PUBLIC REVIEW DRAFT

**Regulatory Impact Review
for Proposed Amendment
to the Federal Regulations Implementing the Pacific Halibut Fisheries Off Alaska**

Community Quota Entity Individual Fishing Quota Fish Up in Area 3A

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Abstract: This Regulatory Impact Review (RIR) analyzes a proposed management measure that would apply exclusively to the Pacific halibut (*Hippoglossus stenolepis*) individual fishing quota (IFQ) fishery in the Community Quota Entity (CQE) Program in IFQ Regulatory Area 3A. The measure under consideration would allow eligible CQE community residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A, either for the duration of the season, after a date specified, for a limited number of years, or a combination of these options.

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List of Acronyms and Abbreviations

AKFIN	Alaska Fisheries Information Network
BSAI	Bering Sea and Aleutian Islands
CAS	Catch Accounting System
CDQ	Community development quota
Council	North Pacific Fishery Management Council
CP	catcher/processor
CV	catcher vessel
E.O.	Executive Order
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EIS	Environmental Impact Statement
FMP	fishery management plan
FR	Federal Register
ft	foot or feet
GOA	Gulf of Alaska
IFQ	Individual fishing quota
IRFA	Initial Regulatory Flexibility Analysis
lb	pound(s)
IPHC	International Pacific Halibut Commission
LOA	length overall
LAPP	Limited Access Privilege Program
m	meter or meters
mt	metric ton
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NEPA	National Environmental Policy Act
NPFMC	North Pacific Fishery Management Council
Observer Program	North Pacific Groundfish and Halibut Observer Program
OLE	Office of Law Enforcement
PA	Preferred alternative
PPA	preliminary preferred alternative
PRA	Paperwork Reduction Act
PSEIS	Programmatic Supplemental Environmental Impact Statement
QS	Quota share
RFA	Regulatory Flexibility Act
RFFA	reasonably foreseeable future action
RIR	Regulatory Impact Review
SAFE	Stock Assessment and Fishery Evaluation
Secretary	Secretary of Commerce
TAC	total allowable catch
U.S.	United States
USCG	United States Coast Guard

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Executive Summary

This Regulatory Impact Review (RIR) was prepared to evaluate the benefits and costs of a proposed Federal regulatory amendment as required under Presidential Executive Order 12866. The proposed amendment would allow Community Quota Entities (CQEs) in Area 3A to fish D class halibut IFQ on C or D class vessels. 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. Section 1 provides an introduction and a brief history of the action. Section 2 provides the methodology for the analysis of impacts, a brief description of, and participation in, the IFQ and CQE Programs, and the analysis of impacts. Section 2.9 provides an analysis of the status quo impacts, and Section 2.10 provides an analysis of the impacts of the action alternatives (Alternatives 2 and 3). Section 2.11 includes the management and enforcement considerations of the proposed action.

As described in Section 2.7 of the document, the CQE Program was developed in order to allow a distinct set of small, remote, coastal communities with few economic alternatives to purchase and hold catcher vessel quota share (QS) in the Gulf of Alaska in order to help facilitate access to and sustain participation in the commercial halibut and sablefish IFQ fisheries. Among other restrictions, the IFQ and CQE Programs include QS class designations. Described in Section 2.6, QS class designations represent the length of vessel that is permitted to harvest that IFQ and whether the vessel is able to process onboard (Table ES-1). These categories were designed to maintain a diverse, owner-operated fleet and provide entry-level opportunities in the IFQ fisheries. The Council intended for D class QS to be the most likely entry-level opportunity, as it was originally thought that entry-level fishermen would be using smaller and more affordable D class vessels. Since the implementation of the IFQ Program, numerous amendments have lifted the original vessel length landing restrictions of the QS vessel class designations. 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 (Table 2-2).

Table ES-1 Current harvest authority for halibut under specific vessel categories.

Vessel Category	Authority
A	May harvest and process IFQ halibut on a vessel of any length (freezer/longliners)
B	May harvest IFQ halibut on a vessel of any length
C	May harvest IFQ halibut on a vessel ≤ 60 ft LOA
D	May harvest IFQ halibut on a vessel ≤ 35 ft LOA

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 IFQ would remain unharvested for the year. **The measure under consideration would allow eligible Community Quota Entity (CQE) residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A. This harvesting flexibility could occur either after a date specified in regulation or for the duration of the IFQ season (Alternative 2), in a limited number of years (Alternative 3), or both (Alternatives 2 and 3 combined).**

Purpose and Need

In April 2019, the Council adopted a replacement purpose and need statement and alternatives for analysis, with a request for Council staff to assist with rewording of the purpose and need for the next iteration of the analysis. The Council recommended the analysis be released for public review. Council

staff has included their recommended language changes, which the Council can modify or adopt. New language is underlined; deleted language is in ~~strike-through~~.

The ability of fishermen in a remote coastal community to purchase QS or maintain existing QS may be limited by a variety of factors both shared among and unique to each community. Although the specific causes for decreasing QS holdings in a specific community may vary, the net effect is a disincentive to participation by residents of these communities in the halibut and sablefish IFQ fisheries. The substantial decline in the number of resident QS holders and the total amount of QS held by residents of remote coastal communities may have aggravated unemployment and related social and economic conditions in those communities. To remedy these barriers to participation in remote coastal communities, the Council developed the CQE Program to provide these communities with long-term opportunities to access the halibut and sablefish resources. Public testimony has indicated that in one of these remote communities, fishermen leasing CQE-held "D" class halibut IFQ do not always have "D" class vessels that are available to harvest the IFQ, and that the smaller skiffs often used in this community as "D" class vessels are not ideal for the harsher weather and ocean conditions later in the season when halibut tend to move further offshore. These circumstances, combined with Program regulations in Area 3A that restrict CQE ability to fish "D" class quota on "C" class vessels ~~has~~ have, in some circumstances, limited the CQE community's ability to access CQE halibut ~~in Area 3A. In these remote communities, public testimony has indicated that fishermen leasing CQE held "D" class quota do not always have "D" class vessels that are available to harvest the quota~~. Therefore, modifying the regulations would ~~the Council would like to~~ provide more flexibility to CQE community participants to harvest "D" class quota in Area 3A. ~~Modifying the program to allow~~Allowing CQEs located within Area 3A to fish "D" class quota on "C" class vessels in Area 3A will further the Council's intent of encouraging CQE communities to secure long-term opportunities to access halibut.

Alternatives

The Council adopted the following revised alternatives and options for analysis in April 2019. The Council wished to understand the impacts of these options further before identifying a preliminary preferred alternatives (PPA). Council staff has included their recommended language changes, which the Council can modify or adopt. New language is underlined, deleted language is in ~~strike-through~~.

Alternative 1: No action (status quo)

Alternative 2: Allow eligible CQE residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A ~~CQEs to transfer "D" class IFQ to eligible participants who may fish the quota on "C" class or "D" class vessels.~~

Option 1: beginning on August 15.

Option 2: beginning on September 1.

Option 3: for the duration of the annual IFQ season.

Alternative 3: Allow eligible CQE residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A ~~CQEs to transfer "D" class IFQ to eligible participants who may fish the quota on "C" class or "D" class vessels~~ only in a limited number of years:

Option 1: 2 out of 3 years

Option 2: 3 out of 5 years

Option 3: 3 out of 7 years

Note: Alternatives 2 and 3 can be combined.

Updates from the Initial Review Draft (April 2019)

Broadly, changes to the document from the April 2019 initial review draft include:

- Changes to the purpose and need statement (Section 2.2)
- Expanded history of action (Section 1.1)
- Updates to reflect the Council's revisions to the alternatives (Section 2.4) including the addition of Alternative 2, Option 3 in the analysis of impacts.
- Addition of owner address data for community/vessel information (Section 2.8.1)
- Availability of D class QS and updated price and availability information for C and D class QS in Area 3A (Section 2.8.2)
- Clarification of regulatory caps that apply to CQEs in Area 3A (Section 2.10.1)
- Data on weekly halibut IFQ landings in Area 3A by vessel size (Section 2.10.3)
- Updates to the management and enforcement considerations section (Section 2.11)
- Description of affected small entities (Section 2.12)
- Summation of the alternatives with respect to net benefit of the nation (Section 2.13)
- Pacific Halibut Act considerations (Section 3.1)
- Section on how each alternative is consistent with the Council's Ecosystem Vision Statement (Section 3.2).

Environmental Assessment

The proposed action has no potential to individually nor cumulatively affect the human environment. The only effects of the action are socio-economic, as analyzed in this RIR. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Regulatory Impact Review

This action could directly benefit CQEs in Area 3A that currently hold, or are in the market for, D class QS. As compared to the Alternative 1, the action alternatives (Alternatives 2 and 3) could provide increased flexibility in harvesting operations for CQEs in Area 3A with D class IFQ. Increased harvesting flexibility for CQEs under either action alternative may provide an opportunity to reduce forgone revenue for CQEs with D class QS, which could result in economic benefits for the communities those CQEs represent.

In principle, this action could potentially increase the value of D class QS, which could affect both CQEs and non-CQEs looking to purchase QS. However, changes in the value and price of QS are expected to be minimal for the reasons described below (described further in Section 2.10). While upward pressure on the value of QS could cumulatively impact transfer price, many factors influence QS prices, and fluctuations in QS price in response to this action are difficult to predict.

The impacts of this action are expected to be minimal for the following reasons:

- In Area 3A, there are 14 communities that are eligible to form CQEs.
- CQEs have historically faced difficulties funding the purchase of QS.
- Based on current QS holdings, only one CQE would be directly affected at this time. This CQE held a small amount of D class IFQ in 2018 (6,324 lbs).
- Purchase of QS by CQEs are capped at 1,502,823 units of QS of any vessel class (59,741 lbs in 2018).

- The purchase of D class halibut QS by CQEs (in aggregation) is capped at 1,233,740 units in order to limit the amount of D class QS that CQEs can accumulate within the area. In 2018, this cap was roughly 49,000 lbs IFQ, which is roughly 10% of total D class QS. The other 90% is available to individual IFQ holders only.

The distribution of impacts is expected to be similar for each of the action alternatives. The date restriction under Alternative 2 Options A and B, and the frequency restriction under Alternative 3 limit the extent of flexibility provided by the action, diluting the magnitude of potential impacts. The intent 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 on a D class vessel earlier in the season as planned (Alternative 2), or only for a certain number of years (Alternative 3). The combination of the two action alternatives would be expected to decrease the anticipated magnitude of impacts across all those affected, as this combination allows the least amount of change in flexibility for CQEs in Area 3A. Alternative 2, Option 3 offers the CQE the most flexibility. In theory, the magnitude of the impacts for CQEs and individual IFQ holders would be expected to be larger under this option than under the other options. In contrast, the magnitude of management and enforcement impacts under this option would be smaller.

If this action is driven by safety or weather concerns, the Council may wish to also consider individual D class IFQ holders and how to best account for safety when choosing a preferred alternative. Sections 2.8.3 and 2.10.3 describe some of the safety considerations and challenges of predicting impacts of this action on safety.

Costs to implement and enforce this action would be billed under cost recovery in the IFQ Program. OLE notes that aside from Alternative 2, Option 3, 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 a combination of Alternatives 2 and 3, more substantial programming revisions to the eLandings and IFQ database would likely be required for effective enforcement and accounting.

NMFS has recommended Alternative 2, Option 3 to allow CQE-held D class IFQ in Area 3A to be fished on C class vessels for the duration of the IFQ season. This option could reduce enforcement burden, compliance issues, and minimize additional costs to IFQ participants for programming changes. This is described further in Section 2.11.

1 Introduction

This document analyzes a proposed management measure which would apply exclusively to the Pacific halibut (*Hippoglossus stenolepis*) individual fishing quota (IFQ) fishery in the Community Quota Entity (CQE) Program in IFQ Regulatory Area 3A. The measure under consideration would allow eligible Community Quota Entity (CQE) residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A. This document is a Regulatory Impact Review (RIR)[1] which provides assessments of the social and economic benefits and costs of the action alternatives, as well as their distribution. The document addresses the statutory requirements of the Northern Pacific Halibut Act of 1982 and Presidential Executive Order 12866. A RIR is a standard document produced by the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical background for decision-making.

1.1 History of the Action

In February 2018, the Council directed staff to produce a discussion paper on whether to allow Community Quota Entities (CQEs) in Area 3A to fish Category "D" (D class) halibut IFQ on Category "C" (C class) vessels after August 15th or September 1st. [2] 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 proposed action, known as a "fish up," was requested for Council consideration by industry stakeholders.

The Council received testimony that severe weather and/or disabled small vessels have led to CQE-held D class IFQ shares going unfished by eligible residents in one CQE community. An active CQE group in Area 3A stated that on occasion, there were one or more D class designees who cannot fish their IFQ within the nine-month timeframe, thus the CQE may be faced with unfished D class IFQ late in the season. While the amount of IFQ that has gone unfished remains confidential, this CQE in Area 3A held 6,324 lbs of D class IFQ in 2018 (which represents all the D class IFQ that was held by CQEs in Area 3A in that year). Sometimes the only remaining vessel in the community that can fish IFQ is a C class vessel, but, due to vessel length restrictions, these vessels are not permitted to fish D class IFQ. If a holder of D class IFQ is unable to fish their IFQ and the only vessel available in the community is a C class vessel, then existing regulations require that this IFQ remains unharvested for the year.

The Council received the discussion paper in October 2018. At that time, the Council adopted a purpose and need statement, developed alternatives, and initiated an analysis.[3] The Council reviewed this analysis in April 2019, and revised the purpose and need and the alternatives to include Alternative 2, Option 3. The Council released the document for public review pending specific revisions to the document and inclusion of SSC, AP, and Council recommendations. At that time, the Council did not identify a preliminary preferred alternative.

[1]The proposed action has no potential to affect, individually or cumulatively, the human environment. The only effects of the action are socio-economic, as analyzed in this RIR. As such, it is categorically excluded from the need to prepare an Environmental Assessment.
[2] Link to Discussion Paper: Allow Community Quota Entities to fish IFQ derived from Category D QS to be fished on Category C vessels in Area 3A
[3] Link to Council motion from October 2018

2 Regulatory Impact Review

This RIR examines the benefits and costs of a proposed Federal regulatory amendment to allow Community Quota Entities (CQEs) in Area 3A to fish D class halibut IFQ on C class vessels. The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

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

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

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

2.1 Statutory Authority

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

(c) Regional Fishery Management Council involvement

The Regional Fishery Management Council having authority for the geographic area concerned may develop regulations governing the United States portion of Convention waters, including limited access regulations, applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with regulations adopted by the International Pacific Halibut Commission. Such regulations shall only be implemented with the approval of the Secretary, shall not discriminate between residents of different States, and shall be consistent with the limited entry criteria set forth in section 1853(b)(6) of this title. If it becomes necessary to allocate or assign halibut fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in existing Federal law, reasonably calculated to promote conservation,

and carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of the halibut fishing privileges.

It is necessary for the Council to consider the authority of the Halibut Act when considering regulations resulting from the proposed action, however, Federal regulations at 50 CFR part 679, established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act of 1976, implement the IFQ Program for the halibut and sablefish fisheries. Regulations implementing the Halibut Act in waters in and off Alaska appear at 50 CFR part 300.60 - 300.66. The proposed action under consideration would amend Federal regulations at 50 CFR 679.

2.2 Purpose and Need for Action

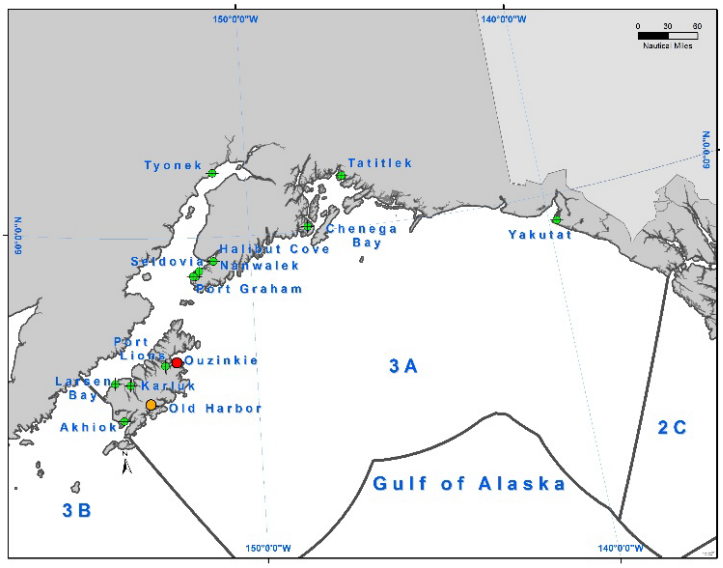
In April 2019, the Council adopted a replacement purpose and need statement and alternatives for analysis, with a request for Council staff to assist with rewording of the purpose and need for the next iteration of the analysis. The Council recommended the analysis be released for public review. Council staff has included their recommended language changes, which the Council can modify or adopt. New language is underlined; deleted language is in ~~strike-through~~.

The ability of fishermen in a remote coastal community to purchase QS or maintain existing QS may be limited by a variety of factors both shared among and unique to each community. Although the specific causes for decreasing QS holdings in a specific community may vary, the net effect is a disincentive to participation by residents of these communities in the halibut and sablefish IFQ fisheries. The substantial decline in the number of resident QS holders and the total amount of QS held by residents of remote coastal communities may have aggravated unemployment and related social and economic conditions in those communities. To remedy these barriers to participation in remote coastal communities, the Council developed the CQE Program to provide these communities with long-term opportunities to access the halibut and sablefish resources. Public testimony has indicated that in one of these remote communities, fishermen leasing CQE-held "D" class halibut IFQ do not always have "D" class vessels that are available to harvest the IFQ, and that the smaller skiffs often used in this community as "D" class vessels are not ideal for the harsher weather and ocean conditions later in the season when halibut tend to move further offshore. These circumstances, combined with Program regulations in Area 3A that restrict CQE ability to fish "D" class quota on "C" class vessels ~~has~~ have, in some circumstances, limited the CQE community's ability to access CQE halibut ~~in Area 3A. In these remote communities, public testimony has indicated that fishermen leasing CQE held "D" class quota do not always have "D" class vessels that are available to harvest the quota~~. Therefore, modifying the regulations would ~~the Council would like to~~ provide more flexibility to CQE community participants to harvest "D" class quota in Area 3A. ~~Modifying the program to allow~~Allowing CQEs located within Area 3A to fish "D" class quota on "C" class vessels in Area 3A will further the Council's intent of encouraging CQE communities to secure long-term opportunities to access halibut.

2.3 Description of Management Area

The action alternative would only apply to CQEs in the eligible CQE communities located within IFQ Regulatory Area 3A (Figure 2-1).

Figure 2-1 Map of eligible CQE communities in Area 3A



Note: Orange= Old Harbor (holds halibut IFQ, no D class), Red= Ouzinkie (holds D class halibut IFQ), Green= Eligible communities (as of 2019, CQEs representing these communities do not hold any halibut IFQ).

2.4 Description of Alternatives

The proposed action alternatives were designed to accomplish the stated purpose and need for the action (Section 2.2). In October 2018, the Council developed alternatives for analysis, which were revised in April 2019. Council staff has included their recommended language changes, which the Council can modify or adopt. New language is underlined, deleted language is in ~~strike-through~~.

Alternative 1: No action (status quo)

Alternative 2: Allow eligible CQE residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A ~~CQEs to transfer "D" class IFQ to eligible participants who may fish the quota on "C" class or "D" class vessels.~~

Option 1: beginning on August 15.

Option 2: beginning on September 1.

Option 3: for the duration of the annual IFQ season.

Alternative 3: Allow eligible CQE residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A ~~CQEs to transfer "D" class IFQ to eligible participants who may fish the quota on "C" class or "D" class vessels~~ only in a limited number of years:

Option 1: 2 out of 3 years

Option 2: 3 out of 5 years

Option 3: 3 out of 7 years

Note: Alternatives 2 and 3 can be combined.

Alternative 1, No Action

Under status quo, U.S. Federal regulations at 50 CFR 679 include restrictions on both the class of halibut quota shares (QS) CQEs may hold in each regulatory area, cumulatively and individually, as well as what

length vessel each class of halibut QS may be fished on (see Section 2.6 for further description of the QS class regulations). Alternative 1 would maintain the current regulations; in IFQ regulatory Area 3A, D class IFQ derived from QS held by a CQE must be fished on vessels $\leq$ 35 ft (§679.42(a)).

Alternative 2

Alternative 2 would allow eligible CQE community residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A, either after a date specified (Option 1: August 15 or Option 2: September 1), or for the duration of the IFQ season (Option 3). The date options were initially proposed by a stakeholder and adopted as part of Alternative 2 by the Council at its October 2018 meeting, and Option 3 was recommended by NMFS for consideration at initial review.

Alternative 3

Alternative 3 would allow eligible CQE community residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A only in a limited number of years. The options include: 2 out of 3 years, 3 out of 5 years, and 3 out of 7 years. These options were selected by the Council at its October 2018 meeting.

Either action alternative (2 or 3) could directly affect a small number of participants, and indirectly affect IFQ holders, mainly in Area 3A (Section 2.12). Section 2.6 discusses the original intent of the CQE Program and Section 2.11 discusses additional considerations for management and enforcement under Alternatives 2 and 3.

Selecting Alternative 2 or 3 (or the combination of the two action alternatives) would require a Federal regulatory amendment. It would not require a FMP amendment and it is not expected to require State regulation changes.

2.5 Methodology for analysis of impacts

The evaluation of impacts in this analysis is designed to meet the requirement of E.O. 12866, which dictates that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision makers "to maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach." The costs and benefits of this action with respect to these attributes are described in the sections that follow, comparing the "no action" alternative (Alternative 1) with the action alternatives (Alternatives 2 and 3).

This analysis was prepared using a combination of qualitative and quantitative sources. Data on harvest was obtained from NMFS Restricted Access Management (RAM) division IFQ landings database sourced through AKFIN. Data on harvesting vessels was obtained from ADF&G Commercial Fisheries Entry Commission (CFEC) fish tickets and sourced through AKFIN. Information about halibut allocation and QS holders was derived from data provided by NMFS RAM. This analysis also relied on a number of references for both qualitative and quantitative background information, notably the IFQ Program 20-year review (NPFMC/NMFS 2016) and the Review of the Community Quota Entity Program under the Halibut/Sablefish IFQ Program (NPFMC 2010). Information on halibut harvest by CQEs in Area 3A, which would help to inform the analysis, is confidential due to the small number of entities involved. Some qualitative information included in the analysis has been gleaned from those with a general knowledge of the issue and the IFQ Program.

For a full list of people consulted and references, see Sections 4 and 5.

2.6 Structure of the IFQ Program

This section highlights the most relevant elements of the IFQ management system to this current action. For a more comprehensive overview of the IFQ Program, see additional sources incorporated by reference.[4]

The IFQ Program is a limited access privilege program (LAPP) for the commercial fixed-gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in the Exclusive Economic Zone (EEZ) off Alaska. This Program was implemented in 1995 (58 FR 59375). The IFQ Program limits access to the halibut and sablefish fisheries by issuing QS that equates to individual harvesting privileges through the annual issuance of IFQ permits. The specific amount (in pounds) that an individual permit holder is annually authorized to harvest is determined by the number of QS units held for that species, the total number of QS units issued for that species in a specific regulatory area, and the total amount of the species allocated for IFQ fisheries in a particular year. By ensuring access to a certain amount of the TAC at the beginning of the season, QS holders may determine where and when to fish, how much gear to deploy, and how much overall investment to make in harvesting.

The Council and NMFS designed the IFQ Program to provide economic stability in the commercial halibut and sablefish fixed-gear fisheries and to improve the long-term productivity of the halibut and sablefish fisheries while retaining the character and distribution of the fishing fleets as much as possible. The Program was meant to further promote the conservation and management objectives of the MSA and the Halibut Act. The Program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based; to allocate specific harvesting privileges among U.S. fishermen; to resolve management and conservation problems associated with "open access" fishery management; and to promote the development of fishery-based economic opportunities in western Alaska. The IFQ approach was chosen to provide fishermen with the authority to decide how much and what types of investment they wished to make to harvest the resource. The development and design of the halibut IFQ fishery is described in further detail in Pautzke and Oliver (1997) and Hartley and Fina (2001a, b).

In the original *Supplemental Environmental Impact Statement for the IFQ Program*, the Council identified 10 policy objectives that it intended to address through specific elements of the IFQ Program. Specifically, in selecting the elements of the IFQ Program the Council attempted to do the following:

1) Address the problems that occurred with the open-access management regime. The Council identified 10 specific problems: Allocation conflicts, gear conflicts, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and communities, and rural coastal community development of a small boat fleet.
2) Link the initial QS allocations to recent dependence on the halibut and sablefish fixed gear fisheries.
3) Broadly distribute QS to prevent excessively large QS from being given to some persons.
4) Maintain the diversity in the fleet with respect to vessel categories.
5) Maintain the existing business relationships among vessel owners, crews, and processors.

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

6) Assure that those directly involved in the fishery benefit from the IFQ Program by assuring that these two fisheries are dominated by owner/operator operations.

7) Limit the concentration of quota share ownership and IFQ usage that will occur over time.

8) Limit the adjustment cost to current participants including Alaskan coastal communities.

9) Increase the ability of rural coastal communities adjacent to the Bering Sea and Aleutian Islands to share in the wealth generated by the IFQ Program.

10) Achieve previously stated Council goals and objectives and meet MSA requirements.

During the development of the IFQ Program, the Council was concerned about consolidation of ownership and divestiture of QS by coastal communities and removing small community access to and participation in the fisheries. For this reason, the Council built in several provisions to address concerns regarding transferability and the goal of preserving an owner-operated fleet. The goal was to protect small operations, part-time participants, and entry-level participants who may tend to be eliminated from rationalized fisheries because of potential excessive consolidation under the IFQ Program. The Program includes restrictions designed to prevent too many quota shares from falling into too few hands (ownerships caps) or from being fished on too few vessels (vessel use caps).

The Council designed a "block provision" to further guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. A block is a consolidation of QS units that may not be divided. Most initially-issued QS that resulted in less than the equivalent of 20,000 pounds (9 mt) of IFQ (in 1994 pound equivalents) was "blocked," that is, issued as an inseparable unit. One of the primary purposes of QS blocks and the amendments to the block provisions was to conserve small blocks of QS that could be purchased at a relatively low cost by crew members and new entrants to the IFQ fisheries. The block provision reduced the amount of QS consolidation that could have occurred under the IFQ Program and slowed consolidation by restricting QS transfers. Over time, the Council and NMFS have amended the Program to remove constraints so that greater amounts of QS can be swept-up into larger amounts that could be fished more economically.[5]

Other restrictions, such as the **QS class designations**, which represent the length of vessel that is permitted to harvest that IFQ, are intended to prevent the fishery from being dominated by large boats or by any particular vessel class. **Under these class designations, halibut QS were originally assigned under the one of the following four vessel categories:**

- Class A - designated for vessels that process at sea or catcher-processors (freezer longliner vessels) and do not have a vessel length restriction;
- Class B - catcher vessels greater than 60' LOA;
- Class C - catcher vessels 36' to 60' LOA; or
- Class D - catcher vessels 35' LOA or less.

The categories were designed to maintain a diverse, owner-operated fleet and provide more entry-level opportunities in the IFQ fisheries. The Council intended for the D class QS to be the most likely entry-level opportunity, as it was thought that entry-level fishermen would be using smaller, D class vessels (NPFMC 2016).

D class QS were originally intended, in part, to provide an affordable opportunity for skippers and crew members to buy into the fishery. According to the Twenty-Year Review (NPFMC 2016), in Area 3A between 1995 and 2014, the mean price in dollars per IFQ pound of D class QS was lower than that of C

[5] GOA Amendment 43 (61 FR 67962, December 26, 1996), and GOA Amendment 67 (72 FR 44795, August 9, 2007).

class QS every year except 2010 (NOAA Fisheries, RAM 2015).[6] Despite this trend in Area 3A, in many years, D class QS aggregated across all regulatory areas is not the lowest price QS in the halibut IFQ fishery. This could mean that Class D QS is not always the QS that is most accessible to new entrants and small operators. Additionally, fishery participants have noted that crew members looking to buy into the fishery may actually purchase C class QS and fish it on a larger boat with other QS holders rather than purchase D class QS and fish the IFQ on a smaller D class vessel. Furthermore, a relatively small amount of D class IFQ is designated in each area (6.8% in Area 3A), which affects availability of QS for new entrants.[7]

Since the implementation of the IFQ Program, numerous amendments have lifted the original vessel length landing restrictions of the QS vessel class designations. In 1996, the "fish down" provision allowed IFQ derived from larger class QS to be fished on smaller class vessels.[8] The current vessel length categories in Table 2-1 reflect the "fish-down" provision. The Council has also amended the IFQ Program to allow "fishing up" in some areas. Fishing up occurs when the IFQ derived from smaller class QS is fished on larger class vessels. Safety issues and economic hardships prompted Council action to allow these shares to be fished up on C class vessels in certain areas, such as in Areas 3B, 4B, and 4C.

Table 2-1 Current harvest authority for halibut under specific vessel categories.

Vessel Category	Authority
A	May harvest and process IFQ halibut on a vessel of any length (freezer/longliners)
B	May harvest IFQ halibut on a vessel of any length
C	May harvest IFQ halibut on a vessel ≤ 60 ft LOA
D	May harvest IFQ halibut on a vessel ≤ 35 ft LOA

2.7 The Community Quota Entity (CQE) Program

This section highlights a brief history and the goals of the Program, as well as the management measures most directly related to this action. For a comprehensive overview and more extensive data on the CQE Program, see the "Review of the Community Quota Entity (CQE) Program under the Halibut/Sablefish IFQ Program" (NPFMC 2010).

The CQE Program was approved by the Council in 2002 and implemented by NMFS in 2004 under Amendment 66 (69 FR 23681) to the GOA FMP. This amendment revised the IFQ Program to allow a distinct set of remote, coastal communities with few economic alternatives to purchase and hold catcher vessel QS in Areas 2C, 3A, and 3B in order to help facilitate access to and sustain participation in the commercial halibut and sablefish fisheries. Eligibility to participate in the Program was limited to communities with fewer than 1,500 people, documented historical participation in the IFQ fisheries, direct access to saltwater on the Gulf of Alaska, and no road access to a larger community. Eligible communities can form non-profit corporations (CQEs) to purchase catcher vessel QS. The annual IFQ resulting from the QS can be transferred to eligible community residents. In addition to purchasing commercial halibut and sablefish, some CQE communities may request to be issued charter halibut permits (CHPs) and/or Pacific cod endorsements for non-trawl groundfish licenses for lease to residents.

[6] Price in $/IFQ factors in TAC. Due to a significant database change, 1999 data were not available. Until 2015, the NOAA Fisheries RAM Program provided regular IFQ reports that documented information on QS transfers and prices (any transaction resulting in a permanent change of ownership is considere d a transfer). "Changes under Alaska's Halibut IFQ Program, 1995 – 2014", published in August 2015, provides the estimated annual prices for halibut QS sold with the associated current year IFQ, by area and year.
[7] See NPFMC 2016 for further discussion on how the IFQ Program has performed with respect to its original policy objectives, including those regarding entry opportunities.
[8] Implemented through GOA and BSAI Amendments 42 (61 FR 43312, August 22, 1996) and Federal regulations at 50 CFR 679.40(a)(5)(ii).

The CQE Program was intended as a way to promote ownership by individual residents in coastal communities, as individuals have the opportunity to lease annual IFQ from the CQE and gradually become financially able to purchase their own QS. CQE-held QS must remain with the CQE unless it is sold in order to improve, sustain or expand the opportunities for community residents to participate in the IFQ fisheries or to meet legal requirements,[9] creating a permanent asset to be used for the benefit of the community and its residents. Both community- and individually-held QS are important in achieving the Council's objectives for the IFQ Program in terms of fishing access and socioeconomic wellbeing.

The CQE Program has evolved over time, similar to the IFQ Program, to be less restrictive and allow more flexibility. In 2013, Amendment 94 added three eligible communities in the GOA to the list of communities eligible to form CQEs,[10] and removed a restriction which prohibited CQEs in Area 3A from purchasing D class halibut QS (further discussed below). Also in April 2013, the Council took final action on an amendment to remove a limitation that had previously restricted CQEs from purchasing small blocks of QS in the Gulf of Alaska.[11] In 2014, BSAI Amendment 102 expanded the Program to include one community in Area 4B.[12] As of 2019, there are 46 CQE-eligible communities.[13]

CQEs are, in some cases, subject to different restrictions than individual QS holders. CQEs are limited in their ability to purchase of halibut QS**. In Area 3A, CQEs representing a single community may not receive by transfer, use, or hold more than 1,502,823 units of halibut QS (59,741 lbs in 2018).[14]** Prior to a regulatory amendment made as part of GOA Amendment 94, CQEs in Area 3A could only purchase and use B-class and C class halibut QS.[15] CQEs were prohibited from holding D class QS in Area 3A due to concern that an influx of CQEs in Area 3A would drive up the market price of D class QS and result in fewer and more expensive shares available to individuals. The Council wanted to ensure that D class QS would continue to be available to new entrants and crew members that wanted to start their own businesses. CQEs were not prohibited from holding D class halibut QS in Area 3B, however, no CQEs in Area 3B have purchased D class halibut QS as of 2019. A relatively small amount of D class QS exist in Area 3B (3% of Area 3B QS are D class).

Public testimony received from residents of communities located in Area 3A led the Council to determine that additional CQEs in Area 3A could participate in the CQE Program if they were eligible to purchase D class halibut QS. By allowing CQEs in 3A to purchase D class QS (any size block, but only up to ten blocks per CQE), Amendment 94 was meant to increase fishing opportunities for CQE communities in Area 3A and for the owners of the small D class catcher vessels they may use. While this amendment provided increased flexibility in the types of QS CQEs could purchase, **GOA Amendment 94 capped the holding of vessel category D QS by Area 3A CQEs at 1,233,740 units (roughly 49,000 lbs in 2018, roughly 10% of the D class IFQ),[16] to limit the amount of D class QS that CQEs could accumulate within the area.** For a comprehensive list of which CQEs may acquire which types of shares in which areas, see Table 21 in 50 CFR 679.

The cap equals the number of D class QS units initially issued to individual residents of Area 3A CQE communities. NMFS could only approve a transfer for the amount of QS that would take the CQE up to the cap. If Area 3A CQE communities purchase sufficient QS to reach the cap, NMFS will prohibit

[9] 50 CFR 679.41(g): A CQE may transfer QS: (i) To generate revenues to provide funds to meet administrative costs for managing the community QS holdings; (ii) To generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries; (iii) To generate revenue to purchase QS to yield IFQ for use by community residents; (iv) To dissolve the CQE; or (v) As a result of a court order, operation of law, or as part of a security agreement. If the CQE sells its QS for any other reason, NMFS will withhold annual IFQ permits on any remaining QS held and will disqualify the CQE from holding QS on behalf of that community for three years. It also requires that the CQE divest itself of any remaining QS on behalf of that community.
[10] Game Creek, Naukati Bay, and Cold Bay. GOA Amendment 94 (78 FR 33243, June 4, 2013).
[11] GOA Amendment 96 (79 FR 66324, November 7, 2014). Public Review Document
[12] Adak, BSAI Amendment 102 (79 FR 8870, February 14, 2014).
[13] See Table 21 in 50 CFR 679.
[14] 50 CFR 679.42(f)(ii)
[15] Also applies to Area 2C, which has not been amended.
[16] 50 CFR 679.41(g)(5)(ii).

further transfers of D class QS. The Council recommended this limit to provide opportunities for CQEs to hold an amount of D class QS up to the amount historically held by CQE residents. However, the cap amount does not significantly expand the total holdings of D class QS in CQE communities, nor does it significantly increase potential competition for D class QS between non-CQE and CQE QS holders.[17]

An understanding of which vessel length categories apply to CQE-held QS in each regulatory area is useful for comparing which restrictions and exemptions apply and to whom. Regulations at 50 CFR 679.42(a) include vessel category restrictions for halibut IFQ.[18] Table 2-2 outlines restrictions and exemptions that pertain to CQEs as identified in 50 CFR 679.41(g) and 679.42(a). In certain regulatory areas, vessel length restrictions are not the same for CQE-held QS and individually-held QS. For length restrictions for individually-held QS, see Table 2-9.

Table 2-2 Summary of applicable CQE-held IFQ regulations, as of 2019.

IFQ Area	# eligible communities	# CQEs	Can they hold D class quota?	Could they fish up quota?	Communities that currently hold QS	Do they currently hold D class quota?
2C	23	14	No, cannot hold D class QS.[19]	Yes, any length vessel can fish any CQE-held quota, but CQEs cannot hold D class quota	• Hoonah (currently only holds QS in 2C)	No
3A	14	9	Yes, CQEs in 3A can hold D class in 3A and 3B	No, D class cannot be fished up	• Ouzinkie • Old Harbor	Yes, Ouzinkie does in 3A.
3B	8	4	CQEs in 3B can hold D class quota in 3B, but not in 3A. CQEs in 3B can purchase B and C class QS in 3A.	Yes, any length vessel can fish any CQE-held quota If a CQE in 3A held 3B D class QS, they could fish it up in 3B	• Old Harbor holds QS in 3B, but not D class • No 3B communities hold QS	No
4B	1	1	Yes in 4B	Yes. D class can only be fished on D or C class vessels, other categories do not have QS class restrictions in 4B	• Adak	No
4ACDE	No eligible communities in areas 4A, 4C, 4D, or 4E.					

2.8 Participation by Area 3A CQEs in the IFQ Program

In 2018, approximately 16.6 million pounds of IFQ halibut were allocated among halibut QS holders in the halibut IFQ regulatory areas (Table 2-3). Overall, 95% of the allocation was harvested. Table 2-4 shows the number of distinct halibut QS holders by regulatory area. Over the last four years, the number of halibut QS holders has stayed between 2,200 and 2,500; a total of 2,326 QS holders participated in the halibut fishery in 2018 (Table 2-4). Area 3A has the highest number of distinct QS holders of all areas, and also the highest number of distinct D class QS holders (Table 2-5). Specifically, in Area 3A in 2018, there were 1,183 QS holders, 332 of whom held D class QS; 730 QS holders with C class halibut QS; 274

[17] GOA Amendment 94 (78 FR 33243, June 4, 2013)
[18] 50 CFR 679.42(a)
[19] 50 CFR 679.41(g)(5) A CQE may not hold QS in halibut IFQ regulatory area 2C that is assigned to vessel category D.(i) A CQE may not hold QS in halibut IFQ regulatory area 3A that is assigned to vessel category D on behalf of a community that is located in halibut IFQ regulatory areas 2C or 3B as listed in Table 21 to part 679.

QS holders with B-class QS; and 33 QS holders with A-class QS (Table 2-5). In Area 3A, 98% percent of the available IFQ was harvested in 2018.

Table 2-3 Individual Fishing Quota allocations and landings for fishing year 2018

IFQ Area	*Landings*	*Catch (lb)*	*Catch Limit (lb)*	*Remaining (lb)*	*% Harvested*
2C	1,222	3,401,415	3,570,000	168,585	95
3A	1,449	7,197,255	7,350,000	152,745	98
3B	352	2,437,783	2,620,000	182,217	93
4A	167	1,217,036	1,370,000	152,964	89
4B	80	826,707	840,000	13,293	98
4C/4D	107	791,736	880,200	88,464	90
Total	**3,377**	**15,871,932**	**16,630,200**	**758,268**	**95**

Source: NMFS RAM, https://alaskafisheries.noaa.gov/sites/default/files/reports/18ifqland.htm
Notes:

1. Total number of vessel offloads containing only halibut IFQ: 3,285
2. This report summarizes fixed gear IFQ landings reported by Registered Buyers. At sea discards excluded, confiscations included.
3. Halibut weights are reported in net (headed and gutted) pounds.
4. 'Vessel Landings' include the number of landings by participating vessels reported by IFQ regulatory area. Each such landing may include harvests from more than one IFQ Permit Holder. Since there may be more than one area represented in any particular offload, the sum of vessel landings will necessarily be greater than the 'Total number of vessel offloads'.
5. Due to over- or underharvest of TAC and/or rounding, percentages may not total to 100%.
6. Data are derived from initial data entry procedures and are preliminary. Future review and editing may result in minor changes.
7. Landings in areas 4C and 4D have been combined, since 4C allocation may be fished in 4C or 4D. Harvest is debited from the account for the reported harvest area, but the combination in this report is a better representation of activity in the 4C/4D areas.

Table 2-4 Number of persons holding halibut QS at year end 2015-2018

Area	*# distinct QS holders end 2015*	*# distinct QS holders end 2016*	*# distinct QS holders end 2017*	*# distinct QS holders end 2018*
2C	960	945	904	942
3A	1,254	1,231	1,181	1,183
3B	452	447	436	450
4A	174	172	172	194
4B	85	81	80	82
4C	51	50	49	50
4D	44	44	43	43
4E	96	96	86	94
Total across areas:	2,421	2,388	2,282	2,326

Source: NMFS AKR
Notes:

1. Counts are not additive across areas.
2. Includes CDQ.
3. Halibut IFQs are not awarded to the persons who hold Area 4E QS, as that entire allocation is made to the western Alaska CDQ Program.

Table 2-5 Number of QS holders and units in the halibut IFQ fisheries in 2018 by area and vessel category

	QS holders					*QS Units*				
Area	**A**	**B**	**C**	**D**	**Total**	**A**	**B**	**C**	**D**	**Total**
2C	27	63	600	313	1,003	1,249,141	2,672,115	46,675,795	8,879,243	59,476,294
3A	33	274	730	**332**	1,369	4,773,918	68,504,699	98,876,488	**12,670,608**	184,825,713
3B	17	180	269	60	526	1,593,155	29,969,959	20,966,072	1,652,238	54,181,424
4A	13	99	83	49	244	619,003	8,547,977	4,371,083	1,047,684	14,585,747
4B	7	54	28	11	100	553,489	7,114,526	1,347,763	268,996	9,284,774
4C	x	20	12	29	x	18,876	1,620,909	867,827	1,508,740	4,016,352
4D	4	35	10	0	49	413,936	4,100,095	444,219	0	4,958,250
4E	0	x	7	86	x	0	10,816	37,032	90,875	138,723

Source: NMFS AKR
Note: Counts are not additive across areas. Includes CDQ. X indicates confidential data.

CQE participation has been limited, mainly because most CQEs have had difficulty financing the purchase of QS (NPFMC 2010). Previous analyses have expanded upon funding for CQEs and available QS (see Section 2.8.2). Only five CQEs have purchased QS.[20] However, 30 of the 46 eligible GOA communities have completed the process to form a CQE and have it approved by NMFS. There are currently 14 eligible CQE communities in Area 3A[21] but only 9 of these have created a CQE.[22] Shown in Figure 2-1, the CQEs representing Old Harbor (orange) and Ouzinkie (red) are the only CQEs in Area 3A that have purchased commercial halibut QS. The CQEs representing Old Harbor and Ouzinkie have been participating in the Program using halibut QS since 2006 and 2011, respectively. The CQE that represents the community of Ouzinkie (Ouzinkie Community Holding Corporation, or OCHC) is the only Area 3A CQE that has purchased and currently holds D class IFQ. In 2018, OCHC held 159,075 QS units (6,324 lbs) of D class IFQ (Table 2-6). OCHC did not hold any D class IFQ prior to 2017.

Table 2-6 Area 3A CQE QS holdings in 2018

AREA	CAT	COMPANY/LAST NAME	QS UNITS (2018)	Pounds of IFQ (2018)
3A	C	OLD HARBOR: CAPE BARNABAS INC.	43,362	1,724
3B	B	OLD HARBOR: CAPE BARNABAS INC.	50,542	2,443
3B	C	OLD HARBOR: CAPE BARNABAS INC.	100,692	4,867
3A	C	OUZINKIE: OCHC	281,593	11,194
3A	**D**	**OUZINKIE: OCHC**	**159,075**	**6,324**

Source: NMFS RAM Program.

As of 2018, there were 332 D class QS holders in Area 3A. As of 2018, 0.26% of all halibut QS in Area 3A were held by CQEs. Of all the halibut QS in Area 3A, 6.8% are D class shares (Table 2-7). Of these D class halibut shares, 1.3% are owned by one CQE (Table 2-8). This one CQE holds 159,075 units of D class QS, which is 13% of the amount of D class QS that Area 3A CQEs are allowed to hold in aggregate (1,233,740 QS). In addition, about one-third (30.4%) of the halibut QS currently held by residents of the eligible communities in Area 3A are D class; 4.3% of these QS are held by one CQE. Currently, 33% of the halibut QS owned by CQEs in 3A is D class IFQ, and the remainder is C class IFQ.

[20] Adak (4B), Hoonah (2C), Perryville (3B), Old Harbor (3A), and Ouzinkie (3A) are the five CQE communities that have purchased QS as of March 2019.
[21] Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, and Yakutat.
[22] Chenega Bay, Halibut Cove, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia

Table 2-7 Percentage of QS in each vessel class in Area 3A

Area	Vessel Class	2018 % of Area QS (based on lbs IFQ)
3A	Class A	2.6%
	Class B	37.0%
	Class C	53.6%
	Class D	6.8%

Source: NMFS AKR

Table 2-8 Percent of CQE-held QS by vessel class (2018), and percent of combined unfished IFQ.

Area	Vessel Class	% of total 3A QS held by CQEs	% of each class of QS held by CQEs	*2016 % lbs unfished	*2017 % lbs unfished	*2018 % lbs unfished
3A	Class A	0%	0%	0.20%	0.25%	0.24%
	Class B	0%	0%	0.64%	0.57%	0.63%
	Class C	0.17%	0.32%	0.40%	0.26%	0.48%
	Class D	0.09%	1.3%	0.51%	0.21%	0.20%

Note: *Includes both individually- and CQE-held quota, accounts for IFQ that went unfished after the 10% rollover.

Due to confidentiality restrictions, the amount of CQE-derived IFQ that has been fish or unfished cannot be presented. However, of the individually- and CQE-held D class IFQ in 2017, 1,088 lbs (0.21%) went unfished in Area 3A (Table 2-8). In 2016, 2,580 lbs (0.51%) of the combined D class IFQ went unfished in Area 3A. However, regulations at 50 CFR Section 679.40(e) state, "Underages of up to 10% of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ account in the year following determination of the underage."[23] NMFS Restricted Access Management (RAM) has clarified that this underage provision does apply to CQE-held QS.

2.8.1 CQE Communities in Area 3A

Various data sources have illustrated the early out-migration of halibut and sablefish fishing effort from the smaller communities of the Gulf of Alaska, and the subsequent impact on the diversified fishing portfolios of community residents (CFEC 1998; DORY 2009). According to the CQE Program Review (NPFMC 2010), all but one southcentral CQE community has either reduced or maintained the number of IFQ holders since initial issuance, and all but two communities have realized a reduction in the amount of QS held by residents. According to the Program Review, Southcentral Alaska faced a -50% change in halibut QS holders from 1995-2008. Other recent research and transfer reports provide a more detailed evaluation of halibut quota share transfer patterns out of small, rural communities (Carothers Lew, & Sepez 2010; NOAA Fisheries, RAM 2015).

The CQEs representing the communities of Ouzinkie and Old Harbor are the only two CQEs that have purchased QS in Area 3A, as mentioned in Section 2.8. For this reason, they are the main communities of focus for this analysis. According to the Alaska Community Database, [24] approximately three-quarters of the population in each of these villages is Alaska Native. Ouzinkie, an Alutiiq village with a population of 161 as of the 2010 census, is the only CQE community in Area 3A that currently possesses D class halibut QS. Commercial fishing and subsistence activities support the community. Old Harbor, with a population of 218 as of 2010, is the only other CQE community in Area 3A that has purchased halibut QS of any class. Old Harbor practices its traditional Alutiiq culture and subsistence lifestyle, and commercial

[23] This underage adjustment to the annual IFQ allocation will be specific to IFQ species, IFQ regulatory area, and vessel category for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.
[24] The Alaska Community Database Online, a portal for information resources about Alaskan Communities and Places of Interest, provides information on these communities as well as other communities. https://dcra-cdo-dcced.opendata.arcgis.com/

fishing provides income to the community. Further information about other Area 3A communities can be found through the database.

Each CQE-eligible community in Area 3A has access to a different number of vessels of each size class. CQEs go through their own process at the beginning of the season to decide which eligible community members receive the IFQ. Eligible community members (and their vessels) may be available to fish CQE-held halibut IFQ at different times of the year due to participation in other fisheries, other employment, or other circumstances. The following vessel information is included to provide some context for the number of potentially available vessels in CQE communities in Area 3A.

- In 2017, six vessels that participated in commercial fisheries in Alaska listed Ouzinkie as their homeport on their CFEC permits. Four of these vessels fell into the D class and two were C class vessels.
- Seven vessels had owner addresses (rather than homeports) of Ouzinkie; 4 were D class vessels and 3 were C class vessels.
- One C class vessel and four D class vessels landed IFQ halibut in Ouzinkie in 2017.
- In 2017, eight vessels listed Old Harbor as their homeport on their CFEC permits, only one of which was a D class vessel.
- Eleven vessels had owner addresses of Old Harbor, and only one was a D class vessel.
- Three C class vessels and zero D class vessels landed IFQ halibut in Old Harbor in 2017.[25]

2.8.2 Quota Share: Purchasing, Price, and Availability

Past analyses have extensively reviewed topics such as barriers to purchasing QS, availability of funding for QS, increases in QS price, and factors which contribute to the financial advantage or disadvantage of CQEs in comparison to individual IFQ holders. Availability of QS and financing the purchase of community-owned QS have been the primary obstacles cited to participating in the CQE Program. For more detail on funding obstacles and effects of increased flexibility in the IFQ Program on the quota share market see the "Review of the CQE Program under the Halibut/Sablefish IFQ Program," (NPFMC 2010) and the "Community Quota Entity Small Block Restriction" analysis (NPFMC 2013).

The price of both halibut and sablefish QS has increased since the IFQ Program was implemented, which affects both CQEs and individual IFQ holders. In the first year of IFQ Program implementation (1995), the average halibut price in dollars per IFQ pound in Area 3A was $6.99 for D class QS. In 2004, the year in which the CQE Program took effect, the average price for the same IFQ was $12.71. By 2018, the, average price in dollars per IFQ pound had increased to $36.91 for D class QS in Area 3A. Thus, between the year of Program implementation and 2018, D class halibut IFQ prices in Area 3A had increased by approximately 5 times. Similarly, C class QS was approximately $7.23 in Area 3A in 1995, $15.06 in 2004, and $45.34 in 2018. [26] Increases in the price of D class QS could reduce entry level opportunities, and potentially demand for D class QS (both CQEs and non-CQEs).

The availability of D class QS in Area 3A also affects the ability of CQEs to purchase those QS. In 2018 there were roughly 500,000 lbs of D class IFQ in Area 3A, and only 12,907 lbs were transferred on the

[25] Data from 2018 not available at time of analysis. These numbers are not specific to only CQE-held IFQ. Vessels that are greater than 35 ft and less than or equal to 60 ft LOA can also be used to fish A or B class QS, and vessels that are less than or equal to 35 ft LOA can be used to fish any class of QS due to the fish-down provision.
[26] Price in $/IFQ factors in TAC. 1995 price from NMFS Transfer Reports, price for other years is data from RAM compiled by AKFIN. Includes arms-length transactions only.

open market.[27] The number of pounds of IFQ available to CQEs would likely be even less due to the restriction that a CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area.[28]

2.8.3 Safety Considerations

The IFQ season typically runs from March to November each year, providing a nine-month timeframe for fishermen to harvest their QS in a safe manner. According to some fishery participants, some vessels in Area 3A face concerns related to weather and safety, particularly if they cannot harvest their QS until the fall months. Generally, according to the National Institute for Occupational Safety and Health (NIOSH), there were 13 incidents with halibut boats $\leq$ 35 ft in Alaska since the year 2000. One of these incidents occurred in IFQ Area 3A, but it was recorded as "not weather related." Section 2.10.3 includes more discussion about potential impacts of Alternatives 2 and 3 on vessel safety.

2.9 Analysis of Impacts: Alternative 1, No Action

The Council designed the original IFQ Program to include elements that were intended to preserve the diversity of the fleet and maintain entry-level opportunity in the fisheries. The IFQ Program, as currently regulated, constrains the use of IFQ derived from a particular QS Category. The restrictions, listed in Table 2-1, permanently attribute QS holdings to halibut vessel categories A, B, C, and D, which restrict how the resulting IFQ is fished. The QS Category determines both whether harvested fish may be processed onboard, and the length of vessel on which the catcher vessel IFQ may be harvested.

Taking no action maintains the existing regulations regarding the use of CQE-held halibut IFQ derived from a particular QS Category, and restrictions in Table 2-1 would continue to apply. Under the no action alternative, no changes to the current vessel length restrictions would occur, and D class IFQ would only be permitted to be fished on vessels $\leq$35 ft LOA. If CQE participants face challenges in getting their D class IFQ harvested on vessels $\leq$35 ft during the duration of the IFQ fishing season, this IFQ would remain unharvested (with the exception of up to 10% which can be rolled over to the following year). Taking no action would not prevent CQEs from fully harvesting their IFQ; however, by maintaining the current vessel length restrictions, Alternative 1 would not maximize harvesting flexibility for Area 3A CQEs.

2.10 Analysis of Impacts: Alternatives 2 and 3

2.10.1 Scope of Potential Impacts

The scope and magnitude of potential impacts of this action are ultimately determined by the extent to which D class IFQ can be fished up. This is determined by the following factors:

- The number of CQEs in Area 3A, which is limited by the number of eligible communities. **Currently, 14 communities are eligible to form CQEs in Area 3A.[29]**
- The amount of D class IFQ that CQEs in Area 3A hold, which is limited by funding for CQEs, availability of D class QS, and regulatory constraints/caps (see below). **As of 2018, one CQE holds 6,324 lbs of D class IFQ** (1.3% of the total D class IFQ in Area 3A).
- The level of flexibility when fishery participants are able to take advantage of the fish up opportunity (Alternative 2 options) and how frequently they are able to take advantage of the fish up opportunity

[27] Data from NMFS RAM, compiled by AKFIN. Includes arms-length transactions only.
[28] GOA Amendment 67 (72 FR 44795, August 9, 2007).
[29] Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, and Yakutat.

(Alternative 3 options). Alternative 2, Option A (a date of August 15) would allow greater flexibility for CQEs in Area 3A than Option B (a date of September 1). Alternative 3, Option A (2 out of 3 years) would allow greater flexibility than Options B (2 out of 5 years) or C (3 out of 7 years). Combining the alternatives would create the least flexibility for CQEs to fish up their QS.

- The QS use caps that constrain CQEs and other IFQ holders. CQEs located in Area 3A are constrained in the following ways in terms of their QS holdings:
    - The holding and use of D class halibut QS by CQEs (in aggregation) is capped at roughly 10% of total QS, or 1,233,740 units (49,045 lbs in 2018).
    - The holding and use of halibut QS (of any vessel class) by CQEs representing a single community is capped at 1,502,823 units (59,741 lbs) of halibut QS.
    - No vessel may be used, during any fishing year, to harvest more than 50,000 lbs (22.7 mt) of IFQ halibut derived from QS held by a CQE, and no vessel used to harvest IFQ halibut derived from QS held by a CQE may be used to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut in Area 3A. TAC 2018 = 16,630,200 lbs * 0.5% = 3A vessel use cap of 83,151 pounds.
    - The holding and use of halibut QS (of any vessel class) by all CQEs in aggregation in Area 3A is capped at 21 percent of the total QS in Area 3A.
- Seasonality of CQE-held IFQ landings can also determine the amount of IFQ affected by the action. The amount of IFQ affected by Alternative 2 would be determined by how much D class IFQ a CQE harvests after the selected date. Seasonal patterns in CQE harvest of D class halibut IFQ are not clear due to the limited number of years of data and small number of trips. The two years of confidential landings data (no CQEs held D class QS before 2017) vary substantially in fishing patterns, yielding a high degree of uncertainty in predicting future behavior in the fishery.

The specifics of Alternative 2, Option 1 or 2 (limiting the provision to after a date specified) and Alternative 3 (limiting the number of years the provision may be used) may also limit the impacts of the proposed action. These restrictions dilute the flexibility of a fish up action, essentially allowing the fish up measure to be utilized, but only 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 earlier in the season as planned. These restrictions also differentiate this action from previous fish up actions. For this reason, when estimating the magnitude of anticipated impacts, comparisons between this action and the outcomes of previous fish up actions in other regulatory areas would be limited in their utility. For example, trying to predict the degree to which the fish up provision may be used as a result of this action by looking at how often QS are fished up in other areas would not lend a fair comparison. This is due to differences faced by vessels in different regulatory areas (weather and safety concerns, accessibility to ports), in addition to the qualifiers included in Alternatives 2 and 3.

Alternative 2, Option 3 offers the CQE the most flexibility. In theory, the magnitude of the impacts for CQEs and individual IFQ holders would be expected to be larger under this option than under the other options. In contrast, the magnitude of management and enforcement impacts under this option would be smaller than under the other options.

The distribution of impacts is expected to be similar for each of the action alternatives. Furthermore, the combination of the two action alternatives would be expected to decrease the anticipated magnitude of impacts across all those affected, as this combination allows the least amount of change in flexibility for CQEs in Area 3A. Combining both Alternative 2 and 3 is more restrictive (and would therefore likely have smaller impacts) than either action alternative on its own, but the combination of the two is still less restrictive than taking no action under Alternative 1.

2.10.2 Impacts on CQE Communities and Individual IFQ Holders

The impacts of the action alternatives fall under two main categories: 1) increased harvesting flexibility for CQEs that hold (or plan to purchase) D class QS in Area 3A, and 2) potential changes in the value of D class QS. The following sections describe how potential impacts may be distributed, and the expected extent of these impacts.

Impacts on CQE Communities in Area 3A

CQEs in Area 3A that possess D class halibut QS, and the resident fishermen they lease to, are expected to benefit from the action alternatives. The CQEs in Area 3A that currently hold D class QS would experience increased flexibility for harvesting their D class halibut IFQ. Increased operational flexibility could reduce the risk of not fully harvesting D class IFQ (and forfeiting revenue), which could provide financial benefits to those CQE communities.

Maximizing CQE revenue may yield indirect impacts, such as increased CQE purchase of QS in the future, which would be available for CQE residents to lease and fish. CQE community resident fishermen that are not able to finance the purchase of QS may find an IFQ lease arrangement with a CQE to be a viable alternative to purchasing QS and allow for continued participation in the fishery. The ability to lease IFQ in the short-term and gain revenue from the sale of fish may allow individual residents to purchase QS over time. In this sense, the Program (and indirectly, any flexibility from the action alternatives) could facilitate individual ownership of QS in those communities. This is part of the purpose of the CQE Program, to enhance individual resident holdings in conjunction with community holdings. In addition, those who have access to a C class vessel could benefit, as the action would offer an opportunity to harvest more CQE-held QS, at least for part of the season (Alternative 2) or a certain number of years (Alternative 3).

Impacts on D class QS & Individual IFQ Holders/Non-CQE Communities

This action would not allow individual D class IFQ holders in 3A to fish up; the flexibility provided by this action is exclusive to CQEs. Therefore, non-CQE participants are not directly regulated by the proposed action. Non-direct impacts are expected to be minimal, and all related to changes in the value of D class QS. In theory, Alternatives 2 or 3 could marginally increase the value of D class QS due to the increased harvesting flexibility that is proposed.[30] **Changes in the value of (and in turn, demand for) D class QS could potentially increase the transfer price. However, changes in QS price as a result of this action are expected to be limited for the following reasons.** First, the flexibility to fish up afforded by this action is currently limited to one CQE in Area 3A which currently holds 6,324 lbs of D class IFQ (Section 2.8). Second, because either alternative would limit the opportunity for increased flexibility to a narrow group of users for a limited amount of time, demand for D class QS is not likely to increase due to this action. Third, the market power of CQEs to purchase QS is constrained due to the lack of availability of D class QS and funding barriers CQEs experience (described in Section 2.8.2) as well as the regulatory caps described in Section 2.10.1. Non-CQE participants would continue to have access to roughly 90% of the D class QS in Area 3A without potential competition from CQEs. While cumulatively, small amounts of upward pressure on the value of QS (such as being able to fish up) could impact transfer prices, the marginal impact of this action is expected to be minimal, given the present constraints on CQEs' access to investment capital and the range of other factors that influence QS prices.[31]

There could also be some corollary decrease in the value of C class QS because the proposed alternative could potentially (marginally) increase the value of D class QS in this area. However, D class QS constitutes such a small share of the aggregate halibut TAC in Area 3A (6.8%), that such a change in relative value would not be expected to substantially influence the market for QS. Due to the limited

[30] Note: extent of harvesting flexibility will be determined by which alternative and option the Council chooses.
[31] Other factors include annual QS:IFQ ratios, general economic conditions for securing loan financing, and participants' level of confidence in the future value of the fishery. See NPFMC 2013.

scope of the proposed action, impacts that directly affect IFQ participants' access to other categories (B and C) of catcher vessel QS or access to D class QS in areas other than Area 3A are expected to be minimal.

Some of the same realities faced by CQEs are faced by individual IFQ holders, such as weather, vessel repairs throughout the season, and balancing participation in multiple fisheries. In other regulatory areas, there are some exceptions to the vessel category restrictions for individual IFQ holders. For comparisons across areas, the fish up/down regulations applicable to individually-held IFQ are included in Table 2-9.

Table 2-9 As of 2019- Fish Up/Down Regulations Applicable to Individually-held halibut IFQ

IPHC Area	Is any D class quota currently held in this area?	Can they fish up?	Can they fish down?
2C	Yes	Cannot fish up any quota	Yes
3A	Yes	Cannot fish up any quota	
3B	Yes	D class can be fished up on C class vessels (679.42(a)(2)(iv))	
4A	Yes	Cannot fish up any quota	
4B	Yes	D class can be fished up on C class vessels (679.42(a)(2)(iv))	
4C	Yes. 4C QS can also be fished in 4D	D class can be fished up on C class vessels (679.42(a)(2)(iv))	
4D	No, but 4C QS can be fished in 4D	Cannot fish up any quota	
4E	Yes	Cannot fish up any quota	

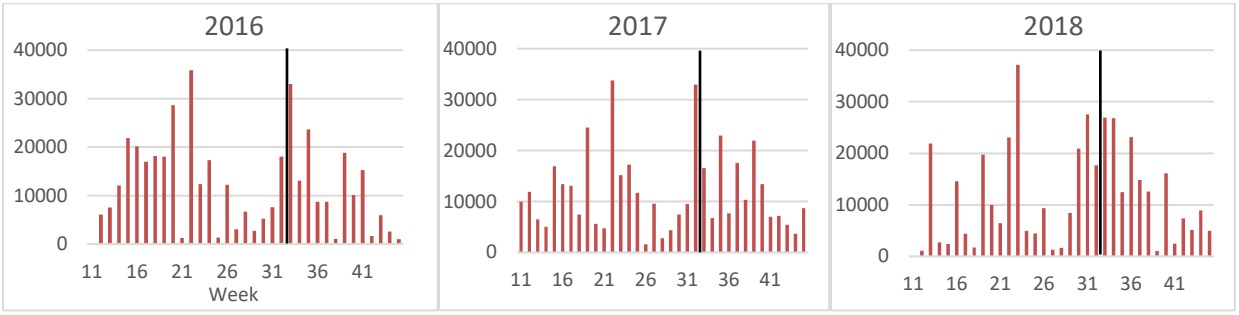
2.10.3 Impacts on Safety

Determining if weather plays a critical role in a CQE's ability to get their D class IFQ fished on a D class vessel is best informed by local knowledge from those participating in the fishery in Area 3A. Fishery participants in Area 3A (specifically off Kodiak) have described that weather generally deteriorates later in the season, and halibut move further offshore during this time. D class vessels are held back more often than other vessel size classes due to weather concerns, because going out in poor weather is generally a higher risk for smaller vessels. However, weather issues are a barrier to harvest that is faced not only by CQEs. Testimony on the safety of harvesting IFQ on D class vessels in the fall has varied and is likely informed by the size of the D class vessel. A 20 ft skiff has different seagoing capability than a 35 ft vessel (both D class). In terms of vessel safety, individual IFQ holders fishing on a D class vessel and D class vessels that are fishing CQE-held IFQ are no different, unless the sizes of these vessels vary.

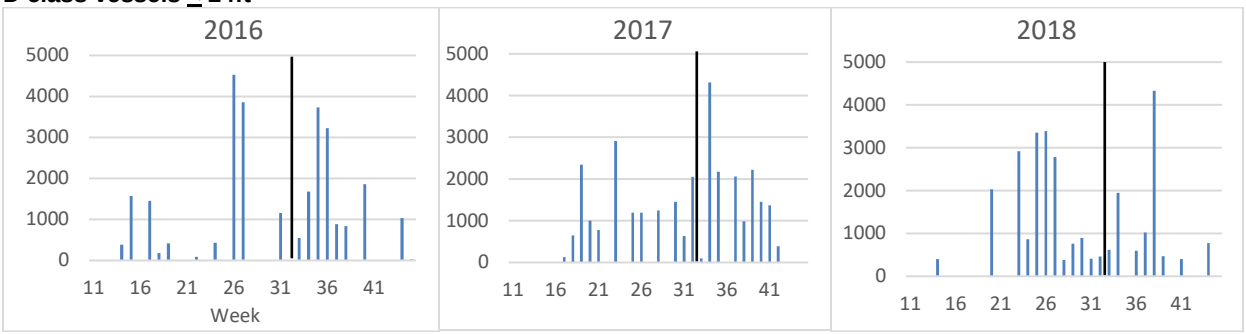
Despite seasonal changes in weather, over the past three years (averaged), over 32% of all D class IFQ landings in Area 3A have occurred after the 33rd week of the year (roughly August 15th). Over 22% (averaged) of D class IFQ landings have occurred after September 1st. For smaller D class vessels ($\leq$24 ft LOA), an average of 35% of the halibut IFQ is harvested after the 33rd week, and an average of 22% is harvested after September 1st. This data is not necessarily representative of CQE-held IFQ landings, and does not provide information on whether the amount of fish harvested is due to changes in effort (related to whether or not a vessel chooses to take a trip due to weather concerns), changes in CPUE related to fish movement to other areas, or other variables.

Figure 2-2 Trends in weekly D class IFQ landings in Area 3A by vessel size

D class vessels 24.1 to 35ft



D class vessels ≤ 24ft



Note: Anything after vertical black line is after week 33, or roughly August 15th. Week 35 represents September 1st.
Source: NMFS RAM, through AKFIN.

If this action is driven by a safety or weather concern, the Council may wish to consider how this opportunity impacts individual IFQ holders differently than those fishing CQE-held IFQ, and how to best account for safety when choosing a preferred alternative.

While largely dependent on behavior of those in the fishery, Alternative 2 would allow the flexibility for fishermen to take trips to fish D class IFQ on C class vessels later in the season in conditions that they may not generally take D class vessels. Alternative 2 would not provide such an opportunity for D class IFQ harvesters during the rest of the season before (August 15th or September 1st), as D class IFQ would still be required to be harvested on D class vessels.

Under Alternative 3, safety concerns addressed by allowing D class IFQ to be fished on C class vessels would only be addressed during a certain number of years. If a CQE has used the fish-up provision the maximum number of years, D class IFQ holders in subsequent years would still be required to fish that IFQ on a D class vessel (they would not be permitted to use the fish up provision). This could potentially result either in IFQ going unharvested due to weather concerns for small vessels, or captains choosing to proceed with a trip despite weather/safety concerns in order to fully harvest IFQ.

2.11 Management and Enforcement Considerations

This section 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 in order to avoid violations as well as 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.

One of the reasons for this proposal was an unintended violation that occurred in 2017. Due to confusion about existing vessel restrictions (and exceptions to those restrictions) in Area 3A and adjoining Areas 2C and 3B, a CQE landing was flagged in the landings program as a potential violation when a C class vessel landed IFQ halibut with a D class permit. This resulted in a written warning from NOAA Fisheries Enforcement.

Status quo regulations are not consistent for Area 3A and 3B. There is already an exception for Area 3B that allows D class to be fished on C class vessels (no matter who holds the IFQ). If the Council decided to create an exception specifically for CQEs in Area 3A, it could likely result in crossover confusion concerning the area and permit holder, not just by those fishing CQE-held IFQ. Further specifying the exception to a time of years or a certain number of years would further complicate the regulations and could further increase potentially for confusion.

2.11.1 Summary of the Management Impacts

Under both action alternatives NMFS would have to modify programming in the permits database, eLandings, or both, which would accrue costs recoverable from cost recovery fees assessed on IFQ participants. It is difficult to assess how much specifically this action could increase costs. Under Alternative 2, the number of IFQ transfers processed by RAM each year could increase if a CQE initially transfers IFQ to a fisherman fishing on a D class vessel and if left unfished until the authorized fish up date, then the need may arise to transfer the IFQ to a different fisherman to be landed on a C class vessel. A fisherman could hold the IFQ until the date set by Alternative 2 to transfer it back so they can fish up.

If the Council recommends either Alternative 2 or 3, the Council could recommend how partial amounts of IFQ (parts of QS blocks, for example) subject to the provisions would be handled.

NMFS recommends allowing CQE-held D class IFQ in area 3A to be fished on C class vessels for the entire IFQ season (Alternative 2, Option 3). This option could reduce enforcement burden, compliance issues, and minimize additional costs to IFQ participants for programming changes. At this time, there are roughly only 6,000 pounds of IFQ held by a CQE in area 3A. CQE groups are limited financially and by regulation in terms of how much QS they can purchase. NMFS anticipates that the maximum potential impact would be minimal. OLE emphasized that consistency in regulations between areas makes it easier on fishermen and on enforcement, especially near adjoining areas such as 3B or 2C (as described in Section 2.7 and Table 2-2).

Creating individual landing exceptions in the IFQ database for use of the CQE fish-up provision may seem like the simplest solution, but it in the complex ecosystem of IFQ regulations, it creates additional complications in the database that would need to be manually tracked and resolved for the duration of the program. The additional maintenance and review time required would fall under costs recoverable from the IFQ program. In addition, NMFS would need to consider all future potential users of the provision (all CQEs that may acquire D class QS in 3A) and manually excepting landings for each one does not create economies of scale in the long run.

2.11.2 Management and Enforcement Impacts: Alternative 2

Alternative 2 would allow D class IFQ to be fished on a C class vessel after a specific date. Implementing this alternative would require programming changes to the RAM permits database as well as to the eLandings database. RAM programming changes would be necessary to add information to a permit issued to indicate the vessel class exception during the time period. This exception would be necessary to include on the permit to inform the permit holder, OLE, and USCG of the limitations (i.e. CQE, Area 3A only, vessel class, and effective date of change). This would be important for enforcement purposes especially during USCG routine boarding. The IFQ landings database would need to be modified to allow landings to be recorded for the D class IFQ by a C class vessel. By limiting this exception to after a

certain date in the year, the programing would be more complicated and likely increase costs to implement the Program. Direct costs related to the implementation of the IFQ Program are recoverable under cost recovery provisions at §679.45. These programming changes would be necessary to allow a landing of D class IFQ by a C class vessel. Currently if this were to occur, an error would indicate a compliance concern under existing permit provisions.

The Council may wish to clarify if a C class vessel leaving port and fishing prior to the date (August 10, for the August 15 date, for example) is eligible to land the D class IFQ halibut after the designated date. This could become an issue if a vessel is not planning to land fish until after the provision date, but weather changes during a trip and the vessel returns to port earlier than planned. While someone leasing CQE-held class D IFQ would be able to walk onto a C class vessel to use the fish-up provision, it may also be important to consider the time it takes for RAM to re-issue QS to the CQE if the original leasee is unable to complete fishing with a D class vessel or obtain access to a C class vessel to use the fish-up provision. If the date is too close to the end of the season, there may be limited time to have the QS re-issued and transferred to someone with access to a C class vessel with enough time remaining to fish it. If someone were no longer able to fish the CQE-held IFQ, RAM requires the timely affidavit from IFQ holder that transfers it back to the CQE. A CQE can only do a subsequent transfer of IFQ pounds that had been leased to another person when those leased IFQ pounds have been returned to the CQE through the NMFS RAM process.

2.11.3 Management and Enforcement Impacts: Alternative 3

Alternative 3 would limit the number of years that a D class IFQ could be fished up and harvested on a C class vessel. This alternative would present unique compliance monitoring challenges due to the potential for different individuals and/or vessels to use the CQE permit from year to year. NMFS RAM would have to make programming modifications to the permits and eLandings databases to monitor for compliance with this provision. A concern would arise with how to track the use of this provision and how this limit could be communicated to the permit holder, especially since the permit holder could change each year. For example, a fisherman who used the fish up provision could logically assume that it could be done the following year. A fisherman new to the CQE Program might not be aware that the allowable years have been used. A situation could arise where only a partial amount of the CQE-held D class quota is eligible for use with this fish-up provision.

Alternative 3 would require that limitations resulting from all allowable years being used be implemented by RAM at the time of application for IFQ, similar to other transfers in the IFQ Program. It could not be enforced at-sea or on the docks since it would require knowledge of previous seasons' activities.

2.11.4 Observer Program and Sampling

All participants engaged in the federally-managed commercial groundfish and halibut fishing operations fisheries off Alaska are subject to monitoring requirements (observer coverage or electronic monitoring (EM)). Described at §679.51, the partial coverage category includes catcher vessels when fishing for halibut IFQ or CDQ. Vessels and processors are placed into one of two observer coverage categories: 1) the full coverage category, or 2) the partial coverage category. Partial coverage is then broken into three pools: 1) No Selection, 2) EM selection, or 3) Observer Trip Selection. Since 2013, the no-selection pool has been composed of fixed-gear vessels less than 40 ft LOA and vessels fishing with jig gear as well as fixed-gear vessels voluntarily participating in EM innovation and research in later years.

Since 2013, D class vessels (those $\leq$ 35ft), have been in the no-selection pool. However, if D class IFQ held by a CQE is transferred to a C class vessel, trips taken by that vessel to fish that IFQ could fall under another pool in the partial coverage category.

Each year, NMFS releases an Annual Deployment Plan (ADP) that documents how the agency plans to deploy fishery observers and Electronic Monitoring (EM) to vessels for the upcoming year. For vessels in the partial coverage category, the ADP describes the sampling design and selection rate—the portion of trips— that are intended to be sampled. In 2019, observers and EM will be deployed according to the following strata and selection rates: No Selection – 0%; EM – 30%; Trawl – 24%; Hook-and-line – 18%; Pot – 15%; Tender trawl – 27%; Tender pot – 16%.

If a C class vessel takes a trip instead of a D class vessel, there could be a slight increase in the number of trips taken by vessels in the trip selection or EM trip selection pools of the partial coverage category. Due to the relatively small amount of QS that may be expected to be fished up on a C class vessel, the magnitude of the impact on fishing effort, cost of observer or EM deployment and potential additional data collected is expected to be minimal. This action would not impact which landings are subject to observer fees because all IFQ landings are currently assessed the observer fee if landed by a vessel not in the full coverage category.

2.12 Affected Small Entities

Section 603 of the Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis (IRFA) be prepared to identify if a proposed action will result in a disproportionate and/ or significant adverse economic impact on the directly regulated small entities, and to consider any alternatives that would lessen this adverse economic impact to those small entities. As of January 2017, NMFS Alaska Region will prepare the IRFA in the classification section of the proposed rule for an action. Therefore, the preparation of a separate IRFA is not necessary for Council final actions on this issue. This section will provide information that NMFS will use in preparing the IRFA for this action, namely a description and estimate of the number of small, directly regulated entities to which the proposed action will apply.

The proposed action would allow eligible Community Quota Entity (CQE) residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A, either for the duration of the season, after a date specified, or for a limited number of years (or a combination of these). The Council has not identified a preliminary preferred alternative at this time, however, both of the action alternatives would impact the same directly regulated small entities.

Identification of Directly Regulated Entities

Entities that might be directly regulated by this action include CQEs in Area 3A, particularly those that possess D class halibut IFQ. Under the action alternatives, eligible community residents who fish the D class IFQ would have the opportunity to either walk on to a larger C class vessel to harvest their IFQ, or the CQE could transfer the IFQ to an eligible community resident who will fish it on their own C class vessel. Note that the action alternatives under consideration merely “allow” this opportunity; neither alternative requires it.

Count of Small, Directly Regulated Entities

Under the RFA, businesses that are classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation (81 FR 4469; January 26, 2016). If a vessel has a known affiliation with other vessels – through a business ownership or through a cooperative – these thresholds are measured against the small entity threshold based on the total gross revenues of all affiliated vessels.

CQEs are non-profit entities, and as such are all considered small entities**. As of 2019, there were nine CQEs in Area 3A.**

Impacts to Small, Directly Regulated Entities

CQEs in Area 3A are expected to benefit from the additional flexibility to allow eligible residents to fish D class CQE-held IFQ on C class vessels. For those CQEs that possess D class QS, this action could reduce the risk of not fully harvesting D class IFQ (and forfeiting revenue), which would provide financial benefits to those CQE communities. Based on the scope of this action, impacts to small, directly regulated entities are expected to be minimal and beneficial if the entities decide to utilize the flexibility.

CQE community resident fishermen that are not able to finance the purchase of QS may find an IFQ lease arrangement with a CQE to be a viable alternative to purchasing QS and allow for continued participation in the fishery.

This action does not place any new regulatory burden on CQEs; it allows increased flexibility for CQEs in Area 3A that choose to utilize the harvest flexibility. CQEs directly affected by this action are those that have "opted into" the opportunity to first purchase D class QS, and second, to have an eligible community resident fish the CQE-held D class IFQ on a C class vessel. If the CQE does not possess D class QS, or it does not have its D class IFQ fished on a C class vessel, it would not be using the flexibility created through revised regulations stemming from this action.

2.13 Summation of the Alternatives with Respect to Net Benefit to the Nation

Two general outcomes are possible under the proposed action, each of which would have different net benefit impacts.

The first possible outcome (under Alternative 1) is that the ≤35 ft LOA vessel length restriction remains in place for D class IFQ, including IFQ held by CQEs. Net benefits would not change from the status quo under this outcome. The harvest authority for halibut under specific vessel length categories (as shown in Table 2-1) would continue unchanged from the current length restrictions. CQEs would continue to be required to have eligible community residents fish D class IFQ on D class vessels (those ≤35 ft LOA).

The second possible outcome (under Alternatives 2, 3, or a combination of the two) is that eligible participants may fish the quota on C class or D class vessels, either after a date specified in regulation or for the duration of the IFQ season (Alternative 2), in a limited number of years (Alternative 3), or both (Alternatives 2 and 3 combined).

The likely benefits of allowing increased harvesting flexibility for CQEs in Area 3A are aligned with the Council's purpose and need for this action- namely to provide more flexibility to CQE community participants to harvest D class quota in Area 3A and encouraging CQE communities to secure long-term opportunities to access halibut.

Anyone who attempts purchase D class halibut QS in Area 3A in the future may be indirectly impacted through an increase in the price of D class QS. Given the level of expected change and ability of CQEs to purchase more QS, however, this change is likely to be minimal.

3 Consistency with Applicable Law and Policy

3.1 Pacific Halibut Act Considerations

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

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

The Halibut Act states that the Council may develop regulations to govern the fishery, provided that the Council's actions are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC). As described in Section 2.1, none of the alternatives would require changes to current IPHC regulations.

It is necessary for the Council to consider the directions in the Halibut Act about the regulations that may result from this action. Much of the direction listed in §773c(c) is duplicative with the Magnuson-Stevens Act's National Standard 4, requiring that regulations not discriminate between residents of different States, and directing that if halibut fishing privileges are allocated or assigned among fishermen, such allocation shall be fair and equitable. The CQE Program qualifies eligible remote, coastal communities. These qualifications include only Alaska communities. However, those that have been excluded from participation in the program include both Alaskan and non-Alaskan communities, so this action is not predicated upon any effort to discriminate between residents of different states.

Moreover, the analysis demonstrates that any adverse impacts due to changes in the price of D class QS in Area 3A would be felt by anyone looking to purchase D class QS, which would include both Alaska residents and non-residents.

The flexibility for CQEs in Area 3A to transfer D class IFQ to eligible participants who may fish the quota on C class or D class vessels is also consistent with limited entry criteria set forth in Section 1853(b)(6) of the Halibut Act. This action would not create a new limited access program, but would amend current IFQ Program regulations for halibut. Regulatory caps in place in the IFQ Program would still apply to those holdings under any alternative, continuing to limit individuals, corporations, or other entities from acquiring an excessive share of harvesting privileges.

3.2 Council's Ecosystem Vision Statement

In February 2014, the Council adopted, as Council policy, the following:

Ecosystem Approach for the North Pacific Fishery Management Council

Value Statement

The Gulf of Alaska, Bering Sea, and Aleutian Islands are some of the most biologically productive and unique marine ecosystems in the world, supporting globally significant populations of marine mammals, seabirds, fish, and shellfish. This region produces over half the nation's seafood and supports robust fishing communities, recreational fisheries, and a subsistence way of life. The Arctic ecosystem is a dynamic environment that is experiencing an unprecedented rate of loss of sea ice and other effects of climate change, resulting in elevated levels of risk and uncertainty. The North Pacific Fishery Management Council has an important stewardship responsibility for these resources, their productivity, and their sustainability for future generations.

Vision Statement

The Council envisions sustainable fisheries that provide benefits for harvesters, processors, recreational and subsistence users, and fishing communities, which (1) are maintained by healthy, productive, biodiverse, resilient marine ecosystems that support a range of services; (2) support robust populations of marine species at all trophic levels, including marine mammals and seabirds; and (3) are managed using a precautionary, transparent, and inclusive process that allows for analyses of tradeoffs, accounts for changing conditions, and mitigates threats.

Implementation Strategy

The Council intends that fishery management explicitly take into account environmental variability and uncertainty, changes and trends in climate and oceanographic conditions, fluctuations in productivity for managed species and associated ecosystem components, such as habitats and non-managed species, and relationships between marine species. Implementation will be responsive to changes in the ecosystem and our understanding of those dynamics, incorporate the best available science (including local and traditional knowledge), and engage scientists, managers, and the public.

The vision statement shall be given effect through all of the Council's work, including long-term planning initiatives, fishery management actions, and science planning to support ecosystem-based fishery management.

In considering this action, the Council is being consistent with its ecosystem approach policy. This action increases flexibility in the IFQ fishery to allow for harvesters eligible to harvest CQE-held halibut IFQ to adapt to changes within the fishery and the environment. Sources of local knowledge have observed changes in fish distribution with halibut moving further offshore during certain months, which reduces the ability of CQEs which only have access to small vessels to harvest their IFQ. Reflecting the Council's intent to be adaptive to changes in the ecosystem, this action allows CQEs in Area 3A the flexibility to have eligible community residents fish CQE-held D class halibut IFQ on a C class vessel.

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