



Enforcement Committee

AGENDA

April 2, 2019 1:00 pm – 4:00 pm Cook Inlet Boardroom

<https://www.npfmc.org/committees/enforcement-committee/>

1. C6 Review CQE Fish-up in 3A Analysis
2. D8 Review of Sablefish Discards Discussion Paper
3. Progress Report on Trawl Electronic Monitoring Committee's Cooperative Research Plan
4. Discussion of Potential Draft Agenda Items for Future Enforcement Committee Meeting

Background for C6 CQE Fish-up in 3A Analysis

The measure under consideration would allow Community Quota Entities in Area 3A to fish “D” (D class) halibut quota on Category “C” (C class) vessels, either after a date specified in regulation (Alternative 2), in a limited number of years (Alternative 3), or both (Alternatives 2 and 3 combined). Currently in Area 3A, only vessels that are ≤ 35 ft LOA can harvest D class IFQ, and vessels that are ≤ 60 ft LOA can harvest C class IFQ.

The ability of IFQ Program participants to fish certain classes of QS on a larger vessel (known as “fishing up”), varies depending upon regulatory area and whether the QS is held by an individual or a CQE (see Table 2-2 of the analysis). Under current regulations, if a CQE in Area 3A cannot fully harvest its D class IFQ on a D class vessel (≤ 35 ft length overall (LOA)), the IFQ may not be harvested on a larger vessel due to the existing vessel length restrictions, and this quota would remain unharvested for the year. In October 2018, the Council received a discussion paper on this issue and initiated analysis.¹ The intent of the action is to allow the fish up measure to be used as a fallback mechanism if a situation arises in which the CQE cannot harvest all its D class IFQ fished on a D class vessel as planned.

¹ Discussion Paper: Allow Community Quota Entities to fish IFQ derived from Category D QS to be fished on Category C vessels in Area 3A. Council motion from October 2018.

Alternatives for Consideration

- Alternative 1: No Action
- Alternative 2: Allow CQE communities to fish D class quota on C class vessels after:
- a. August 15
 - b. September 1
- Alternative 3: Allow CQE communities to fish D class quota on C class vessels in a limited number of years.
- a. 2 out of 3 years
 - b. 3 out of 5 years
 - c. 3 out of 7 years

Additionally, Alternatives 2 and 3 could be combined to restrict the ability to fish up both after a date specified and for a certain number of years.

Enforcement Considerations:

Section 2.11 of the analysis describes management and enforcement concerns identified by NMFS Office of Law Enforcement (OLE) and Restricted Access Management (RAM) Program. The current action alternatives would implement complicated technical regulations and it would be up to CQEs and fishermen to understand them, not only for avoiding violations but also to avoid situations where IFQ cannot be fished. By recommending straightforward, easy to understand regulations, the potential negative impacts of non-compliance on communities and fishermen would be minimized, as would the potential enforcement burden for NMFS by not using Agency resources to adjudicate inadvertent regulatory violations.

NMFS OLE notes that this action has the potential to increase violations, if fishery participants make mistakes interpreting complex regulations that differ between adjacent areas, during different parts of the season, or by year. Under the action alternatives, substantial programming revisions to the eLandings and IFQ database would likely be required for effective enforcement and accounting.

By limiting this exception to after a certain date in the year (Alternative 2), the programming would be more complicated and likely increase costs to implement the program. By limiting the number of years that a D class quota could be fished up and harvested on a C class vessel (Alternative 3), this alternative would present unique compliance monitoring challenges due to the potential for different vessels to use the CQE permit from year to year.

The Council could consider a new alternative that was recommended by NMFS to allow CQE-held D class quota in Area 3A to be fished on C class vessels for the entire IFQ season. This option could reduce enforcement burden, compliance issues, and minimize additional costs to IFQ participants for programming changes.

Background for D8 Review of Sablefish Discards Discussion Paper

A discussion paper² presented to the Council at its October 2018 meeting³ explored the potential to allow discarding of small sablefish in the Individual Fishing Quota (IFQ) sablefish fishery. The discarding

² <http://meetings.npfmc.org/CommentReview/DownloadFile?p=b6b509dd-a14c-442b-867b-3f88fa9f8d98.pdf&fileName=D2%20Sablefish%20Discard%20Allowance.pdf>

³ <http://meetings.npfmc.org/Meeting/Details/142>

allowance was suggested by stakeholders in April 2018⁴ as a management response to potential inundation of directed fishing catches of small sablefish from the 2014 year class, the largest on record, and one that will likely dominate fishery landings for the next several years. Stakeholders and Council members expressed a desire to minimize fishing mortality for the year class, which has considerable potential to expand the spawning stock, and also to minimize the economic burden to the fishery of a massive shift in catches of small, low value sablefish.

This discussion paper briefly characterizes a range of decision points that are likely to require development through future analyses if the Council chooses to recommend action on a discarding provision for the IFQ sablefish fishery. The October 2018 motion⁵ calling for this discussion paper, identifies nine specific challenges, of which enforcement considerations was one of identified challenges.

Enforcement Options

At sea and dockside enforcement operations are resource intensive and establishing new regulations or modifying existing regulations must be carried out with due consideration of the challenges and efficiencies associated with enforcing those regulations. The Council's Enforcement Committee was established to review proposed FMP amendments, regulatory changes, and other management actions on matters related to enforcement and safety at sea. A set of [enforcement precepts](#) was developed by the Committee to assist the Council in any potential rulemaking project. These precepts, listed below, address enhancing enforceability of regulations and FMPs; understanding policy implications for enforcement; and potential statutory and regulatory amendments to address emerging areas such as seafood fraud and traceability.

Issues addressed by Enforcement Precepts:

1. Regulations Should Be as Simple and Straightforward as Possible
2. Where Feasible, Seek to Reduce the Number of Regulations
3. Clear Record of Council Intent
4. Accountable and Traceable Seafood Products
5. Electronic Monitoring and Technology
6. Observers
7. Resource Intensive Regulations

Vessel-Specific Enforcement Considerations

As addressed in the October 2018 discussion paper, an important consideration in modifying regulations associated with the IFQ sablefish fishery would be whether discarding is *allowed*, i.e., optional, or *required*. The discussion paper points out that discretionary release of sablefish by vessel operators would only require extension of careful release requirements (50 CFR 679.21(a)(2)(ii)) to sablefish. For at-sea enforcement operations, this would involve observing fishery operations and ensuring that sablefish not retained by IFQ vessels are returned to the sea immediately, with a minimum of injury.

An additional layer of consideration would be involved if a discretionary allowance for discarding sablefish were associated with a minimum size. In this case, vessel operators could either retain or discard sablefish, but would only be able to discard if the sablefish were below a given size. Vessel operations would continue to be held to careful release standards, but the observation of discarding by enforcement would also involve verification of compliance with length standards. This means that a violation would

⁴ <http://npfmc.legistar.com/gateway.aspx?M=F&ID=f7e25c7f-12e1-4fc1-9b92-eb99b965b4be.pdf>

⁵ <http://meetings.npfmc.org/CommentReview/DownloadFile?p=cb4f3d0b-62d2-42a2-978e-0a339956f983.pdf&fileName=D2%20COUNCIL%20MOTION.pdf>

involve discarding fish above the minimum size and evidence for a violation would require that enforcement obtain a discarded fish or somehow record a discarding event that shows the violation. As long as discarding is discretionary, examination of the retained catch would not be necessary since retention of small fish would be allowed.

If a minimum size is associated with a discarding requirement, then the careful release and interception of discarding violations would still be necessary. In addition, at-sea or dockside enforcement of the minimum size for retention would be achieved by examination by enforcement officials of retained or landed catch.

If the Council intends to proceed to action on this issue, the above considerations and the exact regulatory language would need to be explored in an analytical document and be reviewed by the Council's Enforcement Committee in order to achieve consistency with various enforcement precepts. It is likely that a regulatory change allowing or requiring sablefish discarding would affect each of those enforcement precepts. It should be noted that the commercial IFQ fishery for Pacific halibut currently operates under a minimum size (28 inches) discard requirement. Many of the vessels that participate in that fishery also hold sablefish IFQ, and, as such, adaptation to a regulatory change extending size-based management to sablefish would be expected to be achievable for both fishery participants and enforcement personnel.

Fishery-wide Enforcement Considerations

Beyond enforcement of compliance with sablefish discarding regulations at the vessel level, the Council should consider, in a future analysis, the effects of a regulatory change on fishery-wide behavior. At the root of this concern is the issue of consistency between expected sablefish mortalities under discarding and actual sablefish mortalities reflected in the fishery's response to the regulatory change. Review by the Enforcement Committee would help craft a regulatory approach that would ensure that sablefish discards reported or otherwise attributed to the fishery reflect the level of discarding intended by the Council.

A risk will need to be addressed in a future analysis and review to ensure regulations or other management structures do not create unintended tensions between sablefish discard accounting and discard reporting and monitoring mechanisms. Potential issues to be addressed would include: 1) compliance with size-based regulations by unobserved vessels, 2) accuracy of trip-level discard reporting, 3) observer involvement in compliance.