


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: January 5, 1995

SUBJECT: Sablefish and Halibut IFQ Program

ESTIMATED TIME
3 HOURS

ACTION REQUIRED

- (a) Receive IFQ Industry Implementation Team report
- (b) Final action on halibut/sablefish CDQ Compensation QS Block Exemption and One-time Trade, exempt from vessel categories.

BACKGROUND

(a) Industry Implementation Team Report

When the IFQ Industry Implementation Team (Team) reported to the Council in December they identified several issues which would be the subject of an additional meeting of the Team in January. The Team met on Monday evening of this week, and their report will be available by meeting time. Team Chair Kris Norosz will be available to report to the Council on these issues.

(b) CDQ Compensation QS/One-time Transfer

In April 1994 the Council received a request from the Central Bering Sea Fishermen's Association (CBSFA) to consider a one-time trade of QS between the CDQ areas and non-CDQ areas for those vessel owners who received compensation. Fishermen in Bering Sea communities would like to consolidate their QS/IFQ holdings by transferring their CDQ compensation QS (which they may hold in Area 3A, for example) with fishermen residing in 3A whose QS may be in a different vessel category. The 3A residents in this example would like to consolidate their QS by transferring their 'regular' Bering Sea QS to these same fishermen from the Bering Sea communities. This would allow fishermen to consolidate their holdings closer to home. Current restrictions on transfers across vessel categories would prevent most of these potential consolidations.

This issue has been addressed by the Industry Implementation Team which recommends to the Council to allow the one-time trade for a period of one year after implementation.

The other issue has to do specifically with CDQ compensation pieces. In September 1994 the Council received staff reports and public testimony that the QS allocated as CDQ compensation will be issued in a multitude of small 'pieces' and that a full or partial exemption from the provisions of the Block Amendment would likely make transfers of these small pieces easier for both fishermen holding the pieces and the agency which must monitor and administer the program. Lifting the Block restrictions would allow consolidation of these CDQ compensation

pieces making them potentially more marketable and easier to track. If these small pieces are counted as blocks (under current regulations), they will likely be virtually unmarketable.

A further exemption of these pieces from the vessel size categories (length but not freezer-longliner designations) would further facilitate their marketability. These CDQ compensation pieces represent, in total, about 2% of the overall halibut QS in existence and less than 3% of the overall sablefish QS in existence. The proposed exemptions would not affect the intent of the Block Amendment, which was based on the 'regular' QS/IFQ issuance, irrespective of CDQ pieces, nor would it affect the maximum possible fleet consolidation as described in the Block analyses.

The following list of alternatives is excerpted from the analysis, which will be available by meeting time.

CDQ Compensation QS Block/Vessel Category Exemption

Alternative 1: Status Quo - No exemption but would be allowed to utilize current 'sweep-up' provisions.

✓ Alternative 2: Allow CDQ compensation pieces to be exempt from Block provisions.

Option A: Allow initial consolidation, then subject newly formed CDQ compensation piece to the 'Block Test'.

✓ Option B: Exempt CDQ compensation pieces from Block provisions in perpetuity.

✓ Suboption A: Exempt from vessel size (length) categories (does not include freezer/longliner category).

CDQ/IFQ One-time Trade

Alternative 1: Status Quo - Trade or transfer across vessel categories not allowed.

Alternative 2: Allow one-time trade across all vessel categories (must be single, paired transaction).

✓ Alternative 3: Allow one-time trade only across length categories (not freezer/longliner category).

Staff will provide the Council with additional detail on the analysis at this time. Council action at this meeting is required for this amendment to be in place for the 1995 fishing season.

MINUTES
IFQ INDUSTRY IMPLEMENTATION MEETING
JANUARY 9, 1995

The IFQ Industry Implementation Team (Team) met Monday evening, January 9, 1995 to discuss the issues identified below. Present for the discussion were Kris Norosz (Chair), Jack Knudsen, Linda Kozak, Drew Scalzi, John Woodruff, and John Bruce. Also present were Dr. David Fluharty (Council member), Rob Wurm (AP member), Chris Oliver, Jane DiCosimo (Council staff), Ron Berg, Jay Ginter, Kaja Brix, Steve Meyer (all of NMFS), and nine members of the public.

Closure of IFQ species fisheries due to other fisheries bycatch

The Team discussed the potential closures of IFQ fisheries due to other fishery bycatch, specifically of thornyhead and shortraker/rougheye rockfishes. After discussion of potentially reaching overfishing levels for those species based on a review of NMFS data, the Team reviewed a number of management options available to NMFS for in-season management and reviewed the 1995 TACs. The Team requested that NMFS closely monitor the catch of thornyhead and shortraker/rougheye rockfish during the 1995 season to ensure that the overfishing levels of these species are not reached. To ensure that minor species catches not close the IFQ fisheries in the future, the Team reviewed the following management options. The first four were presented as management options by Ron Berg; the last two were suggested by industry.

- (1) The "minor species" component of the 602 guidelines could be modified by plan amendment to allow overfishing of minor species. The Team deemed this option to be highly undesirable.
- (2) Time and area closures to reduce harvest of minor species.
- (3) Reduce minor stock component by reducing TAC of target species.
- (4) Make minor species a Prohibited Species Catch based on in-season projections to prevent reaching OFL.
- (5) Change the season start date for target species (rockfish) from July 1 to August or September.
- (6) Reduce the directed fishing standard rate for shortraker/rougheye and demersal shelf rockfish.

The Team decided that the best available option was a reduction in the DFS.

Sablefish Longline Survey

The Team discussed the possible ramifications on the determination of ABC and TAC for sablefish, if continued commercial fishing is permitted during the summer sablefish survey. The Team recommended that the sablefish grounds not be closed to commercial fishing since most sablefish will be caught in April and May under the IFQ fishery. The Team recommended that the Council recommend to NMFS that the sablefish survey be conducted in the winter (when the sablefish fishery is closed) and the summer for a few years to correlate the data from the two surveys.

The Team also recommends the sablefish fleet be requested to voluntarily stay out of the immediate survey area 10 days prior to its start and while it is being conducted. The Team requested that NMFS issue bulletins identifying the schedule and associated areas of the survey.

Seamounts

The Team recommended Alternative 3, Option 3 [vessels be required to carry a transponder (provided by NMFS) when fishing outside the EEZ] and Alternative 4 [vessels must complete and submit a Vessel Activity Report and must offload all fish immediately upon reentry to the EEZ] as outlined in the EA/RIR, modified by removing the observer requirement under Alternative 3.

CDQ compensation block exemption and one-time trade

The Team recommended Block Exemption, Alternative 2, Option B, to exempt CDQ compensation pieces from the block provision in perpetuity. The Team further recommended Alternative 1, status quo - to not allow transfer of quota shares across vessel categories, under the One-Time Trade alternatives.

Unharvested blocks of IFQ

The Team discussed the potential for unused blocks of halibut and sablefish IFQ and requested that NMFS/RAM prepare an annual year-end report on the amount of unharvested IFQs, number and size of blocks, and associated area.

Other

The Team also discussed five additional sablefish and halibut IFQ issues identified by staff that may come before the Council in the future. Jay Ginter briefed the Team on regulatory changes underway on the IFQ appeals process. Steve Meyer reported on the progress of NMFS Enforcement IFQ workshops.

North Pacific Fisheries Management Council

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TO: Jane, Chris
FROM: Marcus
DATE: January 9, 1995
SUBJECT: Items of interest with respect to the Sablefish and Halibut IFQ Program.

The following issues have been brought to my attention with respect to the Sablefish and Halibut IFQ Program.

1. Because of the rule placing QS into inseparable blocks, the provision allowing leasing of 10% of Catcher Vessel QS will only apply to those catcher vessel shares which are unblocked. Similarly the provision that allows freezer shares to be leased without restriction will only apply to unblocked freezer shares. Freezer shares in blocked may be leased but only the entire block may be leased.
2. Many contractual arrangements were made between skippers and owners, between past owners and current owners, and others regarding the disposition of shares once they were issued. Many of these arrangements will become moot under the block proposal, unless some appeal mechanism is implemented to allow the splitting of blocks under these arrangements.
3. Pacific cod and rockfish are required to be landed if caught while IFQ fish are on board. This provision will only be implemented if the Pacific cod and rockfish fishery are open. If these fisheries are closed to directed fishing then vessels with IFQs will be required to land up to the directed fishing standards. If P.cod and rockfish have been declared as prohibited species then they must be discarded even if IFQs species are on board.
4. There will be no grandfathering under the provision limiting a person to use no more than two blocks in an area. If a person receives shares under 3 different vessel classes then they would be issued as three separate blocks. Since this violates the 2-block limits no IFQs will be issued for one of the block (presumably the smallest.) Of course the person may sell one of the blocks.
5. The sweep up provisions under the block will be implemented such that no combination of shares results in more than the sweep-up limit. This means that two halibut blocks of 500 and 501 lbs worth of IFQS may not be combined. One possible alternative would be to ^{exempt} all blocks under the sweep-up limit from the block proposal, i.e. they would be unblocked shares for purposes of the sweep up provision.

DRAFT FOR COUNCIL REVIEW

ENVIRONMENTAL ASSESSMENT AND REGULATORY IMPACT REVIEW

FOR A

PLAN AMENDMENT

FOR

HALIBUT/SABLEFISH COMMUNITY DEVELOPMENT QUOTA

COMPENSATION QUOTA SHARE

BLOCK EXEMPTION

AND

ONE-TIME TRANSFER

Prepared by

Staff of the North Pacific Fishery Management Council

January 1995

EXECUTIVE SUMMARY

This amendment addresses two issues related to Community Development Quota (CDQ) compensation shares for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQs in CDQ areas, which resulted from allocations of those fishery resources to the CDQ program. This document analyzes the environmental, economic, and social impacts of the status quo (CDQ Block/Vessel Category Exemption, Alternative 1 and CDQ/IFQ One-Time Transfer, Alternative 1) and the proposed management actions (Block Exemption, Alternative 2 and One-Time Transfer, Alternatives 2 and 3) for modifying the halibut and sablefish Community Development Quota compensation system by allowing a block exemption and one-time transfer of shares. This document is intended to comply with the requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12866.

The first problem identified by the North Pacific Fishery Management Council is the multitude of small "pieces" in which the allocation of CDQ compensation quota shares will be issued. The provisions of the Block Amendment [BSAI FMP Amendment 31/GOA FMP Amendment 35] hinder the efficiency of trading these small quota pieces by limiting the size and number of blocks an individual would be permitted to hold.

Block Exemption, Alternative 2 would exempt quota share pieces awarded as CDQ compensation from the provisions of the Block Amendment. One alternative would allow small CDQ compensation pieces to be consolidated beyond the 1,000 lb limit for halibut and 3,000 lb limit for sablefish (status quo), with an option to allow consolidation across all vessel categories (except freezer/longline vessels). The consolidated "piece" would then be subjected to the "block test" to determine if the piece would be deemed "blocked" or "unblocked" shares. The creation of blocked CDQ compensation shares adds a new category of quota shares to the current system. Unblocked CDQ compensation quota shares, "pieces" exceeding the 20,000 lb minimum, would be treated the same as unblocked IFQ shares. Small, blocked CDQ compensation shares may be difficult to transfer under the current 2-block cap, but may be desirable by small volume fishermen or new entrants to the fisheries.

A second option would fully exempt consolidated pieces from the block provisions (treating them as unblocked quota shares) in perpetuity. A further modification under both Alternative 2 options would allow consolidation across all vessel categories (except freezer/longline vessels). A full exemption to the Block Amendment would make transfers of these small pieces easier for both fishermen and the National Marine Fisheries Service, the agency which must account for them, by leaving the quota system unburdened by an additional regulatory quota share category. The Council's original intent in creating the CDQ compensation program was to develop a mechanism to replace quota share lost to the CDQ program. An exemption to the block provision allows the unrestricted exchange of quota share among fishermen to fishing areas closest to their traditional grounds (where the QS/IFQ were originally foregone).

The second problem concerns regulations within the current management regime which restrict transfers of quota shares. Residents of CDQ areas have traditionally employed smaller vessels than the non-residents who qualify and receive regular QS in the CDQ areas. In Area 4C for example, all residents who qualified for regular halibut QS used small vessels (> 35 ft). All non-residents who qualified for regular QS in 4C used larger vessels and thus have QS for larger vessel categories. In order for residents of CDQ areas to increase their holding of regular QS in the CDQ area they must purchase larger vessels, as well as regular QS in the larger vessel categories. This is the case under the status quo.

However, if the residents of the CDQ area could use the larger vessel QS of non-residents on their own smaller vessels, they would not have to purchase both vessels and shares. Therefore, the residents of CDQ areas have

proposed a "one-time trade" which will transfer regular QS from the larger class to the smaller class within the CDQ areas. Because the residents of the CDQ area also qualified for regular QS in the CDQ area, they will receive CDQ Compensation QS in the non-CDQ areas; areas which are likely to be the home of many of the "non-residents" who fished and qualified with large vessels in the CDQ area. These CDQ compensation shares would be the other piece of the "one-time trade." However, in order for this trade to occur, the CDQ compensation shares offered as trade would also have to be exempt from the vessel class categories.

One-Time Transfer, Alternative 2 would allow a one-time transfer of CDQ compensation quota shares for those vessel owners or lease holders who receive halibut and/or sablefish CDQ compensation in non-CDQ areas for IFQ quota shares across all vessel categories. Alternative 3 would exclude freezer/longline vessels from these transfers. Transferability of CDQ compensation and regular IFQ shares allows the marketplace to efficiently reallocate QS to those who will use them most productively, regardless to whom they were initially assigned. The one-time transfer essentially continues the philosophy the Council implemented with the CDQ compensation program of allocating fishery resources to traditional users.

Block Exemption, Alternative 1 and One-Time Transfer, Alternative 1 (status quo) do not require an environmental assessment because they were previously analyzed in the environmental documents for the CDQ program and the Block Amendment. Block Exemption and One-Time Transfer alternatives are also categorically excluded from an environmental assessment, under National Oceanic and Atmospheric Administration Administrative Order 216-6, section 6.02b.3.(b)(ii)(aa), because it is a minor change to a Fishery Management Plan that does not result in a significant change in the original environmental analysis.

Block Exemption, Alternative 2 will also be less obstructive than the current process, since it would not require pooled CDQ compensation quota share to be "blocked." Unblocked quota share would likely be more marketable as it would not be counted against the 2-block cap implemented under the Block Amendment. Alternative 2 would encourage cooperation among fishermen and efficient use of combined capital. Alternative 2 would not adversely impact small businesses or entities within the meaning and intent ascribed to the Regulatory Flexibility Act, nor would it prevent fair competition between large and small businesses or entities.

The CDQ compensation program allocates quota shares in fishing areas some fishermen do not actively fish. One-Time Transfer, Alternatives 2 and 3 would allow increased economic efficiency in the fisheries by allowing fishermen in different fishing areas to transfer their quota shares. Alternatives 2 and 3 would encourage cooperation among fishermen and efficient use of combined capital. Alternatives 2 and 3 would not adversely impact small businesses or entities within the meaning and intent ascribed to the Regulatory Flexibility Act, nor would it prevent fair competition between large and small businesses or entities.

The two management actions presented in this document (CDQ Block/Vessel Category Exemption and CDQ/IFQ One-Time Transfer) are independent management actions. Either or both of these actions will facilitate the full utilization of the allocated halibut and sablefish resources by easing restrictions recently placed on the fisheries. The Council must weigh the complexity and burden of additional regulations addressing the creation of small CDQ compensation "pieces" against the total amount of affected quota (less than 3%). A maximum of 297 halibut and 161 sablefish fishermen may be affected by the proposed actions.

DRAFT EA/RIR FOR HALIBUT/SABLEFISH CDQ COMPENSATION AMENDMENT

1.0 INTRODUCTION

This document is the draft Environmental Assessment/Regulatory Impact Review/IRFA for Amendment ## to the Bering Sea and Aleutian Islands (BSAI) FMP and Amendment ## for the Gulf of Alaska (GOA) FMP. It addresses two issues related to Community Development Quota (CDQ) compensation shares for reductions in the amount of Pacific halibut and sablefish available for harvest with Individual Fishing Quotas (IFQ) in CDQ areas, which resulted from allocations of those fishery resources to the CDQ program.

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) of the Gulf of Alaska, Bering Sea, and Aleutian Islands are managed under the Fishery Management Plan (FMP) for the Groundfish Fisheries of the GOA and the FMP for the Groundfish Fisheries of the BSAI. Both FMPs were developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP was approved by the Secretary of Commerce and became effective in 1978; the BSAI FMP became effective in 1982.

Actions taken to amend FMPs or implement amendments to regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. Among the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

NEPA, E.O. 12866, and the RFA require a description of the purpose of and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals are also addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered.

1.1 MANAGEMENT BACKGROUND

Current regulations specify that the NMFS Regional Director will compensate persons who receive a reduced halibut quota share (QS) in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. These compensations will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocations. The RD will also compensate persons who receive a reduced sablefish QS in any Bering Sea and Aleutian Islands IFQ regulatory area because of the sablefish CDQ program by taking sablefish QS from the IFQ regulatory areas (Western Gulf, Central Gulf, West Yakutat, and East Yakutat) of the Gulf of Alaska and allocating it in proportion to the loss suffered by persons in the BSAI area.

Compensated persons are those who were initially issued Individual Fishing Quota Shares in CDQ areas. This one-time compensation adjustment is in the form of QS in each of the non-CDQ areas [See 50 CFR 676.24 for a description of this program]. The CDQ compensation formula affected all persons who were initially issued QS, including those who did not historically participate in the Pacific halibut or sablefish fisheries in CDQ areas by decreasing their proportionate share. The Council intended that all persons who are initially issued QS share the burden for compensating persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas. This was accomplished by creating additional QS in the non-CDQ areas as

compensation and reducing the harvest privilege (IFQ) of all persons initially issued QS by a fixed percentage. Persons receiving CDQ compensation shared the burden via a reduction of that same percentage in the amount of compensation harvest privileges they receive under the IFQ program.

CDQ compensation shares are issued by vessel category, and under the current halibut/sablefish IFQ program are tradeable only within the same vessel category. Further, under the Block Amendment [BSAI FMP Amendment 31/GOA FMP Amendment 35] effective in November 1994, all initially issued QS in an amount that will generate less than 20,000 lb of IFQ in any IFQ area will be "blocked." Amounts that would yield 20,000 or more pounds will be "unblocked." Blocked QS may not be subdivided into smaller amounts upon transfer, although very small amounts of QS may be "swept up" by one or more fishermen in a vessel category until a new QS block that would yield 1,000 lb of halibut IFQ or 3,000 lb of sablefish IFQ is formed. Also, no person may hold more than two QS blocks for any species in any regulatory area or blocked and unblocked QS up to limits specified under the amendment.

Once CDQ compensation shares are issued to an IFQ quota shareholder, the combined quota shares are reissued under one certificate are not separable. The proposed action under the CDQ Block/Vessel Category Exemption would benefit only recipients of CDQ compensation shares in non-CDQ areas where they do not possess regular IFQ quota shares. CDQ compensation shares may be too small to warrant travel to remote areas and fishermen may prefer to transfer them for quota closer to their primary fishing area. The proposed action under the CDQ/IFQ One-Time Trade, however, would likely benefit all CDQ compensation quota shareholders and IFQ quota shareholders with whom they might trade. Table 3.1 lists the number of halibut and sablefish fishermen who would be affected by the proposed actions.

1.2 PURPOSE AND NEED FOR ACTION

The two management actions (CDQ Block/Vessel Category Exemption and CDQ/IFQ One-Time Transfer) presented in this document are independent management actions. Either or both of these actions will facilitate the full utilization of the allocated halibut and sablefish resources by easing restrictions recently placed on the fisheries.

One problem in the fishery is described as follows: CDQ compensation QS will be issued in a multitude of small "pieces." A full or partial exemption from the provisions of the Block Amendment would remove them from the liability of the 2-block cap and make transfers of these pieces easier for both fishermen holding the pieces and the NMFS-RAM Division, which must account for them.

A Block/Vessel Category Exemption for CDQ compensation quota shares would allow holders of CDQ compensation pieces to consolidate them and trade them for quota shares from another area. The Council may choose from alternatives which exempt the transfers from the vessel length categories and the 2-block ownership cap. Because so many small pieces of CDQ compensation exist, the economic burden on the industry and the administrative agency governing transfers, may be unnecessarily great if each consolidated piece is required to be traded as a block. This may be mitigated somewhat by the "sweep-up" provision which allows consolidation up to the 1,000 lb limit for halibut and 3,000 lb limit for sablefish. But a substantial number of compensation pieces will still be held by fishermen living and actively fishing in areas geographically distant from the areas for which the pieces are designated. Fishing these small pieces will not be feasible for all fishermen, and matching such pieces with other tradable pieces may be difficult.

One management alternative under the Block Exemption would allow small pieces to be consolidated beyond the 1,000 lb limit for halibut and 3,000 lb limit for sablefish. At the time of transfer, the newly formed piece would be subjected to the "block test." A partial exemption would exist for those pieces which now exceed the block size (20,000 lb); these would now be unblocked pieces. CDQ compensation pieces which fall below the threshold would be treated as a CDQ block. For example, in Area 4E, there are 54 individuals who will be awarded CDQ compensation pieces in four other fishing areas (2C, 3A, 3B, and 4A). Consolidation would mean that 1, rather than as many as 54 individual, pieces of CDQ compensation from an area may be marketed for transfer. A total of 216 pieces of QS amounting to approximately 50,000 lb will be more difficult to trade than if they are allowed to be pooled into four pieces (one in each area). The four pieces could then be treated as fully exempt, or subjected to the block test. If any of the pieces exceed the threshold it would be treated as unblocked quota share.

A second alternative would allow an exemption in perpetuity from the provisions of the Block Amendment up front. Designating all CDQ compensation QS as "unblocked" increases the marketability of those shares since they would not be counted against the 2-block cap. A full exemption would result in maximum flexibility for the recipients of such pieces and minimize transfer and administrative burden on the implementing agency, again noting that these pieces amount to less than 3% of the total QS in existence. The analysis of the Block Amendment concentrated on the number of blocks (and maximum possible fleet consolidation) based on initial QS allocations irrespective of CDQ pieces. As such, exempting CDQ pieces from the Block Amendment would not change the maximum potential fleet consolidation as described in that analysis.

An option under both alternatives would allow pooling of CDQ compensation across all vessel categories, except freezer/longline vessels. Any form of block exemption would minimize the limitations on the fisheries caused by the 2-block cap, however a full block and vessel category exemption (except freezer/longliners) would free the industry of unintended regulatory and economic burden.

A second problem identified that residents of CDQ areas have traditionally employed smaller vessels than the non-residents who qualify and receive regular QS in the CDQ areas. In area 4C for example, all residents who qualified for regular halibut QS used small vessels (> 35 ft). All non-residents who qualified for regular QS in Area 4C used larger vessels and thus have QS for larger vessel categories. In order for residents of CDQ areas to increase their holding of regular QS in the CDQ area they must purchase larger vessels as well as regular QS in the larger vessel categories. This is the case under the status quo.

However, if the residents of the CDQ area could use the larger vessel QS of non-residents on their own smaller vessels, they would not have to purchase both vessels and shares. Therefore, the residents of CDQ areas have proposed a "one-time trade" which will transfer regular QS from the larger class to the smaller class within the CDQ areas. Because the residents of the CDQ area also qualified for regular QS in the CDQ area, they will receive CDQ Compensation QS in the non-CDQ areas; areas which are likely to be the home of many of the "non-residents" who fished and qualified with large vessels in the CDQ area. These CDQ compensation shares would be the other piece of the "one-time trade." However, in order for this trade to occur, the CDQ compensation shares offered as trade the shares would also have to be exempt from the vessel class categories.

A One-Time Transfer alternative would permit the transfer of CDQ compensation QS for QS in another fishing area across vessel size categories. Another alternative would prohibit freezer/longline vessels from these transfers. A sunset provision would end the program after one year following its effective date. Quota share transfers under this provision may be exempt from the block restriction that otherwise might apply so that a person who makes such transactions will not be assigned two blocks of QS (see Block Exemption discussion).

1.3 MANAGEMENT ACTION ALTERNATIVES

CDQ Compensation QS Block/Vessel Category Exemption

Alternative 1: Status Quo. No exemption, but current "sweep-up" provisions allowed.

Alternative 2: Allow CDQ compensation pieces to be exempt from the block provisions.

Option A: At transfer, subject newly formed CDQ compensation piece to the "block test." (Allow initial pooling² with other CDQ compensation holders, then apply block test at transfer.)

Option B: Exempt CDQ compensation pieces from the block provisions in perpetuity.

Suboption A: Exempt from vessel (length) categories until transfer, not including freezer/longliner category (i.e., may be used on any catcher vessel of any length. If the consolidated piece is transferred to someone outside the pool, a vessel length category will be assigned based on the purchaser's choice).

CDQ/IFQ One-Time Trade

Alternative 1: Status Quo. Trade or transfer across vessel categories is not allowed.

Alternative 2: Allow a "one-time trade" exempt from vessel category restrictions. The "one-time trade" would be defined as a paired transaction involving regular large vessel QS in CDQ areas and small vessel CDQ Compensation QS in non-CDQ areas.

Alternative 3: Allow one-time trade only across vessel categories (not freezer/longliner category).

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

One part of the package is the environmental assessment (EA) that is required by NOAA in compliance with the National Environmental Policy Act of 1969 (NEPA). The purpose of the EA is to analyze the impacts of major federal actions on the quality of the human environment. The EA serves as a means of determining if significant environmental impacts could result from a proposed action. If the action is determined not to be significant, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact study (EIS) must be prepared if the proposed action may be reasonably expected to: (1) jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action; (2) allow substantial damage to the ocean and coastal habitats; (3) have a substantial adverse impact on public health or safety; (4) affect adversely an endangered or threatened species or a marine mammal population; or (5) result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action. Following the end of the public review period, the Council could determine that the proposed changes will have significant impacts on the human environment and proceed directly with preparation of an EIS.

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 provides the policies and procedures to be followed by National Marine Fisheries Service (NMFS) when assessing environmental issues. Under NAO 216-6, certain Federal actions that individually or cumulatively do not have the potential to pose significant threats to the human environment are exempt from further analysis and the requirement to prepare environmental documents. This exemption, known as a categorical exclusion, applies to specific actions and general categories.

Section 6.02b.3.(b)(ii) of NAO 216-6 categorically excludes "[a]ctions which do not result in a significant change in the original environmental action." Included within this general category are "minor technical additions, corrections, or changes to a management plan or regulation."

CDQ Block/Vessel Category Exemption, Alternative 1 and CDQ/IFQ One-Time Transfer, Alternative 1 (status quo) does not require further environmental assessment. The environmental impacts of Alternatives 1 were analyzed in a series of environmental documents produced for the Pacific halibut and sablefish IFQ program¹. Alternatives 1 would not require any changes to the program as analyzed in the above documents.

CDQ Block/Vessel Category Exemption, Alternative 2, the proposed action for exempting CDQ compensations shares from the block rule, would also not result in a significant change in the original environmental action. Alternative 2 would allow an exemption from block and vessel category restrictions. The amount of CDQ allocated to fishermen would remain the same as under Alternative 1. The difference between the two alternatives is that under status quo, some part of the CDQ allocation would be underutilized.

CDQ/IFQ One-Time Transfer, Alternatives 2 and 3, the proposed alternatives for one-time transfer of CDQ compensation shares, would not result in a significant change in the original environmental action. Alternative 2 would allow a one-time transfer of CDQ compensation shares between users of the resource for all vessels categories. Alternative 3 would not include freezer/longline vessels in transfers. The amount of CDQ allocated to fishermen would remain the same as under Alternative 1. The difference between Alternative 2 and Alternatives 1 and 3 is that the latter actions will result in some part of the CDQ allocation being underutilized.

The foregoing analysis supports the decision that Block Exemption, Alternative 2 and One-Time Transfer, Alternative 2 should be categorically excluded from further environmental assessment under NAO 216-6, section 6.02b.3.(b)(ii)(aa).

3.0 REGULATORY IMPACT REVIEW: SOCIAL AND ECONOMIC IMPACTS OF THE ALTERNATIVES

This section provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantifying the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs.

A Regulatory Impact Review (RIR) is required by the National Marine Fisheries Service (NMFS) for all

¹(1) Draft SEIS/RIR/IRFA regarding sablefish [November 16, 1989]; (2) revised supplement to the Draft SEIS/RIR/IRFA [May 13, 1991]; (3) Draft SEIS/RIR/IRFA regarding halibut [July 19, 1991]; (4) Draft SEIS/RIR/IRFA regarding sablefish and halibut [March 27, 1992]; and (5) Final SEIS/EIS/FRFA [September 15, 1992].

regulatory actions or for significant Department of Commerce or NOAA policy changes that are of significant public interest. The RIR: (1) provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems; and (3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

Executive Order 12866, "Regulatory Planning and Review," was signed on September 30, 1993 and established guidelines for promulgating new regulations and reviewing existing regulations. While the order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order describes the regulatory philosophy and principles that are to guide agency development of regulations. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity) that maximize net benefit to the nation.

The regulatory principles in E.O 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives, such as user fees or marketable permits, to encourage the desired behavior. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. Each agency shall assess both the costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.

The preparation of a RIR is required for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles of E.O. 12866.

Executive Order 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described in item (1) above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

3.1 IDENTIFICATION OF THE ISSUES TO BE RESOLVED BY THE PROPOSED ACTION

As explained in detail in the Introduction, the current Pacific halibut and sablefish CDQ compensation quota share program currently restricts the size and number of "blocked" quota shares which an individual may possess. The current program also restricts the transfer of quota shares between vessels of different size categories.

Modification of these restrictions may increase the regulatory and economic efficiency of trading blocked or unblocked CDQ compensation shares and unburden the individual from applying CDQ compensation block or unblocked QS against the 2-block cap.

3.2 IDENTIFICATION OF THE INDIVIDUALS OR GROUPS THAT MAY BE AFFECTED BY THE PROPOSED ACTION

Table 3.1 lists the maximum number of fishermen who could be affected by the proposed actions. Only those individuals who receive CDQ compensation quota shares, but do not receive regular IFQ quota shares, in a given fishing area would benefit from the proposed actions under the Block/Vessel Category Exemption, since CDQ QS and IFQ QS issued to a fisherman are indistinguishable, and inseparable. In addition to CDQ compensation recipients, all individuals participating in the Pacific halibut and sablefish IFQ program would potentially benefit by the proposed alternatives under the CDQ/IFQ One-Time Transfer. The number of affected fishermen under either management action may be less than the maximum number of fishermen listed since not all eligible fishermen will want to participate in pooling their CDQ compensation shares or transferring them.

Table 3.1 Number of halibut and sablefish fishermen by fishing area who would be potentially affected by the proposed actions.

| Fishing Area | CDQ Compensation QS only Fishermen | CDQ compensation and IFQ QS Fishermen | Total |
|------------------|--|---|-------|
| Halibut | | | |
| 2C | 268 | 29 | 297 |
| 3A | 144 | 153 | 297 |
| 3B | 153 | 144 | 297 |
| 4A | 173 | 124 | 297 |
| Sablefish | | | |
| W. Gulf | 40 | 121 | 161 |
| C. Gulf | 18 | 143 | 161 |
| W. Yakutat | 47 | 114 | 161 |
| E. Yakutat | 86 | 75 | 161 |

3.3 MANAGEMENT ACTION ALTERNATIVES

CDQ Compensation QS Block/Vessel Category Exemption

Alternative 1: Status Quo. No exemption, but current "sweep-up" provisions allowed.

Under Alternative 1, no action would be taken. The status quo would remain in effect, whereby individuals are allowed to "sweep-up" quota share to the 1,000 lb limit for halibut and 3,000 lb limit for sablefish, as specified under the Block Amendment. As a result, the potential economic benefits that could occur under Alternative 2 would not be realized. Some of the approximately 3% of total QS assigned as CDQ compensation could be underutilized each year.

Alternative 2: Allow CDQ compensation pieces to be exempt from the block provisions.

Option A: At transfer, subject newly formed CDQ compensation piece to the "block test." (Allow initial pooling² with other CDQ compensation holders, then apply block test at transfer.)

Option B: Exempt CDQ compensation pieces from the block provisions in perpetuity.

Suboption A: Exempt from vessel (length) categories until transfer, not including freezer/longliner category (i.e., may be used on any catcher vessel of any length. If the consolidated piece is transferred to someone outside the pool, a vessel length category will be assigned based on the purchaser's choice).

Alternative 2 would allow initial consolidation of total CDQ compensation shares by an individual or group of individuals. Option A would subject the consolidated "piece" to the block provisions to determine whether the newly formed piece will be transferred (where transfer means "to someone outside the pool") as blocked or unblocked shares. This "partial exemption" would allow a group to consolidate their individual, CDQ compensation pieces above the current limits. If the consolidated piece is greater than the 20,000 lb threshold for unblocked shares, that piece would be transferred as unblocked quota shares and be treated as regular quota shares. They will revert to unblocked QS in all subsequent transfers. If the new piece is below the threshold, it will be "blocked" at the new consolidated share level and would be transferred as a "block." An incentive is then created for individual fishermen to seek out others, who might not otherwise find a market for their small piece or be sought for inclusion in forming a consolidated piece, to meet the 20,000 lb limit for unblocked quota shares.

Sub-option A would allow consolidation across all vessel categories, except freezer/longline vessels. Small pieces do provide an opportunity to small volume fishermen and new entrants to the fishery. However, it is likely that some small pieces will not be consolidated, will be difficult to transfer, and will create a net loss to the nation from foregone economic revenue from unused shares.

Option B would exempt all CDQ compensation pieces from the block provisions in perpetuity. Sub-option A would allow consolidation across all vessel categories, except freezer/longline vessels. This is the least burdensome alternative in easing the regulatory restrictions placed on the CDQ compensation program from

²pooling is allowed for only CDQ compensation quota shares, and must be owned by a person who received initial CDQ compensation QS.

actions implemented under the Block Amendment. The 2-block cap provision restricts the marketability of small blocked quota shares. The Council did not fully consider the effect of the provisions of the Block Amendment on the multitude of new "blocks" created by the CDQ compensation program. Blocked shares owned by 738 halibut fishermen and 191 sablefish fishermen, at most, may be affected, although this maximum number will be reduced by fishermen receiving compensation in more than one fishing area, by pooling of very small pieces up to the current "sweep-up" limits, and by eliminating the restriction on sweeping-up across vessel categories, if chosen.

It was not the Council's intent to allocate valuable quota shares to fishermen unable to utilize them due to economic (e.g., some compensation QS may be too small to fish economically) and vessel safety concerns (e.g., some compensation QS are allocated in areas geographically distant from traditional fishing grounds and may exceed the safe cruising range of smaller vessels). A permanent exemption of the block provisions for CDQ compensation quota shares will ease the regulatory burden on industry and the implementing agency.

Table 3.2 illustrates how a group of fictional CDQ compensation shareholders may be affected by options under the proposed action. There are 47 halibut fishermen who reside in Fishing Bay, Alaska. Thirteen small boat fishermen, 30 fishermen in the 35 - 60 ft vessel category, and 4 fishermen in the > 60 ft vessel category received CDQ compensation quota shares in Areas 2C, 3A, 3B, and 4A.

Table 3.2 CDQ compensation quota shares of a fictional group of fishermen from Fishing Bay, Alaska.

| Vessel Category | # Fishermen | Pooled CDQ Compensation Quota Shares by Area | | | |
|-----------------|-------------|--|---------------|---------------|--------------|
| | | 2C | 3A | 3B | 4A |
| < 35 ft | 13 | 1,825 | 5,360 | 1,400 | 350 |
| 35 - 60 ft | 30 | 20,100 | 58,600 | 15,340 | 3,860 |
| > 60 ft | 4 | 6,600 | 19,200 | 5,010 | 1,260 |
| TOTAL | 47 | 28,525 | 83,160 | 21,680 | 5,470 |

Alternative 1 (status quo) allows only the 13 small boat fishermen who have a total of 350 lb of CDQ compensation and 4 fishermen in the > 60 ft category who have 420 lb of CDQ compensation to pool (or "sweep-up") their CDQ compensation QS in Area 4A. All other consolidated totals would exceed the 1,000 lb "sweep-up" allowance for halibut. Fishermen within each vessel category would, however, be allowed to "sweep-up" to multiple 1,000 lb blocks.

Alternative 2, Option A would allow fishermen within a vessel category to pool their CDQ compensation shareholdings. If the pooled shares are transferred to someone outside the pool, a "transfer" of the newly consolidated "piece" would be subjected to the "block test." If the new "piece" exceeds 20,000 lb, it would be exempt from the block provisions and treated as regular (IFQ) quota shares. If it is below the 20,000 lb threshold, it will be treated as a "block" at its new, consolidated total in perpetuity. In Table 3.2, all new pieces, if consolidated by all fishermen within a vessel category, would be transferred as a block, except for the pieces created by the 30 (35 - 60 ft) fishermen in Areas 2C (20,100 lb) and 3A (58,600 lb).

Under Suboption A, which would allow consolidation across vessel categories, not including freezer/longline vessels, all new pieces in each area would exceed the 20,000 lb block threshold, except for Area 4A (5,470 lb) which could remain as blocked quota shares. When and if these pools are transferred to a person outside the pool, they would be assigned a vessel length according to the purchaser's choice.

Alternative 2, Option B would exempt all consolidated CDQ compensation pieces from the block provisions in perpetuity (i.e., no minimum threshold to exceed) and allow them to be transferred as regular (unblocked) quota shares. Suboption A would allow a further exemption from the block provisions by eliminating vessel category restrictions from consolidation, except for freezer/longline vessels.

CDQ/IFQ One-Time Trade

Alternative 1: Status Quo. Trade or transfer across vessel categories is not allowed.

Alternative 2: Allow a "one-time trade" exempt from vessel category restrictions. The "one-time trade" would be defined as a paired transaction involving regular large vessel QS in CDQ areas and small vessel CDQ Compensation QS in non-CDQ areas.

Table 3.3 summarizes the problem for Area 4C. Under the status quo, if residents of 4C are to increase their holdings of regular QS in the area, they would have to purchase large vessels shares and use them on large vessels. If, however, an exemption from the vessel class restriction were put into effect they would not have to obtain the use of larger vessels; they would only have to purchase the shares.

Table 3.3 Regular Quota Shares issued for Area 4C by vessel category and area of residence.

| Residence | Regular Quota Shares Available for Trade | | | |
|-----------------|--|------------|---------|---------|
| | < 35 ft class | 35 - 60 ft | > 60 ft | freezer |
| Inside Area 4C | | 0 | 0 | 0 |
| Outside Area 4C | 0 | | | |

Table 3.4 shows the number of CDQ Compensation shares residents of 4C will receive. Under Alternative 2, these would be available to non-residents under the "one-time trade." Alternative 2 would allow the unrestricted transfer of CDQ compensation shares to facilitate the efficient reallocation of QS to those individuals who will use them most productively. Some fishermen may wish to trade their CDQ compensation QS in remote fishing areas for QS closer to home. In some fishing areas, there may be no other fishermen who possess IFQ in their vessel category for which to trade their CDQ compensation shares. Fishermen in small boat category in the western Aleutians area (including the Pribilofs) may want to transfer their CDQ compensation shares in Areas 2C, 3A, 3B, and 4A for 4C IFQ QS, since there are no other fishermen in their vessel category with which to trade their CDQ compensation QS.

In the following example, 30 western Aleutian Islands small boat fishermen have combined their 3A CDQ compensation into one piece (58,600 lb). They may prefer to trade their 3A CDQ compensation QS for some of the 417,800 lb owned by other fishermen in the 35 - 60 ft and > 60 ft vessel categories.

Table 3.4 Area 4C resident CDQ compensation QS and non-resident IFQ QS available for transfer.

| Vessel Category | # | Area 4C Resident CDQ Compensation Quota Shares | | | | Non-resident IFQ QS | |
|-----------------|----|--|---------------|--------|-------|---------------------|----------------|
| | | 2C | 3A | 3B | 4A | # | 4C |
| < 35 ft | 30 | 20,100 | 58,600 | 15,340 | 3,860 | 0 | 0 |
| 35 - 0 ft | 0 | 0 | 0 | 0 | 0 | 25 | 228,750 |
| > 60 ft | 0 | 0 | 0 | 0 | 0 | 20 | 189,050 |
| freezer | 0 | 0 | 0 | 0 | 0 | 1 | conf |

The prohibition on the transfer of CDQ compensation shares across categories poses a substantial impediment to their use. It was not the Council's intent to allocate commercially valuable quota shares to fishermen unable to utilize them due to economic (e.g., some compensation QS may be too small to fish economically) and vessel safety concerns (e.g., some compensation QS are allocated in areas geographically distant from traditional fishing grounds; fishing grounds may exceed the safe cruising range of smaller vessels).

However, an allowance for a one-time transfer of CDQ compensation quota shares will create a regulatory burden on industry and the implementing agency. Regulations to allow a one-time transfer of quota shares will create a complex and burdensome administrative process to track and reissue quota shares in the first year of the IFQ program. The costs and administrative burden for tracking the transfers may not be warranted given the small amount of quota and numbers of fishermen affected.

Alternative 3: Allow one-time trade only across vessel categories (not freezer/longliner category).

Alternative 3 would allow the unrestricted transfer (through sale or trade in a single, paired transaction) of CDQ compensation shares, as described under Alternative 2, but would exclude freezer/longline vessels from the one-time transfer provision. This would eliminate approximately ten vessels from the transfer allowance. A total of nine freezer/longline vessels would be excluded from transfer under this alternative.

3.4 QUALITATIVE ANALYSIS OF THE EXPECTED BENEFITS AND COST OF THE PROPOSED ACTIONS

As explained above, the proposed action under CDQ Compensation QS Block/Vessel Category Exemption would enable the consolidation of compensation quota shares into fewer, larger pieces to enhance their marketability and provide economic return to quota shareholders. The proposed action allows a group to pool their resources and reduce the administrative burden accompanying the transfer of quota shares. The principles of economies of scale provide for a more efficient use of fishery resources accomplished from loosening the block provision restrictions on CDQ compensation shares. Cooperation would be beneficial because less time and effort would be needed to effect the quota share transfer for a consolidated pool of shares. A full exemption from the block provisions allows for the full utilization of the allocated resource, while providing enhanced opportunities for smaller volume fishermen and new entrants to obtain additional and affordable (i.e., small quantity) quota shares in preferred fishing areas while not being restricted by the 2-block cap.

One of the primary purposes of the CDQ compensation program was to replace foregone quota shares awarded to CDQ communities. The proposed action under the CDQ/IFQ One-Time Trade would allow those

individuals who were compensated for lost revenue to recoup those losses which would be made permanent in fishing areas outside their geographical area or unsafe, given their vessel size, in which to fish. Allowing the unencumbered transfer of fishing rights on a one-time basis would assure the attainment of the goals of the Council in initially awarding the compensation shares.

3.5 ADMINISTRATIVE, ENFORCEMENT AND INFORMATION COSTS

Significant costs will be borne by the administrative agency in the first year of the IFQ program in monitoring the consolidation of compensation shares, their transfer and reissue. However, this burden may be substantially reduced by an exemption for CDQ compensation shares from the block provisions. The complexity of the regulatory changes required to allow for the one-time transfer across vessel categories may also be significant in the first year of the program.

No additional enforcement costs are expected from either of the proposed actions.

4.0 INITIAL REGULATORY FLEXIBILITY ACT

The objective of the Regulatory Flexibility Act is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

NMFS has defined all fish harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$2 million as small businesses. In addition, seafood processors with 500 employees or less, wholesale industry members with 100 members or less, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it resulted in a reduction in annual gross revenues by more than 5%, annual compliance costs that increased total costs of production by more than 5%, or compliance costs of small entities that are at least 10% higher than compliance costs as a percent of sales for large entities.

If an action is determined to affect a substantial number of small entities, the analysis must include:

- (1) description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and
- (2) analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork, or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cashflow and liquidity, and ability of small entities to remain in the market.

4.1 ECONOMIC IMPACT ON SMALL ENTITIES

Every vessel participating in the Alaska Pacific halibut and sablefish IFQ fisheries would be affected by the management measures proposed under the CDQ/IFQ One-Time Trade. Vessels receiving CDQ compensation, but not IFQ, in a given fishing area would be affected by the proposed action under Block/Vessel Category Exemption. The proposed actions would mostly affect small boat (< 35 ft) fishermen, since they would have

received relatively small CDQ compensation shares and would be more affected by safety concerns, if fishing in geographically distant areas from their traditional fishing grounds. A majority of the small boat halibut fishermen reside in the Western Aleutian Islands, Bethel, Bristol Bay, Dillingham, and the Kenai Peninsula area.

Most vessels harvesting halibut and sablefish off Alaska meet the definition of a small entity under the RFA. As many as 297 halibut fishermen and 161 sablefish fishermen may potentially be affected by the proposed action under CDQ Block/Vessel Category Exemption and CDQ/IFQ One-Time Trade.

5.0 LIST OF PREPARERS

Jane DiCosimo, Darrell Brannan
North Pacific Fishery Management Council Staff

6.0 FINDING OF NO SIGNIFICANT IMPACT

For the reasons discussed above, implementation of any one of the alternatives to the status quo would not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required under Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Date

**STATEMENT TO COUNCIL
REGARDING THE APPEALS INTERIM FINAL RULE
NMFS ALASKA REGION
January 11, 1995**

The Alaska Region initiated an interim final rule (IFR) in late December that amends the regulations implementing the appeals procedures for limited access management of Federal fisheries in and off of Alaska. This rule will be effective on filing with the Federal Register but it will provide for a concurrent 30-day public comment period.

The changes made by the IFR:

1. Eliminate applicants' right to appeal an appellate officer's decision to the NMFS Director, Alaska Region (Regional Director), although the Regional Director may modify, reverse or remand any such decision;
2. Reduce the time period for filing an appeal of an initial administrative determination from 90 Federal business days to 60 calendar days after the date the determination was made;
3. Reduce the time period before an appellate officer's decision becomes effective from 45 Federal business days to 30 calendar days after the date the decision is issued, unless, prior to that time, the Regional Director alters or modifies the decision, issues an order staying the effectiveness of the decision pending review, or accelerates the effectiveness date; and
4. Establish a quota share (QS) reserve as part of each QS pool which allows for the addition of catch history that is in dispute and being appealed.

These changes are necessary to avoid excessive delays in deciding appeals and to allow the timely issuance of IFQ resulting from disputed catch history that was successfully appealed. The intended effect of this action is to shorten the appeals process while providing reasonable time for applicants to file, and to provide IFQ resulting from disputed catch history to persons who may have an appeal successfully resolved after the IFQ calculation date.

Explanation

First, this action eliminates a provision for an appeal of an appellate officer's decision to the Regional Director but retains the Regional Director's discretionary authority to review any appellate officer's decision. This effectively changes the original two-stage appeals procedure into a single-step process. The original procedure provided an applicant a first-stage opportunity to appeal an initial administrative determination to an appellate officer, and a second-stage opportunity to appeal the appellate officer's decision to the Regional Director. This regulatory amendment eliminates the second stage appeal; however, the Regional Director will routinely review appellate officers' decisions, and may reverse, modify, or remand these decisions for further consideration. If the appellate officer's decision is modified or reversed, the Regional Director will issue a written decision explaining the reasons for this action. The appellate officer's decision, unless acted on by the Regional Director, will be the final agency action for purposes of judicial review 30 days after issuance.

Second, this action substantially reduces the time period within which an appellant may file an appeal. The purpose of this change is to expedite the appeals process, as explained above. The time period within which an appellant may file a written appeal of an initial administrative determination is changed from 90 Federal business days to 60 calendar days after the date the determination is made. This change effectively reduces the appeal filing opportunity from about 4 months to about 2 months. Saturdays, Sundays and Federal holidays would be counted as part of the 60-day time period unless the last day of the 60-day period falls on a Saturday, Sunday or Federal holiday. In this event, the period is extended to the close of business on the next business day.

Third, this action shortens the period of delayed effectiveness of an appellate officer's decision from 45 Federal business days to 30 calendar days. The purpose of this change also is to speed achievement of final agency action on appeals. This 30-calendar-day delayed effectiveness period is the same as the delayed effectiveness period for rules under the Administrative Procedure Act, and it is also an adequate time for the Regional Director to decide whether to stay the delayed effectiveness period and take further action on the appellate officer's decision. Unless acted on by the Regional Director, an appellate officer's decision will be the final agency action subject to judicial review at the end of the 30-day delayed effectiveness period.

Fourth, this action changes § 676.20(d)(3) to establish a reserve within the QS pool of each IFQ regulatory area. Contested catch history will be placed in the reserve and included in the pool for purposes of calculation IFQ. If this were not done, catch history subject to a dispute would not have been included in the QS pool. Any person who does not have QS included in the QS pool on January 31 of any year will not be allocated IFQ for that year and will not be able to participate in the IFQ fisheries in that year. If an appeal is settled during the fishing year, the successful appellant would have to wait until after the following January 31 to receive IFQ. This action will allow IFQ to be issued immediately after final agency action on an appeal because the QS on which it is based will have been included, for calculation purposes, in the QS pool on the previous January 31. This procedure (i.e., placing contested QS in a reserve) is for use only in situations in which the eligibility for qualifying pounds has been established but the appropriate party to be issued the QS, and the resulting IFQ, is pending decision.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

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AGENDA C-5
 SUPPLEMENTAL
 JANUARY 1995

January 9, 1995

Mr. Richard B. Lauber, Chairman
 North Pacific Fishery Management Council
 P.O. Box 10316
 Anchorage, Alaska 99510

Subject: IFQ Implementation Report

Dear Mr. Lauber:

This is an update on the status of implementation of the halibut/sablefish IFQ program. Since the December 6 update, the Restricted Access Management Division of the National Marine Fisheries Service (NMFS/RAM) has been occupied primarily with three tasks: (1) processing additional documentation requested under 90-day evidentiary "windows" and issuing Quota Share (QS) to persons whose claims match NMFS records; (2) issuing denials for claims that remain unsubstantiated after the close of a 90-day window; and (3) issuing initiative administrative determinations for parties whose QS claims remain in conflict with other parties and whose 90-day windows have elapsed.

On January 31, the 1995 QS Pools will be established. All QS issuable will be included in the pools by that date and all remaining QS certificates will be mailed.

APPLICATIONS/APPLICATION PROCESSING

The following tables display, by total number, the status of the QS issuance and applications process as of January 6, 1994 (end of last week). As in prior reports, all numbers are rounded.

Status of Initial Applications

All persons applying for QS were required to complete and to submit a Request for Application by July 15, 1994. The following table displays the status of that activity (these same numbers were reported to the Council at the December meeting):

| | Halibut | Sablefish | Total |
|----------------------|---------|-----------|-------|
| RFAs made available: | 7590 | 1950 | 9540 |



| | Halibut | Sablefish | Total |
|-------------------------------------|-------------|-------------|-------------|
| RFAs made available: | 7590 | 1950 | 9540 |
| RFAs undeliverable: | 410 | 70 | 480 |
| RFAs duplicated: | 160 | 50 | 210 |
| RFAs not returned: | <u>1020</u> | <u>230</u> | <u>1250</u> |
| Total RFAs returned to NMFS: | 5900 | 1700 | 7600 |

Of those 7,600 applications, processing is moving forward rapidly. Because some persons have been issued QS that satisfy part, but not all, of their application(s), the following table displays statistics on QS permits applied for and issued.

Status of QS Permits

| | <u>Halibut</u> | <u>Sablefish</u> | <u>Total</u> |
|--|----------------|------------------|--------------|
| Total QS permits applied for - | 6400 | 1900 | 8300 |
| <u>QS Permits Already Issued:</u> | <u>4370</u> | <u>1070</u> | <u>5440</u> |
| QS Permits still to be issued - | 2030 | 830 | 2860 |
| Estimated CDQ Compensation permits to be issued - | | | <u>910</u> |
| Total permits still to be issued - | | | 3770 |

The 5,440 QS permits already issued were sent to 3,350 persons.

Additional Information Requested from Applicants

| | | | |
|---|-------------|------------|-------------|
| Awaiting More Evidence (response to "90-day" letters): | 620 | 110 | 730 |
| Awaiting Applicant Challenge (response to Data Summaries): | <u>2530</u> | <u>840</u> | <u>3370</u> |
| Totals of Information Requested: | 3150 | 950 | 4100 |

Applications in Conflict

| | | | |
|------------------------------|-----------|-----------|--|
| (most involve both species): | <u>88</u> | <u>53</u> | |
|------------------------------|-----------|-----------|--|

Denials and Appeals

| | | | |
|----------------------|----|----|----|
| Applications Denied: | 73 | 28 | |
| Appeals Filed: | | | 12 |
| Hearings granted: | | | 3 |
| Appeals Denied: | | | 2 |

Further Appeal (to RD):

1

NEAR-TERM PROCESSING COMPLETIONS

We have established a tentative mailing schedule for remaining QS certificates of January 12, 26, and February 2, which will allow 90-day evidentiary "windows" to close. Approximately 600 QS certificates (permits) will be mailed January 12. A substantial proportion of claims awaiting the end of a 90-day window will likely be denied as ineligible.

CONFIDENTIALITY ISSUES

NMFS/RAM continues to receive waivers for landings which are otherwise confidential to vessel owners and lessors under state and federal confidentiality rules. At this time, data must be held confidential on applications for fewer than 130 QS permits (area/species/vessel category combinations). We continue to seek ways in which QS may be issued to those applicants, even if we may not reveal the total qualifying pounds on a year-by-year basis.

CDQ COMPENSATION SCHEDULE

Calculation of CDQ compensation will be accomplished following the Council meeting (and will rely, to some extent, on Council action). We expect to have CDQ compensation QS issued later in January.

IFQ CREW MEMBER TRANSFER ELIGIBILITY CERTIFICATES

NMFS/RAM widely distributed "IFQ Crew Member Transfer Eligibility Certificate" (TEC) applications for individuals who, while not receiving QS by initial issuance, nevertheless wish to gain eligibility to receive QS and/or IFQ by transfer. To date, approximately 60 of those applications have been processed and TECs have been issued. We are able to process applications as they arrive.

QS/IFQ TRANSFER APPLICATIONS

Applications for Transfer of Quota Share are included with the Quota Share Certificates mailed and also were widely distributed

to fishing associations, brokers, and others. To date we have received 5 Transfer Applications and will process those later this week.

REGISTERED BUYER PERMITS/TRANSACTION TERMINALS

We are in the process of distributing "Registered Buyer Applications" for those who wish to be authorized to make or receive landings of IFQ fish. This package also includes a request for an automated transaction terminal, with which required electronic reporting of IFQ landings will be accomplished. This week, NMFS/RAM will mail application packets to approximately 9,000 persons, including known receivers and processors of Alaskan fish who are located in Alaska, Washington, Oregon, California, and Canada; persons who have recently held groundfish, or halibut permits with NMFS or the International Pacific Halibut Commission, respectively; and CDQ managing organizations. As a convenience to fishermen and to facilitate electronic reporting, we are attempting to place transaction terminals with approximately 175 harbormasters in the aforementioned locations. NMFS/RAM will also distribute forms widely to associations, brokers, etc., and request.

Also, final programming for the Transaction Terminals to be used for making landings of IFQ products is nearing completion. During late January and early February, we will be distributing those machines to eligible buyers and to public locations (such as harbormaster offices) to insure that they are readily available to the fishermen when IFQ landings are being made.

PUBLIC INFORMATION EFFORTS

Central to the success of the program is the effort made to maintain good communications with the public, and to efficiently respond to public concerns.

To that end, we have maintained our toll-free telephone number (800-304-4846), which is being heavily used [during October alone, we received over 2,000 calls on the line, accounting for some 12,000 minutes (or, 200 hours of toll charges)].

We are in the final editing stages of a new informational brochure. This will be similar in design to the earlier publication (The IFQ Program: Insights and Updates) published in February 1994, but will focus more precisely on permits, fishing practices, and landing and reporting requirements under the IFQ

program.

Also during the IPHC meeting in late January we intend to explain the IFQ landing system with a "hands-on" demonstration of the transaction terminal.

In cooperation with the NMFS Enforcement Division, additional workshops are being planned (as is attendance at the Kodiak Fish Expo next March) to insure that buyers and fishermen are well apprised of the mechanics of the new system that governs fishing under IFQs and landing IFQ halibut and sablefish.

NMFS COMPUTER BULLETIN BOARD

As part of our effort to insure that the public can access the necessary information to work with the program, we have placed three reports on the NMFS computer Bulletin Board. One lists the name and business address of all persons that currently hold QS, by type of QS; one lists all current QS holders in a format suitable for generating mailing labels; and the last lists all persons who are currently transfer-eligible (i.e., were initially-issued QS, or have obtained a TEC from NMFS/RAM.

As time goes on, we will periodically update information on the Bulletin Board -- it would be helpful for us to hear from the affected public so that we can insure that the information we are providing is both timely and of some value to users.

SCHEDULES AND TIME FRAMES

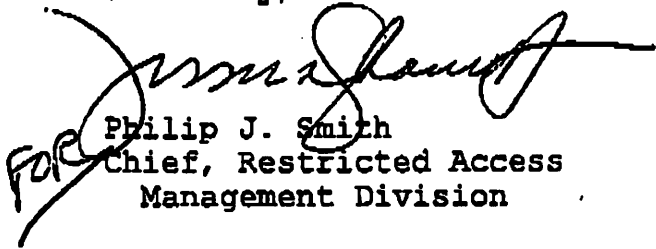
We continue to believe that the program implementation is substantially "on track" and do not foresee any major impediments to full implementation next spring.

We are continuing to meet the time-table provided to the Council in September, with the full expectation that QS will be issued to all eligible applicants by the end of January, and the transfer, appeals, and other elements of the program proceeding as scheduled.

CONCLUSION

Thank you for your continued interest in, and support for, the IFQ implementation effort. Please feel free to let us know if you have any questions or comments.

Sincerely,

FOR 

Philip J. Smith
Chief, Restricted Access
Management Division

cc: Steven Pennoyer
Director, Alaska Region