appears to be strong indications that this will be the case.

Mr. Chairman, members of the Council, the communities within my district that derive much of their revenues from our fisheries are facing serious problems. This is true of towns and villages all along our coast. We simply cannot afford to see a major resource locked into a system that may seriously jeopardize our future development.

As you know, a decision on sablefish will be followed by decisions on halibut and other bottomfish. At a minimum, further hearings should be scheduled that take into consideration the present state

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

of our fisheries--as well as economic impact on our people. I would also hope that such hearings would be both located and scheduled to allow maximum input by the people of Alaska whose very livelihoods rest on these decisions.

It is for these reasons that I ask you to maintain the current open access status for the immediate future.

Sincerely,

Gene Kubina
Representative Gene Kubina
District Six

SABLEFISH LONGLINE MANAGEMENT PLAN
As Adopted by the North Pacific Fishery Management Council
August 14, 1991

Sec. 1. DEFINITIONS. Definitions for terms used herein shall be the same as those contained in the Magnuson Fishery Conservation and Management Act, except as follows:

- (a) "Person" means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state) which meets the requirements set forth in 46 CFR Part 67.03, as applicable. This definition is subject to other restrictions and conditions as set forth in Sec.(2)(c).
- (b) An "individual" shall be defined as a natural person who is not a corporation, partnership, association, or other entity.
- (c) "Quota share" means a percentage of the fixed gear Total Allowable Catch (TAC) for each management area which is based on historical, qualifying landings.
- (d) "Individual fishery quota" (IFQ) means the annual poundage of fish derived by applying the quota share percentage to the annual fixed gear TAC for each management area.
- (e) "Fixed gear" means hook and line fishery (which includes longlines, jigging, handlines etc.) and pot gear.
- (f) "Catcher boat" or "catcher vessel" means any vessel which delivers catch or landing in an unfrozen state.
- (g) "Freezer longliner" means any vessel engaged in fishing in the fixed gear fishery which utilizes freezer capacity and delivers some or all of its groundfish product in a frozen state.
- (h) Bona fide fixed gear crew member. Any person that has acquired fishing time at sea, time being equal to port to port, that is equal to 15 months from any commercial fishing activity for species managed by the North Pacific Fishery Management Council, International Pacific Halibut Commission, or State of Alaska, and including salmon, herring and crab, with at least 5 months longline fishing will be considered a bona fide fixed gear crew member.

Sec. 2. FIXED GEAR QUOTA SHARE (QS) AND INDIVIDUAL FISHERY QUOTA (IFQ) SYSTEM FOR SABLEFISH.

- (a) **AREA.** Quota shares and Individual Fishery Quotas (IFQs) shall be made available for each of the management areas identified for the Bering Sea and the Gulf of Alaska.

(b) **INITIAL QUOTA SHARE ASSIGNMENT.** Quota Shares and Individual Fisheries Quotas shall be assigned to qualified persons on the following basis:

(1) Initial assignments of Quota Shares shall be made to;

- (i) a qualified person who is a vessel owner who meets the requirements in this section; or
- (ii) a qualified person who meets the requirements of this section engaged in a lease or other "bare-boat charter" arrangement in order to participate in the fishery. (For instances identified under this section, the qualified person shall receive full credit for deliveries made while conducting the fishery under such a lease or arrangement.)

(2) Initial quota share assignments will be made only to persons who meet all other requirements of this section and who have landed sablefish in either 1988, 1989, or 1990.

(3) Initial assignments of quota shares shall be assigned to qualified persons based on recorded landings, as documented through fish tickets or other documentation [for fixed gear landings], for the period 1985 through 1990. For each management area, each person will select five (5) years out of six (6) on which to base that person's quota share.

(4) The sum of the catch in each person's five (5) selected years for each area shall be divided by the total qualifying poundage of all sablefish harvested for the qualifying period in those selected areas. The resultant percentage shall be that person's quota share for that area.

(c) **VESSEL CATEGORIES.** Quota shares and IFQs shall be assigned by vessel category as follows:

(1) All landings made during the qualifying period by freezer longliners shall be calculated for one category of quota shares.

(2) Any person owning freezer longliner quota shares may sell or lease those quota shares to any other qualified person.

(3) Fish caught with freezer longliner IFQs may be delivered frozen or unfrozen.

- (4) All landings made during the qualifying period by catcher boats shall be calculated for a separate category of quota shares. There shall be two categories for catcher boats:
- (i) vessels less than 60 feet in length overall.
 - (ii) vessels 60 feet and over in length overall.
 - (iii) those owners of record, which have bought or sold vessels and to the extent that the vessels operations were in the 60 foot and less one year and the next vessel owned was in the 60 plus category or the freezer longliner category, the ownership of record would be able to count all quota caught as if it were harvested by the last vessel owned.
 - (iv) if a quota share recipient owned or leased two or more vessels simultaneously during the qualifying period which landed sablefish, then their allocations will be for each of those vessel classes.
- (5) Following initial allocation:
- (i) In order to purchase catcher boat quota share: must be an individual who is a U.S. citizen and either own a fixed gear vessel or be a bona-fide fixed gear crewman.
 - (ii) In order to use catcher boat IFQs: own the QS, be a U.S. citizen, either own the vessel or be a bona fide crew member, be aboard the vessel during fishing operations, and sign the fish ticket upon landing. Those persons who received initial allocations will be allowed to purchase additional QS/ITQs and must own the vessel upon which the QS are utilized or be a bona fide crew member who is aboard the vessel during fishing operations, and sign the fish ticket upon landing. In the event of sale or transfer of the QS the new owner must comply with 2(c)(5)(iii).
 - (iii) If any person which receives an initial allocation sells or transfers control of the original assignment of QS/IFQs the new owner must comply with Section 2(c)(5).
 - (iv) The Secretary may, by regulation, designate exceptions to sections (i) and (ii) to be employed in case of personal injury or extreme personal emergency which allow the transfer of catcher boat QS/IFQs for limited periods of time.
- (6) Any person owning catcher boat quota shares may sell those quota shares only to an individual who is qualified under (C)(5). Catcher boat quota shares may not be leased. (i.e., annual IFQs cannot be sold)
- (7) Fish caught with catcher boat quota shares may not be frozen aboard the vessel utilizing those quota shares.
- (8) Quota shares or IFQs arising from those quota shares for either vessel category or any management area may not be transferred to the other vessel category or any other management area.

(d) LIMITATIONS ON OWNERSHIP AND USE OF QUOTA SHARES.

Each qualified person [or individual]:

- (1) May own, hold or otherwise control, individually or collectively, but may not exceed, one percent (1%) of the combined total for the Gulf of Alaska/Bering Sea Aleutian Islands except that east of 140 degrees west in the Gulf of Alaska (East Yakutat/S.E. Outside) holdings shall not exceed 1% for that management area.
- (2) Any person who receives an initial assignment of quota shares in excess of the limits set forth in paragraph (d)(1) shall:
 - (i) be prohibited from purchasing, leasing, holding or otherwise controlling additional quota shares until that person's quota share falls below the limits set forth in (d)(1) above, at which time each such person shall be subject to the limitations of paragraph (d)(1) above; and
 - (ii) be prohibited from selling, trading, leasing or otherwise transferring any interest, in whole or in part, of an initial assignment of quota share to any other person in excess of the limitations set forth in (d)(1) above.
- (3) For IFQ accounting purposes, sale of catcher vessel caught sablefish to other than a legally registered buyer is illegal. Frozen product can only be offloaded at sites which NMFS can monitor.

(e) INDIVIDUAL FISHERIES QUOTAS. Individual fisheries quotas are determined for each calendar year for each person by applying that person's quota share percentage to the annual Total Allowable Catch for each management area. Persons must control IFQs for the amount to be caught before a trip begins.

(f) VESSEL AND GEAR RESTRICTIONS.

- (1) No more than one percent (1%) of the combined Gulf of Alaska/Bering Sea Aleutian Island quota may be taken on any one vessel, and no more than 1% of the Southeast Outside/East Yakutat quota may be landed by the same vessel except where persons received initial allocation greater than 1%, that quota may continue to be taken on the same vessel.
- (2) Quota shares and IFQs arising from those quota shares may not be applied to trawl-caught sablefish from any management area or to sablefish harvested utilizing pots in the Gulf of Alaska.

(g) ADMINISTRATION. All sales, transfers, or leases of quota shares or IFQ arising from those quota shares must occur in a manner approved by the Secretary. All quota share and IFQ assignments and transfers will be administered by NMFS based on regulations established by the Secretary. The Secretary, in promulgating such regulations, shall hold at least one public hearing in each state represented on the Council and in at least one community in each of the management areas governed by the Council.

- (h) **DURATION.** IFQ harvest privileges are good for an indefinite period of time, except that these privileges may be subject to periodic change, including revocation, in accordance with regulations promulgated by the Secretary.
- (i) **DISCARD OF SABLEFISH.** Discard of sablefish is prohibited by persons holding QS and those fishing under the community development quota programs.

Sec. 3. COMMUNITY DEVELOPMENT QUOTAS (CDQs). No more than 20% of the annual fixed gear Total Allowable Catch for each management area in the Bering Sea/Aleutian Islands (BSAI) area shall be made available in that management area for a western Alaska sablefish community quota program. The purpose of the program is to provide the opportunity for disadvantaged western Alaska communities to enter the BSAI area sablefish fishery and thereby assist in the development of a self-sustaining fisheries economy. The program is also intended to complement and work in conjunction with the western Alaska community quota program adopted by the Council for BSAI pollock.

The western Alaska sablefish community quota program shall be implemented through the draft regulations attached. In implementing this program, community development plans shall provide a harvesting preference for residents of the community over any harvesting arrangements with persons who reside outside of the community. Attached are guidelines under which the CDQ program will be implemented.

Sec. 4. AD HOC WORKING GROUPS. Two ad hoc working groups shall be established. One by the Council composed of representatives from longline vessel owners, crew members and processors, who would likely be affected by the Council's action on IFQs. The second group will be established by the Alaska Regional Director, NMFS, composed of administration, data management, enforcement, and legal professionals. The groups will develop a detailed implementation plan covering all aspects of carrying out the Council's preferred alternative for a longline (fixed gear) IFQ management program (for sablefish and halibut). All states represented on the Council shall be given an opportunity to provide technical input to the groups.

GUIDELINES FOR IMPLEMENTING THE WESTERN ALASKA COMMUNITY SABLEFISH QUOTA

Sec. 1. PURPOSE AND SCOPE

In order to provide fishermen who reside in western Alaskan communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands sablefish fishery, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social economic crisis within these communities, the western Alaska sablefish community quota is established. Residents of western Alaska communities are predominantly Alaska Natives who have traditionally depended upon the marine resources of the Bering Sea for their economic and cultural well-being. The western Alaska sablefish community quota is a joint program of the Secretary and the Governor of the State of Alaska. Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long-term employment, and participate in the Bering Sea/Aleutian Islands sablefish fishery which has been foreclosed to them because of the high capital investment needed to enter the fishery.

Sec. 2. WESTERN ALASKA SABLEFISH COMMUNITY QUOTA

- (a) The NMFS Regional Director shall hold 20 percent of the annual Total Allowable Catch of sablefish for each management area in the Bering Sea/Aleutian Islands Area for the western Alaska sablefish community quota. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use. Any of the TAC not released by the end of the third quarter shall be made available for harvest to any individual or vessel providing the person does not own, hold, or otherwise control unused IFQ for that fishing year.
- (b) Not more than 12 percent of the total western Alaska sablefish community quota may be designated for a single community, except that if portions of the total quota are not designated by the end of the second quarter, communities may apply for any portion of the remaining quota for the remainder of that year only.

Sec. 3. ELIGIBLE WESTERN ALASKA COMMUNITIES

- (a) The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be a community eligible for the western Alaska community quota program (hereinafter "the Program"):
 - (1) be located on or proximate to the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands or a community located on an island within the Bering Sea, that the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages are defined in section 3(c) of Pub. L. No. 92-203;

- (2) be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;
 - (3) its residents have traditionally engaged in and depended upon fishing in the waters of the Bering Sea coast;
 - (4) has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the Bering Sea/Aleutian Islands because of a lack of sufficient funds for investing in harvesting or processing equipment; and
 - (5) has developed a community development plan approved by the Governor, after consultation with the North Pacific Fishery Management Council.
- (b) Any number of eligible communities may apply under a single development plan. In cases where more than one community applies in a joint application, each community is entitled to its full portion of the quota.

Sec. 4. COMMUNITY DEVELOPMENT PLANS

- (a) Within 60 days of the effective date of these regulations, the Governor shall submit to the Secretary, after review by the North Pacific Fishery Management Council, criteria which the community must, at a minimum, include in a community development plan to be eligible to participate in the program. The criteria shall include provisions concerning the following:
- (1) amount of quota requested;
 - (2) length of time community is requesting to receive a share of the quota;
 - (3) benefits that will accrue to the community from approval of their plan and release of quota, including how the plan will assist in diversifying the community's economy and provide opportunities for training and employment;
 - (4) how the benefits will be shared within the community;
 - (5) business plan which will provide adequate information to complete a financial feasibility assessment;
 - (6) business arrangements which are entered into between a community and residents who reside outside of the community, provided that residents of a community shall receive a preference for a portion of the harvesting quota over any arrangements for harvesting with persons who reside outside of the community; and
 - (7) Within 30 days of receipt of the criteria from the Governor, the Secretary will approve, disapprove, or return the criteria to the Governor with recommendations for changes necessary to comply with the provisions of this Act, or other applicable law.

Sec. 5. APPROVAL OF PLANS

- (a) Within 45 days of receipt of an application for a community, the Governor shall review the community's eligibility for the program and the community development plan and forward the application to the North Pacific Fishery Management Council for its review and recommendations. The application shall be subject to a public hearing before the Council. If the Council does not review the plan at its next regularly scheduled meeting, the Governor shall then submit the application to the Secretary for designation of a portion of the quota. The Governor shall submit the application to the Secretary within 14 days of Council action or within 14 days of the date of the adjournment of the Council meeting without any action taken on the application, unless the application is withdrawn by the applying community.
- (b) Within 30 days of the receipt of an application approved by the Governor, the Secretary will designate a portion of the quota to the community, if the community development plan satisfies the criteria developed by the Governor and approved by the Secretary, or return the application to the Governor with his reasons for denial.

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SABLEFISH LONGLINE MANAGEMENT PLAN

Sec.1. DEFINITIONS. Definitions for terms used herein shall be the same as those contained in the Magnuson Fishery Conservation and Management Act, except as follows:

- (a) "Person" means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state) which meets the requirements set forth in 46 CFR Part 67.03, as applicable. This definition is subject to other restrictions and conditions as set forth in Sec.(2)(c).
- (b) An "individual" shall be defined as a natural person who is not a corporation, partnership, association, or other entity.
- (c) "Quota share" means a percentage of the fixed gear Total Allowable Catch (TAC) for each management area which is based on historical, qualifying landings.
- (d) "Individual fishery quota" (IFQ) means the annual poundage of fish derived by applying the quota share percentage to the annual fixed gear TAC for each management area.
- (e) "Fixed gear" means hook and line fishery (which includes longlines, jigging, handlines etc.) and pot gear.
- (f) "Catcher boat" or "catcher vessel" means any vessel which delivers catch or landing in an unfrozen state.
- (g) "Freezer longliner" means any vessel engaged in fishing in the fixed gear fishery which utilizes freezer capacity and delivers some or all of its groundfish product in a frozen state.
- (h) Bonafide fixed gear crew member. Any person that has acquired fishing time at sea, time being equal to port to port, that is equal to 15 months from any commercial fishing activity for species managed by the NPFMC, IPHC and including salmon, herring and crab, with at least 5 months longline fishing will be considered a bonafide fixed gear crewmember.

Sec.2. FIXED GEAR QUOTA SHARE AND INDIVIDUAL FISHERY QUOTA SYSTEM FOR SABLEFISH.

- (a) AREA. Quota shares and Individual Fishery Quotas (IFQs) shall be made available for each of the management areas identified for the Bering Sea and the Gulf of Alaska.
- (b) INITIAL QUOTA SHARE ASSIGNMENT. Quota Shares and Individual Fisheries Quotas shall be assigned to qualified persons on the following basis:

- (1) Initial assignments of Quota Shares shall be made to;
 - (i) a qualified person who is a vessel owner who meets the requirements in this section; or
 - (ii) a qualified person who meets the requirements of this section engaged in a lease or other "bare-boat charter" arrangement in order to participate in the fishery.
(For instances identified under this section, the qualified person shall receive full credit for deliveries made while conducting the fishery under such a lease or arrangement.)
 - (2) Initial quota share assignments will be made only to persons who meet all other requirements of this section and who have landed sablefish in either 1988, 1989, or 1990.
 - (3) Initial assignments of quota shares shall be assigned to qualified persons based on recorded landings, as documented through fish tickets or other documentation [for fixed gear landings], for the period 1985 through 1990. For each management area, each person will select five (5) years out of six (6) on which to base that person's quota share.
 - (4) The sum of the catch in each person's five (5) selected years for each area shall be divided by the total qualifying poundage of all sablefish harvested for the qualifying period in those selected areas. The resultant percentage shall be that person's quota share for that area.
- (c) VESSEL CATEGORIES. Quota shares and IFQs shall be assigned by vessel category as follows:
- (1) All landings made during the qualifying period by freezer longliners shall be calculated for one category of quota shares.
 - (2) Any person owning freezer longliner quota shares may sell or lease those quota shares to any other qualified person.
 - (3) Fish caught with freezer longliner IFQs may be delivered frozen or unfrozen.
 - (4) All landings made during the qualifying period by catcher boats shall be calculated for a separate category of quota shares. There shall be two categories for catcher boats;
 - (i) vessels less than 60 feet in length overall;
 - (ii) vessels 60 feet and over in length overall.

- (iii) those owners of record, which have bought or sold vessels and to the extent that the vessels operations were in the 60 foot and less one year and the next vessel owned was in the 60 plus category or the freezer longliner category the ownership of record would be able to count all quota caught as if it were harvested by the last vessel owned.
- (iv) if a QS recipient owned or leased two or more vessels simultaneously during the qualifying period which landed sablefish, then their allocations will be for each of those vessel classes.

(5) Following initial allocation:

- (i) In order to purchase catcher boat QS: must be an individual who is a U.S. citizen and either own a fixed gear vessel or be a bona-fide fixed gear crewman.
 - (ii) In order to use catcher boat IFQs: own the QS, be a U.S. citizen, either own the vessel or be a bona fide crewmember, be aboard the vessel during fishing operations, and sign the fish ticket upon landing. Those persons who received initial allocations will be allowed to purchase additional QS/IFQs and must own the vessel upon which the QS are utilized or be a bona fide crewmember who is aboard the vessel during fishing operations, and sign the fish ticket upon landing. In the event of sale or transfer of the QS the new owner must comply with 2(c)(5)(iii).
 - (iii) If any person which receives an initial allocation sells or transfers control of the original assignment of QS/IFQs the new owner must comply with Section 2(c)(5).
 - (iv) The Secretary may, by regulation, designate exceptions to sections (i) and (ii) to be employed in case of personal injury or extreme personal emergency which allow the transfer of catcher boat QS/IFQs for limited periods of time.
- (6) Any person owning catcher boat quota shares may sell those quota shares only to an individual who is qualified under (C)(5). Catcher boat quota shares may not be leased. (i.e., annual IFQs cannot be sold)
- (7) Fish caught with catcher boat quota shares may not be frozen aboard the vessel utilizing those quota shares.
- (8) Quota shares or IFQs arising from those quota shares for either vessel category or any management area may not be transferred to the other vessel category or any other management area.

(d) LIMITATIONS ON OWNERSHIP AND USE OF QUOTA SHARES.

Each qualified person [or individual]:

- (1) May own, hold or otherwise control, individually or collectively, but may not exceed, one percent (1%) of the combined total for the Gulf of Alaska/Bering Sea Aleutian Islands except that east of 140 degrees west in the Gulf of Alaska holdings shall not exceed 1% for that management area.
 - (2) Any person who receives an initial assignment of quota shares in excess of the limits set forth in paragraph (d)(1) shall:
 - (i) be prohibited from purchasing, leasing, holding or otherwise controlling additional quota shares until that person's quota share falls below the limits set forth in (d)(1) above, at which time each such person shall be subject to the limitations of paragraph (d)(1) above; and
 - (ii) be prohibited from selling, trading, leasing or otherwise transferring any interest, in whole or in part, of an initial assignment of quota share to any other person in excess of the limitations set forth in (d)(1) above.
 - (3) For IFQ accounting purposes, sale of catcher vessel caught sablefish to other than a legally registered buyer is illegal. Frozen product can only be offloaded at sites which NMFS can monitor.
- (e) INDIVIDUAL FISHERIES QUOTAS. Individual fisheries quotas are determined for each calendar year for each person by applying that person's quota share percentage to the annual Total Allowable Catch for each management area. Persons must control IFQs for the amount to be caught before a trip begins.
- (f) VESSEL AND GEAR RESTRICTIONS.
- (1) No more than one percent (1%) of the combined Gulf of Alaska/Bering Sea Aleutian Island quota may be taken on any one vessel, and no more than 1% of the SE Outside East Yakutat quota may be landed by the same vessel except where persons received initial allocation greater than 1%, that quota may continue to be taken on the same vessel.
 - (2) Quota shares and IFQs arising from those quota shares may not be applied to trawl-caught sablefish from any management area or to sablefish harvested utilizing pots in the Gulf of Alaska.

- (g) **ADMINISTRATION.** All sales, transfers, or leases of quota shares or IFQ arising from those quota shares must occur in a manner approved by the Secretary. All quota share and IFQ assignments and transfers will be administered by NMFS based on regulations established by the Secretary. The Secretary, in promulgating such regulations, shall hold at least one public hearing in each state represented on the Council and in at least one community in each of the management areas governed by the Council.
- (h) **DURATION.** IFQ harvest privileges are good for an indefinite period of time, except that these privileges may be subject to periodic change, including revocation, in accordance with regulations promulgated by the Secretary.
- (i) **DISCARD OF SABLEFISH** Discard of sablefish is prohibited by persons holding share quotas and those fishing under the CDQ program.

Sec. 3. COMMUNITY DEVELOPMENT QUOTAS. No more than 20% of the annual fixed gear Total Allowable Catch for each management area in the Bering Sea/Aleutian Islands (BSAI) area shall be made available in that management area for a western Alaska sablefish community quota program. The purpose of the program is to provide the opportunity for disadvantaged western Alaska communities to enter the BSAI area sablefish fishery and thereby assist in the development of a self-sustaining fisheries economy. The program is also intended to complement and work in conjunction with the western Alaska community quota program adopted by the Council for BSAI pollock.

The western Alaska sablefish community quota program shall be implemented through the draft regulations attached. In implementing this program, community development plans shall provide a harvesting preference for residents of the community over any harvesting arrangements with persons who reside outside of the community.

Sec. 4. AD HOC WORKING GROUPS. Two ad hoc working groups shall be established. One by the Council composed of representatives from longline vessel owners, crewmembers and processors, who would likely be affected by the Council's action on IFQs. The second group will be established by the Alaska Regional Director, NMFS, composed of administration, data management, enforcement, and legal professionals. The groups will develop a detailed implementation plan covering all aspects of the carrying out the Council's preferred alternative for a longline (fixed gear) IFQ management program (for sablefish and halibut). All states represented on the Council shall be given an opportunity to provide technical input to the groups.

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REGULATIONS IMPLEMENTING THE WESTERN ALASKA
COMMUNITY SABLEFISH QUOTA

Sec. 1. Purpose and Scope

In order to provide fishermen who reside in western Alaskan communities a fair and reasonable opportunity to participate in the Bering Sea/Aleutian Islands sablefish fishery, to expand their participation in salmon, herring, and other nearshore fisheries, and to help alleviate the growing social and economic crisis within these communities, the western Alaska sablefish community quota is established. Residents of western Alaska communities are predominantly Alaska Natives who have traditionally depended upon the marine resources of the Bering Sea for their economic and cultural well-being. The western Alaska sablefish community quota is a joint program of the Secretary and the Governor of the State of Alaska. Through the creation and implementation of community development plans, western Alaska communities will be able to diversify their local economies, provide community residents with new opportunities to obtain stable, long term employment, and participate in the Bering Sea/Aleutian Islands sablefish fishery which has been foreclosed to them because of the high capital investment needed to enter the fishery.

Sec. 2. Western Alaska Sablefish Community Quota

- a. The NMFS Regional Director shall hold 20 percent of the annual Total Allowable Catch of sablefish for each management area in the Bering Sea/Aleutian Islands Area for the western Alaskan sablefish community quota. These amounts shall be released to eligible Alaska communities who submit a plan, approved by the Governor of Alaska, for its wise and appropriate use. Any of the TAC not released by the end of the third quarter shall be made available for harvest to any individual or vessel providing the person does not own, hold, or otherwise control unused IFQ for that fishing year.
- b. Not more than 12% of the total western Alaska sablefish community quota may be designated for a single community, except that if portions of the total quota are not designated by the end of the second quarter, communities may apply for any portion of the remaining quota for the remainder of that year only.

Sec. 3. Eligible western Alaska communities

- a) The Governor of Alaska is authorized to recommend to the Secretary that a community within western Alaska which meets all of the following criteria be a community eligible for the western Alaska community quota program

(hereinafter "the Program"):

- 1) be located on or proximate to the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands or a community located on an island within the Bering Sea, that the Secretary of the Interior has certified pursuant to section 11(b)(2) or (3) of Pub. L. No. 92-203 as Native villages are defined in section 3(c) of Pub. L. No. 92-203;

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be unlikely to be able to attract and develop economic activity other than commercial fishing that would provide a substantial source of employment;

- 3) its residents have traditionally engaged in and depended upon fishing in the waters off the Bering Sea coast;

- 4) has not previously developed harvesting or processing capability sufficient to support substantial participation in the commercial groundfish fisheries of the Bering Sea/Aleutian Islands because of a lack of sufficient funds for investing in harvesting or processing equipment; and

- 5) has developed a community development plan approved by the Governor, after consultation with the North Pacific Fishery Management Council.

- b) Any number of eligible communities may apply under a single community development plan. In cases where more than one community applies in a joint application, each community is entitled to its full portion of the quota.

Sec. 4. Community development plans

- a) Within 60 days of the effective date of these regulations, the Governor shall submit to the Secretary, after review by the North Pacific Fishery Management Council, criteria which the community must, at a minimum, include in a community development plan to be eligible to participate in the program. The criteria shall include provisions concerning the following:

- 1) amount of quota requested;
- 2) length of time community is requesting to receive a share of the quota;
- 3) benefits that will accrue to the community from approval of their plan and release of quota, including how the plan will assist in diversifying

the community's economy and provide opportunities for training and employment;

- 4) how the benefits will be shared within the community;
- 5) business plan which will provide adequate information to complete a financial feasibility assessment;
- 6) business arrangements which are entered into between a community and residents who reside outside of the community; and
 - c) business arrangements which are entered into between a community and residents who reside outside of the community; provided that residents of a community shall receive a preference for a portion of the harvesting quota over any arrangements for harvesting with persons who reside outside of the community; and
- 7) ability of the organization applying on behalf of the community to successfully fulfill the provisions of the community development plan.

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b) Within 30 days of receipt of the criteria from the Governor, the Secretary will approve, disapprove, or return the criteria to the Governor with recommendations for changes necessary to comply with the provisions of this Act, or other applicable law.

Sec. 5. Approval of plans

- a) Within 45 days of receipt of an application for a community, the Governor shall review the community's eligibility for the program and the community development plan and forward the application to the North Pacific Fishery Management Council for its review and recommendations. The application shall be subject to a public hearing before the Council. If the Council does not review the plan at its next regularly scheduled meeting, the Governor shall then submit the application to the Secretary for designation of a portion of the quota. The Governor shall submit the application to the Secretary within 14 days of Council action or within 14 days of the date of the adjournment of the Council meeting without any action taken on the application, unless the application is withdrawn by the applying community.
- b) Within 30 days of the receipt of an application approved by the Governor, the Secretary will designate a portion the quota to the community, if the community development plan satisfies the criteria developed by the Governor and approved by the Secretary, or return the application to the Governor with his reasons for denial.

Council discussion on CDQs at August 13-16, 1991 Council Meeting

Henry Mitchell moved to amend the CDQ program to remove all references to the Bering Sea/Aleutian Islands in Section 3 and add a new Section 4, to read:

Western Alaska sablefish community quota. Twenty percent of the annual total allowable catch for each management area in the Bering Sea/Aleutian Islands area shall be made available in that management area for a Western Alaska Sablefish Community Quota program. The purpose of the program is to provide the opportunity for disadvantaged Western Alaska communities to enter the Bering Sea/Aleutian Islands sablefish fishery and thereby assist in the development of self-sustaining fisheries economies. The program is also intended to complement and work in conjunction with the Western Alaska community quota program adopted by the Council for Bering Sea/Aleutian Islands pollock. The Western Alaska Community Sablefish Quota Program shall be implemented through the draft regulations attached to this motion. In implementing this program, community development plans shall provide a harvesting preference for residents of the community over any harvesting arrangements with persons who reside outside the community.

Attached to it are recommended regulations.

Motion seconded by Wally Pereyra.

Council Chairman Rick Lauber: Care to discuss your motion, Mr. Mitchell?

Mitchell: Well, Mr. Chairman, the concept of the community development quota has been discussed many times over the years. We all realize that many of the coastal communities in remote locations in the Bering Sea/Aleutian Islands and the Pribilof Islands have not had an adequate opportunity to participate in these various fisheries at their doorstep and I, for one, feel very strongly that it's incumbent on this Council to provide that opportunity. In the accompanying recommended regulations you'll see that we've set the parameters, talked about which communities would be eligible, how that's determined, how they go about developing these community development plans and the types of approval that would be necessary, including approval by the Governor and in consultation with the North Pacific Council, and it's a program that I feel has a lot of merit and I would hope that the Council would be supportive of this program. I do have copies of this that I can pass out to individuals.

Lauber: That might be appropriate. Any further comment?

Clem Tillion: Mr. Chairman, the difficulty I had with Henry's previous motions on community development quotas have been pretty well solved in the second paragraph. My fear was that the communities would get so used to renting out their 20% that they would ignore their own people, so as long as you have the section where those who wish to fish from those village areas have first priority to take the fish over their own city and village councils, I can support this. It's not a great deal different than what I intended with the original 20% open access. I was always afraid of giving community development quotas even with the pressure from our Senator Stevens because I thought that they would end up really being used to support white lawyers in Anchorage instead of village people in the villages. Since we've in effect reached a compromise where the village people have the right to preempt their own council or community group I no longer have that fear and I could support this amendment.

Lauber: Any further discussion?

Larry Cotter: I support the motion; I do have a question of clarification. The motion removes all references to the Bering Sea/Aleutian Islands in Section 3 and adds Section 4; why not just replace Section 3 with this?

Mitchell: Well, Section 3 would be there and if someone wanted to make a motion to delete that, they could do that, but of course Section 3 also talks in part about the Gulf of Alaska and I have not addressed the Gulf of Alaska.

Cotter: When I initially read this motion I did not include reference to the Gulf of Alaska although I see it's in brackets here. So, in the event that this motion carries I would be moving to delete Section 3, so if Mr. Mitchell would care to include that in his main motion it will save us an additional motion if this passes.

Mitchell: Well, I'm talking about a new Section 4 which basically just talks to that.

Lauber: Mr. Tillion, a question. You said there was some paragraph that was included that you saw that said something about the fishermen would have access over the communities if they wanted to fish, where is that in here?

Tillion: At the very last, "in implementing this program, community development plans shall provide a harvesting preference for residents of the community over any harvesting arrangements with persons who reside outside the community." In other words, if a local wishes to preempt what the village might be using as a cash travel account they may do so by just exercising their right to go out and take the fish. The 20% will give them preference to take them first over their own village councils or other groups that might wish to use them for other purposes.

Joe Blum: On a matter of procedure I think we are proceeding in error. We have been following a set pattern of dealing with the sections in order. We now have before us a new section 4 having not dealt with Section 3. I think Mr. Cotter's suggestion, if Mr. Mitchell consent to it, would be that you motion would include elimination of Section 3 and replacement with the motion that you have not quite enough copies to go around the table, of.

Lauber: I assume the suggestion is that what would happen would be the hand-out titled "Amendment to Sablefish Longline Management Plan" would be substituted in place of Section 3. Mr. Mitchell? [responded, that's fine] So, the Chair will say that the motion made by Mr. Mitchell will be to strike section 3 and add the hand-out titled "Amendment to Sablefish Longline Management Plan." Is there further discussion?

Steve Pennoyer: Before we substitute or do anything else, is it appropriate to discuss the concepts of community development quotas for a second? I know that over time, and even in pollock, we've regressed now in the idea of setting aside a certain part of the ITQs or TAC for community development and I'd like to raise just again one question, it came up early and I don't know we've discussed it in any detail since that time. These shares are available for purchase. Many of these programs seem to be something that get's people in the door for a while and they have a plan and if it doesn't work out it goes away again. We've been continuously bothered by things such as allocation of resource shares in the Bering Sea to halibut fishermen, through various areas we've set aside and trip quotas and registration, check in, check out, and so forth and our experience is none of these things works all that well, or at least as well as a direct allocation, probably even less well than a directly-owned allocation. I still wonder if there's a possibility that what we should be talking about is to allow the State or other entities to accrue more than one percent for purpose of reallocation to individuals whose development they're concerned with, or who we are concerned with their fishing. I'm not clear if this still is a leverage process or it's a process to actually participate in the fishery and I guess I'd like to hear some comments on what direction we're going.

Tillion: Well, I'm sure there are some of those that like the idea of the leverage to begin with. I'm only supporting this because I feel it will lead to actual fishing by people in their area; that's why I set it aside as 20% instead of 1% because it's of their area only, the areas fronting in effect on these communities, like Atka, the Pribilof Islands, and I feel that with a longline species you're going to have to keep 20% back for it. This is one that probably will, if it goes to an ITQ in the distant future, and will be only after another Council has been asked to do so, otherwise this 20% stays somewhat fluid. But I would see the fleet, for instance this St. Paul and St. George, very quickly

acquiring the ability to catch this 20% and therefore preempting it as a community development quota, but isn't that what the goal is, so that people will in effect become fishermen.

Ron Hegge: I'd like to ask Mr. Mitchell if this allocation would be utilized in a manner consistent with the rest of the sablefish plan, that is the ownership requirements, lack of leasing, the utilization on vessels and so forth.

Mitchell: Well, I think that in order for some of the individuals holding community development quota to make a go of it they necessarily probably would have to go into some sort of equity arrangement on the use of a boat or lease of a boat to use that quota. They might hold the quota but then in fact may not be able obtain, because of a lack of other resources, the money to buy boats, so I would see that these types of plans that would be approved, recommended by the Governor, and looked at by the Council, would allow that sort of activity to take place as long as it made economic sense, that these programs were in fact real programs that actually got those individuals from the community actively involved in the fisheries. So, I would say that some of the provisions of the sablefish program that we have approved to date should necessarily be suspended by the Council to allow for the best possible business plans to be put together while these communities use these to bootstrap themselves up into viable participation in the fishery.

Bob Alverson: Henry, if several of the Atkans or Pribilovians chose to set up an arrangement with some other vessel, perhaps that didn't have a history in fishing blackcod and maybe it just completed its own IFQs, would that constitute a program of training and such that perhaps not the full crew is. . .because of choice of Pribilofs or a need to have someone to train people, part of the concept you're talking about?

Mitchell: Absolutely. I think that the present industry in their expertise are going to have to be utilized in the kind of developmental plans for these individuals to actually go there and fish and that's why I say there would have to be a suspension of the rules. But these plans are going to have to be approved and the Council will be reviewing these plans and we're going to be looking forward to the expertise of the fishing community out there to make sure that these developmental regimes actually work. We don't want them to be failures or boondoggles. There's a good number of people out there with expertise and we see them as probably being in a position as being willing to engage in some sort of equity arrangements for the use of these type of quotas, but I wouldn't envision the Governor or this Council approving plans that's just merely a windfall to some outside interest and passing the money on to, say, an IRA council that they would do other things with it. It's got to be a real plan that's actually going to get people actively working on the vessels or in some capacity that's meaningful.

Pennoyer: Well, I guess the point I was going at, Mr. Mitchell, how do they permanently transit into the fishery? What happens to this 20%, where do they permanently become sablefish fishermen; how do they acquire a permanent part of the resource to fish on in the future? Twenty percent is a development process and presumably it's not forever, so how do they acquire those shares?

Mitchell: Well, over time through whatever equity arrangements they come to, I would assume that they would set aside a certain portion to go out in the free market. It may be also that the Secretary may deem it necessary to take a small portion out of somewhere to fund those things into the future. In the initial years of this there may be two or three communities that use the initial amount and after a period of time other communities would come forward and say we want to use this, and if their plans were approved those other communities would either have to go out in the open market and purchase shares. It's going to be an evolving situation. Your concern about whether the state is going to be in a position of actually buying other shares in conjunction with a program like this, I'd say well maybe that's possible in future years. It would depend on state revenues. At this point I'd say it's unlikely that the state would do that. But I think that if they have a well-functioning fishery regime that a certain portion of the profits under the plan should be held to purchase shares on the open market so they can have a self-sustaining fishing operation without the use of those initial shares eventually.

Lauber: I have a question. Would it be possible, or theoretically possible, that under this amendment that the best plan offered could be something that would involve for instance the Japanese North Pacific Longline Gillnet Assn? Could a foreign entity come in and. . .

Mitchell: I don't believe so.

Lauber: I didn't say whether you believe so. Is there anything in here to prohibit this from bringing back the foreign floating factory ships?

Mitchell: No, this does not envision bringing in foreign ships to harvest.

Wally Pereyra: It seems to me that we're not going to be able to detail out exactly how these disadvantaged Western Alaskan communities are going to be able to come into the fishery. But I think the intent here, at least my intent, is that they have a good chance to take advantage of this opportunity and that may require that we have to relax some of the standards, slightly. The intent, from my standpoint, would be that we follow the rules and regulations from the overall program to the extent practicable, but on occasion you may have to bend slightly one way or the other in order to facilitate the intent. If we don't do that, then I think we're speaking in rather a shallow and hollow manner.

Tillion: I could not have bought this if it wasn't that the plans have to not only go through the Governor but come back to us. We have an oversight authority; if somebody's pulling a sandy it's a simple matter for us to bring it to a stop. I would see it unlike. . .you know I probably have a good deal of differences between Mr. Mitchell and I, but it still comes down to the fact that I feel that when you have fleet that has availed themselves of this 20% that the Council might very well wish to bring them into the ITQ and end the program. That would be another Council's worry at a future time. Right now what you're doing is giving the people that live there an option that you have a second chance to look at how it will be done before they get to use it.

Mitchell: I might also point out the Secretary of Commerce is the one that would be responsible for the ultimate approval of this and so I think there's a great deal of protection here. We have recommendations from the Governor, we've got an oversight by this Council, and the Secretary himself is the one that's going to have to finally approve whatever fishery development plans that are used in conjunction with this quota.

Alverson: Henry, having only read the front page of this and my eyes not being able to function on the second page of it, my print-out is really retarded, but is there a section in here that deals with non-utilization by the communities? Twenty percent would be almost 600 tons of both quotas out there; if that's not utilized, is there a provision in here that it be utilized by those people who have ITQs out in that area?

Mitchell: I can't say definitely that there is a non-utilization, but in fact if that's what you decided to put in. I'll tell you right now, though, the kind of interest that there is out there in this, I think if this approved by us and ultimately approved by the Secretary, I think there will be a number of communities that will come forward with plans and this 20% will be utilized in the first year, there's no doubt in my mind about that.

Hegge: I agree with you, Henry, because I think any community could certainly comply with the requirements set out here. Going back to my original question, would the parts even(?) for freezer longliner or frozen shares or even the fact of harvested by fixed gear apply to this. There's no reference in there how the harvest will be done or who will fish it. . .

Mitchell: They would be limited to 20%, 20% of the TAC in the Bering Sea/Aleutian Islands could be used for this program, so that would be about 600 tons; 600 tons is how much, about 1.2 million pounds? I would anticipate just in the beginning four or five communities will apply for the use of that, and when you divide that

up it will be less than the 1% that you've already approved.

Alverson: I've got a question on how the mechanics are going to work here, Henry. There's currently an allocation in the Aleutian Islands to fixed gear and trawl and the Bering Sea district between fixed gear and trawl. When the 20% is taken of the total TAC, is that deducted from the fixed gear's allocation or does that come off the top of everybody?

Mitchell: Well, the Council could do it either way. If you want to take it out of a bigger pool, you can take it out of the total TAC.

Alverson: Well, the mechanics are if it's taken directly out of the fixed gear people's allocation it probably results in a 30-40% reduction to the people who have harvesting history out in that area. I don't think that that's fair. If it's 20% of the allocation to fixed gear, that's another issue; that's 20%. The motion is 20% of the total TAC.

Mitchell: That's the motion. The total TAC in the Bering Sea/Aleutian Islands, not the total TAC for the Bering Sea/Aleutian Islands, the Gulf and Yakutat.

Alverson: No, but Henry, it's not 20% of the fixed gear allocation.

Mitchell: No, it's not, as written.

Cotter: So, what we're talking about is 20% of the total sablefish allocation, TAC, in the Bering Sea/Aleutian Islands would be set aside, that's for fixed gear and trawl. That seems to be fair because everybody ought to be participating in helping these communities develop. Also, as I understand it, what this motion also does is it removes the sablefish being utilized in the community development program from any of the rules that are otherwise included in the sablefish IFQ plan that the Council may adopt so that the provisions regarding catcher vessels and freezer vessels do not apply. I think it's also important for the Council to realize we can't look at, I don't think we can look at community development in a context of single species. At the June meeting we dealt with pollock; here we're talking about sablefish; it's inevitable we'll probably talk about some other species as well. There are some communities along the Bering Sea coastline that have opportunities that could be, well, they have better opportunities with, say, Pacific cod, in some areas than they do with sablefish. But that doesn't preclude those communities, as I understand the program, from using either the pollock CDQ program, or the sablefish CDQ program as proposed, or a combination of the two to help them develop an industry to allow them to better take advantage of the resources immediately available to them and get involved in the industry. I think it's a step in the right direction.

Pereyra: I guess I have some concerns at this point. I thought that we were only talking about the fixed gear allocation. . . previously when I was talking about doing something with bycatch there was some concern expressed afterwards by one of the individuals that was opposed to that particular motion about the procedural aspects that that would have, that it would have sort of a defacto way of changing Amendment 14 and Amendment 16, Bering Sea. If we're going to go ahead now and include trawl fish in this particular quota, we're again I think in the same area. We are involved in, I think, a procedural issue here that may not be appropriate. We certainly did not notice that we in fact were going to be talking about taking fish from the trawl side of the Bering Sea TAC, at least I didn't feel we were. And so, I think if this is the intent then I think we have maybe a whole additional notice process to go through because we're stepping outside of the sablefish longline ITQ program which is what this entire package is all about. I think the appropriate thing to do is to deal with the sablefish longline element at this point in time and if it's decided we want to expand it to include the trawl sector that we do that as a separate amendment to the Bering Sea FMP.

Hegge: I guess I do have some problems with it. I support the concept, but I have some difficulty with the way this one's being implemented. Basically what we're doing here is just anybody that come's forward and fits some very abstract criteria is going to get quota. They don't have to lease a boat, they don't have to participate in the catching in even more than a token amount, and I don't see how that's benefiting the community or bootstrapping them in. I'm very much for giving them opportunity to go into a fishery or even projects that will lead to purchasing boats through lease operations or something, but this doesn't do that. This is basically about as liberal as you can get. I'm also concerned that we're throwing out the criteria that we've done on the other. We just went through quite an exercise in the Bering Sea, dividing that up on some very meaningful grounds, conservation grounds. Now we're going to disregard that and say the harvest can be done any way that is chosen. I have problems with these things.

Tillion: A motion to require that this 20% be taken by longline or fixed gear is not unreasonable. I don't think there'd be an objection to that, and I agree with you. That's a worry. . . I don't want to see what is longline given to the trawl fleet. I think the motion at this time to make sure, I thought this was under the longline plan and therefore I didn't worry about it because I felt that anything given here must be utilized by longliners only. I think the maker intends that.

Alverson: Well, I don't think Wally got an answer to his question and so I'll ask it again, in terms of the 20% coming off the top, Lisa (Lindeman), and that affecting both a pro rata reduction at our December meetings of what would be available to the fixed gear and the trawl industry, has that been adequately noticed to the public?

Lindeman: Mr. Chairman, I don't have a copy of the notice of the meeting. I don't know if the public could reasonably anticipate that from what the notice in the Federal Register stated.

Alverson: I didn't hear the answer. . .

[Lindeman reiterated the answer]

Clarence Pautzke: Mr. Chairman, the notice of this meeting is not going to get you down to the level here to answer that question. The notice is in the analysis and in the plan that was sent out for public review and I think the Council's intent that they've signaled to the industry for a year now is that any community development quota would be a set-aside from the IFQ system that we're looking at for the fixed gear fleet would be 20% of that fixed gear. This here, I think, goes outside the bounds of anything that we've signaled industry as far as the plan and the options we're looking at now.

Pennoyer: Clarence, you mean the concept of the TAC being the total TAC. . .

Pautzke: The total TAC-type thing. . .

Pennoyer: The other pieces aren't necessarily out of bounds. . .

Mitchell: Mr. Chairman, to make it very clear, I will state that it comes off the fixed gear allocation, O.K.? Does that solve the problem? And furthermore, if you would read this stuff, there are provisions in here that basically, if it's not used by the communities it reverts back to the other participants in the fishery, but I'm telling you, it'll get used.

Pautzke: May I just ask two clarifying things? I've had phone calls on the sablefish and what your intent was with the CDQ. I presume with this that we would not be able to allow more than 20% of an area's TAC, Bering Sea or Aleutians to be taken in that area. [affirmative response] O.K., and secondly, here's a real question I've had, a community like the Pribilofs, can they get their CDQ in another management area, such as the Aleutians,

is that O.K. to take it out of that area, and I don't see anything here that prohibits that but I thought you ought to talk about it. . .

[someone unidentified said: No, it doesn't have to be in the management area of the community.]

Pautzke: I mean, they could go down to the Aleutians and take it, right?

Mitchell: The guidelines that would be set up by the Governor and be reviewed by you could allow for something like that and the Secretary could approve something like that under a fishery development plan. I don't think it should be limited.

Tillion: When the final plan comes I have no intention of voting for something that's outside of their area. That's something we have another look at; it says for each management area. I'd expect the 20% around the Pribilofs to be harvested by the people of the Pribilofs not by the people of Atka or Nelson Island. It's going to be by area; we're going to be taking another look at it when it comes back here after the Governor has O.K.'d it and before it goes to the Secretary and I'm just noticing right now that I'm not interested in having these people ranging all over the Bering Sea into other people's areas. I think that the Nelson Island people should fish in the Nelson Island area and the Pribilof people in the Pribilof area and the Atka people off Atka.

Hegge: Mr. Mitchell, I understood you to say that under your proposal leasing these shares would be appropriate, or allowed?

Mitchell: May be allowed if the Governor approved the plan, the Secretary approved the plan, if that's the only viable way that they can make a good entry into the fishery. They may be able to get boats without. . .

Hegge: Would you consider a sunset on the number years it could be leased after which they must either lease or own vessels, or purchase vessels?

Mitchell: Would you consider a sunset on the number of years that you have to have your IFQs?

Hegge: We already gave up the option of leasing.

Cotter: Several thoughts. I think that it is clear that the Council is going to have to spend some time working on CDQs, either in open Council forum such as this or via a subcommittee. Many of the issues that we're beginning to touch on now are the same type of issue that need to be dealt with regarding pollock, the same type issues that are going to be need to be dealt with regarding other CDQ programs: issues of leasability, duration of programs, so on and so forth. Those are all items that need to be dealt with and need to be clarified. My own personal opinion is that it is absolutely unreasonable to expect this program to work if we do not allow those communities to be able to lease the CDQ out for a period of time. Hopefully that will be as brief as possible, but we need to provide them with the assets to generate revenue to allow them to take advantage of the fishery resources. It is unrealistic to expect them suddenly to be able to come up with the cash and the vessels to go and out and take advantage of some of these resources. Heck, they can't do it right now. Where are they going to get the money next year merely because we said they can do next year what they can do right now? They can go out there right now and get a boat and fish for as much of the Bering Sea and Aleutian Islands sablefish TAC that they can take right now and they're not out there. We've got to give them the ability to get those physical aspects. I hate to disagree with Mr. Tillion, but if we're going to try and use this as a development program and get these communities going, as I said, I think we need to do leasing and it really doesn't matter whether it's in the Bering Sea or whether it's in the Aleutian Islands. I would think that Atka would have first crack at CDQ in the Aleutian Islands but if they're not going to need the whole thing I see nothing wrong with allowing the Pribilofs or Nelson Island to be able to use some of that CDQ to parlay themselves into P. cod or something like that, and the name

of the game is to help these folks develop.

Pereyra: What we're dealing with here in a microsense is the same sort of problems that were dealt with years ago when people were looking at how do we bring Black America into the mainstream of this country; how do we bring women into the mainstream of this economy; and you cannot do it sitting from a vantage point that we have here. What has to be done is we have to go back to the people that are concerned and ask them, not only what they want but what how they think it needs be done to implement it, and have them come back to us with what they consider to be the appropriate way to proceed and then embrace that and move forward with rather than having to sit here and debate about it.

Mitchell: In answer to Mr. Pereyra, this is what the people out there want. They have come before this Council many times and told you that they're interested in community development programs. There's been very much testimony on this at Council meetings, Fishery Planning Committee meetings, this is the type of program that folks out there want. I think it's a good shot at the appropriate type of program, the checks and balances are there so that there won't be abuse and believe me, with the help of industry and the help of this Council you will assist those folks in bootstrapping themselves into becoming viable participants in the Bering Sea fisheries for the next ten or fifteen years by utilization of a program like this. You're not talking about a very large portion of the total blackcod resource going into a program like this, it's a very small percentage, not much larger than some of the current big time participants are catching right now. This is not a big grab of the resource, this is a very small percentage of the overall total. Far more of that resource is destroyed by other means, including excess gear and gear left on the grounds than would ever be used in this program, so I think I'd very much appreciate it if you would vote this through. With the help of the industry and the folks out there I think we'll have a good functioning program in a year and a half's time out there to utilize this resource and hopefully we'll do it on some other species, too.

Blum: I think we are sort of seeing what I consider the tip of the iceberg with respect to the amount of time this Council under this particular plan is going to spend on community development activities and I am a supporter of the concept of providing some type of entree in the fishery that is legitimate to communities that reside in the area that the resources are. I am really curious as to why the maker of the amendment has not come forward with a plan similar to what Mr. Pennoyer outlined about a half hour ago and that is where the State of Alaska assumes the responsibility for some set-aside that they would then exercise with some review by the Council and the Secretary, but the State of Alaska would have the burden of putting together the plan, or approving the plan, determining whether the folks from the Pribilofs ought to be able to come down on the Aleutian Chain and fish, all of the types of things that are going to tie this Council, whether it's this membership, or other membership, in knots for hours and days while other business of the Council is being foregone. Again, I think the magnitude of what we're talking about and the future that Mr. Mitchell has outlined, that he expects us to be talking about, is going to be a very inefficient and ineffective way for this Council to deal with allocation and I suggest that we ought to vote this motion down and suggest to the State of Alaska, which has a predominant representation on this Council, to come together with a community development plan that puts the State of Alaska in the driver's seat as opposed to putting this Council in responsibility of doing almost day-to-day social engineering for the developing communities in Western Alaska, and I think we should vote this down for that reason and for no other reason.

Tillion: This does it as close as possible in so far as it's a program prepared by the Governor, submitted to the Council, and passed on to the Secretary. I'm surprised at Mr. Blum who would want the State to actually control this 20% when you've opposed the State of Alaska controlling anything outside of 3 [miles] in the past. What this is, is a compromise that brings it back to the Council while allowing the Governor to set the initial proposal before submitting it to us. I wouldn't be voting for it with the disagreements here if I didn't know that I would have a look at the final way it was to work before it is implemented. All we're establishing here is that 20% will be for these people to try and enter the 20th Century and I think that's fair.

Mitchell: I only want to point out to Mr. Blum that this basically leaves the State in the position of doing most of the work. The Council is going to take a look at this and say yea or nay or we don't like it, or here are some recommendations, and then forward it to the Secretary. The Council's not going to get involved unless they really want to get involved.

Alverson: If this thing passes and all this stuff comes back to us in September, do we have a chance to tinker with things? [Lauber: I believe so] Mr. Chairman, I would move that the 20% be reduced to 15%.

Lauber: Is there a second? Dies for lack of a second. Further discussion on the amendment by Mr. Mitchell? Call the roll.

Vote:	<u>Yes</u>	<u>No</u>
	Pereyra	Blum
	Tillion	Mace
	Alverson	
	Cotter	
	Dyson	
	Hegge	
	Mitchell	
	Pennoyer	
	Lauber	

Motion carried.

Blum: Mr. Chairman, I would move my vote into the plus column and then would move for reconsideration of the motion.

Pereyra: You can't, the vote was already made.

Lauber: Theoretically, a vote can't be changed after it's been announced; have you announced the vote (to Pautzke)?

Pautzke: Well, I announced it passed.

Lauber: Well, I guess that's the vote. Is there any objection to Mr. Blum changing his vote from nay to yea? Hearing none, you may change your vote from nay to yea.

Blum: Thank you, Mr. Chairman. I would then move for immediate reconsideration of the motion. [couldn't hear who seconded the motion]

Lauber: Do you wish to take that up at this time, or do you wish to take it up at a later time?

Blum: Right now. The purpose of bringing it up for reconsideration would be to move for consistency with the pollock program that we have proposed or are in the process of proposing to the Secretary, which was half of the reserve in the Bering Sea/Aleutian Islands and I would suggest that for consistency purposes we ought to do the same for blackcod and that is the sole purpose for the motion for consideration and why I did not second Mr. Alverson's move from 20 to 15% because I think we need to be consistent and go with half of the reserve initially and see what kind of interest and what kind of actual action there is with respect to this.

Tillion: I believe we're in a longline plan here and that might come ahead at some time, but I recommend that we stay in the longline category and not worry about getting into areas we haven't given adequate notice. This is longline, let's stick to longline fixed gear.

Blum: I'm simply talking about numbers; I'm doing this within the context of longline fixed gear and I did not mention the other word.

Lauber: Is there further discussion? The question is whether we will reconsider, not voting on the merits of the . . . so if the motion passes it is up for reconsideration. By the way, for your amendment as well as any other. Call the roll.

Vote:	<u>Yes</u>	<u>No</u>
	Alverson	Tillion
	Blum	Cotter
	Hegge	Dyson
	Mace	Mitchell
	Pennoyer	Pereyra
		Lauber

Motion failed.

Council discussion continued on other aspects of the IFQ program not affecting the CDQ program.

EXECUTIVE SUMMARY

The sablefish fishery off Alaska has evolved rapidly over the last few years from a fishery dominated by foreign harvesters to one which is utilized fully by domestic fishermen and processors. In the Gulf of Alaska, it is the most important groundfish fishery, both in numbers of participants and exvessel revenues. There are much smaller sablefish fisheries in the Bering Sea and Aleutian Islands areas. Development of the fishery has been accompanied by gear allocation conflicts, significant increases in fishing effort, and many other concerns on the part of participants and managers.

Two alternatives are being considered for the management of the longline and pot sablefish fishery in the EEZ off Alaska. They are: (1) continue to use open access management without amending the existing fishery regulations (status quo) and (2) implement an individual fishing quota (IFQ) management program. Four alternative IFQ programs, three of which have several options, are being considered by the Council. This document analyzes the status quo and IFQ alternatives and presents a regulatory impact review (RIR). This is a revised supplement to the sablefish draft supplemental environmental impact statement/regulatory impact review dated November 16, 1989. It replaces the supplement dated May 23, 1990.

A continuation of the status quo (open access) probably would require additional management measures in the future. These measures might include gear restrictions, time/area closures, and trip limits. None of these measures would be instituted by this amendment but would require future amendments to the fishery management plans. With Alternative 1, the regulations will stay the same but the fishery will change. As fishing pressure continues to increase, enforcement and administrative costs will increase and harvesting costs will also increase. It is anticipated that all excess profits would eventually be dissipated because the status quo would continue to allow free and open access to anyone wishing to harvest sablefish. Eventually, the status quo would lead to management problems that can only be resolved by implementing more restrictive fishery regulations.

The IFQ alternative would give ongoing harvesting privileges in the form of quota shares (Qs) to individual vessel owners and, perhaps, lease holders based on past participation in the fixed gear sablefish fishery. These quota shares would be management area specific. On an annual basis, each person who owns quota shares for an area would receive an individual fishing quota (IFQ) corresponding to the percentage of the total quota shares for the area he owns. These IFQs would permit fishermen to harvest a specified amount of sablefish for that year. Several possible options include the use of vessel classes, limitations on the transferability of Qs and IFQs, and community allocations and setting aside 20% for an open access fishery. The use of IFQs would allow fishermen, rather than managers to adjust fishing effort.

As compared to the status quo, the implementation of an IFQ program would tend to increase the benefits derived from the sablefish resources off Alaska and change the distribution of these benefits. IFQs could provide increased benefits to consumers in the United States and elsewhere. The change in management programs would increase reporting, administrative, and enforcement costs.

The use of an IFQ program would change the nature of the fishery; it would tend to reduce the premium on speed and increase that on efficiency and product quality. This would increase the employment opportunities for some, perhaps those who are more experienced, and decrease the employment opportunities for others. The total number of fishermen participating in the fishery would be expected to decrease. However, the duration of employment for many of those who remain in the fishery would increase. The total number of vessels in the fishery would also be expected to decrease. Vessels would leave the fishery as a result of free choice on the part of their owners rather

than as a result of effort controls that are overly restrictive. Fishermen will sell their harvest privileges if, and only if, they believe they can make more income doing something other than sablefish fishing for the next several years.

Joint harvesting and processing profits should increase under any of the four IFQ alternatives being considered. This would be the result of each vessel being able to fish in a way that decreases fishing costs and increases sablefish prices and a shift of the sablefish harvest from less efficient to more efficient vessels. It was estimated that had an IFQ program been in place in 1989, the benefits resulting from decreases in harvesting costs could have increased profits by almost \$7 million. Additional benefits could arise due to anticipated revenue increases resulting from increased consistency of sablefish quality.

Summary of Critical Points

1. An IFQ program can provide a mechanism for allocating the fixed gear apportionments of the sablefish TACs to those who will use the apportionments most productively if willingness to pay for IFQs reflects expected productivity.
2. There will be winners and losers with an IFQ program.
3. It is expected that most any fisherman would prefer the flexibility that IFQs offer if they did not have to pay for them. This suggests that as a group those who are given QSs and those who use IFQs to land sablefish will benefit from an IFQ program.
4. Something of value is being given to those who receive the QSs. The concern about the size of the gifts can be addressed without decreasing the net benefits of the program. A cost recovery program would do that. However, limitations on transferability typically will decrease both the size of the gifts and the net benefits of the program.
5. If a sufficient number of restrictions are placed on transferability (i.e., on letting the market work), the probability that the program will produce positive net benefits will be quite small.
6. There will be costs and benefits associated with the program. There is a limited ability to identify and measure all the effects of an IFQ program and to find a common measure of the various types of effects.

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FILE 11

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United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-6025

June 24, 1991

Richard B. Lauber
 Chairman
 North Pacific Fishery Management Council
 P.O. Box 103136
 Anchorage, AK 99510

Dear Rick:

I wanted to bring to the attention of the North Pacific Fishery Management Council several issues with regard to Individual Fishing Quotas (IFQ) that are of considerable concern to me. I know that you will be considering IFQ systems for sablefish and halibut at this meeting and the September meeting, and hope that this letter contributes to your deliberations.

To work properly an IFQ system must have adequate observer coverage, an efficient data management system, and effective enforcement. The Pacific States Marine Fisheries Commission, which includes all three states represented on the Council, has sent written documents to Congress which state that at least \$43 million should be added to the Administration's budget request for FY 92 in order to allow existing federal fisheries programs on the West Coast to function properly. According to the Council's Regulatory Impact Review, the proposed sablefish program alone will add approximately \$500,000 to this amount. A halibut IFQ program will cost even more. In these tight budget times, finding additional money will be extremely difficult. In light of this reality, I hope the Council will explore carefully the budget impacts of all available management options.

A second concern has to do with the potential concentration of ownership that could result from an IFQ system. In particular, the possibility that large foreign owned fishing concerns could use an IFQ system to increase their control of American fisheries is of great concern to me. I am aware that this has been the subject of considerable debate by the Council, and encourage you in your efforts to address this problem.

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Richard B. Lauber
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In addition to the concentration of ownership, there is the question of what rights an IFQ holder is given in the fishery resource. I do not believe that Congress would be willing to accept any kind of IFQ system that grants the holder a property right in the resource. Even without the creation of a property right, I hope that the Council will consider the impact of IFQ systems on the overcapitalization of the fishery. If vessels are given a right to a quota that can be used to guarantee loans, this could exacerbate current fishery problems by further increasing the size and efficiency of vessels in the fleet.

Finally, I would like to remind the Council of a letter I wrote last year in support of the Community Development Quota concept. I continue to support the reservation of a certain portion of the available quota for use by remote communities that are located near the fishery resource. If the Council is going to limit access to these fisheries through an IFQ system, provisions should be made to permit and encourage participation in the fishery by these isolated coastal communities. Of course, the concerns expressed in the preceding paragraphs would apply to Community Development Quotas as well.

Good luck in your deliberations this week, and thank you for your consideration of the concerns outlined in this letter.

With best wishes,

Cordially,



TED STEVENS

The Chairman and Members of the North Pacific Fisheries Management Council:

A petition regarding the consideration of implementation of Individual Fisherman's Quotas (IFQ)

Sirs: We the undersigned fishermen and crewmembers respectfully request the NPFMC to table all consideration of IFQs for reasons including but not limited to those listed below.

The economic impact to the coastal communities immediatly adjacent to the Exclusive Economic Zone (EEZ) have not been fully examined by the council. Many local communities have only recently developed the expertise of harvesting and processing the species in question. No continued development can take place under a scheme such as that currently being considered. The council itself has determined a large scale disenfranchisement under IFQs i.e. a small segment of the fleet recieving the lions share of the resource.

The council has undertaken a carefully constructed study to demonstrate the theoretical feasibility of IFQs as they see it, yet in fact IFQs will be all but totally unenforceable, without the presence of a federal officer on every dock from Dutch Harbor to Ilwaco Washington.

The council has repeatedly demonstrated it's lack of desire to consider the possibility of other forms of limited access and has among it's members representatives of groups or individuals that will directly benefit from implementation of IFQs.

The council has purportedly engaged in a public process in this matter yet once again the request for written comment and hearings on this matter have taken place during the actual fishery in question, a fact of which the council is most certainly aware.

Vessels which have the highest production records earned them in a fair open competitive fishery and would most probably continue to do so under any of the other forms of limited access should that actually be determined necessary, granting these vessels that production in perpetuity amounts to a misappropriation of public resource unparalled in fisheries management.

~~John E. Crowder~~
Bob Van Brocklin

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee



Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99811
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

21 June 1991

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council

Chairman Lauber and members of the NPFMC:

Since my schedule would not allow me to attend your Anchorage meeting in person, Cordova Mayor Bob Van Brocklin has offered to read this letter on my behalf.

It is my conviction that a decision at this time by the Council to recommend a quota system for sablefish, or any other bottomfish, is premature. Given the economic upheavals the Alaska salmon industry is currently undergoing, any initiative that severely restricts the opportunity for Alaskan fishermen and land based fish processors to diversify, could spell disaster for our coastal communities in the years to come.

I realize that the Council has been looking at this issue for a considerable length of time and there is a desire to move forward to expedite this issue. Regardless, there are new factors to be considered and a decision now would be precipitous. For instance, how well are individual fishing quotas (IFQ) working in those countries that have implemented such a system? There appear some indications to the negative.

Secondly, will IFQs accelerate the trend toward the harvesting of Alaskan resources by outside interests? Again, there appears to be strong indications that this will be the case.

Mr. Chairman, members of the Council, the communities within my district that derive much of their revenues from our fisheries are facing serious problems. This is true of towns and villages all along our coast. We simply cannot afford to see a major resource locked into a system that may seriously jeopardize our future development.

As you know, a decision on sablefish will be followed by decisions on halibut and other bottomfish. At a minimum, further hearings should be scheduled that take into consideration the present state

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of our fisheries--as well as economic impact on our people. I would also hope that such hearings would be both located and scheduled to allow maximum input by the people of Alaska whose very livelihoods rest on these decisions.

It is for these reasons that I ask you to maintain the current open access status for the immediate future.

Sincerely,

Gene Kubina
Representative Gene Kubina
District Six