MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: April 15, 1998

SUBJECT: Halibut and Sablefish IFQs

ESTIMATED TIME
6 HOURS

ACTION REQUIRED

(a) Initial review of IFQ amendments.
(b) Discussion of Secretarial disapproval of recommendations on transfer to heirs amendment.
(c) Status report on IFQ fee and loan programs.
(d) Review of weighmaster proposal. (Postponed)
(e) Discussion of GOA communities' request for "excess" halibut.

BACKGROUND

(a) Initial review of IFQ amendments

In December 1997, the Council approved development of four IFQ proposals recommended for analysis by the IFQ Industry Implementation Team from the 1997 call for IFQ proposals. The four proposals for Plan Amendments 54/54 (Item C-8(a)) are:

(1) Renew IFQ leasing provision.

This proposal would allow B, C, or D category QS holders to lease ten percent of their IFQ holdings across all areas. For the first three years of the IFQ Program, regulations allowed leasing of ten percent of a QS holder's IFQ by area and species. That leasing provision was temporary and sunsetted on January 2, 1998. No leasing of IFQ derived from B, C, or D category QS is currently allowed. This document analyzes a proposal to reinstate a ten percent leasing provision, liberalized to allow a QS holder to lease ten percent of his or her total IFQ holdings across all areas.

Alternative 1: Status quo: allow no leasing of IFQ.

Alternative 2: Allow leasing of up to 10% of a QS holder's total IFQ.

Option A: Renew leasing provision for all areas.

Option B: Renew leasing for the Bering Sea area only.

(2) Revise plan language to authorize indirect vessel ownership for hired skipper provisions.

This proposal would revise the FMP language to allow a QS holder's corporate association to a vessel owner to substitute for a QS holder's vessel ownership for purposes of hiring a skipper to fish the QS holder's IFQ. The language of the FMPs and IFQ implementing regulations currently requires that a QS holder (whether an individual or a corporation or partnership) who wishes to hire a skipper must own the vessel on which the QS holder's IFQ are harvested. In cases where the QS holder is an individual who is a shareholder or partner in a corporation or partnership which owns a vessel, NMFS has allowed the individual QS holder to hire a skipper to fish his or her IFQ on the vessel owned by the corporation or partnership. Likewise, a corporation or partnership holding QS has been allowed to hire a skipper to fish the collectively held QS on a vessel owned by an individual shareholder or partner in the collective entity holding the QS. Interpreted literally, the FMP language requires the person holding the QS to be the documented owner of the vessel. This document analyzes a proposal to revise the current FMP language and pertinent regulations to authorize a QS holder's corporate association with a vessel owner as a substitute for the QS holder's own vessel ownership *per se* for purposes of the IFQ Program's hired skipper provisions.

Alternative 1: Status quo: require that the QS holder wishing to hire a skipper be the named owner of the vessel on USCG vessel documentation.

Alternative 2: Revise FMP language to allow QS holders wishing to hire skippers to establish indirect vessel ownership through corporate ties.

(3) Include "dissolution of the corporation or partnership" in the definition of "a change in the corporation or partnership."

This proposal would revise FMP definition of "a change in the corporation or partnership" to include a dissolution of the corporation. The FMP and IFQ implementing regulations require that upon any change in a corporation or partnership that holds QS, the collectively held QS should transfer to a qualified individual. A "change" in a corporation or partnership is defined as the addition of a shareholder to the corporation or partnership. Nothing in the plan language or regulations explicitly defines a dissolution of the corporation or partnership as a change. As a result, corporations which lose their status as legitimate corporations under applicable laws of incorporation may, unless NMFS is notified that such change has occurred, be erroneously issued annual IFQ deriving from the corporate QS. This analysis reviews a proposal to include "dissolution" as a change in the corporation or partnership.

Alternative 1: Status quo: "a change in the corporation or partnership" will continue to be defined as the addition of a shareholder or partner.

Alternative 2: Redefine "a change in the corporation or partnership" to include "a dissolution of the corporation or partnership."

(4) Proposal to express sablefish use limits as a specific number of QS units.

This proposal would change sablefish use limits from percentage of the total number of QS units to a specific number of QS units. In June 1996, the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use caps from ½ percent to the QS equivalents of 1½ percent based on 1996 QS pool. This amendment also revised the halibut use limits to be expressed as a certain number of QS units rather than as a percentage, in order to provide QS holders with a more stable reference for

measuring their holdings against area use caps. This FMP amendment would effect that revision to calculate the sablefish in QS units based on the 1996 QS pool to standardize the application of use caps for both halibut and sablefish fisheries.

Alternative 1. Status quo: sablefish use limits will remain expressed as a percentage of the QS pool.

Alternative 2. Revise the methodology of calculating use caps for fixed gear sablefish from percent to QS units based on 1996 QS units.

(b) Discussion of disapproved regulatory amendment to transfer IFQ privileges to surviving heirs

At its June 1997 meeting, the Council recommended a regulatory amendment to extend the survivorship privileges to heirs of deceased QS holders (Item C-8(b)(1)). On January 28, 1998 NMFS notified the Council that it was withdrawing the proposed amendment because it conflicted with aspects of the emergency transfer provisions to spouses in the BSAI and GOA FMPs (Item C-8(b)(2)). The Council's recommended action appears to nullify the current provisions to transfer IFQs to a surviving spouse on an emergency basis for a period of up to three years. This transfer provision occurs automatically, notwithstanding the legal determination of the legitimate heir.

NMFS staff suggested that if the Council's intent is to give other members of a deceased QS holder's family the same privileges currently afforded to a spouse, an alternative measure might be to recommend allowing a QS holder to designate an individual to whom NMFS might grant emergency transfer privileges in the event of the QS holder's death and in the absence of a spouse. This designation could be filed with RAM.

(c) Status report on IFQ fee and loan programs

On March 26, 1998, NMFS informed the Council that it had approved the North Pacific Loan Program, as submitted by the Council (Item C-8(c)(1)). The IFQ fee collection program, which is the source of funding for the loan program, will not be implemented until 1999 according to NMFS. However, Congress directed $100,000 to the loan fund for 1998 and loans have been committed from these funds. An update on the loan program status is attached as (Item C-8(c)(2)).

The Magnuson-Stevens Act requires the Secretary to implement a program to recover the management and enforcement costs of the Alaska IFQ and CDQ programs. A NMFS discussion paper that presents a proposal for an IFQ/CDQ cost recovery program will be provided at the meeting. The discussion paper consists of an outline of the elements of the program, and is followed by a full description and brief qualitative analysis of the proposed elements. Some of the key elements include: (1) program objectives, (2) process to establish annual fees, (3) deposits to and disbursements from the Limited Access System Administration Fund, (4) deductions for additional CDQ observer and monitoring costs, and (5) cost recovery program implementation date.

(d) Review of weighmaster implementation plan

This agenda item will be rescheduled for a subsequent meeting.

(e) Discussion of Gulf of Alaska Fisheries Dependent Coastal Communities request for halibut allocation

In February 1998, representatives of the Gulf of Alaska Fisheries Dependent Coastal Communities petitioned the Council to allow them to provide testimony at this meeting on their request for a halibut allocation because of the apparent abundance of halibut stocks. Item C-8(e)(1) provides public response to the proposal for a direct allocation to these communities. An IPHC comment on the issue of "excess halibut" is attached as Item C-8(e)(2). IPHC staff will also be available to address the Council.

Charterboat Cmte
April 1998

Recommended Qualifying Criteria for Participation in Moratorium in areas 2C & 3A

Current Participation Criteria

1. Alaska Business License
2. Alaska F&G Fishing Services Business Registration
3. Commercial Fisheries Entry Commission Charter Vessel with Registration
4. Proof of Protection and Indemnity Insurance with Vessel named as on CFEC registration

Historic Participation Criteria

1. I.P.H.C. Sport Charter Registration (1995,1996,1997)
2. Logbook Data (1998,1999,2000)

Voluntary (optional) Criteria

Historic Advertising Materials
Income Tax Schedule "C" for Fishing Service Business
Sales Tax Registration (Borough or City, where applicable)
Membership in Professional Charterboat Association

REPORT
HALIBUT SUBSISTENCE COMMITTEE
January 22, 1997

The Halibut Subsistence Committee met in Anchorage on January 22, 1997 to provide to the Council their recommendations for developing halibut subsistence regulations. Committee members Robin Samuelsen (Chairman), Harold Martin, Matt Kookesh, Robert Sundown, Flore Lekanoff, Jack Lorigan for Theodore Borbridge, Jude Henzler, and David Bill were in attendance. The meeting agenda and documents distributed at the meeting are attached to this report. The Council, IPHC, NOAA GC, NMFS, NMFS Enforcement, ADF&G, and Alaska Department of Law provided staff support.

Jane DiCosimo, Council staff, provided background as to the purpose and goal of the meeting. She related the findings of agency staff at their November 1996 meeting. At the December 1996 Council meeting, the Council indicated its intention to develop regulations to provide for halibut subsistence harvests during 1997 for effect in 1998.

Bob Wolfe, ADF&G Subsistence Division staff, distributed tables and figures of noncommercial halibut harvests by community and Native Group with subsistence halibut uses. The committee adopted the table of rural communities with customary and traditional use of halibut and associated Alaska Native group as developed by the Alaska Board of Fisheries for identifying eligible participants for halibut subsistence harvests. Those Native groups not on the approved list could petition for subsistence privileges.

Dr. Don McCaughran, IPHC staff, discussed a possible revision of the Halibut Convention to separate subsistence from sportfish regulations. He reported that discussions to renegotiate the treaty for other reasons were currently underway. At present, the treaty language does not specifically address subsistence harvests and subsistence users are restricted to sportfish limits of two fish per person per day and rod and reel gear with a limit of two hooks per reel. He also explained that the 32 inch minimum commercial size was imposed by the IPHC to maximize yield in weight and was not imposed for personal use since yield for that sector is maximized in numbers. **The committee recommended that the North Pacific Council encourage the State Department to petition the United States and Canada to amend the Halibut Convention to recognize subsistence rights for aboriginal users.**

The committee discussed the level of halibut removals for subsistence (approximately 300,000 lb) compared with bycatch removals from commercial fishing (approximately 15.5 million lb).

Steve Meyer, NMFS Enforcement, reported that he is required by law to enforce the current halibut commercial and sportfish regulations. The committee noted that the IPHC acknowledged that halibut subsistence harvests did not affect the conservation of the halibut resource. **The committee recommended that the National Marine Fisheries Service not enforce regulations prohibiting halibut subsistence harvests while the Council is developing subsistence regulations.**

The committee described the need and intent for halibut subsistence regulations to allow the continued practice of long-term traditions of fishing halibut for food for their families in a non-commercial manner for non-economic consumption, and defined subsistence as '**non-commercial fishing for food.**'

The committee recommended that eligibility for halibut subsistence be defined as "**members of Alaska Native Federally-recognized Tribes with customary and traditional use of halibut.**" The committee decided to accept as eligible those Tribes that were identified by the Alaska Board of Fisheries as having customary and traditional (CAT) halibut uses (Attachment 2). The Tribes are identified with a specific coastal community. The organized Tribal entity within a community would be responsible for deciding which individual members were eligible from Tribal enrollment. An individual's Tribal membership card and a subsistence permit would qualify

that person to subsistence fish for halibut from the community in which he/she is enrolled. Using Tribal enrollment would also allow the community to allow members from other Tribes to join their community and fish. Those Tribes not on the BOF list, but with reasonable access to the fishery and that may have a tradition or need to harvest halibut for subsistence may petition for eligibility. The process and criteria for petitioning would be discussed further by the committee at a subsequent meeting.

The committee discussed a proposal to include "other rural residents in areas of Alaska with halibut uses." The committee discussed the opportunities for non-Tribal Alaskans to harvest halibut and concluded that the two fish per day sportfish limit would meet their needs for supplying their families with halibut for food. The determining factor in this conclusion was the stated need to recognize existing, traditional practice at current levels of halibut removals. The management plan for a halibut subsistence program should legalize the current halibut removals and fishing practices by Tribal members. Expansion of subsistence harvests to non-traditional users may create resource concerns within the IPHC regarding increased levels of halibut removals and localized depletion in some rural and urban communities.

The committee recommended that **hook-and-line gear (including set and hand-held gear) with a maximum of 60 hooks, along with rod-and-reel gear** be allowed as legal halibut subsistence gear. An individual would be limited to one skate of gear up to 1,800 ft long (not including the buoy line), with hooks set 18-20 ft apart, with a legibly marked buoy. More than one fisherman may fish from the same boat.

The committee recommended that **no minimum size be imposed for subsistence harvests of halibut.** The committee recognized that the levels of halibut subsistence removals, including fish less than 32 inches, compared with commercial and sportfish removals, are not a conservation concern to the IPHC. The committee further recommended that the commercial minimum size regulations be revised to read, "**except in Area 4E where halibut under 32 inches caught with authorized commercial halibut gear may be retained for subsistence use.**" This minimum size exemption would allow for retention of undersized halibut with legal CDQ halibut harvests in Area 4E only, in accordance with local beliefs that releasing any fish is too damaging to the entire stock from which it came.

The committee discussed seasonal and bag limit restrictions for halibut subsistence, but deferred any recommendations to the Council on legal advice that the aforementioned restrictions are within the purview of the IPHC. Interest was expressed for a twelve month season in the Southeast and no bag limit.

The committee recommended that halibut subsistence users be allowed existing levels of bycatch. They recommended unlimited black cod bycatch, noting that there was a black cod subsistence fishery under State designation and that low levels of bycatch occurred in halibut subsistence fishing. They also recommended that halibut subsistence users be allowed to retain rockfish bycatch, and that the Council and State analyze appropriate bycatch levels.

The committee considered a suggestion that **monitoring of halibut subsistence removals for stock assessment purposes could be best achieved through cooperative agreements between federal agencies and the Tribes.**

The committee discussed trade and barter of subsistence halibut and **endorsed and recommended the sharing and exchange (barter) of halibut since this is a vital part of the traditional subsistence halibut fishery, but that the commercial sale of subsistence-caught halibut not be allowed.** The committee further indicated an interest in **allowing low monetary, non-commercial sale** of halibut to legalize current practice of compensating subsistence fishermen for fuel or other fishing expenses in exchange for fish. The Council may wish to consider allowing trade and barter only among Native Tribal members, limiting the monetary exchange, or other limitations.

The committee expressed interest in continuing to meet to provide recommendations to the Council on the development of halibut subsistence regulations.

however when he applies to the IPHC for his permit he would indicate the boat on which he will be fishing the permit. This approach issues the permit to owners/operators, and restricts the number of vessels which may be used under that permit, but does not make the permit specific to any particular vessel. Each vessel within a given operator's fleet would still be required to carry some type of proof of qualification, for enforcement purposes.

E.4.1.3 Vessel upgrades

The overwhelming majority of vessels in the charter fleet are 'sixpack' vessels which may take up to six persons per trip. The 'sixpack' designation would serve as an effective limitation relative to the issue of vessel replacement and upgrades - as long as the permits are still restricted to vessels which may carry a maximum of six passengers per trip, with each person limited to two fish. There are some vessels in the fishery which are not restricted to the 'sixpack' license, and are operated by persons with, for example, 100 ton Master's Licenses. There may be little practical value in attempting to limit upgrades by these larger vessels, assuming that they are not likely to carry more than 20 passengers per trip under any circumstances.

E.4.1.4 Transfers

Any limited entry program will require allowances for transfers of permits. The recommendation of the Halibut Charter Work Group was to allow transfers of vessels with or without the associated moratorium permit. This is similar to the way the current groundfish and crab moratorium works, and similar to how the license limitation program will work once implemented. Such transfers would be subject to the upgrade restrictions discussed in the previous section. In the case of the charter boat fishery, two types of transfers may need to be accommodated: (1) transfers in the traditional sense - from one owner/operator to another, and (2) 'temporary' transfers of the permit from one vessel to another in the event of vessel breakdowns, for example. This type of transfer would be unnecessary if the permits are owner specific, as opposed to vessel specific.

E.4.1.5 Moratorium vs Licenses

By some definitions, a moratorium is a temporary 'time-out' management measure, often used as a precursor to further management measures, including additional limited entry alternatives. In considering a moratorium on new entry to the charter fleet, the Council needs to determine the appropriate duration of the moratorium, which is at least somewhat dependent upon future management intent. A long-term, or indefinite, moratorium is in effect a license limitation program. The information in this analysis indicates that any moratorium on this industry will likely qualify many more vessels than are currently 'active', and many more than are necessary to accommodate client demand. This information supports the idea of a long-term moratorium, i.e. a license limitation program.

E.4.1.5.1 Moratorium duration

The Halibut Charter Working Group recommended that any moratorium should be as short in duration as possible, noting that the CFEC is limited to four years in terms of fishery moratoriums. A short-term moratorium may be useful in providing a time window for the Council, and other management agencies, to develop more specific management programs geared toward specific regional concerns. However, a short-term moratorium would not likely restrain growth (catch) by the charter fleet, but it may serve other management objectives such as providing a more stable business environment for the charter fleet.

E.4.1.5.2 Licenses

If the Council selects a license limitation program as the vehicle to limit entry into the guided sport fishery for halibut, then the number of licenses issued and to whom they are issued become even more critical than under a moratorium. The Council's approach under the groundfish moratorium and license programs was to be more

lenient under the moratorium, in terms of requirements to earn a moratorium permit, and then require additional qualification criteria under that license program. The addition license qualification requirement reduced the numbers of eligible vessels.

E.4.2 Conclusions

1. Information from ADF&G Sport Fish Division and charter associations indicates anywhere from 450 to 600 'active' charter vessels (in 1994) with at least 200 of those operating 'full-time'. These estimates are consistent with the ISER estimate of 513 active halibut charter operators.

2. The estimated number of vessels that participated in the guided halibut fishery was 1,117 in 1996 based on a match of IPHC license holders and ADF&G guide license holders. The total number licensed for charter halibut fishing (IPHC license holders) was 1,998 in 1996.

3. Other forms of evidence of participation may be appropriate, such as Coast Guard licenses and Alaska Business Licenses.

4. Although the total harvest capacity of the fleet (the total number of halibut clients per season) is difficult to estimate, the currently licensed fleet has a harvest capacity several times the current harvest level, and even the currently active fleet is probably not operating at its maximum capacity. The presence of excess harvest capacity reduces the effectiveness of a moratorium and the ability to predict a moratorium's effect on the allocation of the harvest.

5. Client demand may be the more effective limiting factor on growth in this industry sector than a moratorium, or a moratorium and quota limit, depending on where the limit is set.

6. A moratorium would likely help promote economic stability for existing charter operators, particularly in areas where dramatic increases in participation have occurred recently. However, the issue of who receives the permit will also play an important role in determining future stability.

7. Economic impacts of a moratorium on the charter fleet are estimated based on the number of current license holders, the number of estimated current participants in the guided fishery, and the number of estimated active operations. For current license holders and current participants a moratorium does not constrain the guided harvest for several years, even assuming no increase in harvest capacity above that of the currently active fleet.

8. Granting permits to the 'appropriate' recipients, and avoiding disruptions to individual business operations, will require particular attention to the choices of qualification criteria.

9. A moratorium could be constraining on the guided sport harvest, under some scenarios, assuming that capacity utilization does not change. This could result in some gains to the commercial sector. Because a moratorium alone does not set aside a fixed portion of the exploitable yield for the guided fleet, there may be less down side risk to the commercial sector, when compared to a liberal cap allocation, particularly in the short term.

10. Unlike a quota, a moratorium does not leave unharvested halibut due to the inability of the charter fleet from taking more than their clients demand. Thus, the net economic impact and the net economic benefits will always be as large or larger for a given harvest allocation with a moratorium compared to a quota. In the near term, a general moratorium would not create the losses to the commercial sector which would occur with a cap (in the near term).

DRAFT

ENVIRONMENTAL ASSESSMENT/ REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS

FOR

PROPOSED AMENDMENT 54 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS

AND

PROPOSED AMENDMENT 54 TO THE FISHERY MANAGEMENT PLAN FOR GROUNDFISH OF THE GULF OF ALASKA

prepared by

Staff
National Marine Fisheries Service

April 1998

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Proposed amendment 54 to the Fishery Management Plan of the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 54 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) would address several issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska. The four actions proposed for this plan amendment are:

(1) Allow B, C, or D category QS holders to lease ten percent of their IFQ holdings across all areas. For the first three years of the IFQ Program, regulations allowed leasing of ten percent of a QS holder's IFQ by area and species. That leasing provision was temporary and sunsetted on January 2, 1998. No leasing of IFQ derived from B, C, or D category QS is currently allowed. This document analyzes a proposal to reinstate a ten-percent leasing provision, liberalized to allow a QS holder to lease ten percent of his or her total IFQ holdings across all areas.

(2) Revise FMP language to allow a QS holder's corporate association to a vessel owner to substitute for a QS holder's vessel ownership for purposes of hiring a skipper to fish the QS holder's IFQ. The language of the FMPs and IFQ implementing regulations currently requires that a QS holder (whether an individual or a corporation or partnership) who wishes to hire a skipper must own the vessel on which the QS holder's IFQ are harvested. In cases where the QS holder is an individual who is a shareholder or partner in a corporation or partnership which owns a vessel, NMFS has allowed the individual QS holder to hire a skipper to fish his or her IFQ on the vessel owned by the corporation or partnership. Likewise, a corporation or partnership holding QS has been allowed to hire a skipper to fish the collectively held QS on a vessel owned by an individual shareholder or partner in the collective entity holding the QS. Interpreted literally, the FMP language requires the person holding the QS to be the documented owner of the vessel. This document analyzes a proposal to revise the current FMP language and pertinent regulations to authorize a QS holder's corporate association to a vessel owner as a substitute for the QS holder's own vessel ownership *per se* for purposes of the IFQ Program's hired skipper provisions.

(3) Revise FMP definition of "a change in the corporation or partnership" to include a dissolution of the corporation. The FMP and IFQ implementing regulations require that upon any change in a corporation or partnership that holds QS the collectively held QS transfer to a qualified individual. A "change" in a corporation or partnership is defined as the addition of a shareholder to the corporation or partnership. Nothing in the plan language or regulations explicitly defines a dissolution of the corporation or partnership as a change. As a result, corporations which lose their status as legitimate corporations under applicable laws of incorporation may, unless NMFS is notifed that such change has occurred, be erroneously issued annual IFQ deriving from the corporate QS. This analysis reviews a proposal to include "dissolution" as a change in the corporation or partnership.

(4) Change sablefish use limits from percentage of the total number of QS units to a specific number of QS units. In June 1996, the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use caps from 1/2 percent to the QS equivalents of 1 1/2 percent based on 1996 QS pool. This amendment also revised the halibut use limits to be expressed as a certain number of QS units rather than as a percentage, in order to provide QS holders with a more stable reference for measuring their holdings again area use caps. As this was a regulatory amendment, the sablefish use limits set as percentages by the FMPs could not be revised to QS units for consistency with the halibut use caps. This FMP amendment would effect that revision to calculate the sablefish in QS units based on the 1996 QS pool. This change will standardize the application of use caps for both halibut and sablefish fisheries.

Alternatives

Action 1: Renew IFQ leasing provision.

Alternative 1: Status quo: allow no leasing of IFQ.

Alternative 2: Allow leasing of up to 10% of a QS holder's total IFQ.

Option A: Renew leasing provision for all areas.
Option B: Renew leasing for the Bering Sea area only.

Action 2: Revise plan language to authorize indirect vessel ownership for hired skipper provisions.

Alternative 1: Status quo: require that the QS holder wishing to hire a skipper be the named owner of the vessel on USCG vessel documentation.

Alternative 2: Revise FMP language to allow QS holders wishing to hire skippers to establish indirect vessel ownership through corporate ties.

Action 3: Include "dissolution of the corporation or partnership" in the definition of "a change in the corporation or partnership."

Alternative 1: Status quo: "a change in the corporation or partnership" will continue to be defined as the addition of a shareholder or partner.

Alternative 2: Redefine "a change in the corporation or partnership" to include "a dissolution of the corporation or partnership."

Action 4: Proposal to express sablefish use limits as a specific number of QS units.

Alternative 1. Status quo: sablefish use limits will remain expressed as a percentage of the QS pool.

Alternative 2. Revise the methodology of calculating use caps for fixed gear sablefish from percent to QS units based on 1996 QS units.

1. INTRODUCTION

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

The Northern Pacific Halibut Act of 1982 (NPHA), P.L. 97-176, 16 U.S.C. 773 c (c) authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. waters which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission. The halibut IFQ program is implemented by federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94-265, 16 U.S.C. 1801.

To meet the management and conservation goals of the Magnuson-Stevens Act and the Northern Pacific Halibut Act, the Council developed the Individual Fishing Quota (IFQ) Program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries. NMFS approved the IFQ Program in November 1993, and fully implemented the program beginning in March 1995. The Magnuson-Stevens Act authorizes the Council to recommend to NMFS changes to the IFQ Program as necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

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

This document is the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for Amendment 54 to the Bering Sea/Aleutian Islands (BSAI) Groundfish FMP and Amendment 54 to the Gulf of Alaska (GOA) Groundfish FMP. Changes to the halibut IFQ program would be implemented through a regulatory amendment to 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94-265, 16 U.S.C. 1801.

1.1 Action 1: Leasing of IFQ

1.1.1 Purpose of and Need for the Action

The ability to transfer harvesting privileges among fishermen is a critical element in any individual quota system. Transferability provides a means of reducing overcapitalization in a fishing fleet with minimal government intervention and, also, provides a means of entry into the fishery. Unrestricted transfer, however, could lead to excessive consolidation of the fishing privilege in the hands of a few individuals or corporations, and could lead to biological problems such as localized depletion.

The IFQ Program allows transfer of QS to persons qualified to fish the annual IFQ that derives from the QS. However, the transfer, or leasing, of annual IFQ resulting from B, C, or D category QS is prohibited. In developing the IFQ Program, the Council heard substantial public opposition to the leasing of IFQ; specifically, public testimony raised concerns about fishing privileges being bought by absentee owners who would use the fishing privilege as an investment and consequently reduce the QS available to fishermen for whom the fishing privilege is a livelihood. Opponents of leasing further argued that allowing retired fishermen to lease all of their IFQ would reduce the QS available for transfer to new entrants into the fishery. Proponents of leasing argued, on the other hand, that leasing would afford QS holders more flexibility in conducting their fishing businesses and would reduce the cost of entering the fishery.

In creating the IFQ Program, the Council approved a trial period of three years during which fishermen holding QS in categories B, C, and D (so-called catcher vessel QS) would be able to lease up to ten percent of their IFQ by area and species. (Leasing restrictions do not apply to category A QS, which authorizes the harvest and processing of IFQ species.) In restricting leasing to ten percent of a person's IFQ by area, the Council reasoned that by providing for the leasing of small portions of IFQ, the program would allow QS holders some additional flexibility in managing their fishing businesses, without compromising the socio-economic character of coastal communities or risking excessive consolidation and absentee investment practices.

The trial period ended on January 2, 1998. No leasing of B, C, or D category IFQ is currently allowed. In September 1997, the IFQ Industry Implementation Team recommended to the Council a proposal to renew the leasing provision, with an option to restrict leasing to the Bering Sea regulatory area. The Council subsequently requested staff to analyze alternatives for implementing a new leasing provision that would allow a QS holder to lease ten percent of the QS holder's total IFQ holdings across all regulatory areas.

1.1.2 Alternatives Considered

Alternative 1: Status quo: allow no leasing of IFQ.

Alternative 1 would require no action. The FMPs' prohibition of IFQ leasing would remain unchanged. On January 2, 1998, the three-year period following implementation of the IFQ Program expired. No leasing of IFQ derived from B, C, or D category QS is currently allowed. With the exception of initial recipients of QS, who may under certain conditions hire skippers to fish their IFQ, holders of B, C, or D category QS are required to be onboard the vessel harvesting their IFQs.

Alternative 2: Renew leasing provision to allow leasing of up to 10% of a QS holder's total IFQ.

Option A: Renew leasing provision for all areas.
Option B: Renew leasing for the Bering Sea area only.

This alternative would reinstate an IFQ leasing provision of the IFQ Program either for all IFQ regulatory areas (Option A) or for the Bering Sea area only (Option B), beginning with the 1999 IFQ season. The expired leasing provision allowed leasing of up to ten percent of IFQ by area; under this proposed alternative, leasing provisions would be liberalized to allow category B, C, and D QS holders to lease up to ten percent of their total annual IFQ holdings across all regulatory areas.

Based on the perceived greater need for leasing in the Bering Sea, the Implementation Team recommended and the Council approved review of an option for renewing the leasing provision only for persons holding

QS in Bering Sea regulatory areas. 85 percent of the total species biomass for Bering Sea sablefish occupies waters between 100 and 1,000 m on the outer continental shelf and continental slope (NRC, 1996). Because of the extensive continental shelf in the Bering Sea off Alaska, fishing grounds for IFQ species can lie at considerable distances offshore, thus making small harvest fishing trips uneconomical for many IFQ fishermen. For this reason, Bering Sea IFQ fishermen were perceived as having greater need for a leasing provision that would allow them to utilize small amounts of IFQ which remain toward the end of the IFQ season but which alone would not justify additional fishing trips.

As tables 1-3 show, leasing has not been a prominent feature in the IFQ fisheries during the first three years of the program. In the 1995 season, the first year of the program, seven QS holders were responsible for nine leases totalling 27,778 lbs of halibut IFQ and 11,604 lbs of sablefish IFQ. In 1996, 22 QS holders were responsible for 41 leases totalling 15,888 lbs of halibut IFQ and 13,426 lbs of sablefish IFQ. In 1997, 16 QS holders effected 21 leases totalling 60,581 lbs of halibut IFQ and 15,538 lbs of sablefish IFQ.

In the Bering Sea regulatory area, the first year of the IFQ Program saw only one lease of Area 4 halibut IFQ--for 9,813 lbs. In 1996, the number of leases in the Bering Sea IFQ fisheries increased to eight; the number of IFQ pounds comprised by those leases, however, was lower-- 269 lbs of Area 4A halibut IFQ. In 1997, persons holding QS for the Bering Sea regulatory areas leased no halibut or sablefish IFQ. No leasing of Bering Sea sablefish IFQ occurred during any of the three years of the IFQ Program.

None of the potential problems with leasing about which apprehensions were voiced prior to the program's implementation (excessive consolidation, absentee QS holders) seem in evidence during the three years of the leasing trial period. Given the small amounts of IFQ that QS holders were allowed to lease, the practice remained very limited. The proposed leasing provision would, however, liberalize leasing to allow a QS holder to lease ten percent of his total IFQ holdings across all areas. This would likely lead to more leasing and in larger amounts than occurred under the earlier provision and would possibly lead to some of the perceived problems with leasing that the Council heard in its original deliberations on leasing in developing the IFQ Program.

Under the proposed leasing provision of Alternative 2, a QS holder would be able to acquire amounts of QS in a given area, representing ten percent of his or her overall QS holdings, expressly for the purpose of leasing the entire amount. For example, if a fisherman holds 10,000 lb of halibut IFQ for area 3B and 10,000 lb of halibut IFQ for area 3C, under Alternative 2 he or she would be able to acquire 2,200 lb of halibut IFQ for area 4B expressly for the purpose of leasing the total area 4B IFQ. With this kind of leasing option open to QS holders, QS would become more valuable, thus reducing the opportunities for fishermen wishing to enter the fishery by acquiring QS through transfer. The incidence of absentee QS holders would likely increase under such scenarios.

In Table 4, a random selection of QS holders with 1997 IFQ in multiple areas shows the impact of Alternative 2 may have had, were the proposed leasing provision in effect for the 1997 IFQ season. The table shows a QS holder's holdings by species and area, sums the resulting IFQ, and calculates the ten percent that Alternative 2 would allow each QS holder to lease. Comparison of the amount in the ten-percent column with the QS holder's IFQ in each discrete area exhibits the extent to which Alternative 2 would allow QS holders to lease their entire IFQ for certain areas. Of the 35 randomly selected sablefish QS holders, 24 (or 68%) would be able to lease out the total amount of their IFQ for one or more areas. Of the 64 randomly selected halibut QS holders, 31 (or 48%) would be able to lease out the total amount of their halibut IFQ for one or more areas.

1.2 Action 2: Corporate association and vessel ownership in the IFQ hired skipper provisions

1.2.1 Purpose of and need for the action

An exception to the owner-onboard provision allows an initial recipient of B, C, or D category QS to employ a hired skipper to fish his or her IFQ provided that the QS holder owns the vessel on which the IFQ species are being fished. This exception was created to allow fishermen who had operated their fishing businesses in this manner before the IFQ Program was implemented to have some flexibility to continue operating this way under the IFQ Program. While the IFQ Program prohibits leasing of IFQ derived from B, C, or D category IFQ, this exception allows initial recipients of QS to remain ashore while having their IFQ harvested by a hired skipper. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

The language of the FMP and implementing regulations requires that the QS holder wishing to hire a skipper must be the owner of the vessel on which the hired skipper fishes the QS holder's IFQ:

> Persons, as defined below, who receive initial catcher vessel QS may utilize a hired skipper to fish their quota providing the person owns the vessel upon which the QS will be used. (14.4.7.1.5(5) BSAI FMP; 4.4.1.1.5(5) GOA FMP)
>
> 50 CFR 679.42(i)(1) An individual who receives an initial allocation of QS assigned to vessel categories B, C, or D does not have to be on board and sign IFQ landing reports if that individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.
>
> 50 CFR 679.42(j) Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations or partnerships. A corporation or partnership that receives an initial allocation of QS assigned to vessel categories B, C, or D may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnerhsip that received the initial allocation of QS.

The regulations and FMPs define the term "person" to mean an individual, corporation, partnership, association, or other entity. Literally interpreted, the regulations require that the person holding the QS, whether an individual or a collective entity, be the owner of the vessel in order to participate in the hired skipper exception to the IFQ Program's owner-onboard requirements. A corporation or partnership would not be allowed to hire a skipper to fish its collectively held QS on a vessel owned by an individual, even if that individual is a member of the corporation or partnership. Nor would an individual be allowed to hire a skipper to fish his or her individually held QS on a vessel owned by a corporation or partnership, even if that individual is a shareholder or partner in the collective which owns the vessel.

During the 1995, 1996, and 1997 IFQ seasons, NMFS has broadly interpreted the FMP and regulatory language to allow persons holding initial allocation QS to hire skippers to fish their IFQ on vessels owned by other "persons," provided that the QS holder could show a corporate association to the owner of the vessel (such as an individual QS holder's membership in the corporation or partnership that owns the vessel, or the

collective QS holder's having the owner of the vessel as a shareholder or partner in the corporation or partnership holding the QS). This policy allows individual QS holders to hire skippers to fish their IFQ on vessels owned by corporations or partnerships in which the individual QS holders are shareholders or partners; likewise, the policy allows corporations or partnerships holding QS to fish the collectively held QS on a vessel owned by individuals who are shareholders or partners in the corporation or partnership.

At the beginning of the 1997 IFQ season, NMFS announced to the IFQ fleet that this policy of broadly interpreting the term "person" as it pertains to IFQ hired skipper provisions would continue in effect for the 1997 season, or until the Council makes a determination on whether the policy comports with Council intention. Consequently, in September 1997, the Council requested analysis of alternatives for this issue.

1.2.2 Alternatives considered

Alternative 1: Status quo: require that the person, individual or collective, hiring a skipper to fish initial allocations of B, C, or D category QS be named as the owner of the vessel on the appropriate documents submitted to NMFS/RAM as proof of vessel ownership for purposes of obtaining a hired skipper card.

This alternative would require only that NMFS policy in implementing the hired skipper provision be amended to comport with the existing FMP and regulatory language.

Alternative 2: Revise the FMP language and pertinent regulations to allow, for purposes of the hired skipper provisions only, that a QS holder wishing to hire a skipper possess ownership interest in a vessel either directly, as a documented owner of the vessel, or indirectly, through corporate ties to a documented owner of the vessel.

This alternative would revise the FMPs and regulations to support NMFS's past policy of allowing QS holders to substitute for vessel ownership a corporate link to a vessel owner, solely for purposes of the hired skipper provision.

NMFS/Restricted Access Management Division (RAM) estimates that instances where corporation association to a vessel owner has been allowed to substitute for the QS holder's vessel ownership amount to fewer than 25% of the approved applications for hired skipper cards. Since the inception of the IFQ Program in 1995, RAM has recorded 69 instances of such practices. "Corporate association" comprises a variety of relationships between QS holder and vessel owner. An individual QS holder may hire a skipper to fish his IFQ on a vessel owned by a corporation in which he is a shareholder; an individual QS holder who is also a shareholder in a corporation may hire a skipper to fish his IFQ on a vessel owned by another individual in that same corporation; a corporate QS holder may hire a skipper to fish the corporation-held QS on a vessel owned by a shareholder in the corporation or by another corporation in which the corporation holding the QS holds an interest.

The number and types of indirect vessel ownership within the 69 instances of indirect ownership are as follows:

- 15 QS holders were individuals who employed hired skippers on vessels owned by a corporation or partnership;
- 10 were corporations or partnerships whose vessel was owned by an individual;
- 11 were non-individuals whose vessels were owned by other non-individuals;

- 6 were individuals whose vessels were owned by multiple "persons," i.e., a variety of individual and collective owners;
- 18 were non-individuals whose vessels were owned by multiple "persons";
- 3 were estates whose vessels were owned by the estate representative;
- 1 was an estate whose vessel was owned by a corporation;
- 1 QS holder received QS as a surviving spouse; vessel owned by deceased spouse;
- 3 QS holders had an unknown ownership link to vessel.

Table 5 exhibits the amount of IFQ pounds landed by QS holders of B, C, or D category QS who employed hired skippers on vessels owned by other persons to whom the QS holders had corporate ties.

1.3 Action 3: Revise the definition of "a change in the corporation or partnership."

1.3.1 Purpose of and need for the action.

To prevent excessive consolidation of QS and promote an owner-operator IFQ fleet, the FMPs and IFQ regulations restrict the extent to which corporations, partnerships, and other collective entities can hold QS. One manner for regulating corporate QS holdings is to require that corporations or partnerships transfer the collectively held QS to a qualified individual upon the addition of a shareholder or partner to the collective entity. The pertinent regulations (50 CFR 679.42(j)(1)-(2) read as follows:

> (1) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to vessel categories B, C, or D loses the exemption provided under paragraph (j) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.
>
> (2) For purposes of this paragraph (j), "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

By specifying the exact nature of "a change in the corporation or partnership," the regulatory language unintentionally excludes other possible changes in the collective entity holding QS which, to effect the general intent of the FMPs in regards to corporately held QS, should also require the transfer of the QS to a qualified individual. Specifically, NMFS would revise the definition of "a change in the corporation or partnership" to include "a dissolution of the corporation or partnership" to assure that collective entities holding QS and issued annual IFQ resulting from those QS remain legitimate corporations or partnerships under laws governing such collective entities.

1.3.2 Alternatives considered

Alternative 1: Status quo. No revision would be made to the definition of "a change in the corporation or partnership" currently in the FMPs and IFQ implementing regulations.

Corporations which do not maintain their legitimate status as a corporation but continue to receive annual allocations of IFQ derived from QS held by the collective entity will not technically be in violation of the

regulations, because a "change" in the corporation is narrowly defined as "the addition of a shareholder or partner."

Alternative 2: Revise the definition of "a change in the corporation or partnership" to include "a dissolution" of the corporation or partnership. Collective entities holding QS would be required to maintain the collective's legitimate status as a corporation or partnership under laws applicable to such collective entities in order to hold QS and receive annual allocations of IFQ in compliance with the IFQ implementing regulations.

NMFS needs to track the status of corporations and partnerships holding QS more closely, in order to provide that QS held by such collective entities transfer to qualified individuals upon a change in the status of the corporation or partnership and to prevent the consolidation of QS among corporations and partnerships. By adding "dissolution of the corporation or partnership" to the definition of a change in the corporation or partnership, which requires the consequent transfer of QS to qualified individuals, NMFS will be able to ensure more effectively that corporations not hold QS or IFQ in violation of the intent of the IFQ Program to promote an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

1.4 Action 4: Sablefish use limits

1.4.1 Purpose of and need for the action

One important feature of the IFQ Program is a limitation of the amount of quota shares (QS) an individual may control, also known as a "use cap." The use cap was created to address concerns that an unrestricted market for QS could result in a few powerful interests controlling most of the landings and result in excessive decreases in the number of vessels and fishermen participating in the fixed gear halibut fishery. While QS holders are allowed to harvest the QS received from an initial issuance, the one-percent cap limits consolidation among QS holders who were not initial issuees to no fewer than 100 participants in either: (1) Areas 2C through 4E; or (2) Area 2C alone. A more detailed description of the management goals of the use cap, the Council action that recommended revising the halibut cap in the Bering Sea, and the conversion from percent to halibut QS units can be found in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Increase Halibut QS Use Caps in the Bering Sea/Aleutian Islands (NPFMC 1996).

Current regulations restrict sablefish use, such that:

(1) No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

In June 1996, the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use caps from 1/2 percent to the QS equivalents of 1 1/2 percent based on 1996 QS pool. This amendment was approved for the 1997 IFQ season. Current regulations specify that unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(1) IFQ regulatory area 2C. 599,799 units of halibut QS.

(2) IFQ Regulatory areas 2C, 3A, and 3B. 1,502,823 units of halibut QS.

(3) IFQ Regulatory areas 4A, 4B, 4C, 4D, and 4E. 495,044 units of halibut QS.

This plan amendment proposes to revise the sablefish use caps such that the caps will be calculated in QS units based on the 1996 QS pool. This change will standardize the application of use caps for both halibut and sablefish fisheries.

1.4.2 Alternatives considered

Alternative 1. Status quo.

Alternative 1 would result in no action to standardize the calculation of use caps for the fixed gear halibut and sablefish fisheries. Under this alternative, use caps will continue to be calculated as a percentage of the combined total sablefish QS for: (1)the GOA and BSAI IFQ regulatory areas; and (2) east of 140° W. longitude (Southeast Alaska).

Alternative 2. Revise the methodology of calculating use caps for fixed gear sablefish from percent to QS units based on 1996 QS units.

Alternative 2 would standardize the methodology recommended by the Council in 1996 and implemented by NMFS for the 1997 IFQ season for halibut of calculating use caps in QS units. Note that this alternative would not adjust the amount of QS that an individual could use. It simply proposes to set those caps in the regulations in QS units, instead of percent . Using the proposed method, sablefish use caps would be:

(1) IFQ Regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. 3,229,721 units of sablefish QS.

(2) IFQ regulatory area 2C. 688,485 units of sablefish QS.

2.0 NEPA REQUIREMENTS/ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in a significant impact on the human environment. The environmental analysis in the EA provides the basis for this determination and must analyze the intensity or severity of the impact of an action and the significance of an action with respect to society as a whole, the affected region and interests, and the locality. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact study (EIS) must be prepared if the proposed action may cause a significant impact on the quality of the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives are discussed in Sections 1.1 and 3, and the list of preparers is in Section 6. This section contains the discussion of the environmental impacts of the alternatives including impacts on species listed as threatened and endangered under the Endangered Species Act (ESA).

The environmental impacts generally associated with fishery management actions are effects resulting from: 1) overharvest of fish stocks which might involve changes in predator-prey relationships among invertebrates and vertebrates, including marine mammals and birds; 2) physical changes as a direct result of fishing practices affecting the sea bed; and 3) nutrient changes due to fish processing and discarding fish wastes into the sea.

2.1 Environmental Impacts of the Alternatives

No biological or environmental changes will occur by adopting any of the alternatives for the separate issues. The issues and proposed alternatives all pertain to IFQ transfer and use privileges and would have no biological impact.

2.2 Impacts on Endangered, Threatened or Candidate Species Under the ESA

Species that are listed as threatened or endangered, or are candidates or proposed for listing under the Endangered Species Act (ESA), may be present in the BSAI and GOA. Additionally, nonlisted species, particularly seabirds, also occur in those areas and may be impacted by fishing operations. A list of species and a detailed discussion regarding life history and potential impacts on marine species can be found in the EA/RIR/IRFA for Amendments 31/35 (Block Program) (NPFMC 1994). Since these proposed changes strictly address IFQ transfer and use privilege, fishing activities under either of the alternatives would not be expected to cause any adverse effects.

2.2.1 Salmon

Listed species of salmon, including the Snake River sockeye salmon (*O. nerka*), fall chinook and spring/summer chinook salmon (both *Oncorhynchus tschawytscha*) may be present in the BSAI. These areas are believed to be outside the range of another listed species, the Sacramento River winter-run chinook salmon. A Biological Opinion conducted on effects of the groundfish fisheries concluded that groundfish fisheries are not likely to jeopardize the continued existence of endangered or threatened Snake River salmon species (NMFS 1994a). None of the alternatives for any of the actions comprised by this analysis is expected to adversely affect any listed salmon species.

2.2.2 Seabirds

Listed or candidate species of seabirds include the endangered short-tailed albatross (*Diomedea albatrus*), the threatened spectacled eider (*Somateria fischeri*), and the candidate (category 1) Steller's eider (*Polysticta stelleri*), or (category 2) marbled murrelet (*Brachyramphus marmoratus*), red-legged kittiwake (*Rissa brevirostris*) or Kittlitz's murrelet (*Brachyramphus brevirostris*). A formal consultation conducted by the U.S. Fish and Wildlife Service (USFWS) on the potential impacts of groundfish fisheries and subsequent informal consultation on impacts of 1994 groundfish fisheries on these species concluded that groundfish fisheries adversely affect, but do not jeopardize, the existence of the short-tailed albatross (USFWS 1989, 1994) if the incidental take allowance of up to two short-tailed albatrosses per year was not exceeded. The informal consultation also concluded that groundfish fisheries were not likely to adversely affect the spectacled eider, Steller's eider, or marbled murrelet. The USFWS did not comment on remaining candidate species at that time. None of the alternatives for any of the actions comprised by this analysis is expected to adversely affect any listed or candidate seabird species.

2.2.3 Marine Mammals

As with salmon and seabirds listed under the ESA, fishing activities under this proposed action are not likely to impact the threatened Steller sea lion (*Eumetopias jubatus*), in a manner, or to an extent, not previously considered in informal Section 7 consultations for 1994 groundfish fisheries (NMFS 1994b, c). The 10-nm annual trawl exclusion areas around Steller sea lion rookeries would be in place regardless of which alternative is chosen. These create refuges where no trawling can occur in areas important for sea lion breeding and foraging.

Other listed marine mammals include the endangered fin whale (*Balaenoptera physalus*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), and sperm whale (*Physeter catodon*). None of these species is anticipated to be adversely affected by these proposed changes because total harvests and overall fishing effort would not change. The impacts of marine mammals is further detailed in the EA/RIR/IRFA for Amendments 31/35 (Block Program) (NPFMC 1994).

2.3 Impacts on Marine Mammals not listed under the ESA

Marine mammals not listed under the ESA that may be present in the BSAI or GOA include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon* spp.)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*). A list of species and detailed discussion regarding life history and potential impacts of the 1995 groundfish fisheries of the BSAI and GOA on those species can be found in an EA conducted on the 1995 Total Allowable Catch Specifications for the GOA and BSAI (NMFS 1994a). None of the issues or alternatives proposed in this document is expected to adversely affect any listed or candidate marine mammals in a manner not already considered in previous consultations.

2.4 Coastal Zone Management Act

Each of the alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Zone Management Program within the meaning of Section 307(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Finding of No Significant Impact

None of the issues or alternatives is likely to significantly affect the quality of the human environment; preparation of an environmental impact statement for selection of any of the alternatives proposed would not be required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

3.0 REGULATORY IMPACT REVIEW

The Regulatory Impact Review (RIR) provides information about the economic and sociological impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs.

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

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

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

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

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

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

3.1 Action 1: Leasing of IFQ

3.1.1 Management Action Alternatives

Alternative 1: Status quo. Prohibit the leasing of IFQ derived from B, C, or D category QS.

Under Alternative 1 (status quo), no leasing of IFQ would be allowed in the IFQ Program. An IFQ holder would be required to fish all of his or her IFQ. Initial recipient QS holders, however, would still be allowed to hire skippers pursuant to the hired skipper provisions.

Alternative 2: Allow IFQ holders to lease up to ten percent of their total annual IFQ derived from category B, C, and D QS.

Option A: Allow leasing in all IFQ regulatory areas.
Option B: Allow leasing in the Bering Sea area only.

Alternative 2 would renew the leasing provision which expired on January 2, 1998, with the additional allowance that the ten percent be a percentage of a person's total IFQ holding across all regulatory areas. The opportunity to lease would provide additional flexibility in the use of IFQ and encourage full utilization of the total annual IFQ held by category B, C, and D QS holders. In the absence of a general leasing provision for QS holders, Option B would allow leasing in the Bering Sea regulatory area only, because of the prohibitive costs of conducting small harvest fishing trips in the Bering Sea.

Tables 1-3 summarize leasing activity in the IFQ Program under the ten-percent leasing provision in effect from the beginning of the program in March 1995 until November 15, 1998--the end of the program's third season and the leasing provision's three-year trial period established in the program's implementing regulations.

In the 1995 IFQ season--the first year of the program's implementation--seven QS holders leased portions of their IFQ holdings (either 10 percent or less) for a total of nine leases, representing 27,778 pounds of halibut IFQ and 11,604 pounds of sablefish IFQ. Five leases were of halibut IFQ in Area 3A: two in category B and three in category C. Two other leases of halibut IFQ were of category C shares in Area 2C and category B shares in Area 4B. Only two leases of sablefish IFQ--both of category B shares--occurred in the 1995: one in the SE and one in the WY regulatory areas.

In 1996, the number of QS holders who leased up to 10% of their IFQ increased to a total of 22, representing 41 leases and a total of 15,888 pounds of halibut IFQ and 13,426 pounds of sablefish IFQ. The leased halibut IFQs were divided between five regulatory areas, with four leases of category C IFQ occurring in Area 2C; ten leases of category B IFQ and five leases of category C IFQ in Area 3A; eight leases of category B IFQ in Area 3B; and eight leases of category B IFQ in Area 4A. Leases of sablefish IFQ occurred in only two areas, with 3 leases of category C IFQ in the Central Gulf and three leases of category C IFQ in the Southeast.

In 1997, sixteen QS holders were responsible for 21 leases totalling 60,581 pounds of halibut IFQ and 15,538 pounds of sablefish IFQ. The 21 leases were divided between three leases of category C halibut IFQ in Area 2C; five leases of category B and five leases of category C halibut IFQ in Area 3A; two leases of category B and two leases of category C halibut IFQ in Area 3B; the remaining four leases in 1997 were of Sablefish IFQs--one of category B sablefish IFQ in the Central Gulf, and two of category C and one of category B IFQ in the Southeast.

Overall, the incidence of leasing has remained fairly low. Fishermen may have used the ten percent leasing allowance in the latter end of the season as a way of utilizing small amounts of IFQ pounds which alone do not justify an additional fishing trip. On the other hand, due to the small amount of IFQ which could be leased, the costs involved in arranging a lease may also have been prohibitive, which may have contributed to the small number of leases during the first three years of the IFQ Program. The reasons for restricting leasing of IFQ--to discourage consolidation and promote an owner-operator fishery seem in little evidence from the data shown above. Of course, with a renewal of the IFQ leasing provision, the possiblity exists that many more QS holders could take advantage of the ability to lease ten percent of their annual IFQ. Moreover, the allowance that the ten-percent be a percentage of a person's total IFQ holdings across all areas would allow each IFQ holder to lease more IFQ for a given area than the former leasing provision, in which the ten-percent was a percentage of IFQ by specific area. For example, under the former leasing provision, a QS holder with sablefish IFQ of 5,000 lb in area 4A, 5,000 lb in Area 4B, and 5,000 in Area 4C would be allowed to lease 500 lb of his sablefish IFQ in each of the three areas. Under the proposed leasing provision, the same QS holder would be allowed to lease ten percent of his total IFQ holdings, or 1,500 lb, but in each of the given areas.

In principle, while promoting full utilization of the resource, leasing could also have the effect of causing prices to rise in the affected areas, creating "landlord/tenant" relationships between QS holders and fishermen, and diminishing stewardship incentives. The proposed alternative would create the possibility for QS holders to acquire strategic amounts of QS so that the 10% of their total IFQ would be in areas that they have no intention of fishing for themselves. For example, if a person holds a total of 20,000 lb of IFQ in three areas--9,000 lb of 2C halibut, 9,000 lb of 3A halibut, and 2,000 lb of 4A halibut--he or she would be allowed to lease 2,000 lb of IFQ annually. This would allow the QS holder to lease out all of his or her 4A halibut IFQ.

Table 4 exhibits a random selection of persons holding QS in multiple areas, the total amount of their IFQ for all areas, and ten percent of that total, which would be open to lease under Alternative 2. Comparison of the amount in the ten-percent column with the IFQ holdings by regulatory area will suggest the extent to which leasing may open a discrete area to For both sablefish and halibut QS holders, more than half would be able to lease out their total IFQ for one or more areas under the proposed alternative. Of the 35 randomly selected sablefish QS holders presented, 24 (or 68 %) would be able to lease out the total amount of their IFQ for one or more areas. Of the 56 randomly selected halibut QS holders, 31 (or 55 %) would be able to lease out all of their IFQ for one or more regulatory areas.

While increased opportunity to lease IFQ would promote the fuller utilization of the Area 4A fixed gear halibut allocation, it would also effectively circumvent, in some areas more so than in others, the IFQ Program's owner-onboard provisions. A market may develop to obtain these small amounts of IFQ being leased and, within the seasonal vessel caps, stack amounts of leased IFQ on vessels specializing in harvesting fish from certain areas such as the Bering Sea. Consequently, the market for QS would decrease in the affected areas, resulting in an increased market price for QS and inhibiting new entrants into the IFQ

fisheries. These were some of the concerns the Council originally sought to address by limiting the ability to lease IFQ.

3.1.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

All persons holding B, C, or D category QS would be affected by the alternative to the status quo. Most vessels harvesting IFQ species under B, C, and D QS meet the definition of a small entity under the RFA. A maximum 6,640 halibut fishermen who received halibut QS in categories B, C, and D and a maximum of 1,974 sablefish fishermen who received sablefish QS in categories B and C may potentially be affected by alternative 2, option A by being allowed to lease out then percent of their total IFQ by area and species. The impact of alternative 2, option B would be restricted to persons holding B, C, and D category QS for the Bering Sea regulatory areas. This would comprise approximately ____ QS holders. Quantitative identification of winners and losers under this alternative is not possible because of a lack of information as to the intentions of specific individuals. Nonetheless, the following table identifies qualitatively those potentially impacted by implementation of Alternative 2.

Who May Win	Why
QS holders who wish to lease.	Leasing of ten percent of IFQ, currently prohibited for B, C, and D IFQ, would be allowed.
QS holders who possess or acquire small amounts of QS (equal to ten percent of their overall IFQ by species) for areas in which they do not fish.	The QS will become more valuable by virtue of the ability to lease the total resulting IFQ. The resulting IFQ need not be fished by the QS holder.
Vessel owners specializing in fishing certain areas for which a number of small amounts of leased IFQ are available to consolidate seasonally.	QS holders will be leasing more IFQ.

Who May Lose	Why
Qualified crewmembers who wish to enter the IFQ fisheries by purchasing QS.	Because less QS will be available to receive by transfer, the price of QS will increase.

3.1.3 Administrative, Enforcement, and Information Costs

No additional enforcement and information costs would be imposed by either option under proposed alternative 2. Such costs as might be incurred by a ten-percent leasing provision were provided for under the IFQ implementing regulations and have been extant for the past three years of the IFQ Program.

However, additional administrative costs would be incurred by the increased leasing which would likely occur under Alternative 2. Administration of the proposed 10% aggregate leasing provision would require significant adjustments in the management systems developed by NMFS/RAM to administer the IFQ Program. Leasing transactions would possibly not be allowed to occur during the IFQ season, as in-season transactions either to lease IFQ or to obtain more QS/IFQand then transfer 10% of the newly aggregated total IFQ would require recalibration of the IFQ computer program that is used to monitor IFQ allocations and transfers. Also, accounting for post-season overages and underages and attributing them to the appropriate QS holder the following season would be greatly complicated by a liberalized leasing provision. For instance, if a fisherman fishes some of his or her own IFQ and additional IFQ acquired by leases from several sources, sorting out any overage/underage allocations to the appropriate QS holders would require computer capabilities presently beyond the scope of the RAM IFQ computer data system.

3.2 Action 2: Indirect Vessel Ownership

3.2.1 Management Action Alternatives

Alternative 1: Status quo: require that the QS holder wishing to hire a skipper be the named owner of the vessel.

Under Alternative 1, the language of the FMPs and implementing regulations regarding vessel ownership for purposes of the IFQ hired skipper provisions would be interpreted literally, and NMFS policy adjusted appropriately to require that the QS holder wishing to hire a skipper be the named owner of the vessel on USCG vessel documentation required by NMFS/RAM in application for a hired skipper card. An individual QS holder would not be allowed to hire a skipper to fish on a vessel owned by a corporation or partnership in which the individual is a shareholder or partner. Likewise, a corporation or partnership holding QS would not be allowed to hire a skipper to fish the collectively held IFQ on a vessel owned by an individual who was a shareholder or partner in the corporation or partnership.

Alternative 2: Revise FMP language and appropriate regulations to allow QS holders wishing to hire skippers to establish indirect vessel ownership through corporate ties.

Alternative 2 would liberalize the vessel ownership requirements of the IFQ hired skipper provisions to allow individual QS holders to hire skippers to fish their individually held IFQ on vessels owned by corporation or partnerships in which the individual QS holder is a shareholder or partner. Likewise, corporations and partnerhsips holding QS would be allowed to hire skippers to fish the collectively held IFQ on vessels owned by individuals who are shareholders or partners in the collective entity holding the QS.

Other business relationships would also be included by this alternative in the liberalization of vessel ownership requirements. Corporations or partnerships holding QS would be allowed to hire skippers to fish the collectively held IFQ on vessels owned by other corporations by virtue of a common individual shareholder in both corporations. For example, Corporation A holds an initial allocation of B category QS and wishes to hire a skipper to fish its IFQ. Corporation A, however, does not own a vessel. Fisherman John Doe is a shareholder in Corporation A. He is also a shareholder in Corporation B, which owns a vessel. Alternative 2 would allow Corporation A to fish its collectively held IFQ on the vessel owned by Corporation B, because of Corporation A's association to Corporation B through fisherman John Doe who is a shareholder in both corporations.

Table 5 summarizes the IFQ pounds derived from B, C, or D category QS that were landed by hired skippers on vessels owned by persons other than the QS holder employing the hired skipper over the three years of the IFQ Program implementation.

3.2.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

This action would affect all corporations or partnerships or other collective entities holding B, C, or D category QS and all individuals holding such QS who are also members of corporation or partnership. NMFS/RAM records 241 such collective entities holding QS: 189 corporations and 52 partnerships. All 241 would be affected by the proposed alternative B. Individuals holding QS who are also shareholders or partners in corporations or partnerships would also be affected by alternative 2, because they would be allowed to hire skippers to fish their IFQ on vessels owned by the collective entity. However, data on the number of individual QS holders who are also shareholders or partners in collective entities which own fishing vessels is not available.

In the past three years of the IFQ Program, NMFS/Restricted Access Management Division (RAM) estimates that instances where corporation association to a vessel owner has been allowed to substitute for the QS holder's vessel ownership amount to fewer than 25% of the approved applications for hired skipper cards. Since the inception of the IFQ Program in 1995, RAM has recorded 68 instances of such practices. "Corporate association" comprises a variety of relationships between QS holder and vessel owner. An individual QS holder may hire a skipper to fish his IFQ on a vessel owned by a corporation in which he is a shareholder; an individual QS holder who is also a shareholder in a corporation may hire a skipper to fish his IFQ on a vessel owned by another individual in that same corporation; a corporate QS holder may hire a skipper to fish the corporation-held QS on a vessel owned by a shareholder in the corporation or by another corporation in which the corporation holding the QS holds an interest.

The number and types of indirect vessel ownership within the 68 instances of indirect ownership are as follows:

- 15 QS holders were individuals who employed hired skippers on vessels owned by a corporation or partnership;
- 10 were corporations or partnerships whose vessel was owned by an individual;
- 11 were non-individuals whose vessels were owned by other non-individuals;
- 6 were individuals whose vessels were owned by multiple "persons," i.e., a variety of individual and collective owners;
- 18 were non-individuals whose vessels were owned by multiple "persons";
- 3 were estates whose vessels were owned by the estate representative;
- 1 was an estate whose vessel was owned by a corporation;
- 1 QS holder received QS as a surviving spouse; vessel owned by deceased spouse;
- 3 QS holders had an unknown ownership link to vessel.

Table 5 exhibits the amount of IFQ pounds landed by QS holders of B, C, or D category QS who employed hired skippers on vessels owned by other persons to whom the QS holders had corporate ties.

3.2.3 Administrative, Enforcement, and Information Costs

No additional administrative, enforcement, or information costs would be incurred under either alternative or option.

3.3. Action 3: Revise definition of "a change in the corporation or partnership."

3.3.1 Management Action Alternatives

Alternative 1: Status quo. No revision would be made to the definition of "a change in the corporation or partnership" currently in the FMPs and IFQ implementing regulations.

Corporations which do not maintain their legitimate status as a corporation but continue to receive annual allocations of IFQ derived from QS held by the collective entity will not technically be in violation of the regulations, because a "change" in the corporation is narrowly defined as "the addition of a shareholder or partner."

Alternative 2: Revise the definition of "a change in the corporation or partnership" to include "a dissolution" of the corporation or partnership. Collective entities holding QS would be required to maintain the collective's legitimate status as a corporation or partnership under laws applicable to such collective entities in order to hold QS and receive annual allocations of IFQ in compliance with the IFQ implementing regulations.

NMFS needs to track the status of corporations and partnerships holding QS more closely, in order to provide that QS held by such collective entities transfer to qualified individuals upon a change in the status of the corporation or partnership and to prevent the consolidation of QS among corporations and partnerships. By adding "dissolution of the corporation or partnership" to the definition of a change in the corporation or partnership, which requires the consequent transfer of QS to qualified individuals, NMFS will be able to ensure more effectively that corporations not hold QS or IFQ in violation of the intent of the IFQ Program to promote an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

3.3.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

NMFS/RAM records a total of 241 collective entities holding QS: 189 corporations and 52 partnerships. All 241 would be affected by the proposed Alternative 2 by being required by regulation to maintain the legitimate status of the corporation or partnership as such to continue holding QS which generates annual IFQ. Quantitative identification of winners and losers under this alternative is not possible because of a lack of information as to the intentions of specific individuals and collective entities holding QS.

3.3.3 Administrative, Enforcement, and Information Costs

No additional administrative, enforcement, or information costs would be expected under the proposed alternative to the status quo.

3.4 Action 4: Revise sablefish use limits

3.4.1 Management Action Alternatives

Alternative 1. Status quo.

Alternative 1 would result in no action to standardize the calculation of use caps for the fixed gear halibut and sablefish fisheries. Under this alternative, use caps will continue to be calculated as a percentage of the

combined total sablefish QS for: (1)the GOA and BSAI IFQ regulatory areas; and (2) east of 140° W. longitude (Southeast Alaska).

Alternative 2. Revise the methodology of calculating use caps for fixed gear sablefish from percent to QS units based on 1996 QS units.

Alternative 2 would revise the sablefish use limits for consistency with the halibut use limits which were revised by regulatory amendment in 1996 to read in specific QS units rather than a percentage of the QS pool.

One important feature of the IFQ Program is a limitation of the amount of quota shares (QS) an individual may control, also known as a "use cap." The use cap was created to address concerns that an unrestricted market for QS could result in a few powerful interests controlling most of the landings and result in excessive decreases in the number of vessels and fishermen participating in the fixed gear halibut fishery. While QS holders are allowed to harvest the QS received from an initial issuance, the one-percent cap limits consolidation among QS holders who were not initial issuees to no fewer than 100 participants in either: (1) Areas 2C through 4E; or (2) Area 2C alone. A more detailed description of the management goals of the use cap, the Council action that recommended revising the halibut cap in the Bering Sea, and the conversion from percent to halibut QS units can be found in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Increase Halibut QS Use Caps in the Bering Sea/Aleutian Islands (NPFMC 1996).

Current regulations restrict sablefish use, such that:

(1) No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

In June 1996, the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use caps from 1/2 percent to the QS equivalents of 1 1/2 percent based on 1996 QS pool. This amendment was approved for the 1997 IFQ season. Current regulations specify that unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(1) IFQ regulatory area 2C. 599,799 units of halibut QS.

(2) IFQ Regulatory areas 2C, 3A, and 3B. 1,502,823 units of halibut QS.

(3) IFQ Regulatory areas 4A, 4B, 4C, 4D, and 4E. 495,044 units of halibut QS.

This plan amendment proposes to revise the sablefish use caps such that the caps will be calculated in QS units based on the 1996 QS pool. This change will standardize the application of use caps for both halibut and sablefish fisheries.

Alternative 2 would standardize the methodology recommended by the Council in 1996 and implemented by NMFS for the 1997 IFQ season for halibut of calculating use caps in QS units. Note that this alternative would not adjust the amount of QS that an individual could use. It simply proposes to revise the regulations to express those caps in a stable number of QS units, instead of a percentage. Using the proposed method, sablefish use caps would be:

(1) IFQ Regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E. 3,229,721 units of sablefish QS.

(2) IFQ regulatory area 2C. 688,485 units of sablefish QS.

3.4.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

This proposed action would affect all QS holders holding sablefish QS. At the end of the 1997 IFQ season, 1,029 persons held sablefish QS. Alternative 2 would benefit all 1,029 sablefish QS holders by establishing the use limit as a stable number of QS units that will enable a QS holder to determine more accurately his or her QS holdings' proximity to the limit.

3.4.3 Administrative, Enforcement, and Information Costs

No additional administrative, enforcement, or information costs would be incurred under either alternative or option.

4.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

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

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

(1) description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and

(2) analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork, or record keeping requirements, effect on the competitive position of small entities, effect on the small entity's cash flow and liquidity, and ability of small entities to remain in the market.

4.1 Action 1: Leasing of IFQ. Economic Impact on Small Entities

Every holder of IFQ derived from B, C, or D category QS would be affected by the alternative to the status quo. Most vessels harvesting IFQ species under B, C, and D QS meet the definition of a small entity under the RFA. A maximum 6,640 halibut fishermen who received QS in categories B, C, and D and a maximum of 1,974 sablefish fishermen who received QS in categories B and C may potentially be affected by alternative 2, option A by being allowed to lease out then percent of their total IFQ by area and species. The impact of alternative 2, option B would be restricted to B, C, and D category QS holders operating in the Bering Sea regulatory areas. This would comprise approximately _____ QS holders. This action would affect the way in which QS holders would be able to use ten percent of their IFQ. However, this action would not further restrict the use of IFQ but afford fishermen an additional option for conducting their fishing businesses. These impacts do not appear to be significant within the meaning of the Act. They are not likely to lead to a reduction in the gross revenues received by the small business sector of the fleet.

4.2 Action 2: Indirect Vessel Ownership. Economic Impact on Small Entities.

This action would affect all corporations or partnerships or other collective entities holding B, C, or D category QS and all individuals holding such QS who are also members of corporation or partnership. NMFS/RAM records 241 such collective entities holding QS: 189 corporations and 52 partnerships. All 241 would be affected by the proposed alternative B. Individuals holding QS who are also shareholders or

partners in corporations or partnerships would also be affected by alternative 2, because they would be allowed to hire skippers to fish their IFQ on vessels owned by the collective entity. However, data on the number of individual QS holders who are also shareholders or partners in collective entities which own fishing vessels is not available. Approximately 5,000 QS holders, both individuals and collective entities, hold initial allocations of QS and are therefore eligible to employ hired skippers to fish their IFQ and would potentially be affected by the proposed alternative.

In the past three years of the IFQ Program, NMFS/Restricted Access Management Division (RAM) estimates that instances where corporation association to a vessel owner has been allowed to substitute for the QS holder's vessel ownership amount to fewer than 25% of the approved applications for hired skipper cards. Since the inception of the IFQ Program in 1995, RAM has recorded 68 instances of such practices. "Corporate association" comprises a variety of relationships between QS holder and vessel owner. An individual QS holder may hire a skipper to fish his IFQ on a vessel owned by a corporation in which he is a shareholder; an individual QS holder who is also a shareholder in a corporation may hire a skipper to fish his IFQ on a vessel owned by another individual in that same corporation; a corporate QS holder may hire a skipper to fish the corporation-held QS on a vessel owned by a shareholder in the corporation or by another corporation in which the corporation holding the QS holds an interest.

Because the proposed Alternative 2 would simply revise the plan language and regulations to provide for NMFS policy over the past three years of the IFQ Program, Alternative 2 would not have any impact on IFQ fishermen different from how they have operated under the program since its implementation. The proposed Alternative 1, however, would require that NMFS policy be adjusted to comport with the literal language of the FMPs and, hence, require QS holders who do not own vessels to acquire ownership of a vessel in order to hire skippers. Vessel ownership, however, was itself a requirement intended by and provided for in the IFQ implementing regulations. Therefore, neither of these alternatives would have an impact on QS holders different from those expected under the IFQ Program's implementing regulations. These impacts do not appear to be significant within the meaning of the Act. They are not likely to lead to a reduction in the gross revenues received by the small business sector of the fleet.

4.3 Action 3: Revise definition of "a change in the corporation or partnership." Economic Impact on Small Entities.

NMFS/RAM records a total of 241 collective entities holding QS: 189 corporations and 52 partnerships. All 241 would be affected by the proposed Alternative 2 by being required by regulation to maintain the legitimate status of the corporation or partnership as such to continue holding QS which generates annual IFQ. The alternatives would, however, have no economic impact on those corporations and partnership not already intended by the IFQ Program. This action would simply close a loophole in the regulations that has the potential to allow corporations holding QS to be issued annual IFQ derived from the QS even though the corporation has been dissolved. The impacts of the alternatives, therefore, do not appear to be significant within the meaning of the Act. They are not likely to lead to a reduction in the gross revenues received by the small business sector of the fleet.

4.4 Action 4: Revise sablefish use limits. Economic Impact on Small Entities.

This proposed action would affect all QS holders holding sablefish QS. At the end of the 1997 IFQ season, 1,029 persons held sablefish QS. Alternative 2 would have an impact on all 1,029 sablefish QS holders by

establishing the use limit as a stable number of QS units that will enable a QS holder to determine more accurately his or her QS holdings' proximity to the limit. However, since this impact would be positive by providing a means by which QS holders may more accurately and economically manage their QS holdings, the impacts of the proposed Alternative 2 do not appear to be significant within the meaning of the Act. They are not likely to lead to a reduction in the gross revenues received by the small business sector of the fleet.

5.0 LITERATURE CITED

NRC (National Research Council), The Bering Sea Ecosystem, Washington DC, 1996.

6.0 LIST OF AGENCIES AND INDIVIDUALS CONSULTED

Tracy Buck
NMFS RAM Division
P.O. Box 21668
Juneau, Alaska 99802-1668

7.0 LIST OF PREPARERS

Jane DiCosimo
North Pacific Fishery Management Council
605 W. 4th Avenue
Anchorage, Alaska 99501

James Hale
Sustainable Fisheries Division
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

Table 1. **IFQ Leasing in 1995***

# of Quota Share Holders	# of IFQ Transfers		Area	Vessel Category	Total 1995 IFQ Pounds
7	9	1	2C	C	542
		2	3A	B	10,446
		3	3A	C	6,977
		1	4B	B	9,813
		1	SE	B	1,647
		1	WY	B	9,957

*Data does not include transfers of IFQ by surviving spouses.

67% of the total number of transfers (6) were for the full 10% of individual holdings by species, area and vessel category

33% of the total number of transfers (3) were for less than 10% of individual holdings by species, area and vessel category

Table 2. Leasing in 1996

1996

# of Quota Share Holders	# of IFQ Transfers		Area	Vessel Category	Total 1996 IFQ Pounds
22	41	4	2C	C	7,084
		10	3A	B	2,908
		5	3A	C	5,183
		8	3B	B	444
		8	4A	B	269
		3	CG	C	5,071
		3	SE	C	8,355

Above data does not include transfers of IFQ only by Surviving Spouses.

85% of the total number of transfers (35) were for the full 10% of individual holdings by species, area and vessel category

15% of the total number of transfers (6) were for less than 10% of individual holdings by species, area and vessel category

Table 3. Leasing in 1997

1997

# of Quota Share Holders	# of IFQ Transfers		Area	Vessel Category	Total 1997 IFQ Pounds
16	21	3	2C	C	3,078
		5	3A	B	16,201
		5	3A	C	25,646
		2	3B	B	7,275
		2	3B	C	8,381
		1	CG	B	7,355
		2	SE	C	6,683
		1	SE	B	1,500

Above data does not include transfers of IFQ only by Surviving Spouses.

86% of the total number of transfers (18) were for the full 10% of individual holdings by species, area and vessel category

14% of the total number of transfers (3) were for less than 10% of individual holdings by species, area and vessel category

Table 4

Species/Area	QS Units	1997 IFQ	Sum of 1997 IFQ	10% of Sum of 1997 IFQ
710 AI	28,776	1,664		
710 BS	4,292	264		
710 CG	446,958	44,875		
710 SE	1,607	187		
710 WG	24803	2,234		
710 WY	1,318	119	49,343	4,934
710 CG	725	73		
710 SE	173054	20,175		
			20,248	2,025
710 AI	90,927	5,257		
710 BS	90,212	5,559		
710 CG	13406	1346		
710 SE	8191	955		
710 WG	90,121	8117		
710 WY	6714	605		
			10,816	1,082
710 AI	552	32		
710 BS	75061	4,626		
710 CG	85293	8,563		
710 WG	186608	16,807	30,028	3,003
710 SE	101288	11,809		
710 WY	52810	4,758		
			16,567	1,657
710 BS	43016	2,651		
710 WG	947	85		
710 WY	1431	129		
			2,865	287
710 AI	240326	13,896		
710 BS	246278	15,177		
710 CG	180859	18,158		
710 WG	929575	83,724		
710 WY	71299	6,423		
			137,378	13,738
710 AI	43249	2,501		
710 BS	825	51		
710 CG	431216	43,294		
710 SE	292,025	34,046		
710 WG	1186	107		
710 WY	49760	4,483		
			84,482	8,448
710 CG	270468	27,155		
710 WG	98003	8,827		
710 WY	218462	19,681		
			55,663	5,566

710 AI	115934	6,703		
710 BS	392059	24,161		
710 CG	27961	2,807		
710 WG	170326	15,341		
710 WY	99702	8,982		
			57,994	5,799
710 AI	15917	920		
710 BS	42505	2,619		
710 CG	586359	58,871		
710 SE	20094	2,343		
710 WG	113962	10,264		
710 WY	117360	10,573		
			75,017	7,502
710 BS	2414	149		
710 CG	104520	10,494		
710 SE	98	11		
710 WG	535			
710 WY	5810	523		
			11,177	1,118
710 BS	3527	217		
710 CG	234	23		
710 SE	143	17		
710 WG	787			
710 WY	117	11		
			268	27
710 AI	115356	6,670		
710 BS	54571	3,363		
710 CG	668023	67,070		
710 SE	5745	670		
710 WG	230140	20,728		
710 WY	421974	38,015		
			136,516	13,652
710 AI	2927	169		
710 BS	277824	17,121		
			17,290	1,729
710 SE	31860	3,714		
710 WY	55208	4,974		
			3,714	371
710 CG	3625	364		
710 WY	36222	3,263		
			3,627	363
710 SE	179151	20,886		
710 WY	11441	1,031		
			21,917	2,192
710 SE	60276	7,027		
710 CG	490	49		
			7,076	708
710 CG	38337	3,849		
710 SE	102807	11,986		

710 WY	19070	1,718		
			17,553	1,755
710 CG	11921	1,197		
710 WY	2987	269		
			1,466	147
710 CG	185075	18,582		
710 SE	143580	16,739		
710 WY	145309	13,091		
			48,412	4,841
710 CG	5124	514		
710 SE	121729	14,192		
710 WY	362	33		
			14,739	1,474
710 BS	90416	5,572		
710 CG	964619	96,848		
710 AI	4390	254		
710 BS	50316	3,101		
710 SE	739		105,775	10,578
710 CG	220436	22,132		
710 SE	277438	32,345		
			54,477	5,448
710 CG	368879	37,036		
710 SE	200500	23,375		
710 WG	346121	31,174		
710 WY	389210	35,064		
			126,649	12,665
710 CG	596704	59,905		
710 SE	700175	81,630		
710 WY	232845	20,977		
			162,512	16,251
710 AI	3153296	182,324		
710 BS	844297	52,031		
710 CG	1013361	101,742		
710 SE	191327	22,306		
710 WG	692671	62,387		
710 WY	156827	14,128		
			434,918	43,492
710 AI	338045	19,546		
710 BS	616808	38,011		
710 CG	1394804	140,039		
710 SE	89704	10,458		
710 WG	364465	32,826		
710 WY	221087	19,918		
			260,798	26,080
710 CG	85532	8,587		
710 WG	84646	7,624		
			16,211	1,621
710 BS	1043	64		

710 WG	4649	419		
			483	48
710 AI	23264	1,345		
710 BS	48536	2,991		
710 CG	101488	101,089		
710 WG	8716	785		
710 WY	20200	1,820		
			106,210	10,621
710 CG	16549	1,662		
710 WY	11262	1,015		
710 BS	54944	3,386		
710 SE	118577	13,824		
710 WY	272897	24,585		
			41,795	4,180
710 AI	35375	2,045		
710 CG	112532	11,298		
710 SE	1762	205		
710 WY	443014	39,911		
			53,459	5,346
200 3A	733571	103,139		
200 3B	207473	42,339		
200 4A	120429	29,063		
			174,541	17,454
200 2C	23912	4,215		
200 3A	17614	2,476		
			6,691	669
200 2C	106531	18,783		
200 3A	42410	5,963		
			24,746	2,475
200 2C	427	75		
200 3A	1318	185		
200 3B	385	79		
200 4A	102	25		
200 4E	459	0		
			364	36
200 2C	7594	1,339		
200 3A	32267	4,537		
200 2C	12143	2,141		
200 3A	53370	7,504		
			15,521	1,552
200 3A	116283	16,349		
200 2C	61291	10,807		
200 3A	139394	19,599		
200 2C	1509	266		
200 3A	54230	7,625		
200 3B	163850	33,437		
200 4A	3622	874		
200 4D	28841	6,592		

			95,549	9,555
200 2C	5082	896		
200 3A	13840	1,946		
			2,842	284
200 3A	11095	1,560		
200 3B	50542	10,314		
200 4A	24008	5,794		
200 4B	96207	29,013		
200 4C	3743	750		
			46,681	4,668
200 4A	24636	5,945		
200 4D	8748	2,000		
			7,945	795
200 2C	38805	6,842		
200 3A	34600	4,865		
			11,707	1,171
200 2C	168705	29,746		
200 3A	572957	80,557		
200 3B	34130	6,965		
200 4A	104696	25,266		
200 4B	26038	7,852		
200 4C	200868	40,232		
200 4D	194774	44,521		
			235,139	23,514
200 2C	239028	42,145		
200 3A	71461	10,047		
			52,192	5,219
200 3A	33563	4,719		
200 3B	4401	898		
			5,617	562
200 2C	50493	8,903		
200 3A	383369	53,901		
200 3B	126613	25,838		
200 4A	78648	18,980		
200 4C	234025	46,874		
200 3A	383747	53,954		
200 3B	243182	49,626		
200 4A	244724	59,059		
200 4B	283356	85,451		
			402,586	40,259
200 3A	170489	23,970		
200 3B	167073	34,094		
200 4A	94036	22,694		
200 4B	53419	16,110		
200 4C	62222	12,463		
			109,331	10,933
200 3A	132142	18,579		
200 3B	175632	35,841		
200 4A	111650	26,944		

200 3A	403894	56,787		
200 3B	5713	1,166		
			139,317	13,932
200 3A	375135	52,743		
200 3B	109448	22,335		
			22,335	2,234
200 2C	225	40		
200 3A	105449	14,826		
200 3B	234892	47,934		
200 4B	4191	1,264		
			64,064	6,406
200 3A	188969	26,569		
200 3B	4738	967		
			27,536	2,754
200 3A	293264	41,233		
200 3B	38323	7,820		
200 4A	19284	4,654		
			53,707	5,371
200 3A	57000	8,014		
200 3B	4282	874		
			8,888	889
200 3A	41372	5,817		
200 3B	28417	5,799		
			11,616	1,162
200 2C	51	9		
200 3A	158	22		
200 3B	46	9		
200 4A	12	3		
200 4B	953	287		
			330	33
200 3A	428626	60,264		
200 3B	13899	2,836		
200 3A	138125	19,420		
200 3B	3263	666		
			83,186	8,319
200 3A	169671	23,855		
200 3B	37338	7,619		
			31,474	3,147
200 2C	72334	12,754		
200 3A	259	36		
			12,790	1,279
200 2C	85	15		
200 3A	261	37		
200 3B	76	16		
200 4A	20	5		
200 4E	91	0		
			73	7
200 2C	100479	17,716		

200 3A	36662	5,155		
200 2C	41549	7,326		
200 3A	27124	3,814		
			34,011	3,401
200 3A	62466	8,783		
200 3B	19180	3,914		
			12,697	1,270
200 3A	589918	82,942		
200 3B	229628	46,860		
200 4C	23170	4,641		
			134,443	13,444
200 3A	73632	10,353		
200 3B	2050	418		
			10,771	1,077
200 3A	422477	59,399		
200 3B	250234	51,065		
200 4A	198124	47,813		
200 4B	49690	14,985		
200 4C	78622	15,747		
			189,009	18,901
200 4A	703	170		
200 4D	56077	12,818		
			12,988	1,299
200 3B	54558	11,134		
200 4A	44489	10,737		
			21,871	2,187
200 2C	2257	398		
200 3A	6968	980		
200 3B	2036	415		
200 4A	541	131		
200 4E	24270		1,924	192
200 2C	31039	5,473		
200 3A	78311	11,010		
			16,483	1,648
200 2C	933	165		
200 3A	2880	405		
200 3B	842	172		
200 4A	223	54		
200 4E	1003	0		

Table 4

				796	80
	200 2C	29596	5,218		
	200 3A	217593	30,593		
				35,811	3,581
	200 2C	15880	2,800		
	200 3A	3181	447		
				3,247	325
	200 3A	165409	23,256		
	200 3B	25289	5,161		
				28,417	2,842
	200 2C	15017	2,648		
	200 3A	500999	70,439		
	200 3B	205883	42,014		
	200 4A	97722	23,583		
				138,684	13,868
	200 3A	75509	10,616		
	200 3B	14312	2,921		
				13,537	1,354
	200 2C	26380	4,651		
	200 3A	153139	21,531		
				26,182	2,618
	200 2C	169598	29,903		
	200 3A	303644	42,692		
				72,595	7,260
	200 2C	91	16		
	200 3A	281	40		
	200 3B	82	17		
	200 4A	22	5		
	200 4E	98	0		
				78	8
200 2C	18098		3,191		
	200 3A	987	139		
				3,330	333
	200 3A	545	77		
	200 3B	2726	556		
				633	63
	200 2C	1693	299		
	200 3A	135856	19,101		
	200 3B	64489	13,160		
	200 4A	6639	1,602		
	200 4B	31563	9,518		
				43,680	4,368
	200 2C	8001	1,411		
	200 3A	55114	7,749		
				9,160	916
	200 2C	139842	24,567		
	200 3A	1815	255		
				24,822	2,482
	200 2C	48784	8,602		

	200 3A	3490	491		
				9,093	909
	200 2C	135	24		
	200 3A	416	58		
	200 3B	122	25		
	200 4A	32	8		
	200 4E	145	0		
				115	12
	200 2C	98142	17,304		
	200 3A	190071	26,723		
				44,027	4,403
	200 3A	327583	46,058		
200 3B	195309	195,309	39,856		
	200 4B	231794	69,902		
	200 4D	65254	14,916		
				170,732	17,073
	200 3A	183557	25,808		
	200 3B	98833	20,169		
	200 4A	47903	11,560		
				57,537	5,754
	200 3A	45405	6,384		
	200 3B	1752	358		
				6,742	674
	200 2C	132,770	23,410		
	200 3A	4521	636		
				24,046	2,405
	200 3A	162532	22,852		
	200 3B	16308	3,328		
	200 4B	32732	9,871		
	200 4E	8168	0		
				36,051	3,605
	200 2C	11256	1,985		
	200 3A	80551	11,325		
				13,310	1,331
	200 2C	53289	9,396		
	200 3A	34946	4,913		
				14,309	1,431
	200 4A	423	102		
	200 4B	32962	9,940		
				10,042	1,004
	200 2C	108661	19,159		
	200 3A	40306	5,667		
				24,826	2,483

Table 5: Mis-titled

Summary of Catcher Vessel IFQ Landed by Hired Skippers for QS holders on Vessels Owned by Other Persons

IFQ Regulatory Area	1995	1996	1997
2C	19,140	47,304	76,995
3A	4,009,048	4,639,301	7,741,741
3B	1,155,775	1,123,682	5,669,970
4A	1,070,445	1,228,010	2,874,214
4B	222,336	567,968	2,228,675
4C	0	76,394	163,612
4D	56,132	125,053	271,609
AI	137,800	228,410	234,933
BS	265,406	153,904	89,520
CG	1,286,873	4,346,247	3,832,210
SE	300,418	387,587	198,565
WG	562,372	792,452	630,224
WY	362,626	1,615,854	1,646,986
Totals	9,448,371	15,332,166	25,659,254

69 "Persons" who received catcher vessel QS by initial issuance hired skippers to fish their Individual Fishing Quota (IFQ) on a vessel or vessels that they did not directly own. The table above is a summary of the total IFQ pounds landed by the hired skippers employed by those 69 "persons" by year and by area.

NMFS/RAM stores only end-of-year data with regard to annual IFQ Permits. Therefore, we are unable to provide information regarding the total amount of catcher vessel IFQ held by these QS holders in relation to the amount of IFQ that was fished by hired skippers.

With regard to the type of indirect vessel ownership:

- 15 of these 69 QS holders were individuals whose vessel was owned by a non-individual
- 10 of these 69 QS holders were non-individuals whose vessel was owned by an individual
- 11 of these 69 QS holders were non-individuals whose vessels were owned by other non-individuals
- 6 of these QS holders were individuals whose vessels were owned by multiple "persons"
- 18 of these QS holders were non-individuals whose vessels were owned by multiple "persons"
- 3 QS holders were estates whose vessels were owned by the estate representative
- 1 QS holders was an estate whose vessel was owned by a corporation
- 1 QS holder who received QS as a surving spouse; vessel owned by deceased spouse
- 3 QS holders had an unknown ownership link to vessel

Alaska Longline Fishermen's Assoc.
P.O. Box 1229 Sitka, AK 99835 (907) 747-3400

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

April 12, 1998

Dear Chairman Lauber,

On behalf of the Alaska Longline Fishermen's Association (ALFA), I would like to submit the following comments on Agenda item C-8, Halibut and Sablefish IFQ Amendments.

ALFA continues to oppose all amendments that expand or extend the leasing provision specified in the initial IFQ program. ALFA maintains that both the resource and the industry are best served by an owner operated fleet, and that any amount of leasing compromises the goals and fundamental premises of the IFQ program.

Regulations that expired with the close of the 1997 season allowed quota share holders to lease 10% of their holdings by area; existing regulations prohibit leasing. In April the Council will review an amendment that proposes to allow quota share holders to lease 10% of their **total** quota share holdings. If approved by the Council, this amendment will erode the creditability and viability of the entire IFQ program. ALFA members believe that the Council should not proceed with this amendment. Our reasons are outlined below.

<u>Stewardship</u>
One of the persuasive arguments for moving to a quota share program was the promotion of stewardship. Proponents of the program argued that fishermen holding shares would exhibit a more long-term perspective on resource health, setting and retrieving gear carefully to avoid loss, minimizing injury to undersized fish, etc.. The same arguments were made in defense of allowing crucifiers back on halibut boats: fishermen with shares would take care of undersized fish. ALFA believes these arguments are as credible today as they were four years ago when the debate raged. However, members do not believe the same arguments can be made for fishermen leasing shares. Rental property, be it a car, house, apartment, or vessel is seldom cared for with the same long-term perspective by the renter or lessee as it would be by the property's owner. Anecdotal information suggests that the same holds true for IFQ holders. In this unobserved fleet, stewardship depends on the quota share holder being present aboard the vessel, fully accountable for and vested in the long-term health of the resource.

Providing an entry level

Implementation of the quota share system substantially raised the cost of entry to the halibut and sablefish fisheries. New entrants and fishermen wishing to increase their quota share holdings pay ten or more dollars per pound for the right to catch either species. Quota share sellers have had the upper hand in the market for the past three years, and, while this year's lower ex-vessel prices have softened the quota share market slightly, ALFA members believe the demand for shares will continue to exceed the availability in the future. Allowing quota share holders who no longer wish to fish to stay ashore while their shares are harvested impedes sales and raises the cost of entry. Deckhands, and initial recipients who received less than viable amounts to support their fishing operations, pay the price while retirees draw the rents from the resource. Not only is the cost of entry higher, but deckhands working on a vessel harvesting leased shares receive a smaller percentage of the gross, since the quota holder's percentage is deducted before the crew is paid. In sum, leasing makes the cost of entry prohibitive to crewmen and recipients of small initial allocations.

Equity

Through out development of the quota share program, fishermen repeatedly stated that they were not looking for windfalls, just a management system that allowed them to prosecute the fisheries in a safe, rational manner. IFQs are a fishing privilege--and a windfall to initial recipients. The halibut and sablefish fisheries are now safe and rational. The shares are also extremely valuable. ALFA members maintain that with this privilege comes certain responsibilities to current and future fishermen. These responsibilities include resource stewardship and maintaining an entry level for those wishing to buy in. Staying ashore, drawing resource rents of up to 80% of the gross while true fishermen take the risks and make the daily decisions associated with running a fishing operation addresses neither of these responsibilities. Lessees and their crew become akin to tenant farmers, sharecroppers working for a pittance while the landlord gets richer. ALFA members see little equity or credibility in such a system.

Speculative entry

A review of quota share programs in other parts of the world demonstrates that leasing encourages speculative entry into fisheries by non-fishermen. Speculative entry increases the demand for shares, raising prices. Speculative entrants are often distant from the resource, having other sources of income and living in non-rural areas. Both factors disadvantage new entrants and members of coastal fishery dependent communities. For example, Iceland is currently facing social and economic crisis in some coastal fishing towns because local people no longer own, nor can they afford to buy fishing shares. With Gulf of Alaska communities currently calling the Council's attention to the plight of their coastal towns, pursuing a policy change that would exacerbated socioeconomic problems in these areas seems both counter productive and illogical.

In closing, the original intent of the halibut and sablefish quota share program was to maintain the owner operated nature of the fleet. Managers and fishermen alike agreed

that the owner operator fleet would promote stewardship and keep access to the resource in the hands of the active fishermen who depend on it. To provide flexibility while fishermen adjusted to the new system, quota share holders were allowed to lease 10% of their shares in each area for a period of three years. That provision was to sunset with the close of the '97 season. Expanding the leasing provision to allowing quota share holders to lease 10% of their total shares would compromise fundamental goals of the program and, to our membership, undermine the industry's credibility and the future viability of the program. Again, ALFA urges the Council not to proceed with this amendment.

Thank you for the opportunity to comment.

Sincerely,

James Swift
(President)

Alaska Custom Seafoods

O-n the Corner of Fish Dock and Homer Spit Road
Box 996; Homer, AK 99603
907-235-7512 fax 907-235-7518

North Pacific Fisheries Management Council
605 West 4Th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Att: Mr. Rick Lauber, Chairman

Re: IFQ Implementation

Dear Chairman Lauber:

Last year my company purchased approximately 1.85 million pounds of halibut. We processed 272 landings for an average landing size of @ 6700 pounds. Disregarding the fairness issue in the original allocation, from my standpoint, the IFQ system is working. It is safer, it maximizes the value of the resource, and it is good for the consumer who gets to eat fresh halibut eight months of the year.

As a buyer, I have learned to cope with the paperwork involved. It seemed onerous at first, but, we are all used to the reporting and shipping requirements now, and it goes pretty smooth. I would like to address my comments to the one requirement that makes our life miserable every day we land fish, and that is the Six Hour Notice of Landing requirement.

In Homer, we have eight cranes and all the buyers lined up on one dock. This fosters increased competition among buyers. The Homer prices, minus transportation to Seattle, often lead the state, because of this competition. The reality of the Six Hour Notice requires me to be available for call-ins from 6 AM till Midnight. Missing a call at 11:30 PM means I can't possibly move a fish of the dock till 12:15 PM the next day; if the quota holder gets hold of me by 6 AM.

The reality is that most boats come into the harbor in the middle of the night. They wake, have their coffee and shop their loads for the highest price. Hopefully they make their deals by 10 AM, generating a 4PM offload time. We are not allowed to leave till the paper work is letter perfect and the shipping reports are processed. This means many days we work sixteen or eighteen hours to take a single 7,000 pound load. If I schedule five boats to offload and we get behind more than two hours, due to late arrivals or mechanical breakdown, we have to reschedule all the boats.

The local NMFS officers can grant a waiver to allow us to move fish in less than six hours. If you look at the number of waivers granted on the Homer dock, you will find a high percentage of the landings waived by the local officers. Rather than load four boats at four different times, it is far easier for the officers and the buyers to line them up an waive them through. Unfortunately, this system of waivers is rife with favoritism. I have documented this to the Council and NMFS in the past, so I will not discuss examples here, but, it leaves the waiver decision in the hands of the local officer on the dock. I have dealt with fifteen different NMFS officers in the first three years on this dock. Whether waivers are granted depends on who the officer is and his mood that day.

The net effect of the waiver system is to hold a huge hammer over the head of all the buyers as to whether you can move fish on schedule. Last Saturday, I had a Russian fisherman, who cannot offload on Sunday due to religious reasons, call in his landing shortly after 12 PM. He was denied a waiver. The local officer would not even bother to talk with the skipper on his cell phone when the officer was in my office. The reason for this was because another skipper had called in Auction waived Sahalee and then again waived Alaska Custom. To process the waiver would have taken five minutes of the officer's time, but he refused and left the dock. The skipper that had requested a second waiver, and got it, made twenty cents extra on his fish that day. The skipper that was denied a waiver made twenty cents less than my written guarantee for Saturday, when he was able to land his fish the following Monday. I ran two half empty trucks down the Alcan and had my crew sitting for over an hour while we searched for the local officer who had said he would be on the dock till we finished the first boat.

My point is that the waiver system, as it exists now, effects competition and the price of fish, every single day. In Homer, we have a NMFS attendance rate of close to 60%. This compares with 15% in the rest of the state. We also have a NMFS office staffed by two officers, ten minutes drive from the dock. I can not find too much fault with the officers. They are all working overtime, buried under mounds of paperwork. NMFS in general is under funded and understaffed. A waiver is extra paperwork for them. When it suits them, they grant waivers. When it doesn't they don't.

My solution is simple. Make the notice in Homer two hours. Get rid of the time waivers as a regular way of doing business. Homer is the perfect place to try this. All the buyers are at one dock. If it works, other docks could be granted two hour waiver status on a case by case basis, depending on the proximity of NMFS enforcement officers.

By allowing two hour notice, competition will be increased and the paper load of the officers that have been granting waivers will be decreased. The local IPHC representative does not have a problem with this. Every quota holder and buyer I have spoken with is in favor of it. Everybody wins and, with one easy change, the rules are the same for everybody, not dependent on the mood or experience level of the fifteen different NMFS officers that have been on this dock.

I understand there have been a number of comments to both the Council and NMFS concerning the Six Hour Notice. I also understand that changes to the IFQ implementation probably won't occur till the year 2000. I am asking you to give it a try on the Homer dock, where every buyer is shoulder to shoulder with every other buyer. We are the perfect port to test out a Two Hour Notice. We have the highest NMFS attendance rate and we are only ten minutes drive from their office. I know my life would be a whole lot easier, trying to schedule multiple boats, trucks, planes, offloading crews and cutting crews, if we had one rule that everyone had to follow all the time.

Thank you for your time.

Respectfully,

Brad Faulkner

Brad Faulkner
President

DRAFT

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS FOR A REGULATORY AMENDMENT TO EXTEND TRANSFER PRIVILEGES TO SURVIVING HEIRS OF DECEASED QUOTA SHARE (QS) AND INDIVIDUAL FISHING QUOTA (IFQ) HOLDERS IN THE IFQ PROGRAM

Prepared by

National Marine Fisheries Service

May 16, 1997

Executive Summary

The Individual Fishing Quota (IFQ) Program restricts the transfer of quota shares (QS) and resulting IFQ to prevent excessive consolidation of QS and ensure that QS continue to be held by professional fishermen, rather than being acquired by investment speculators. In 1996, a regulatory amendment was implemented to allow for the transfer of QS to surviving spouses of deceased QS holders. Under this provision, upon the death of an individual who holds QS or IFQ, a surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed in a will that is probated. This provision was consistent with the intent of the Council for the IFQ Program, as evidenced by § 14.4.7.1.4(5) of the FMP for the BSAI and § 4.4.1.1.4(5) of the FMP for the GOA, which state:

> The Secretary may, by regulation, designate exceptions to [the transfer provisions] to be employed in cases of personal injury or extreme personal emergency which allows the transfer of [IFQ resulting from QS assigned to vessel categories B, C, or D] for limited periods of time.

At its meeting in October, 1996, the IFQ Industry Implementation Team recommended a proposal to extend transfer privileges to surviving heirs as well, so that other members of a deceased QS holder's immediate family may benefit for a certain period of time from the deceased's commercial fishing interests with regard to the IFQ Program. On the basis of this recommendation, in December, 1996, the North Pacific Fishery Management Council (Council) requested an analysis of an action amending the regulations to include "surviving heirs" of a QS holder's immediate family in the survivorship transfer provisions. Upon initial review of the analysis at its April, 1997, meeting, the Council requested that the analysis include additional options as described below.

Management Action Alternatives

Alternative 1: Status Quo. Provide transfer privileges for a period of three years to a deceased QS holder's surviving spouse only.

Alternative 2: Revise regulations to extend transfer privileges of QS and IFQ to surviving members of a deceased QS holder's immediate family. This alternative would provide for cases in which a deceased QS holder has no surviving spouse but has other surviving members of his or her immediate family who might be in need of temporary financial support from the deceased QS holder's fishing interests. "Immediate family" is defined as a spouse and children of a holder of QS or IFQ.

Option A Allow a surviving heir, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for three calendar years from

the date of the deceased QS holder's death.

Option B — In addition to the provisions of Option A, allow immediate family members who receive QS by right of survivorship to use the resulting IFQ indefinitely provided that the vessel fishing the resulting IFQ remains in the ownership of the immediate family

Option C — In addition to the provisions of Option A, allow a minor who receives QS by right of survivorship to use or transfer resulting IFQ for a period three years following his or her attaining the age of eighteen.

1.0 INTRODUCTION

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

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

NEPA, E.O. 12866, and the RFA require a description of the purpose of and need for the proposed action as well as a description of alternative actions which may address the problem. This information and impacts on endangered species and marine mammals are included in Section 2. Section 3 contains the Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives for the proposed actions be considered. Section 4 contains the Initial Regulatory Flexibility Analysis (IRFA) required by the RFA which specifically addresses the impacts of the proposed action on small businesses. Section 5 contains the summary and conclusions of the analysis and Section 8 lists the preparer of the analysis.

1.1 Purpose and Need for the Action

The IFQ Program restricts transfer of QS and IFQ to assure that catcher vessel QS would

continue to be held by professional fishermen after the initial allocation process instead of being acquired by investment speculators. As evidenced by § 14.4.7.1.4(5) of the FMP for the BSAI and § 4.4.1.1.4(5) of the FMP for the GOA, however, the Council intended to allow for transfer in cases of extreme personal hardship:

> The Secretary may, by regulation, designate exceptions to [the transfer provisions] to be employed in cases of personal injury or extreme personal emergency which allows the transfer of [IFQ resulting from QS assigned to vessel categories B, C, or D] for limited periods of time.

In response to requests to NMFS from the industry, regulations governing transfer of QS and IFQ were amended in 1996 to extend transfer privileges of QS and IFQ to a surviving spouse of a deceased holder of QS and IFQ. Under this provision, upon the death of an individual who holds QS or IFQ, a surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed in an will that is probated. The provision allows a surviving spouse, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for three calendar years from the date of the death of the deceased holder of QS or IFQ.

In October, 1996, the IFQ Industry Implementation Team recommended that the transfer provisions for surviving spouses be extended generally to surviving heirs of a QS holder's immediate family, in the event that a QS holder is survived only by dependent children. This action would create survivorship rights for other immediate family members, in addition to a spouse, to gain some pecuniary benefit from the deceased's commercial fishing interests with regard to the IFQ Program for a certain period of time.

Upon initial review of the analysis at its April, 1997, meeting, the Council requested that the analysis include additional options, which are described below.

1.2 Management Action Alternatives

Alternative 1: Status Quo. Provide transfer privileges to a deceased QS holder's surviving spouse only for a period of three years.

Alternative 2: Revise regulations to extend survivorship transfer privileges to surviving members of a deceased QS holder's immediate family.

Option A Allow a surviving heir, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for three calendar years from the date of the deceased QS holder's death.

Option B In addition to the provisions of Option A, allow immediate family members who receive QS by right of survivorship to use the resulting IFQ indefinitely provided that the vessel fishing the resulting IFQ remains in the ownership of the immediate family

Option C In addition to the provisions of Option A, allow a minor who receives QS by right of survivorship to use or transfer resulting IFQ for a period three years following his or her attaining the age of eighteen.

1.3 Management Background

The Northern Pacific Halibut Act of 1982 (NPHA), P.L. 97-176, 16 U.S.C. 773 c (c) authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. waters, which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission. The halibut IFQ program is implemented by federal regulations under 50 CFR part 679, Limited Access Management of Fisheries off Alaska under authority of the Magnuson Fishery Conservation and Management Act of 1975, P. L. 94-265, 16 U.S.C. 1801.

The halibut and sablefish IFQ program was implemented under Amendments 15/20 to the groundfish FMPs of Alaska (NPFMC 1992). A history of the Council's actions with respect to Alaska's halibut and sablefish IFQ fisheries is summarized in Amendments 31/35 (Modified Block Amendment) (NPFMC 1994a). Recent amendments to the IFQ program have allowed a block exemption and one-time transfer of CDQ compensation QS (Amendments 32/36) (NPFMC 1995), prohibited the use of halibut catcher vessel QS on freezer/longline vessels and allowed the freezing of non-IFQ species along with sablefish catcher vessel QS on freezer/longline vessels (Amendments 33/37) (NPFMC 1996a), allowed the use of larger catcher vessel QS on smaller vessels (Amendments 42/42) (NPFMC 1996c), and increased the halibut and sablefish sweep-up levels (Amendments 43/43) (NPFMC 1996d).

This section contains the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for a regulatory amendment to allow for transfer of QS and IFQ to surviving members of a deceased QS holder's immediate family. As with the provisions for transfer to a surviving spouse, this alternative would allow a surviving heir, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for three calendar years from the date of the death of the deceased holder of QS or IFQ.

2.0. NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives are discussed in Sections 2.1, 2.2, 3.1 and 3.2. Sections 2.4 and 3.4 contain a discussion of the environmental impacts of the alternatives. Section 5 contains the summary and conclusions of the analysis. The list of preparers is in Section 8.

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices, e.g., effects of gear use and fish processing discards; and (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear.

None of the proposed alternatives would have such impacts on the environment. The contemplated action would not change the amount or type of fishing gear use or the time or location of its use. A change in transfer provisions to allow transfer to the surviving heirs of a deceased holder of QS or IFQ would affect only the financial affairs of QS holders. Therefore, this action would have no significant impact on the environment.

2.1 Impacts on Endangered, Threatened or Candidate Species

Endangered and threatened species under the ESA that may be present in the Gulf of Alaska and the Bering Sea and Aleutians Islands include:

Endangered

Northern right whale	*Balaena glacialis*
Sei whale	*Balaenoptera borealis*
Blue whale	*Balaenoptera musculus*
Fin whale	*Baleanoptera physalus*
Humpback whale	*Megaptera novaeangliae*

Sperm whale	*Physeter macrocephalus*
Snake River sockeye salmon	*Oncorhynchus nerka*
Short-tailed albatross	*Diomedea albatrus*

Threatened

Steller sea lion	*Eumetopias jubatus*
Snake River spring and summer chinook salmon	*Oncorhynchus tshawytscha*
Snake River fall chinook salmon	*Oncorhynchus tshawytscha*
Spectacled eider	*Somateria fischeri*

None of the alternatives for either management action is expected to have an effect on endangered, threatened, or candidate species, for the same reasons cited above.

2.2 FINDING OF NO SIGNIFICANT IMPACT

None of the alternatives is likely to significantly affect the quality of the human environment; preparation of an environmental impact statement for selection of any of the alternatives as the proposed action would not be required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

signed:

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

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

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> 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 nevertheless essential to consider. Further, in choosing

among alternative regulatory approaches, agencies should select those approaches that 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.

This section also addresses the requirements of both E.O. 12866 and the Regulatory Flexibility Act to provide adequate information to determine whether an action is "significant" under E.O. 12866 or will result in "significant" impacts on small entities under the RFA.

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:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

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

3.1 Identification of Individuals Affected by this Proposed Action

The action proposed under Alternative 2 would affect all individuals who hold QS or IFQ and the members of their immediate families as survivors of a deceased QS holder. By species and area, as of April 4, 1997, a total of 7,971 persons held QS. Halibut QS are held by 5,978 persons, and sablefish QS by 1,993.

Of 83 estates currently holding a total of 1,054,205 QS units transferred by right of survivorship, nine of those estates are surviving spouses, who hold 571,696 of the total QS units and who are granted use privileges under 50 CFR 679.41(k).

3.2 Economic and Social Implications

Alternative 2 would provide some temporary financial relief for immediate families of deceased holders of QS or IFQ. This action would provide a net benefit to the nation by making the IFQ Program more responsive to the familial financial obligations of its participants who hold QS or IFQ. As the use and transfer privileges allowed by Alternative 2, Option A would be temporary, emergency measures, this option would be consistent with the emergency transfer provisions of the FMPs and with the intent of the IFQ Program to ensure that fishing privileges remain in the hands of professional fishermen.

Alternative 2, Option B, however, and to a lesser extent Option C would extend survivorship use privileges for an indefinite period of time. The FMPs for the GOA and BSAI state that emergency transfer provisions are to be allowed "for a limited period of time." Option B would allow an immediate family member who receives QS by right of survivorship to use the resulting IFQ indefinitely provided that the vessel used to harvest the IFQ continues to be owned by the immediate family surviving the QS holder. Such a provision would extend beyond the authority for a regulatory change in transfer provisions currently allowed by the FMPs and, consequently, require an FMP amendment. Option C, which would grant a minor receiving QS by survivorship to use the resulting IFQ until three years after his or her eighteenth birthday, would also seem to extend transfer privileges beyond the "limited period of time" authorized by the FMPs.

3.3. Administrative, Enforcement, and Information Costs

No additional enforcement costs are expected from the proposed alternative to the status quo. Nor will Administrative and information costs be affected by this action: administrative processes currently in effect to extend transfer privileges of QS or IFQ to surviving spouses would provide also for transfer to surviving heirs.

4.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $2,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer,

wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

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

(1) a description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and

(2) analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cashflow and liquidity, and ability of small entities to remain in the market.

4.1 Economic Impact on Small Entities

The "total universe" of small entities affected by this action would comprise all holders of QS and IFQ. As of April 4, 1997, a total of 7,971 persons held QS. By species and area, that total comprises the following allocations:

halibut

2C	1,869
3A	2,480
3B	805
4A	431
4B	143
4C	79
4D	67
4E	104
	5,978

sablefish

SE	599
WY	382
CG	539
WG	210
AI	129
BS	134
	1,993

This action would relieve a restriction on transfer of QS and IFQ to provide for emergency situations in which the death of a holder of QS or IFQ leaves his or her immediate family in need of temporary financial support.

As a temporary, emergency provision not affecting the general allocation and use of QS and IFQ, this action would not have any significant economic impact on the small entities participating in the IFQ Program. Nor would it impose any additional compliance costs or information requirements beyond those already approved for the IFQ Program.

5.0 Summary and Conclusions

The proposed action would provide for the temporary financial relief of the surviving heirs of a deceased holder of QS or IFQ by extending the emergency transfer provisions for surviving spouses to other surviving members of a deceased QS holder's immediate family.

Two alternatives were evaluated. Alternative 1, the "no action" or status quo alternative required by NEPA and E.O. 12866, would allow transfer of a deceased QS holder's QS or IFQ to a surviving spouse, only. Alternative 2, the proposed alternative submitted by industry representatives, would extend the emergency transfer privileges of a surviving spouse to surviving heirs as well. This alternative would provide for cases in which a deceased QS holder has no surviving spouse but has other surviving members of his or her immediate family who might be in need of temporary financial support from the deceased QS holder's fishing interests.

Alternative 2 contains three options. Option A would allow a surviving heir, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for three calendar years from the date of the deceased QS holder's death. This option would be consistent with the authority granted by the FMPs to allow for emergency transfers for a limited period of time.

Option B, in addition to the provisions of Option A, would allow immediate family members who receive Qs by right of survivorship to use the resulting IFQ indefinitely provided that the vessel fishing the IFQ remains in the ownership of the immediate family. This option, by allowing emergency transfer for an indefinite period of time--would be a regulatory amendment not authorized in the FMPs--would require an FMP amendment to effect.

Option C, in addition to the provisions of Option A, would allow a minor who receives QS by right of survivorship to use or transfer resulting IFQ for a period three years following his or her attaining the age of eighteen. While allowing an emergency transfer for a definite period of time--until three years after the 18th birthday of a minor who receives QS by survivorship--this option would provide use privileges for an extended period of time and may not be consistent

with the intent of the FMPs' emergency transfer provisions.

A review of the economic and social impacts of the alternatives indicates that alternative 2 would provide a net benefit to the nation by improving the responsiveness of the IFQ Program to the personal, familial obligations of its chief participants: the professional fishermen who hold and fish QS and IFQ.

None of the alternatives is expected to have a significant impact on endangered, threatened, or candidate species. Nor are the alternatives expected to have any significant impact on a substantial number of small entities.

6.0 Preparer

James Hale
National Marine Fisheries Service

UNITED STATES DEPART
National Oceanic and Atmo
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 28, 1998

Mr. Richard B. Lauber
Chairman, North Pacific
Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Rick:

We plan to withdraw the proposed regulatory amendment, published in the Federal Register on November 6, 1997 (62 FR 60060), that would have extended survivorship transfer privileges in the Individual Fishing Quota Program to heirs of deceased quota share (QS) holders. On further review of the proposed action, we find a conflict exists between the proposed regulatory amendment and the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

All leasing of IFQ in QS categories B, C, and D is prohibited by existing regulations. However, the FMPs provide for emergency transfer of QS and IFQ. On the authority of the FMPs' emergency transfer provisions, a surviving spouse of a deceased QS holder is granted relief from the general prohibition on leasing of IFQ in categories B, C, and D on an emergency basis for a period of three years following the QS holder's death. The potential emergency upon which such transfer privileges are predicated and, hence, authorized by the FMPs is the temporary indisposition of QS while the deceased QS holder's estate remains in probate. NMFS implemented the surviving spouse provision expressly to allow a spouse, who may not be otherwise eligible to fish an IFQ allocation, to benefit from a deceased QS holder's fishing business pending the final disposition of the QS. These privileges are temporary, because once a deceased QS holder's estate is probated and an heir to the QS determined, that heir is free to transfer the QS to an individual eligible to fish an IFQ allocation.

In June 1997, the North Pacific Fishery Management Council (Council) recommended a regulatory amendment to extend the survivorship transfer privileges to heirs of deceased QS holders. For the benefit of such an action to take effect, the QS must first be disposed through the legal determination of an heir. Implementation of this proposed action would not extend the benefit of the existing surviving spouse transfer privileges to

other surviving family members in addition to or in the absence of a spouse. Rather, it would nullify the benefit of the existing rule, which is to allow a surviving spouse to lease the deceased QS holder's IFQ for up to three years between the date of the QS holder's death and the time when the legal beneficiary of the QS may transfer the QS to an eligible individual. Moreover, no authority exists in the FMPs for implementing this action. Extending to heirs the emergency transfer privileges presently in place for surviving spouses would not provide for an emergency situation and would consequently be in conflict with the FMPs' prohibition of leasing. NMFS intends, therefore, to withdraw the proposed rule.

If the Council's intent is to give other members of a deceased QS holder's family the same privileges currently afforded to surviving spouses, an alternative measure might be to recommend allowing a QS holder to designate an individual to whom NMFS might grant emergency transfer privileges in the event of the QS holder's death and in the absence of a spouse. This alternative may implement the Council's intent in a manner consistent with the FMPs and without nullifying the current transfer privileges afforded to surviving spouses of QS holders.

Sincerely,

Arnold J. Berg

For Steven Pennoyer
Regional Administrator

UNITED STATES DEPARTM
National Oceanic and Atmos
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

March 26, 1998

Dr. Clarence G. Pautzke
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Clarence,

Thank you for your request to implement the North Pacific Loan Program (Loan Program) as authorized under the Magnuson-Stevens Fishery Conservation and Management Act. The National Marine Fisheries Service has approved the Loan Program submitted by the North Pacific Fishery Management Council (Council) and anticipates that an announcement of availability of Federal assistance for the Loan Program will be published in the Federal Register by April 1, 1998. At this time, further action by the Council to implement the Loan Program is not required.

Sincerely,

Steven Pennoyer
Administrator, Alaska Region

North Pacific Fishery Management Council

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

Telephone: (907) 271-2809

605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Fax: (907) 271-2817

March 9, 1998

Mr. Steve Pennoyer
Regional Administrator
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Steve:

I am writing on behalf of the Council to formally request agency action to implement the North Pacific Loan Program (Loan Program). The Magnuson-Stevens Act called for the Council to submit a Loan Program to the Secretary by October of 1997. The Council approved the Loan Program at its September 1997 meeting, based on an analysis prepared by Council staff (see attached). This document, dated October 1, 1997, has been on hold pending resolution of several issues, most notably the availability of funds to implement the program, and uncertainty at the agency level regarding the appropriate form of the submittal package. This latter issue revolved around the question of whether an FMP amendment, and implementing regulations, would be required.

I understand that these issues have been resolved and that there is no FMP required, nor specific implementing regulations. I also understand that $100,000 has been appropriated through Congress to jump-start the Loan Program, and that this is expected to make around $5 million in loans available. Full funding for the Loan Program would be accomplished through the IFQ fee program being developed by NMFS. Now that these issues have been resolved, and NMFS Financial Services Division (FSD) is poised to begin accepting loan applications, I have been advised through Mike Grable that now is the appropriate time for the Council to formally request this action.

I would note that there have been discussions about the consistency of the Council's action (detailed in the attached document) with the specific wording of the Act. For example, the Council's action is to fund the Loan Program with IFQ fees, but not CDQ fees, which may not be consistent with interpretations expressed verbally by NOAA-General Counsel. The Council's action also requires that the full 25% of fees, as dictated by the Act, be used to fund the Loan Program, though I would assume that the agency will determine the appropriate percentage once the fee program is up and running and we have some experience with loan demands under this program.

As I mentioned, the full details of the Council's 'preferred alternative' are highlighted in the attached document. Please let us know if any further action is required from the Council. Chris Oliver is my staff contact person on this issue. Thanks to NMFS for getting this program underway.

Sincerely,

Clarence G. Pautzke
Executive Director

cc: Mike Grable - NMFS Financial Services Division, Silver Spring, MD
Kimberly Berryhill - NMFS Financial Services Division, Seattle WA

G:\HELEN\WPFILES\CORR\LOANPRGM.398

Draft Briefing
on the
Status of the North Pacific "IFQ Loan" Program

Issue: Status on progress toward making loans available for purchase of quota share (QS) under the Individual Fishing Quota (IFQ) program for halibut and sablefish.

Council Action: Status report from NMFS.

Background: The Sustainable Fisheries Act (SFA) requires the North Pacific Fishery Management Council (Council) to make a recommendation to the Secretary of Commerce (Secretary) to finance QS as specified by that Act no later than October 1, 1997. Funding for this financial aid program is to be derived from fees collected on landings of fish under the IFQ and Community Development Quota (CDQ) Programs authorized under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council took final action to make its "IFQ loan" program recommendation at its meeting in September 1997. No further action by the Council is necessary at this time. The Alaska Region and the Financial Services Division, NMFS have been working to establish the IFQ loan program as envisioned by Congress.

Statutory authority:

Sustainable Fisheries Act. Section 108(g) of the SFA provides, on recommendation of the Council, for a loan guarantee program to assist "fishermen who fish from small vessels" and "entry level fishermen" in purchasing QS for the IFQ halibut and sablefish fishery off Alaska. These terms are defined in sec. 108(g) of the SFA as follows:

"'Fishermen who fish from small vessels' .... shall mean fishermen wishing to purchase [QS] for use from Category B, Category C, or Category D vessels [as defined in the IFQ implementing regulations on October 1, 1995]:

- whose aggregate ownership of [QS] will not exceed the equivalent of a total of 50,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee application is made [if approved],
- who will participate aboard the fishing vessel in the harvest of fish caught under such quotas, who have at least 150 days of experience working as part of the harvesting crew in any United States commercial fishery, and
- who do not own in whole or in part any Category A or Category B vessel, as defined [in the IFQ implementing regulations]."

And

"'Entry level fishermen' ... shall mean fishermen who do not own any [QS], who wish to obtain the equivalent of not more than a total of 8,000 pounds of halibut and sablefish harvested in the fishing year in which a guarantee obligation is made, and who will participate aboard the fishing vessel in the harvest of fish caught under such quotas."

Magnuson-Stevens Act. The SFA further provides for the funding for these guarantee obligations to be derived from fees authorized under Magnuson-Stevens Act sections 303(d)(4) and 304(d)(2). Section 303(d)(4)(A) provides the Secretary with discretionary authority to approve a Council-recommended program "...which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used ... to issue obligations that aid in financing the--

(i) purchase of [QS] in that fishery by fishermen who fish from small vessels; and
(ii) first-time purchase of [QS] in that fishery by entry level fishermen."

Section 304(d)(2) of the Magnuson-Stevens Act basically requires the Secretary to "...collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program."

Note that while Congress refers to purchase of IFQ, the term QS is substituted in this paper for IFQ because only QS (Categories B, C, and D) may be transferred. Transfer of IFQ is tantamount to leasing which is prohibited for Categories B, C, and D QS.

Section 304(d)(2) also states that IFQ/CDQ fees are to be deposited into the Limited Access System Administration Fund, except "...that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by ... the Federal Credit Reform Act" (FCRA). The FCRA cost referred to in this paragraph is the estimated net loss expected from lending activity. The dollar amount of the FCRA appropriation together with the estimated percentage of FCRA losses determines the annual loan authority. The FCRA portion of a direct loan is appropriated while the remaining loan principal is borrowed from Treasury. Administrative costs are not included in the FCRA cost.

Merchant Marine Act

Title XI of the Merchant Marine Act of 1936 also was amended by the SFA. Section 1104A(a)(7) of this authorizes NMFS to finance or refinance, under certain conditions, the cost of purchasing QS. As codified at 46 U.S.C. App. 1274(a)(7), this authority states that, "...the Secretary ... may guarantee or make commitment to guarantee, payment of the principal of and interest on an obligation which aids in ... financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 1853(d)(4) of Title 16."

Appropriations

In FY 1998, an appropriation of $338,000 was provided to NMFS. This amount represented a $100,000 increase over the President's request of $238,000. Neither the Conference nor the House Committee report provides language on the use of the $100,000 increase; however, the Senate Committee report is very specific. The Senate language appears as follows:

"The Committee recommendation provides $338,000 for fishing vessel obligations. This amount is $100,000 above the requested level for fiscal year 1998 and $88,000 above the fiscal year 1997 level. In addition, $100,000 is provided for entry level and small vessel IFQ obligation guarantees in the halibut and sablefish fisheries off Alaska pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936. The Committee provides these funds so that IFQ loans can be guaranteed . . . in advance of the collection of fees required for such purpose, which are not expected until 1999."

After reviewing the Senate committee report, NMFS has determined that the additional $100,000 appropriated is to be used to fund the subsidy component of a new type of loan that provides loans to "entry level" and "small vessel fishermen" for the purchase of QS in the halibut and sablefish fisheries of Alaska.

Discussion:

Currently, NMFS is implementing a QS loan program for Fiscal Year 1998, based on the authority provided in Title XI of the Merchant Marine Act and 1998 appropriations legislation. The $100,000 appropriated for this purpose will cover the FCRA costs for loans made in FY 1998. Assuming a 2 percent FCRA cost rate, this appropriation will result in about $5,000,000 of loan capital with which to make loans for the purchase of halibut or sablefish QS. The purpose of this action is as reported by the Senate Committee, i.e. to make QS loans available this year before the collection of IFQ/CDQ fees, as contemplated by secs. 108(g) of the SFA and 303 (d)(4) of the Magnuson-Stevens Act. This is not the loan program authorized by the SFA, however, because the Council's loan program recommendation as a FMP amendment and regulatory amendment has not yet gone through the Secretarial review and approval process. The Council's loan program must be implemented as a FMP/regulatory amendment because the authority to take this action (at sec. 303(d)(4)) in the Magnuson-Stevens Act is under the FMP contents provisions of the Act.

Hence, the Council's recommended loan program under SFA sec. 108(g) can be implemented only by submission, review, and approval of an FMP amendment (with respect to sablefish) and a regulatory amendment (with respect to halibut). The Council has accomplished the initial steps to this end by completing an analysis (EA/RIR), FMP amendment text, and by taking final action on the loan recommendation in September 1997. The Alaska Region staff will draft the Federal Register notice of proposed rulemaking as usual to complete the FMP submission package. This work will be completed as soon as possible, however, its completion will not affect the QS loan program in FY 1998.

The distinctions between implementing the QS loan program under Merchant Marine Act and appropriations authority, as NMFS is doing in 1998, and implementing it as an FMP/regulatory amendment are of little practical importance to the affected fishermen. Several points about this distinction can be made, however.

- Without the Congressional appropriation, no QS loan program would exist in 1998. Even if the fee collection program were implemented in 1998, funds would not have been deposited in the U.S. Treasury and been available for Congressional appropriation until fiscal year 1999, at the earliest. Similar action by Congress will be necessary in FY 1999, regardless of final action by the Secretary on the FMP/regulatory amendment, because fee collection deposits to the U. S. Treasury in 1999, will not be available until fiscal year 2000. Further, Congress may appropriate any amount for the loan program; it is not necessarily limited to the amounts collected in IFQ/CDQ fees. Even after the fee collection program and loan program FMP amendment is implemented, annual Congressional appropriations will be required.
- Implementation of the loan program in FY 1998 under the Merchant Marine Act and appropriations authority will be guided by the restrictions stipulated in SFA sec. 108(g), following Congressional intent. This is not the authority being used, however, to implement the loan program this year.
- As a FMP/regulatory amendment, the Council's recommended action may be approved, disapproved, or partially approved according to section 304(a)(3) of the Magnuson-Stevens Act.

One approval issue under consideration is whether a fisherman can be required to meet the 150-day experience requirement for an "entry level" QS loan as recommended by the Council, regardless of the fact that this requirement pertains to individuals who would receive category B, C, or D QS by transfer. The SFA makes no such requirement for "entry level fishermen" as it does for "small vessel fishermen." Another issue is whether the full 25 percent of IFQ/CDQ fees collected will be needed to fund the loan program. This proportion of the collected fees may be in excess of $1 million per year which, assuming the same two percent FCRA cost as in 1998, would provide for a loan capitalization of more than $50,000,000 per year, if Congress appropriated the full amount. Although the Council was required by the SFA to request the full 25 percent of fees, the Secretary has discretion under sec. 303(d)(4) in approving the requested amount. These and other details can be formally clarified only by following the normal FMP/regulatory amendment procedure.

Current action:

1. A notice of availability (NOA) and press release has been drafted for publication in the Federal Register.
2. The NMFS Financial Services Division, is preparing to issue QS loan applications for the authorized loan capital available in FY 1998. Further, the Division's Seattle office is accepting names of interested applicants.
3. Loan applications will be available after the NOA is published. Loan applications will be processed as they are received. Assuming that the demand for loans will exceed the total FY 1998 loan principal, providing for a fair start in the application process is important. A commencement date for the QS loan program is under consideration at NMFS' HQ.
4. Work on the loan program implementing regulations under a FMP/regulatory amendment will continue at the Alaska Region Office.

Further reports on the progress of the loan program implementation will be made to the Council together with reports on the progress of the IFQ/CDQ fee collection program.

JGinter: 4-13-98, g:\fmgroup\ifqloan.brf
Revised: 4-14-98 re. comments from Shawn Barry and Lisa Lindeman
Revised: 4-15-98 (1200)
Revised: 4-15-98 (1245) re. Lindeman comments

FISHING VESSEL OWNERS' ASSOCIATION
INCORPORATED
ROOM 232, WEST WALL BUILDING • 4005 20TH AVE. W.
SEATTLE, WASHINGTON 98199-1290
SINCE 1914

March 13, 1998

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Dear Chairman Lauber:

On behalf of the members of the Fishing Vessel Owners' Association, I am writing to you regarding the formation of the Coalition of Fisheries Dependent Communities, which represents residents of communities adjacent to the Gulf of Alaska. At the North Pacific Fishery Management Council meeting on February 2, 1998, this new group indicated that its communities are having economic problems and need relief. Enclosed are the group's position paper and a response from an Alaskan owner of a small boat. I ask that you read both very carefully. See Appendix 1 and 1a.

The initial idea of this Coalition was to establish some form of community development quota, "CDQ", for fisheries in the Gulf of Alaska. However, the group learned that this is precluded for that geographic area by the Magnuson-Stevens Act, as amended most recently by the Sustainable Fisheries Act. Therefore, the group appears likely to seek federal legislation for preferential access in the Gulf of Alaska or a special regulatory allocation, neither of which would be called a "CDQ". The group will present a plan to the Council at the April meeting in Anchorage. It seems that all species will be targeted by this Alaskan group.

I would like you to focus closely on the Coalition's premise, an alleged inability to access and be eligible for fishing opportunities, because of State and Federal regulations. The truth is, however, that members of the listed communities have a greater ability to participate in these fisheries than do most other people.

Individuals in communities represented by the Coalition have a very large number of vessels and fishing permits in the salmon and herring industries, and due to the depressed market situation for products from those fisheries, the Coalition wishes to use other peoples' income base in other fisheries for an expanded economic safety net. In short, this scheme is calculated to relieve the Coalition's economic problem by simply causing a new economic problem for other fishermen and communities.

I believe that the people represented by the Coalition have more than enough opportunity to invest in the fisheries that the proposal would forcibly reallocate. Some of the funding sources that could facilitate entry into the federal fisheries of the Gulf of Alaska are set forth below.

(1) **The Federal Government has provided 13 native regional corporations, through the Alaska Native Claims Settlement Act (ANCSA), with approximately one billion dollars.** Five of these corporations have all or part of their geographic boundaries on the Gulf of Alaska. Those five are the Aleut Corp., Chugach Corp, Cook Inlet Region Inc., Koniag Inc., and Sea Alaska Corp. These native corporations had $492.4 million in revenues in FY 96, with $103.4 million net. During FY97, the Aleut, Koniag and Sea Alaska Corporations reported total earnings of $262.3 million, with a net of $32.2 million. See Appendix 2. These Native Corporations have been highly successful and have diversified their investments in tourism, construction, mines, timber and commercial real estate. What precludes these corporations from providing loans for fishing vessels, permits, and quotas or from investing in processor facilities? In fact, Sea Alaska Corporation owned Ocean Beauty Seafood and eventually sold it. Why does the Coalition need a forced reallocation of resources upon which other Alaskan's and non-Alaskans depend?

(2) In an article by Rose Ragsdale for the Alaska Journal of Commerce, December 4, 1995, she states:

> A little-known loan guarantee program offered by the U.S. Bureau of Indian Affairs could arguably be the best financing opportunity in Alaska these days. The program offers guarantees of 90 percent on commercial loans from banks to eligible Alaskan Native tribes or Alaskan Native Claims Settlement Act Corporations. Interest rates are based on the prime rate plus 1.5 percent for

the 90 percent guarantee. **Maximum loan requests cannot exceed $500,000 for an individual or $5.5 million for tribes or corporations.** [See Appendix 3.]

The native tribes and corporations and native individuals can access millions of dollars for fishing permits, vessels, and quotas and for shoreside facilities, through special programs administered by the BIA. Non-native Alaskans and non-Alaskans do not have similar opportunities, but they do pay taxes to support these kinds of programs, which end up competing against their own financial interests.

(3) The Magnuson-Stevens Act provides for an individual fishing quota loan program. The loans are specifically designed for small boats and entry-level fishermen. Those fishermen owning vessels greater than 60 feet, and/or controlling 50,000 lbs of IFQ fish, are ineligible for the program, but must still pay a landing fee into the program. It is estimated that the landing fee will generate $1.5 million annually. The NMFS, using a 5% default collection rate, will be allowed to loan up to $25 million annually based on the landing fee. Why can't the Coalition members use that vehicle, which was provided by Congress in the most recent reauthorization of the Magnuson-Stevens Act, to finance their participation in these fisheries?

(4) The State of Alaska provides its citizens with a loan program through the Dept. Of Commerce and Economic Development for the purpose of financing the purchase of entry permits and quota shares. **From 1972 to 1994, the State of Alaska financed 2,031 fishing permits and 194 vessels for its residents, for a total of $146,511,417.** See Appendix 4. If over 2000 Alaskans are able to take loans out from the State for access to fisheries, what precludes individuals in the communities represented by the Coalition from doing the same? Could it be that the Coalition would rather take someone else's livelihood away, than repay loans for investments in entry into the fisheries like everyone else does?

(5) In an article from the Seattle Times, January 25, 1998, entitled, "Indians Losing their Image as Earth's Noble Guardian", it is reported that "...in Alaska, the native share of the states valuable timber harvest already exceeds 60 percent. The impact on the land sometimes has been devastating provoking sorrow and anger even among natives who share in the profits. ...In the village of Hoonah in S.E. Alaska, residents point to surrounding hillsides skinned by clear-cuts of spruce

forest that have laid bare traditional hunting grounds. **...It is little consolation that logging is being carried out by native corporations with the profits going to native people throughout the state."** See Appendix 5. Nothing is said as to the devastation to the salmon spawning streams due to the clear-cutting, but the question remains, why can't the Coalition members from Hoonah use their logging proceeds to invest in fishing?

(6) Below is a summary of the NMFS landing report for Alaska, for all species, including groundfish, salmon, halibut, shellfish and herring. See Appendix 6. **Many of the signatories to the Coalition's letter, are residents of these major seafood ports, but still claim to lack access to the fisheries.**

Port Name	Ex-vessel Pounds	Ex-vessel Value
Cook Inlet	104,271	319,416
Craig	885,266	1,648,243
Naknek	1,480,868	431,119
Haines	5,256,092	1,953,752
Juneau	6,624,923	9,171,541
Anchorage	8,194,733	3,587,406
Yukon Delta	11,006,281	5,355,282
Norton Sound	12,340,000	4,936,000
Homer	21,787,759	18,902,615
Wrangell	25,145,519	7,899,920
Seward	29,240,387	25,512,122
Sitka	32,036,820	33,001,820
Kenai	37,939,730	31,569,820
Valdez	41,607,404	11,831,994
Cordova	55,373,873	27,808,697
Upper Southeast	56,782,057	29,734,239
Petersburg	104,959,778	36,381,506
Ketchikan	136,773,352	23,672,288
Kodiak	202,730,408	82,290,674
Bristol Bay	252,270,468	174,699,926
Peninsula	458,561,618	93,131,107
Dutch Harbor	579,619,323	118,737,703

With the implementation of the groundfish and crab license limited entry program in the year 2000, deliveries of those species into Alaska from federal waters will be

based on limited entry permits. (Salmon and herring are already subject to limited entry programs.) Any reallocation of these species amongst those who qualified for permits, or to those who did not qualify for permits, will place extreme economic hardship on the losers. It is obvious that the intent of the Coalition is not to redirect delivery patterns among ports, but rather, primarily to change the names of those who deliver fish from existing fishermen to those who do not qualify for the historically-based limited entry permits, that is, from those who risked their lives in the groundfish and crab fisheries, and investments to those who did not.

(7) In 1986, Congress allowed the native corporations to sell their net operating losses. It is reported that **"native corporations typically got about 30 cents on the dollar for their losses." "The regional corporations picked up as much as an additional $650 million in cash."** See Appendix 7. What has prevented these funds from being used to assist native Alaskans with getting into the fishing business?

(8) The current groundfish license limited entry program in the Gulf of Alaska exempts boats less than 25 feet in length. This is intended to allow entry-level fishermen from the coastal communities to participate freely in the inside cod fish fishery off Alaska, without having to acquire limited entry permits. This provides significant new opportunities for participation in the Gulf of Alaska fisheries.

In addition, the 1996 Board of Fisheries allocated 15-20% of the Pacific Cod resource in the Gulf of Alaska to be harvested inside three miles by vessels using jig gear and by limit seine vessels no longer than 58' which use pots; no trawls or longline vessels are permitted access. This favors the local communities.

(9) Several of the signatories for the Coalition may soon have additional economic advantages through amendments to ANCSA. Currently, in Congress, is the "Unrecognized Southeast Alaska Native Communities Recognition Act," (H.R. 2812 and corresponding provisions of S.967). This will affect the native villages of Haines, Ketchikan, Petersburg and Wrangell, in that they may organize as Urban Corporations, and the native village of Tenakee, which may organize as a Group Corporation. This will entitle the new corporations as at-large shareholders of Sealaska Corporation. Each will be authorized to receive a planning grant of $250,000. See Appendix 8. Congress also is currently considering other programs,

to assist native Alaskans. (See Appendix 10).

The Coalition stated before the Council, **"our communities are nearing a state of economic crisis, which we believe is a direct result of the inability to access and be eligible for fishing opportunities."** It is obvious, based on the preceding list of economic opportunities, that this statement is false. The real problem is that the Coalition's communities rely largely on herring and salmon, for which the markets are currently in poor shape, and available funding sources are not being effectively utilized to invest in other fisheries. What the Coalition wants is to raid someone else's economic base to subsidize their own.

Senator Frank Murkowski correctly identified the coastal Alaskan fishery problems in his recent letter published in the Bristol Bay Times and Fishermen's News, February 1998. See Appendix 9. **At the outset he states, "the first step towards developing a cure is an accurate diagnosis of the ailment."** His diagnosis includes:

> Salmon fishermen in 1997 saw their incomes drop by nearly $100 million to just $270 million, three times less than the salmon value just a decade ago.
>
> * * * * *
>
> Chile's share of the market, from its farmed-salmon coho industry, has risen sharply from less than 10 percent to 22.7 percent.
>
> * * * * *
>
> This year marks the first year where Chile has sold more salmon to Japan than Alaska.
>
> * * * * *
>
> The weakened yen by 20 percent...
>
> * * * * *

> Reduced promotion: Alaska has had less money to spend on promotion....Norway raised its Japanese promotions to $3 million, plus another $1.5 million for the rest of Asia.
>
> * * * * *
>
> ...domestic markets must be cultivated to offset foreign purchases.

Reallocation of fishing resources upon which others depend is not the proper cure for the ailments that Senator Murkowski correctly details.

As you know, our halibut/sablefish longline fleet is currently operating under an IFQ program. Many of our members and their crews have purchased IFQ halibut and sablefish and taken out significant business loans, mortgaged, at times, with the fishermen's homes. It would be a tough situation to find out that a large percentage of fish that we had bought on the open market will all of a sudden be reallocated to someone else who has had little or no fishing history, and who has major programs available to assist his or her entry on a legitimate market basis. Please remember that, as part of the compromise on Magnuson-Stevens, we agreed to fund a low-interest fund for small vessel owners and entry-level fishermen. The majority of our Association vessels are precluded from participating in the loan program, because our vessels are greater than 60 feet, yet their owners will contribute to the program. We also already have major CDQ allocations in place for other Alaskan communities that everyone agreed would be the only social/economic reallocation of halibut and sablefish.

A part of the solution to the problem presented by the Coalition of Fisheries Dependent Communities is to take advantage of the employment opportunities created by the success of the Native Corporations created from ANCSA. Their investments in tourism, commercial real estate, natural resource development, construction and timber, now presents many employment opportunities. This wealth being generated by the Gulf ANCSA Corporations in 1996 was $106 million net which could be reinvested into Gulf communities, if it is the choice of the native shareholders. Another part of the solution is to take advantage of the loan programs available from the State of Alaska, National Marine Fisheries Service (Magnuson-Stevens IFQ loan program), and Bureau of Indian Affairs. A forced reallocation of

fisheries resources is not a legitimate solution because it simply transfers economic hardship from the residents of the Gulf of Alaska communities to others who are, in many cases, less able to survive it.

Sincerely,

Robert D. Alverson
Manager

RDA:cb

Enclosure

NPFMC
605 W. 4th Ave, Suite 306
Anchorage, Alaska
99501-2252

Mar. 13, 1998
(Juneau, AK)

Chairman Lauber,

We are the crew of the F/V Quest. We have 147 years of cumulative Alaska commercial fishery experience, with an average experience of 24.5 years per person. Virtually all of our experience is from the Alaska halibut and sablefish fisheries. We are residents of Alaska and Washington ~~States~~. We have had as many as three generations of our ancestors that have fished in the Alaska longline commercial

fishery.

We are unilaterally opposed to any uncompensated economic bailout such as that proposed by the Alaska Fisheries Dependent Communities Coalition (AFDCC). First of all, what in the hell is the AFDCC? We are all members of Alaska fishery dependant communities on this boat. Who would benefit from this proposal? How would they benefit?

What we see in this proposal (primarily and fundamentally) is a group of limited-entry permit holders in the Alaska salmon fisheries who are suffering from a typical

fluctuation in a historically cyclical salmon resource.

The mechanisms for obtaining additional fishing rights for these temporarily disadvantaged fishermen (and women) exists within the fishery permit market. One well-established mechanism for permit acquisition is collateralization of existing fishing permits and equipment, or outright purchase of permits.

> Each one of us on this crew have purchased or have collateralized to acquire additional IFQ's, and we have done so using traditional financing methods.

If the AFDCC signators choose to acquire additional fishing benefits through NON-tradition methods (at least non-traditional methods to members of our communities)

then,

we suggest that they pursue assistance through federal, state or private sources, or through their own native corporation should they be a member.

We are fundamentally opposed to expanding the (grand total) IFQ quota share pool as an economic bailout. This would be an artificial and wholly

arbitrary act. This would do nothing but (1) undermine our own fishery, (2) undermine our investment into IFQ's, and (3) undermine our ability to acquire additional fishing rights through our traditional funding resources (e.g., banks).

Quite admittedly, we are resentful of the historical use of the longline fishery, as that of a "doormat" when some salmon fishermen have dirtied their feet from a poor salmon season.

As any fishermen who has

~~cyf~~ been in this business for any length of time clearly knows, we all go through good times and we all go through hard times.

When longliners have gone through hard times in the past we have had the option of buying into other fisheries by buying fishing permits. The same opportunity exists today for any fisherman who wants to expand their fishing business.

Thank you,

Scott Clark
Matthew C Lindell
Chuck Hance
Jon Adams
Buke Weik
Dean Adams

MARCH 28, 1998

MR. RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
605 W. 4th AVE. SUITE 306
ANCORAGE ALASKA 99501-2252

DEAR CHAIRMAN LAUBER,

I BEGAN FISHING IN 1979. I INITIALLY ONLY FISHED SALMON. IN THE MID EIGHTIES I BEGAN ALSO FISHING HALIBUT AND SABLEFISH. NOW I ALSO FISH PACIFIC COD.

WHEN IFQ's WERE BEING BEBATED I WAS NOT IN FAVOR OF THIS ALTERNATIVE TO CONTROL THE SABLEFISH AND HALIBUT HARVEST. I WAS ISSUED VERY FEW SHARES OF INITIAL IFQs. RIGHT OR WRONG I DECIDED I WANTED TO REMAIN IN THESE FISHERIES. INITIALLY MOST BANKS WOULD NOT LOAN MONEY FOR QUOTA PURCHASES SO I SPENT MY SAVINGS BUYING QUOTA. AFTER SPENDING MOST OF MY LIFE SAVINGS BUYING QUOTA SHARES I BORROWED FROM THE BANK DURING THE 2ND & 3RD YEAR OF THE PROGRAM.

WHEN I THINK ABOUT HOW MUCH OF MY SAVINGS I SPENT AND THE TREMENDOUS AMOUNTS I OWE THE BANK I GET HEADACHES.

ALL OF THE SABLEFISH QUOTA I PURCHASED HAS DECREASED. SOME AREAS HAVE FALLEN OVER 25%. IF FUTURE INCREASES

IN QUOTA ARE TAKEN FROM ME I MAY HAVE TROUBLE MEETING MY FINANCIAL OBLIGATIONS. THE MONEY I SAVED FROM CLOSE TO 20 YEARS OF FISHING I USED TO PURCHASE THE QUOTA SHARES WILL IN A SENSE ALSO BE TAKEN FROM ME.

I'M SURE THE COALITION OF FISHERIES DEPENDENT COMMUNITIES HAVE LEGITIMATE CONCERNS. AS I'M SURE YOU KNOW there ARE MANY LOANS AND GRANTS AVAILABLE FOR MANY OF THEIR FISHING RESIDENTS. MANY COMMUNITIES HAVE FINE AND WONDERFUL LEADERSHIP IN THEIR LOCAL GOVERNMENTS, TRIBAL GOVERNMENTS, STATE GOVERNMENTS AND NATIVE CORPORATIONS. IF THESE ENTITIES WORK TOGETHER I'M SURE THEY CAN DEVELOP GOOD WORKABLE LOANS FOR THEIR MEMBERS, THERE ARE EXISTING LOW INTREST, LOW DOWN PAYMENT, LONG TERM - LOANS AVAILABLE THAT THESE LOCAL & TRIBAL GOVERNMENTS COULD SUPPLEMENT TO ASSIST THEIR MEMBERS. IN THE LONG RUN COMMUNITIES HELPING THER RESIDENTS WILL MAKE FOR STRONGER COMMUNITIES.

THANK YOU FOR YOUR TIME.

DAVE FRANKLIN
Dave Franklin
F/N HAIDA WARRIOR
3401 W. LAWTON ST.
SEA. WA. 98199

Fairweather Fish, Inc.
F/V Golden Chalice
6320 Rosedale St. N.W.
Gig Harbor, WA. 98335
Phone 253-858-6489
Fax 253-858-6175

North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

April 2, 1998

Dear Council Members,

We have recently heard quite a lot of talk about ***Excess Halibut*** and statements where part of the quota share increase is given to some "new user group". Ask yourselves who would have invested in this fishery if they thought the QSP would be changed? You would be changing the very core of this fishery. Changing the equation that *is* IFQs. There is, and never was anything **EXCESS** about IFQs. The whole system is similar to a stock. Who would invest if they had nothing to gain from the increases?

Like many others, we invested heavily in this fishery and are beginning to feel like we've been sold "a bill of goods". We invested in this fishery after reading publications from RAM, stating that there would be "only slight changes in the total Quota Share Pool".

- Quoting: **Insights and Updates 2-94**

"To make it fair for non-CDQ BS/AI region fishermen who fished in the CDQ areas and whose IFQ will be reduced by the CDQ allocation , the Council will award you small amounts of quota shares from the other areas, in the same proportion as the amount allocated to the CDQ program. This is why your initial quota shares are a little bit smaller than your qualifying poundage. This adjustment will only happen ***once*** as part of your initial allocation of quota shares."

- Quoting: **The IFQ Program Under Way 2-95**

Quota Share Pool or QSP-For each IFQ species and regulatory area, this is the total of all QS issued. This figure will remain relatively ***constant***, with small adjustments resulting from successful appeals or from actions taken be enforcement.

- Quoting: **Report to the Fleet 3-97**

"As noted in Section 1 the pounds of halibut or sablefish that you may harvest in any given year(your annual IFQ) is a function of the amount of QS you hold, the total amount of QS held by everyone in any given regulatory area (the Quota Share Pool), and the annual TAC of halibut or sablefish established for each regulatory area. Of these Factors, the ***biggest variable is the TAC***".

- Quoting: **Report to the Fleet 2-98**

"To determine how many pounds of fish a QS holder may harvest during each year's fishing season, (i.e., the person's annual IFQ), RAM first establishes the Quota Share Pool (QSP) for both species and each regulatory area. There are 8 halibut regulatory areas and 6 sablefish regulatory areas. The QSP is the sum of all the QS units that have been issued to a given area. The QSP is calculated annually (on January 31) and varies ***slightly*** from year to year due to administrative adjustments."

From the very beginning and even in recent publications, RAM has portrayed the QSP as virtually unchangeable, with exception to permits in appeal. Who is to say that if we did compensate a "new user group", that there won't be two more in line after that? It is time to firmly establish that the Quota Share Pool not be tampered with, in such a manner, and on such a large scale.

Thank you for listening,

FAIRWEATHER FISH, INC.
Lisa Newland/ President
Mark Worley/ Captain

NORTH PACIFIC MANAGEMENT COUNCIL
TESTIMONY ON C-8-E LOCAL GOA COMMUNITIES
REQUEST FOR "EXCESS" HALIBUT.

I am very concerned with the pending request by the Gulf of Alaska Fishing Communities Coalition for Halibut Quota, CDQ's, or something like that. This would be very unfair to people like myself that recently bought halibut quota to try to make up for poor salmon seasons. A lot of us have mortgaged our houses and boats to buy quota.

I had crewed for halibut and had geared up my 32 foot Bristol Bay boat for halibut, right before the IFQ program locked down. I didn't get a useful amount of quota so I couldn't fish my own boat. I sold my nearly new gear for 50 cents on the dollar. My crew job on a larger boat ended because they didn't get enough quota to continue. I didn't dare buy quota until the IFQ lawsuit was settled, so I was out, I didn't even have a halibut crew job for 7 years.

Last summer I bought some "sweep-up" quota with savings and a loan on my salmon operation. The court challenge of the IFQ program had ended and the State of Alaska and some banks had began carefully lending money for IFQ's. It seemed like the new rules were in place and that, like it or not, I would have to buy quota if I wanted to fish halibut. Areas 3B and 4A were attractive because all the reports from fishermen and the IPHC test boats indicated the harvest would go up. The proposed increase in areas 3B and 4A was no surprise windfall. It was expected by anybody that was paying any attention at all, and we paid quota prices based on the harvest going up.

I believed in the promise of the IFQ program, that I was buying a percentage of the allowable harvest. If the council changes the rules on me again, and gives the quota that I bought to the Gulf Native Villages, then the whole program is junk. I want out of it and everybody else will too. I'll be making payments on my loan and somebody else will be fishing my quota for free.

Sid Nelson
Owner, Operator F.V. Sharon A.
(32 foot Bristol Bay boat)
P.O. Box 140
Naknek, Alaska 99633
(907) 246 8579

INTERNATIONAL PACIFIC HALIBUT COMMISSION

SEATTLE, WA 98145-2009

ESTABLISHED BY A CONVENTION BETWEEN CANADA
AND THE UNITED STATES OF AMERICA

TELEPHONE
(206) 634-1838

FAX:
(206) 632-2983

April 13, 1998

Dr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RE: April Meeting, Agenda Item C-8(e) Local GOA communities request for "excess" halibut

Dear Clarence:

We have received information from Council staff suggesting that a coalition of GOA communities will request a portion of what they call "excess" halibut to ease economic difficulties. While this issue is primarily allocative, I would like to review for the Council the condition of the halibut resource, as it considers a direction on this issue.

The halibut resource is currently near a historic high level of abundance. However, we see clear signs of declining biomass and lower recruitment than in recent years. The present high biomass is not sustainable as a result of these projected natural declines in recruitment. The time frame of such changes is not known with precision and its prediction is an area of Commission research. However, we estimate the long-term average yield of the stock to be in the 55-65 Mlb range. Obviously, such an average must contemplate years when yields will be below this level and all user groups would have lower quotas. For reference, the 1998 coast-wide catch limit is 71.82 Mlb.

Commercial catch limits have increased since 1995 in conjunction with the higher biomass indicated by the new assessment model, but the Commissioners have been conservative in setting the catch limits until we become more familiar with the new model. We expect declining biomass in future years and any change in halibut allocation should also recognize the distinct probability of lower quotas.

A member of our staff will be at the April meeting and will be available for discussion of halibut issues with the Council, if it so desires.

Best regards,

Bruce M. Leaman.
Director

cc: Commissioners

Individual Transferable Quotas, Comanagement, and Community:

Lessons from Nova Scotia

By Bonnie J. McCay, Richard Apostle, and Carolyn F. Creed

The effect of fisheries management on fishing communities is a major worldwide concern, one that in the United States is expressed in the Magnuson-Stevens Fishery Conservation and Management Act signed on 11 October 1996. Unlike its predecessors, the act requires fishery impact statements that assess the likely effects of management measures on fishing communities [Sec. 108(a)(5); Sec. 106(b)]. It also imposes a four-year moratorium on new individual fishing quota (IFQ) management programs [(Sec. 108(d)]. We believe the two provisions are connected. Accordingly, our study in Nova Scotia, Canada—focused as it is on the question of community in relation to IFQs—may be of broad interest. [In this essay we refer to IFQs as individual quotas (IQs) or individual transferable quotas (ITQs)]. Our study reveals the varied and problematic nature of "community" in fisheries management.

We used five social science research methods: (1) Creed spent one year doing ethnographic field work in a southwestern Nova Scotia fishing community, followed by a one-month "rapid rural appraisal" study in that community and two others in the region; (2) we observed the management community that has formed around the issue at more than 30 meetings; (3) we held informal discussions with participants in Nova Scotia's fisheries about the effects of ITQs on people and their communities, and we carried out more than 100 structured interviews with captains, crew, fish plant workers, vessel and fish plant owners, fishery enforcement officers, and fishery managers from Nova Scotia and the Canadian Department of Fisheries and Oceans (DFO); (4) we collected and analyzed DFO data on landings and quotas; and (5) we compared our results with those of similar research on ITQs in the surf clam (*Spisula solidissima*) and ocean quahog (*Arctica islandica*) fishery of the United States, which at the time we began the study, in 1990, was the first U.S. ITQ system. Such systems now exist for wreckfish (*Polyprion americanus*) in the South Atlantic and for sablefish (*Anoplopoma fimbria*) and halibut (*Hippoglossus stenolepis*) in the North Pacific.

The Scotia-Fundy groundfish fishery extends along the coasts of New Brunswick and Nova Scotia, Canada, from the Cabot Strait off Cape Breton to the U.S. line in the south, bisecting Georges Bank. Historically, cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), pollock (*Pollachius virens*) and flounders (e.g., *Pleuronectes ferrugineus*) are the most valued species. The DFO uses total allowable catches (TAC) for individual species, which are allocated according to gear type, vessel size, and management area. Vessels range from 30-ft gillnetters to 100-ft catcher-processors. The DFO created individual quotas (IQs) in 1991 for a fleet of otter trawlers under 65 feet; these became permanently transferable, and hence ITQs, in 1993. We refer to them as ITQs throughout, because within-season transfers were allowed, and unofficial permanent transfers took place from the outset. We also omit mention of New Brunswick because the fishery rapidly became almost entirely a Nova Scotia one.

The fleet had grown rapidly in numbers and capacity in the 1980s and was viewed as a serious threat to the fish stocks, particularly because of demands made on a beleaguered management system. After reviewing a task force report, Canada's fisheries minister decided to use IQs as well as cut-backs in TACs to deal with the economic and political problems of this fleet. The DFO then created an organization of agency and industry people to design and manage the new system, known as the IQ Group.

Community and Design of Management Systems

Our comparison between this Canadian ITQ system and the U.S. surf clam and ocean quahog ITQ management regime, which we have also studied (McCay et al. 1995), shows the need to be explicit about the nature of community. The new U.S. Magnuson-Stevens Fisheries Conservation and Management Act defines *fishing community* as "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community" [Sec. 102(16)]. Reading this definition, most people will think of a coastal town surrounding a harbor or bay, where people who work out of the port also live and interact socially. This sort of "coastal fishery-dependent" community is very important politically and economically in Atlantic Canada, as it is in the United States. But in more urbanized regions of North America, fish harvesters and processors often live far from where they work, and the places where fish are processed can be far from where they are caught. In those cases, the social and place-specific sense of community is weakened and reshaped into social entities like "interest groups" and highly dispersed "occupational communities."

Such a difference in types of communities may help explain differences in the design of ITQ systems. Arguably, the implications of ITQs for coastal fishery-dependent

Bonnie J. McCay *is a professor in the Department of Human Ecology, Cook College, Rutgers University, 55 Dudley Road, New Brunswick, NJ 08901; mccay@aesop.rutgers.edu.* ***Richard Apostle*** *is a professor in the Department of Sociology and Social Anthropology, Dalhousie University, Halifax, NS, Canada B3H 3J5; apostle@ac.dal.ca.* ***Carolyn F. Creed*** *can be reached at 220 Burlington Court, Flemington, NJ 08822; cfcreed@blast.net.*

communities played a stronger role in decisions about their design in Nova Scotia than they did in the U.S. surf clam and ocean quahog fishery management process, where the relevant "community" in the management process was viewed almost entirely as the industry itself, irrespective of both place and a larger, socially defined community. The ITQ system for that fishery, which is centered in the Mid-Atlantic and also is in New England waters, has been a free market economist's ideal: Few restraints exist regarding who can own ITQs and how much any one firm might control.

We found that ITQs...rapidly became concentrated in the hands of a few even before they officially became permanently transferable.

Nonetheless, members of the fishing community were concerned about monopoly power and corporate control, fears which led to a 10-year delay in the decision to go with ITQs. In the Nova Scotia case, where the fishery is more closely intertwined with coastal fishery-dependent communities, these concerns were magnified by issues such as the possible loss of supply to local fish-processing firms if ITQs were transferred to owners in other ports. The stronger coastal community concerns in Nova Scotia led to a regime that restricted participation to owner-operators of fishing vessels, had "caps" of 2% on each ITQ owner for a species in an area, and initially did not allow permanent transfers of quota. Related coastal community concerns in Alaska have led to similar constraints in the new IFQ system for halibut and sablefish in the North Pacific and have contributed to the current moratorium on IFQs in U.S. waters.

Another finding is the importance of history and context in understanding changing management regimes. In the U.S. case studied, managers adopted ITQs to deal with overcapitalization due to the fact that growth of strong year-classes led to increased catch-per-unit effort, although quotas remained the same. This led to drastic declines in allowable fishing hours, intensified races for clams, lower operating efficiency, and unsafe working conditions. In the Canadian case, managers adopted ITQs to address the decline of groundfish, which also led to overcapitalization but in a different way. The onset of ITQs was concurrent with sharp declines in allowable catches, and it had worsened by 1993 as southwestern Nova Scotia became more clearly involved in the groundfish crisis of the Northwest Atlantic. In either case, changing contexts make it difficult to assess the roles of ITQs in causing outcomes. Therefore, we do not claim that the ITQ system was the sole cause of the situations we are about to describe; arguably social processes such as concentration and differentiation were already well underway, as were the related processes of change in fish abundance and marine ecology.

ITQs and Social Relations in Nova Scotian Fishery-dependent Communities

In a small Acadian village in southwestern Nova Scotia, we conducted an intensive ethnographic field study to explore the short-term pros and cons of ITQs from the perspective of a local, fishery-dependent coastal community. We found that ITQs, initially awarded to all boat owners, rapidly became concentrated in the hands of a few even before they officially became permanently transferable. Within the first two years, small, independent operators were clearly selling out of the fishery, and people reported to us that the price of ITQs was too high for most crew and captains to buy into the fishery (see O'Boyle et al. 1994 and McCay et al. 1995 for quantitative data on a larger scale). As rights to catch fish became scarce and marketable, fish plant owners were the only ones able to buy or lease them. Despite a government policy that forbade plant owners from buying fishing vessels and, hence, sharing in the initial ITQ allocations, fish plants quickly gained control largely through arrangements made with captains, who remained nominal owners of fishing vessels and ITQs.

Ethnographic research helped us document more subtle effects on social relations as well. Those who owned significant quota became gatekeepers to the fishery far more than before; other people in the village became dependent job seekers. This changed social relations in the small, kin-based coastal village in ways that no one seemed to like, whether or not they owned ITQs, and villagers sometimes used the language of feudalism and servitude to express this concern. Concentration of ITQ holdings also changed perceptions of control of working conditions. For example, captains complained that some ITQ holders were sitting in their offices and micromanaging the captains via cellular phones, so that captains had much less say at sea and on shore. As one crew member said, "What can you say when you own nothing?" People resisted by criticizing the ITQ holders to their faces and calling them "Fish Lords" behind their backs. However, the fact remained that the process made possible by ITQs changed social relations in a village with a long, treasured tradition of egalitarianism.

the process made possible by ITQs changed social relations in a village with a long, treasured tradition of egalitarianism.

On the other hand, the ITQ system brought a number of benefits. In our follow-up study, which covered people working out of three ports in the region (Creed 1996), we found that captains liked the new system because they could be more selective. Small-boat captains also liked being able to stay in port when the weather was bad or when the fish were too far from port to make fishing profitable. Moreover, in this and in the earlier village study, we learned that even though owners cut crew share to cover the cost of ITQs, crew incomes did not decline. In addition, plant owners were able to accumulate sufficient quota to keep their fish plants and boats working even though the DFO cut allowable catch limits because of stock declines. We must note, though, that this village was in a special position: Its relative prosperity was partly at the expense of other villages in the region, where many people sold their ITQ holdings to outsiders, including entrepreneurs in the village we studied.

In the interviews and ethnographic study, many ITQ holders also emphasized the extent to which the system helped them develop more competitiveness in the world market. This, some argued, was good for the larger community because it meant fishery jobs for the villagers for years to come. However, the context was a community where the fishery is deeply embedded in the fabric of kinship, politics, culture, and sociality. People interviewed recognized how fragile this fabric might be, particularly when the older generation retired, and younger members of the firms—perhaps with different values, skills, and kinds of commitment to the local community—took over. Moreover, some noted that the large holders had so much money tied up in their ITQs and their fish plants that no one in the village would be able to buy them out should they decide to sell out of the fishery. The dominant fear was that an outside buyer might decide to close the fish plant and take the boats to another port, as had happened in other villages.

The dominant fear was that an outside buyer might decide to close the fish plant and take the boats to another port, as had happened in other villages.

Sustainability, Compliance, and the Comanagement Community

Advocates of ITQs have claimed that exclusive rights give incentives for conservation. We also know that sharply defined individual quotas tempt people to misreport, high-grade, and discard bycatch (Copes 1986). Although these problems exist in Nova Scotia, crew as well as ITQ owners interviewed claimed that the ITQ system reduced illegal fishing. Those polled said the reasons, ranked in order of importance, were (1) use of square-mesh rather than diamond mesh net; (2) a dockside monitoring program; (3) tough administrative sanctions; (4) the incentive structure of ITQ ownership; and (5) concern about declining fish stocks.

By 1993–1995, the interviewing period, fish stocks had crashed all around these fishers, from the U.S. side of Georges Bank to Newfoundland. Fish scarcity sharpened appraisals of illegal fishing as foolish: Without fish they and their children had no future in fishing. The ITQ system underscored the perception of fish as a limited resource, encouraging crew to follow the rules. In addition, respondents credited ITQs with changing incentive structures. ITQs reduced illegal fishing by encouraging fishers to "fish for dollars and not for pounds of fish," said those interviewed.

Tougher administrative sanctions, part of the fishery management plan, were seen as critical to the system's success. Just as important were the new monitoring program and adoption of square-mesh net. These both depended on the emergence and importance of a "comanagement" community (Pinkerton and Weinberg 1995). As noted, Canada's minister of fisheries asked the DFO to work with industry groups to plan the program. The resulting IQ Group, comprised of industry representatives and DFO personnel, became the key forum for debate and decision making as well as for sharing ideas and attitudes. The group's effort took on a life of its own. The industry was told it would have to take over funding of a thorough dockside monitoring program after the first year; although ITQ holders were unhappy about this, they accepted the challenge of designing a less costly, more efficient system that was "at arm's length" from both government and industry. It helped curtail illegal landings. The IQ Group also urged industry adoption of the square-mesh net, which helped increase escapement of small cod and other roundfish (Apostle et al. 1998).

Discussion: Community and Comanagement

Communities are important to fisheries management in at least two ways. First, the "social-impact" question reflects the need for fisheries managers to consider the effects of their management decisions on communities; even if impact analysis is not required by law, the issue will arise in management debates. Second, the success of fisheries management regimes depends heavily on compliance with regulations, and compliance is enhanced by the legitimacy and acceptability of a regime on the part of fishing communities. Consensus is growing that communities, variously defined, can and should play important roles *in* fisheries management, whether *comanagement, community-based fisheries management, virtual community management,* or *partnerships*.

Informal and formal community-based fisheries management, implemented through special committees, cooperatives, unions, or other organizations, is well documented (McGoodwin 1990), even for the United States and Canada (McCay 1980; Matthews 1993). However, local monitoring and control is inappropriate and difficult for migratory fisheries and challenging to sustain, given national laws and global market forces. Where they existed, many community-based management institutions have been replaced or marginalized by the board rooms and ledgers of corporations and the offices, laboratories, and meeting rooms of government managers. However, these facts do not reduce the importance of community as a source of information, incentives, goals, and values; as a site for debate and creative problem-solving; and as something of value that can be strongly affected by management decisions.

Consensus is growing that communities, variously defined, can and should play important roles in fisheries management...

A new kind of community has taken over some of these functions. Comanagement communities, in which participants in a fishery share decision-making power and management responsibilities with government agencies, bring fishing industry participants back into the decision-making process (Jentoft and McCay 1995). Thus, in the U.S. surf clam and ocean quahog fishery, advisory groups and committees of a regional council are engaged in some comanagement. In the Canadian fishery studied, the IQ Group has gone even further, taking on large

responsibilities and major challenges in monitoring, enforcing, and introducing conservation-oriented technologies.

Management communities created through their engagement with ITQ issues can go beyond narrow economic interests. They may become like the "epistemic" communities recognized in international environmental regimes (Haas 1990)—comprised of scientists, industry members, lobbyists, bureaucrats, journalists, and others who meet often, learn whether and how much to trust each other, and share common conceptions of problem and solution even as they may differ on specifics. The IQ Group appears to have taken on some of these features, enabling the development of innovations and experiments that might not otherwise have taken place, including model systems of industry-financed monitoring and the adoption of square-mesh nets. With the added dimension of fisher-scientist collaboration, the IQ Group also is on its way to developing the shared commitment to scientific knowledge that is the hallmark of epistemic communities. Although we agree with Scott (1993) that the ability and motivation to take on responsibilities of fisheries management may increase with individual allocation of property rights, we suggest that it was through the community created, rather than through property rights *per se*, that the Nova Scotia IQ Group found the collaboration, sharing of knowledge, and mutual respect needed to make advances in fisheries conservation and management.

In closing, we raise a warning about comanagement when ownership of ITQs or other exclusive rights is a major determinant of who participates. Although at first the Canadian system was based on nontransferable quotas, they became full-fledged ITQs within two years. The quota owners quickly saw the advantages to themselves of freer opportunities to trade quota, and through the IQ Group they and their government partners changed the rules. That this could happen so fast and with little discussion of potential impacts on coastal communities reinforces the problematic nature of "community" in fisheries management. Each management regime creates its own sociocultural community, largely defined by the interests created through the allocational process (i.e., by awarding vessel owners exclusive rights to own ITQs as opposed to plant owners, crew, and others). The holders of restricted rights see the economic advantages to themselves of transferability; others in the fisheries and in fishery-dependent communities may be in no position to even monitor, much less resist, their moves if the comanagement community is defined by ownership of ITQs, as has happened in both the U.S. and Canadian cases studied.

Hence, one of the risks of comanaged fisheries is neglect of the interests and concerns of other members of coastal communities. Care should be taken to address this problem of representation when designing ITQ and other individual rights-based systems. In Nova Scotia and other parts of Atlantic Canada, members of coastal communities are resisting the trend toward exclusive "partnerships" and "comanagement" arrangements. Application of the "fishing communities" provision of the U.S. Magnuson-Stevens Act may help protect the fuller range of fishery-dependent communities in the United States as well.

Acknowledgments

This publication is a result of work funded by the New Jersey Sea Grant College Program and the National Oceanic and Atmospheric Administration Office of Sea Grant and Extramural Programs, U.S. Department of Commerce, under grant no. NA36-RG0505 (Project No. R/SE-8). NJSG-97-364. It is also the result of research supported by the National Science Foundation, the New Jersey Agricultural Experiment Station (for which this is Journal Series D-26417-1-98), the John D. and Catherine T. MacArthur Program, the Dorothy B. Killam Fellowship Program, and the Department of Fisheries and Oceans of Canada. We are grateful to the Nova Scotia and Mid-Atlantic fishers, fish processors, family members, industry lobbyists, government officials, journalists, and others who helped us in this research, and to Chris Finlayson for helping with the interviews.

References

Apostle, R., G. Barrett, P. Holm, S. Jentoft, L. Mazany, B. McCay, and **K. Mikalsen.** 1998. Community, market, and state on the North Atlantic Rim. University of Toronto Press, Toronto, ON, Canada.

Copes, P. 1986. A critical review of the individual quota as a device in fisheries management. Land Economics 62(3):278–291.

Creed, C. 1996. Social responses to ITQs: cheating and stewardship in the Canadian Scotia-Fundy inshore mobile gear sector. Pages 72–83 *in* D. L. Burke, R. N. O'Boyle, P. Partington, and M. Sinclair, eds. Report of the second workshop on Scotia-Fundy groundfish management. Can. Tech. Rep. Fish. Aquat. Sci. 2100.

Haas, P. M. 1990. Saving the Mediterranean: the politics of international environmental cooperation. Columbia University Press, New York.

Jentoft, S., and **B. J. McCay.** 1995. User participation in fisheries management: lessons drawn from international experiences. Marine Policy 19(3):227–246.

Matthews, D. R. 1993. Controlling common property; regulating Canada's East Coast fishery. University of Toronto Press, Toronto, ON, Canada.

McCay, B. J. 1980. A fishermen's cooperative, limited: indigenous resource management in a complex society. Anthropological Quarterly 53:29–38.

McCay, B. J., C. F. Creed, A. C. Finlayson, R. Apostle, and **K. Mikalsen.** 1995. Individual Transferable Quotas (ITQs) in Canadian and U.S. fisheries. Ocean Coast. Manag. 28(1–3):85–116.

McGoodwin, J. R. 1990. Crisis in the world's fisheries. Stanford University Press, Stanford, CA.

O'Boyle, R., C. Annand, and **L. Brander.** 1994. Individual quotas in the Scotian Shelf groundfishery off Nova Scotia, Canada. Pages 152–168 *in* Karyn Gimbel, ed. Limiting access to marine fisheries: keeping the focus on conservation. Center for Marine Conservation and World Wildlife Fund U.S., Washington, DC.

Pinkerton, E., and **M. Weinstein.** 1995. Fisheries that work: sustainability through community-based management. The David Suzuki Foundation, Vancouver, BC, Canada.

Scott, A. 1993. Obstacles to fishery self-government. Marine Resource Economics 8:187–199.

U.S. Department of Transportation
United States Coast Guard

RECEIVED
MAR 16 1998
N.P.F.M.C

Notice

March 6, 1998

U. S. COAST GUARD AND NATIONAL MARINE FISHERIES SERVICE 1998 IFQ DOCKSIDE ENFORCEMENT PROGRAM

The U. S. Coast Guard (USCG) and the National Marine Fisheries Service (NMFS) will be supporting each other's effort to effectively manage the 1998 IFQ fishery through a balanced enforcement approach both at sea and dockside. Plant managers and fishers should expect to see an increased presence of Coast Guard boarding personnel at the dock in 1998 as the Coast Guard conducts independent dockside IFQ monitors. These monitors are being conducted to help fill an IFQ enforcement gap created by vacancies in the NMFS Fishery Patrol Officer ranks.

The Coast Guard will conduct dockside monitors at both high and low volume ports, including cutter homeports, and will be fully coordinated with NMFS enforcement personnel. The Coast Guard plans to continue this support for as long as needed, and with minimal impact to the Coast Guard's more traditional "at-sea" enforcement mission. The four primary violations the dockside enforcement program is intended to detect and deter are:

(1). IFQ cardholder not on board
(2). Improper reporting of landing weight and area fished
(3). Inadequate quota share available to cover the catch
(4). Illegal fishing by a non-IFQ participant

The Coast Guard intends to conduct dockside monitors following procedures similar to those used by NMFS enforcement officers. The Coast Guard will typically send two law enforcement personnel to monitor the IFQ offload. They will be armed in accordance with standard Coast Guard law enforcement procedures. The monitor will include a complete observance of the offload, inspection of the vessel's holds and logs and completion of a boarding report. The boarding team will also verify that NMFS is informed by the plant of any overages. On occasion, the boarding personnel may also ask to use the plant's data terminal. Landing Reports must still only be made to NMFS, and waivers may only be requested through NMFS.

If you have any questions concerning the Coast Guard's IFQ enforcement program, please contact LCDR Greg Busch at (907) 463-2223.

J. V. O'SHEA
Captain, U.S. Coast Guard
Chief, Maritime Operations Plans and Policy Branch
Seventeenth Coast Guard District
By direction of the District Commander

John Lingafelter for:
SAC MEYER
Special Agent-in-Charge
Alaska Enforcement Division
National Marine Fisheries Service

Agenda C-8(c)
April 1998

DRAFT PROPOSAL FOR AN

ALASKA IFQ/CDQ COST RECOVERY PROGRAM

Discussion Paper prepared by
National Marine Fisheries Service

April 20, 1998

DESCRIPTION AND QUALITATIVE ANALYSIS

OF THE PROPOSED IFQ/CDQ COST RECOVERY PROGRAM

Introduction--Magnuson-Stevens Act authorization

1. Program Objectives

2. Process to Establish Annual Fees

3. Limited Access System Administration Fund (LASAF): System for Deposits and Disbursements

4. Deductions for Additional CDQ Observer and Reporting Costs

5. Implementation Date

MSA REQUIREMENTS FOR
Limited Access System Administration Fund (LASAF)
Section 305(h)(5)(B)

Secretary shall make LASAF available without appropriation or FY limitation to:

Administer the central registry system

SHALL

Collect reasonable fee of not more than 0.5% of value of LAS permit (registration and transfer) 305(h)(5)(A)

Administer & implement this Act in the fishery in which fees are collected

SHALL

Collect fee of up to 3% of exvessel value to recover actual costs of IFQ/CDQ programs 304(d)(2)

MAY

Up to 25% of fees collected under 304(d)(2) can be used for IFQ loan costs 303(d)(4)

This is subject to annual appropriation to cover costs of new direct loan obligations 304(d)(2)(C)(i)

SHALL

Upon application of the State, transfer up to 33% of CDQ fee to State for mgt. & enforcement of CDQ program 304(d)(2)(C)(ii)

SHALL

Deduct from CDQ fees the costs incurred by participants for observer & reporting requirements which are in addn. to requirements of other participants in the fishery (i.e. open access) 305(i)(3)

1. PROGRAM OBJECTIVES

1) to meet the MSA requirements to implement a program to recover the management and enforcement costs of the IFQ and CDQ programs;

2) to do so in a manner that is equitable, effective, and efficient; and

3) to avoid delays in implementing the program.

The ability of the program to recover IFQ and CDQ program costs will be dependent on the following issues:

1) **the definition of recoverable costs;**

2) **the quantity and value of the catch subject to the fees;**

3) **the percent of the fees used for the IFQ loan program;**

4) **the reimbursement to the State; and**

5) **the deductions for additional CDQ observer and reporting costs.**

2. PROCESS TO ESTABLISH ANNUAL FEES

a. Identification of IFQ/CDQ fisheries

b. Annual determination of fee percentage(s)

c. Catch subject to IFQ/CDQ fees

d. Establishing and using standard ex-vessel prices

e. Ex-vessel value and price adjustment reports

a. Identification of IFQ/CDQ fisheries

For purposes of establishing the fee percentages and separate accounts in the Limited Access System Administration Fund (LASAF), NMFS would define the following two IFQ/CDQ fisheries:

- **Halibut and sablefish IFQ fishery**
- **BSAI multispecies CDQ fishery (groundfish, halibut and crab)**

b. Annual determination of fee percentage(s)

- Establish annual fee percentage for the upcoming calendar year for each IFQ/CDQ fishery.

- The fee percentage for the fishery would be based on standard ex-vessel prices by species and on projections of the following for that fishery:

  1) the catch subject to the IFQ/CDQ fees;

  2) the direct management and enforcement costs of that IFQ or CDQ program;

  3) the funds for that program in the LASAF; and

  4) nonpayment of fee liabilities.

Proposed and Final Specification Process

After consulting with the Council and State, NMFS would publish the following in the Federal Register and invite comments:

1) **fee percentage for each IFQ/CDQ fishery;**

2) **the standard ex-vessel prices; and**

3) **the values of the variables on which each fee percentage is based.**

After considering comments received, NMFS would publish, in the Federal Register, the final fee percentages, standard ex-vessel prices, fee per pound schedule, and projections used in establishing the fee percentages.

Fee Percentage

The fee percentage for each IFQ/CDQ fishery would be set equal to whichever is less, the fee percentage calculated using the following equation or 3 percent.

$$\text{Fee percentage} = [100 \times (DPC - AB)/V]/(1 - NPR)$$

where,

- **DPC = projection of direct program costs for that fishery for coming year,**
- **AB = projected end of the year LASAF account balance for that program,**
- **V = projected ex-vessel value of the catch subject to the IFQ/CDQ fees in that IFQ/CDQ fishery for the coming year, and**
- **NPR = fraction of fee assessments that are expected to result in nonpayment.**

c. Catch subject to IFQ/CDQ fees

- IFQ catch: NMFS would base the IFQ fees on the ex-vessel value of the landed catch of the IFQ species harvested under a Federal IFQ program whether the catch is taken in the EEZ or State waters.

Why?

1) the IFQ program monitors the landed catch of IFQ species and not other groundfish species;

2) the IFQ program principally addresses the harvest of IFQ species;

3) the additional management and enforcement costs principally are associated with the harvest of the IFQ species;

4) the benefits to participants in the IFQ program principally are associated with the harvest of the IFQ species; and

5) imposing a fee on other species caught with IFQ species would provide an incentive to discard the other species and an even greater incentive to discard halibut and sablefish when small amounts of the IFQ species are taken as bycatch in other groundfish fisheries.

For each IFQ species, the fee would be the product of the fee percentage, the standard ex-vessel price and the amount of the IFQ species landed.

- CDQ catch: NMFS would base the CDQ fees on the ex-vessel value of the total catch (retained and discarded catch) of groundfish and the landed catch of crab and halibut harvested under a Federal CDQ program whether the catch is taken in the EEZ or State waters.

Why? Fee basis for catch weight would be determined by how weight is reported to NMFS----

- groundfish CDQ--total catch is allocated to CDQ group; CDQ group reports total catch

- halibut CDQ--landed catch is reported via IFQ/CDQ card swipe system

- crab CDQ--State monitors crab CDQs in terms of landed catch, including deadloss

- Prohibited species quota (PSQ) species would not be subject to the fees.

- The CDQ fee for each CDQ species would be the product of the fee percentage, the standard ex-vessel price and the amount of the CDQ catch subject to the fee reported to NMFS by the CDQ group, or by ADF&G for CDQ crab.

d. Establishing and using standard ex-vessel prices

- NMFS would use standard ex-vessel prices, not actual ex-vessel prices.

Why?

- Standard prices would have to be used for the IFQ and CDQ catch that is not sold prior to being processed, i.e. no ex-vessel transactions. This would include:
  - very small part of halibut IFQs used for at-sea processing
  - larger part of the sablefish IFQs used for at-sea processing
  - very small part of IFQs where all or part of fish landed is retained for personal use or later sale
  - large share of the groundfish CDQs because at-sea processors are expected to be very actively involved in the CDQ groundfish fisheries
- If actual ex-vessel prices were used for some catch and standard ex-vessel prices based on pre-season projections were used for the rest of the catch, the process (and reporting burden) would be more complicated.
- Simpler to audit the quantity caught or landed than it is to audit the quantity and the ex-vessel price.
- NMFS would explore the feasibility of modifying the card swipe system to calculate the IFQ fee liability for each IFQ landing. This would simplify IFQ fee collections, submissions and audits for IFQ fishermen, registered buyers and NOAA.

Process to establish standard ex-vessel prices

- NMFS would establish the standard ex-vessel prices by species, gear, area of catch, season, and port group prior to each fishing year based on ex-vessel price information from the most recent 12-month period for which data are available and on factors that are expected to change the average ex-vessel prices in the coming year.

- A similar process was used for the Research Plan Fee Program.

- The State generates standard ex-vessel prices for the purpose of the State landings tax for at-sea processors; however, because of differences in the timing of the fee collections for the State's landings tax and the IFQ/CDQ fees, the State's standard ex-vessel prices would be quite old by the time they were used for the IFQ/CDQ fees.

- Having the CDQ fees based on the royalties the CDQ groups receive for the use of their CDQs and PSQs is not a viable alternative. The royalties are not a measure of the ex-vessel value of the CDQ catch.

e. Ex-vessel value and price adjustment reports

- NMFS could collect ex-vessel value information with landings data for each IFQ landing in order to provide better standard ex-vessel prices for IFQ halibut and sablefish.

- Similarly, groundfish ex-vessel value data could be collected with the Weekly Processor Reports for processors that report landed weight.

- IFQ registered buyers and groundfish processors that report landed weight in the Weekly Processors Reports could be required to provide information on post landings price adjustments. This would provide more complete estimates of ex-vessel prices.

3. LASAF: System for Deposits and Disbursements

a. LASAF deposits and accounts

b. Treasury deposits for IFQ loan program

c. IFQ and CDQ fee collection and submission mechanisms and schedules

   IFQ fee collection

   CDQ fee collection

   Fee submission to Department of Commerce (DOC)

d. Recoverable program costs

e. Reimbursement for State of Alaska CDQ management and enforcement costs

f. Compliance incentives

a. LASAF deposits and accounts

- All IFQ and CDQ fees will be deposited in the LASAF;

- Except for the IFQ fees that are deposited in the Treasury and available to cover the costs of the new IFQ loan obligations and loan guarantee program.

- Separate LASAF accounts can be created to ensure that:

1) the funds from a specific IFQ (CDQ) fishery are used only to pay for the direct management and enforcement costs of the IFQ (CDQ) program for that fishery and

2) the funds from the permit registration and transfer fees would only be used to pay for the cost of administering the central registry system.

b. Treasury deposits for IFQ loan program

- None of the CDQ fees would be deposited in the Treasury for the IFQ loan program.

- The percent of the IFQ fees, up to the 25 percent limit, to be deposited in the Treasury for the IFQ loan obligations and loan guarantee program would be determined annually by the Secretary based on estimates of the funds required for that program and the IFQ fee collections.

c. IFQ and CDQ fee collection and submission mechanisms and schedules

- IFQ fee collection--IFQ fees would be collected for NMFS from the person making the IFQ landing by the registered buyer at the time of landing.

- The fees would be collected for the entire IFQ landing including any amount the fisherman retains for personal use or later sale.

- CDQ fee collection--CDQ fees would be collected for NMFS by the CDQ group in the last quarter of the calendar year in which the fish is harvested.

- Fees collected would be less the credit for additional observer and reporting costs.

- Each CDQ group would determine if it would collect the fees from the fishing operation, the processor or itself.

Why?

- Using registered buyers and CDQ groups as the collection point would minimize the number of persons calculating and submitting fees.

- This proposed method would utilize existing reporting mechanisms for catch weight.

Fee submission to Department of Commerce (DOC)

- The fees proposed to be collected by IFQ registered buyers and CDQ groups would be submitted to the DOC within one month after the end of the calendar year for which the fees were collected.

- NMFS would specify the information to be submitted with the payment to substantiate the fee liability calculations made by the registered buyer or CDQ group.

Audits

- The audits of the pre-credit fee liabilities would be based on existing reporting requirements.

- IFQ landings reports would be used to audit IFQ fee submissions.

- CDQ group catch reports would be used to audit CDQ fee submissions for groundfish (and halibut).

- ADF&G reports on CDQ crab catch would be used to audit fee submissions for the crab fishery.

- A dispute resolution mechanism would be developed to resolve any differences between the payment a registered buyer or CDQ group submits and what a NMFS audit indicates should have been submitted.

d. Recoverable program costs

- Recoverable costs for the IFQ and CDQ programs would include Federal management and enforcement costs that would not occur in the absence of these programs.

- Recoverable costs would not include Federal or State overhead costs, stock assessment costs or observer program costs that would occur in the absence of the IFQ and CDQ programs.

- NMFS would provide more specific guidance on what Federal and State costs are recoverable.

- In addition, up to the 33 percent limit, recoverable costs would include State of Alaska management and enforcement costs that would not occur in the absence of the CDQ program.

e. Reimbursement for State of Alaska CDQ management and enforcement costs

- Upon application by the State, up to 33 percent of the CDQ fees collected and deposited in the LASAF will be transferred to the State in order to reimburse it for the actual costs directly incurred in the management and enforcement of the CDQ program.

- If the State's direct program costs do not exceed the 33 percent limit and if the CDQ account funds in the LASAF are sufficient to cover the State and Federal direct costs for the CDQ program, the State's direct program costs are fully reimbursable.

- However, if the sum of the State's direct costs, up to the 33 percent limit, and the direct Federal costs exceeds the CDQ account funds in the LASAF, there would be proportional decreases in the amount the State is reimbursed and in the amount of the direct Federal costs that are paid for from the LASAF.

f. Compliance incentives

- **The following incentives would be used to increase compliance with the fee submission requirements:**

1) **late payment charges and interest charges;**

2) **requiring an adequate payment record to complete the annual application process to become a registered buyer; and**

3) **requiring an adequate payment record for approval of a CDP and to use a CDQ allocation.**

4. Deductions for Additional CDQ Observer and Reporting Costs

a. Additional CDQ observer and reporting requirements

b. Credits for additional observer costs

c. Credits for additional reporting costs

Credits for capital expenditures

Credits for previous capital expenditures

d. Credit carryover

e. Determining and substantiating CDQ fee credits

a. Additional CDQ observer and reporting requirements

- CDQ fee credits can be claimed for the costs incurred by participants in the CDQ program for observer and reporting requirements which are in addition to observer and reporting requirements costs of "other participants" in the fishery from which the CDQ allocation is made.

- Given lack of guidance in statutory language and the legislative history, NMFS has discretion to identify the specific observer and reporting requirements for which CDQ cost deductions from fees can be claimed.

- NMFS proposes to identify the "other participants" as the fishermen, vessel owners, processors, registered buyers, etc. who catch and process groundfish, halibut, and crab in the non-CDQ fisheries.

- Therefore, the credits would be limited to the additional observer and reporting costs of these participants in the CDQ fishery.

- The costs incurred by the CDQ group for administration and management of the CDQ program and fisheries would not be deductible.

- NMFS has not yet determined whether the costs of purchasing, installing and maintaining the scales and observer sampling stations required in the CDQ fisheries are deductible costs and seeks Council and public comment on this particular issue.

b. Credits for additional observer costs

- The costs that can be claimed would be limited to those associated with the additional coverage required in a CDQ fishery and the requirement of CDQ certified observers.

- The cost of observer coverage above that required by the CDQ program regulations could not be claimed.

- The credit for additional observer coverage would be based on information provided by the CDQ group, Pacific States Marine Fishery Commission, and/or observer contractors.

c. Credits for additional reporting costs

- Claims for credits for additional reporting requirements for participants in CDQ fisheries would need to be itemized and substantiated.

- NMFS may specify the method for estimating a standard deduction for some specific additional reporting requirements.

- NMFS would specify the information that a CDQ group would need to provide to receive a claimed credit.

- Credits for capital expenditures--If determined to be deductible costs, the credit for the capital expenditure (e.g., the cost of buying and installing scales) would be for the year of the capital expenditure and NMFS would specify what information must be provided to substantiate a claimed credit.

- Credits for previous capital expenditures--If determined to be deductible costs, a prorated part of the capital expenditures that occurred before the CDQ fee program was implemented but that were for equipment that is required to meet the additional CDQ reporting requirements during the first year of the fee program can be included as capital expenditures for the first year of the fee program.

d. Credit carryover

- Credits in excess of pre-credit fee liabilities would not be used in subsequent years.

e. Determining and substantiating CDQ fee credits

- Each CDQ group would calculate its CDQ fee credits based on the following:

  1) guidelines established by NMFS and

  2) information which substantiates the additional observer and reporting costs for the relevant participants in the CDQ fisheries.

5. Implementation Date

- Three alternative implementation dates are considered. They are:

- a. January 1, 1999;

- b. later in 1999; and

- c. January 1, 2000.

- Mid-year implementation would raise some equity concerns and would provide an additional incentive to harvest fish early in the year. However, the catch data required for a mid-year implementation would be available. In addition, it would increase the fees that could be collected if the IFQ/CDQ fee program cannot be implemented by January 1, 1999.

Schedule for Development and Implementation of IFQ/CDQ Fee Collection Program

1998:

April: Present draft discussion paper to the public and the Council for comment at the Council meeting

June: Initial EA/RIR/IRFA available for public and Council review at the Council meeting

Sept: Publish proposed rule and proposed 1999 standard ex-vessel price specifications for 30 day public comment period

October: Accept public and Council comment at Council meeting

Nov-Dec: Publish final rule and final 1999 standard price specifications

This schedule with proposed fee collection beginning January 1, 1999 represents one very optimistic alternative.

Implementation date will depend on time necessary to develop the infrastructure of the system supporting the IFQ/CDQ fee collection program.

Programmatic Considerations During Proposed Development Phase of Program

Public Outreach

Recordkeeping and Reporting Requirements

- revise existing forms or requirements (IFQ landing report, registered buyer permit)
- develop new forms and instructions (annual IFQ fee return and worksheet, annual CDQ fee return and worksheet, CDQ fee credit form, 'form' to appeal/amend return)

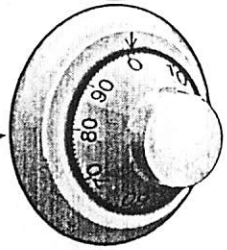
Software Development

- changes to transaction terminal software (price info, IFQ fee calculated for each landing and printed on landing report; target completion date is January 1, 1999)
- data transfer and storage for ADF&G's CDQ crab catch data
- audit mechanism tied in to existing databases for already required reports
- target completion date is January 31, 2000

NOAA Finance

- establishment of lockbox, assignment of LASAF accounting codes, etc.
- establish LASAF account procedures and protocols for deposits and disbursements
- collection data transfers with Alaska Region
- target date to receive first IFQ/CDQ fees is January 31, 2000

NOAA L CK BOX



ANNUAL FEE RETURN
LBS x FEE % x STANDARD EXVESSEL PRICE = FEE

REGISTERED BUYERS

IFQ LANDING REPORT, PRICE INFO
COPY OF FEE RETURNS

UP TO 25%
to cover costs of new IFQ loan obligations and loan guarantee program

U.S. TREASURY
LIMITED ACCESS SYSTEM ADMINISTRATION FUND

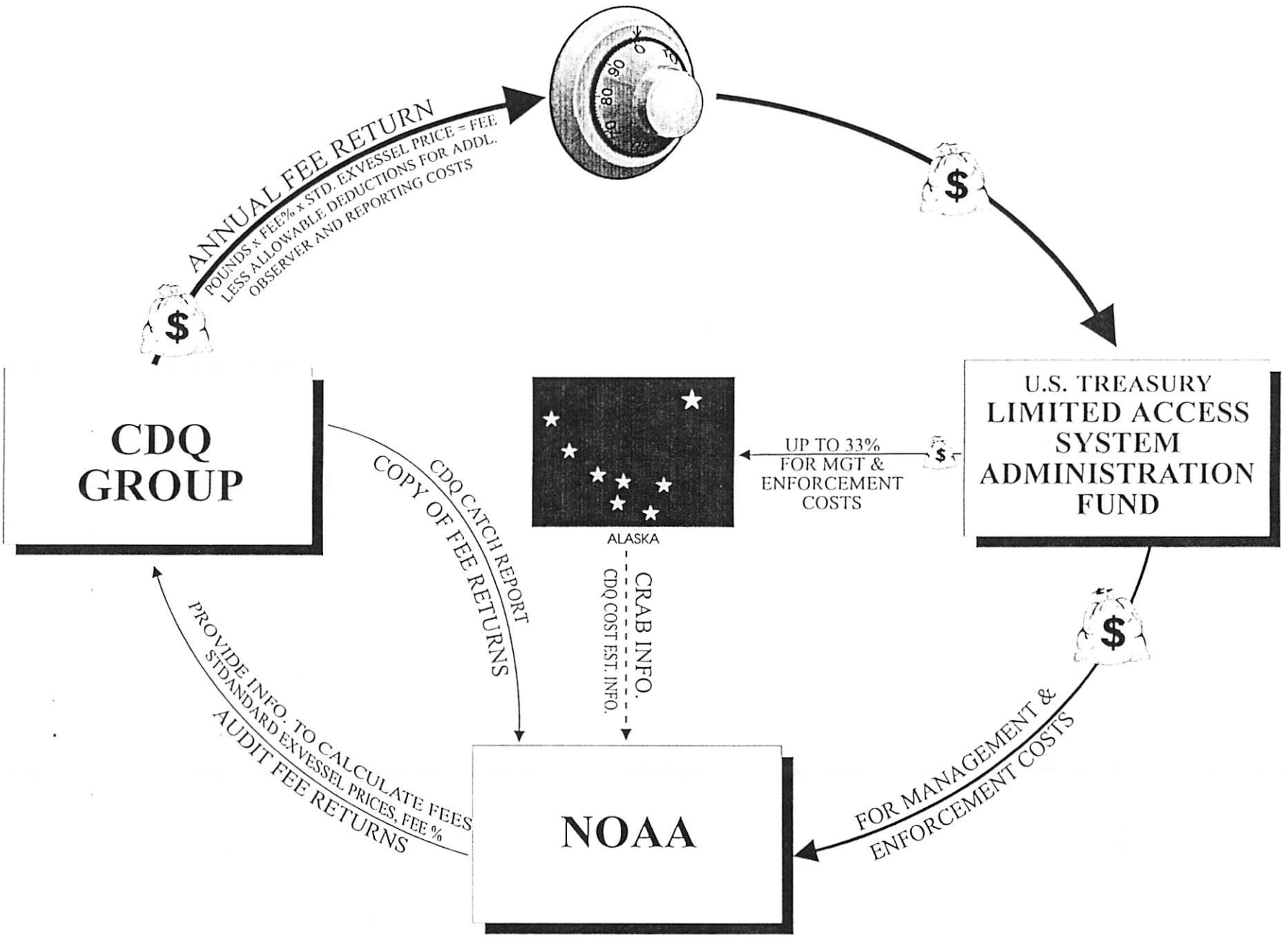
PROVIDE INFO. TO CALCULATE FEES, STANDARD EXVESSEL PRICES, FEE%
AUDIT FEE RETURNS

NOAA

FOR MGT. & ENFORCEMENT COSTS

IFQ FEE COLLECTION DATA & $ FLOW

NOAA LOCK BOX



CDQ FEE COLLECTION DATA & $ FLOW

Agenda C-8(c)
April 1998

DRAFT PROPOSAL FOR AN

ALASKA IFQ/CDQ COST RECOVERY PROGRAM

Discussion Paper prepared by
National Marine Fisheries Service

April 20, 1998

TABLE OF CONTENTS

DISCUSSION PAPER

NMFS IFQ/CDQ COST RECOVERY PROGRAM PROPOSAL

April 20, 1998

INTRODUCTION

The Magnuson-Stevens Act (MSA) requires the Secretary of Commerce (Secretary) to implement a program to recover the management and enforcement costs of the Alaska Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) programs. MSA language concerning that requirement is presented in Appendix A. Relevant MSA language concerning the central registry program and the IFQ loan obligation and guarantee program also is included in Appendix A. These are two separate but related programs required by the MSA.

This discussion paper presents a draft proposal for an IFQ/CDQ cost recovery program. An outline of the elements of the program is followed by a full description and brief qualitative analysis of the proposed elements. The schedule for the development and implementation of the IFQ/CDQ cost recovery program and a list of programmatic considerations during the development phase of the program, respectively, are in Appendices B and C. Flow diagrams of MSA requirements and the cost recovery program are in Appendix D.

The IFQ/CDQ cost recovery program will be developed and implemented by NMFS via a regulatory amendment, but with assistance from the North Pacific Fishery Management Council (Council), the State of Alaska, participants in the IFQ and CDQ fisheries, and other interested parties. NMFS has not made final determinations on specific implementation aspects of this program and actively seeks Council and public comment on this discussion paper and during the public comment period of the subsequent proposed rulemaking process. The Council will provide an effective forum for discussing the proposed elements of the program. However, the Council is not required to take formal action on the amendment.

OUTLINE OF PROGRAM ELEMENTS

An IFQ/CDQ cost recovery program is defined by its specific elements. The topics addressed by the proposed elements are outlined below.

1. Program Objectives

2. Process to Establish Annual Fees

   a. Identification of IFQ/CDQ fisheries

   b. Annual determination of fee percentage(s)

   c. Catch subject to IFQ/CDQ fees

      IFQ catch

      CDQ catch

   d. Establishing and using standard ex-vessel prices

   e. Ex-vessel value and price adjustment reports

3. LASAF: System for Deposits and Disbursements

   a. LASAF deposits and accounts

   b. Treasury deposits for IFQ loan program

   c. IFQ and CDQ fee collection and submission mechanisms and schedules

      IFQ fee collection

      CDQ fee collection

      Fee submission to Department of Commerce (DOC)

   d. Recoverable program costs

   e. Reimbursement for State of Alaska CDQ management and enforcement costs

   f. Compliance incentives

4. Deductions for Additional CDQ Observer and Reporting Costs

   a. Additional CDQ observer and reporting requirements

   b. Credits for additional observer costs

   c. Credits for additional reporting costs

      Credits for capital expenditures

Credits for previous capital expenditures

d. Credit carryover

e. Determining and substantiating CDQ fee credits

5. Implementation Date

DESCRIPTION AND QUALITATIVE ANALYSIS OF THE PROPOSED IFQ/CDQ COST RECOVERY PROGRAM

This section contains a description and qualitative analysis of each element of the proposed IFQ/CDQ cost recovery program. The elements are presented in the order in which they were outlined above.

1. **Program Objectives**

The proposed objectives of the fee collection program are:

1) to meet the MSA requirements to implement a program to recover the management and enforcement costs of the IFQ and CDQ programs;
2) to do so in a manner that is equitable, effective, and efficient; and
3) to avoid delays in implementing the program.

Analysis: The fundamental objective is to implement a program to recover the actual costs directly related to the management and enforcement of the IFQ and CDQ programs implemented in the fisheries under the jurisdiction of the Council. Council and industry support for the concept of cost recovery was demonstrated during the development of the IFQ program for halibut and sablefish. The Council's final action on the initial IFQ program included a commitment to implement a cost recovery program as soon as such authority was added to the MSA. More recently, Council and industry support was important in having the cost recovery requirements included in the MSA and without the implementation delay required for some other IFQ programs.

There are several reasons why the fees collected will not necessarily cover the full actual costs directly related to the management and enforcement of IFQ and CDQ programs. They include the following:

1) The fee cannot exceed 3 percent of the ex-vessel value of fish harvested under any such program;
2) Up to 25 percent of the fee revenue will be used for the IFQ loan obligation and guarantee program;

3) CDQ fee revenue is reduced by the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the corresponding non-CDQ fishery;
4) Up to 33 percent of the CDQ fee revenues for a fishery shall be transferred to the State of Alaska to reimburse it for its actual costs directly incurred in the management and enforcement of the CDQ program; and
5) The amount of the fee revenue that can be collected is limited to the recoverable costs without consideration of either item 2 or 3. That is, the fee percentage used probably cannot be adjusted upward, toward the 3 percent limit, to account for the fact that: 1) part of the revenues will be used to support the IFQ loan program as opposed to covering actual direct program costs, and 2) the CDQ fee revenues will be decreased by the CDQ fee credits/deductions that are allowed.

The ability of the program to recover IFQ and CDQ program costs, therefore, will be heavily dependent on the design of the elements that address the following issues:

1) the definition of recoverable costs;
2) the quantity and value of the catch subject to the fees;
3) the percent of the fees used for the IFQ loan program;
4) the reimbursement to the State; and
5) the deductions for additional CDQ observer and reporting costs.

The equitable objective is to ensure that those who pay the fees are treated fairly and that the disbursement of the fees between the Federal Government and the State is fair. The effective objective can be defined in terms of meeting the program requirements established by the MSA. The efficiency objective addresses the cost of the cost recovery program to NOAA and the participants in the IFQ and CDQ programs. The efficiency objective can in part be met by making the program simple to understand and implement.

2. Process to Establish Annual Fees

a. Identification of IFQ/CDQ fisheries

For the purposes of establishing the fee percentages and separate accounts in the Limited Access System Administration Fund (LASAF), NMFS proposes to define the following two IFQ/CDQ fisheries:

-Halibut and sablefish IFQ fishery

-BSAI multispecies CDQ fishery (groundfish, halibut and crab)

Analysis: Although the BSAI crab fishery, the BSAI groundfish fishery, the halibut fishery, and the fixed gear sablefish fishery are considered to be four separate fisheries for many purposes, they would be defined as two IFQ/CDQ fisheries for this program. This would: 1) differentiate between the IFQ and CDQ programs and 2) meet the MSA requirement that the fees be used for "administering and implementing this Act in the fishery in which the fees were collected". The halibut and sablefish IFQ program and the BSAI multispecies CDQ program are two distinct programs.

There are principally four reasons why the CDQ fishery would not be defined as two or more separate fisheries. First, the MSA requires that all CDQ allocations be established within a single CDQ program. Second, many of the management and enforcement costs of the CDQ program are not species-specific: therefore, apportioning such program costs by species would be arbitrary. Third, making distinctions between the CDQ crab, groundfish and halibut fisheries would decrease the ability of the State to be reimbursed fully for its direct CDQ management and enforcement costs. This is because if the crab CDQ fishery is defined as a separate CDQ fishery, the 33 percent limit on reimbursements to the State would apply to the crab fishery even though State costs will account for a much larger percent of the sum of Federal and State management and enforcement costs for CDQ crab. However, depending on what CDQ observer and reporting requirement costs are determined to be deductible, the State's reimbursements, at least initially, would be greater if the crab fishery were defined as a separate CDQ fishery. Fourth, that same distinction would decrease the total costs that are recoverable because State costs are only recoverable up to the 33 percent limit for each CDQ fishery. Including all groundfish, crab and halibut in one CDQ fishery would eliminate the possibility of having different fee percentages for groundfish, crab and halibut. The possibility of different fee percentages would be an advantage to CDQ groups and CDQ partners who would be subject to the lower fee percentages and it would be a disadvantage to those who would be subject to the higher fee percentages. However, if the fee recoverable costs are at least 3 percent of the ex-vessel value for CDQ groundfish, for CDQ crab and for CDQ halibut, the fee percentage would be 3 percent for CDQ groundfish, crab and halibut and such advantages and disadvantages would not occur.

In terms of IFQ program management and enforcement costs, and

sometimes in terms of fishing activities, it is difficult to differentiate between the IFQ halibut and sablefish fisheries. Therefore, NMFS does not propose to define them as separate IFQ fisheries. Treating them as a single fishery simplifies somewhat the processes of annually setting the fee percentage and of keeping the funds in the correct LASAF accounts. However, it would eliminate the possibility of different fee percentages for halibut and sablefish. This would be a disadvantage to the fishermen who would otherwise have a lower fee percentage. However, if the fee recoverable costs are at least 3 percent of the ex-vessel value for IFQ halibut and for IFQ sablefish, the fee percentage would be 3 percent for IFQ halibut and sablefish fishermen and this disadvantage would not occur.

b. Annual determination of fee percentage(s)

NMFS proposes to establish annually an IFQ/CDQ fee percentage for the upcoming calendar year for each IFQ/CDQ fishery. The fee percentage for the fishery would be based on standard ex-vessel prices by species and on projections of the following for that fishery:

1) the catch subject to the IFQ/CDQ fees;
2) the costs directly related to the management and enforcement of that IFQ or CDQ program;
3) the funds for that program in the LASAF; and
4) nonpayment of fee liabilities.

After consulting with the Council and State, NMFS would publish the following in the Federal Register and invite comments:

1) fee percentage for each IFQ/CDQ fishery;
2) the standard ex-vessel prices; and
3) the values of the variables on which each fee percentage is based.

After considering comments received, NMFS would publish, in the Federal Register, the final fee percentages, standard ex-vessel prices, fee per pound schedule, and projections used in establishing the fee percentages. Note, methods to streamline this process, similar to those for the total allowable catch (TAC) and prohibited species catch (PSC) specification process, are being evaluated.

The fee percentage for each IFQ/CDQ fishery would be set equal to which ever is less, the fee percentage calculated using the following equation or 3 percent.

$$\text{Fee percentage} = [100 \times (DPC - AB)/V]/(1 - NPR)$$

where DPC is the projection of the direct program costs for that fishery for the coming year, AB is the projected end of the year LASAF account balance for that program, V is the projected ex-vessel value of the catch subject to the IFQ/CDQ fees in that IFQ/CDQ fishery for the coming year, and NPR is the fraction of fee assessments that are expected to result in nonpayment.

Analysis: The proposed process for determining the fee percentage was based on that used for the Research Plan. The latter part of the element reflects the limits established in the MSA and is similar to that used for the Research Plan. For the Research Plan, the MSA requires a deduction for the fund balance at the end of the year. The MSA does not require a similar deduction for the IFQ/CDQ fee program; however, it could be justified in terms of limiting the fee percentage to the level required to cover expected management and enforcement costs after taking into account excess fee collections in a previous year. If the management and enforcement costs are expected to be at least 3 percent of the ex-vessel value of the individual IFQ/CDQ fisheries, consideration of the account balances would have little or no effect. Consideration of the account balances would have an effect on the fee percentage only in the years that the fee percentage would be less than 3 percent when they are considered.

c. <u>Catch subject to IFQ/CDQ fees</u>

IFQ catch: NMFS proposes to base the IFQ fees on the ex-vessel value of the retained catch of the IFQ species harvested under a Federal IFQ program whether the catch is taken in the EEZ or State waters. For each IFQ species, the fee would be the product of the fee percentage, the standard ex-vessel price and the amount of the IFQ species landed.

Analysis: This element addresses three issues. They are:

1) the distinction between catch from the EEZ and State waters;
2) whether only the IFQ species (halibut and sablefish) are subject to the IFQ fees; and
3) the distinction between total and retained catch.

The MSA provides the clearest guidance for the first issue and more regulatory discretion for the other two issues.

Issue 1): The MSA states that "Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program". Therefore, if it is determined that halibut or sablefish catch counts against a person's IFQ, the ex-vessel

value of that catch is subject to the IFQ fee. The issue of what sablefish catch from State waters is harvested under the IFQ program will be determined by the regulations for that program. This is not an issue for halibut because all commercial halibut catch in the EEZ and in State waters is under Federal jurisdiction.

Issue 2): The MSA does not state whether other species that are harvested with the IFQ species are subject to the IFQ fee. NMFS proposes that if the other groundfish harvested with the IFQ species are harvested under a groundfish FMP but not under the IFQ program, the other species would not be subject to the IFQ fees. The reasons for supporting this position include the following:

1) the IFQ program monitors the landed catch of IFQ species and not other groundfish species;
2) the IFQ program principally addresses the harvest of IFQ species;
3) the additional management and enforcement costs principally are associated with the harvest of the IFQ species;
4) the benefits to participants in the IFQ program principally are associated with the harvest of the IFQ species; and
5) imposing a fee on other species caught with IFQ species would provide an incentive to discard the other species and an even greater incentive to discard halibut and sablefish when small amounts of the IFQ species are taken as bycatch in other groundfish fisheries.

However, limiting the IFQ fees to only the IFQ species would decrease the fees that will be collected. No attempt has been made to estimate the decrease. The current data collection programs make it difficult to generate an accurate estimate.

Issue 3): The justification for excluding discarded halibut and sablefish catch from the IFQ fees is that the IFQs are monitored in terms of landed weight (i.e. net of at-sea discards). For example, juvenile halibut must be discarded at-sea and such catch is not counted as part of the IFQ halibut catch. Note that IFQ regulations prohibit the discard of sablefish unless the sablefish IFQ available to the vessel has been exhausted.

CDQ catch: NMFS proposes to base the CDQ fees on the ex-vessel value of the total catch (retained and discarded catch) of groundfish and the retained catch of crab and halibut harvested under a Federal CDQ program whether the catch is taken in the EEZ

or State waters. Prohibited species quota (PSQ) species would not be subject to the fees. The CDQ fee for each CDQ species would be the product of the fee percentage, the standard ex-vessel price and the amount of the CDQ catch subject to the fee reported to NMFS by the CDQ group, or by ADF&G for crab, for that CDQ species.

Analysis: This element of the proposal addresses two issues. They are: 1) the distinction between catch from the EEZ and State waters and 2) the distinction between total and retained catch. The distinction between CDQ and non-CDQ species is not an issue for the CDQ fees because the CDQ species, including the PSQ species, include the full range of species of commercial value taken by vessels in the CDQ fisheries. As noted above, the MSA provides clear guidance for the first issue but regulatory discretion for the second issue.

Issue 1): The MSA states that "Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program". Therefore, all catch that counts against a Federal quota for a CDQ program would be included regardless of whether the catch is from the EEZ or State waters. The regulations for the CDQ program determine what catch is subject to the CDQ quotas and is, therefore, subject to the CDQ fees.

Issue 2): Groundfish Total groundfish catch and PSQs are established for each CDQ group and they are monitored using catch reports from each CDQ group. Therefore, it would be feasible to base the CDQ fee collections on total catch including the bycatch of prohibited species rather than on just the retained catch of the groundfish species. In fact, because the monitoring program was designed to estimate total groundfish catch rather than the disposition of the catch, the estimates of total groundfish catch and prohibited species catch generally are expected to be better than the estimates of retained catch. The exceptions would be: 1) species for which it is clear that either all or none of the catch is discarded and 2) catch delivered to onshore processors. With the first exception, the estimates of total and retained catch would be equally good. With the second exception, the estimates of retained catch would be expected to be better than the estimates of total catch for species subject to being discarded at sea. An additional advantage of basing the CDQ fees on total catch would be that the CDQ groups who would submit the CDQ fees to DOC will be required to report total catch but not retained catch or discarded catch to NMFS. If the CDQ groundfish fees are based on retained catch, the estimates would be based on the following: 1) weekly production report data from the processors that receive CDQ catch and 2) product recovery rates (PRRs) provided by NMFS. The CDQ groups would have to obtain the

former from the processors. The PRRs would be used when fish are not landed in the round and when the catch is processed at sea.

Estimating the ex-vessel value of catch that is not retained would be an issue and some would certainly argue, but not necessarily successfully, that the ex-vessel value of discarded catch is zero. However, applying the same standard ex-vessel price and fee to all catch of a given species would provide an additional incentive to either avoid or retain catch that normally would be discarded. It would also increase CDQ fee collections.

Crab The State will monitor the crab CDQs in terms of landed catch including deadloss. Therefore, even though the State is expected to require observers on all fishing vessels in the CDQ crab fishery to prevent highgrading at least during the first year of the program, it probably would not be practicable to base the fees on total catch. In the case of the crab fishery, the high survival rates that are assumed for discarded crab are another reason for basing the fees on landed catch. It would need to be determined what ex-vessel value to apply to deadloss.

Halibut Given that the halibut CDQs will be monitored in terms of retained catch, it would not be practicable to base the CDQ halibut fee collections on total catch.

Having different rules on what catch will be subject to the fees in the IFQ, CDQ groundfish, CDQ halibut, and CDQ crab fisheries would raise equity issues that would offset at least some of the advantages of doing so.

The Council faced a somewhat similar issue for the Research Plan and at that time decided to limit the fees to retained catch.

d. Establishing and using standard ex-vessel prices

Standard ex-vessel prices: NMFS proposes to use standard ex-vessel prices, not actual ex-vessel prices, to calculate the ex-vessel values, fees per pound and fee liabilities in all cases.

Analysis: Standard ex-vessel prices would have to be used for the IFQ and CDQ catch that is not sold prior to being processed. This would include the very small part of the halibut IFQs that is used for at-sea processing and the larger part of the sablefish IFQs that is used for at-sea processing. In addition, it is expected to include a large share of the groundfish CDQs because at-sea processors are expected to be very actively involved in the CDQ groundfish fisheries. If actual ex-vessel prices were used for some catch and standard ex-vessel prices

based on pre-season projections were used for the rest of the catch, post-season adjustments would be necessary for the latter to adjust for differences between the actual and standard ex-vessel prices and the process (and reporting burden) therefore more complicated.

During and subsequent to the development and implementation of the Research Plan fee collection program, the issue of using standard ex-vessel prices as opposed to actual prices when possible received considerable attention. Although standard ex-vessel prices were used, some participants in the fisheries supported the use of actual prices. One of the benefits is that it was simpler for processors to collect a fee based on the actual ex-vessel prices and values because it would then be similar to the State's raw fish tax and the fee percentage could be applied to the actual ex-vessel value which their accounting systems were already programmed to do. With standard ex-vessel prices, processors had to reprogram their accounting systems to calculate a fee based on the round weight equivalent of landed catch and a fee per pound which varied by species.

NMFS proposes to explore the feasibility of modifying the card swipe system to calculate the IFQ fee liability for each IFQ landing. This would simplify IFQ fee collections, submissions and audits for IFQ fishermen, registered buyers and NOAA.

The use of actual ex-vessel prices would help ensure that the fee did not exceed 3 percent of the actual ex-vessel value of the catch. If actual prices were lower than the standard prices, a fee percentage of 3 percent would result in the fees exceeding 3 percent of actual ex-vessel value. Conversely, if the actual prices were greater than the standard prices, a fee percentage of 3 percent would result in fees less than 3 percent of the actual ex-vessel value of the catch.

The use of actual prices tends to increase the uncertainty concerning what total fee collections will be. This could become a problem if the fees become a major source of funding for IFQ and CDQ management and enforcement costs. The magnitude of this problem would be determined, in part, by the lead time required to obtain alternative Federal funding sources. However, the use of standard ex-vessel prices would not eliminate the problem of the fees providing an unstable source of funding for the management and enforcement of the IFQ and CDQ programs.

The use of actual prices would result in the fee per pound varying among landings as the actual ex-vessel prices vary. This may be more equitable from the perspective of the ability to pay the fee but probably less equitable either in terms of sharing management and enforcement costs or with respect to paying for

the use of part of a quota.

Fishermen who tend to receive a higher than average price due to market conditions or the value they add to the fish would benefit from the use of standard prices. Conversely, fishermen who receive less than the average price would benefit from the use of actual prices. These advantages or disadvantages can be decreased but not eliminated by defining ex-vessel prices, for example, by area, gear and season.

There would be less of an incentive to understate actual ex-vessel prices if standard ex-vessel prices are used and it is simpler to audit the quantity caught or landed than it is to audit the quantity and the ex-vessel price.

Actual prices could be used for the IFQ fees when there is an ex-vessel transaction that can be tracked readily by existing data collection systems. This would include the vast majority of IFQ landings. Standard ex-vessel prices that are based on year to date actual ex-vessel prices could be provided to CDQ groups and IFQ fishermen who act as their own registered buyers. This could be done late each year just prior to the time that the CDQ groups and registered buyers are required to submit fees to the DOC. The CDQ groups and these registered buyers would not need to know what the standard ex-vessel prices would be until late in the year because they would be collecting the fees from themselves not from others. If actual prices were available on a timely basis, the standard ex-vessel prices established late in the year would approximate actual prices for the year as a whole very well. This probably would eliminate the need to allow for post-fee payment adjustments to account for differences between actual and standard ex-vessel prices. Unfortunately, the atypical landings that probably account for a very small part of the total may make the use of actual prices more complex and costly. An example would be a 10,000 pound IFQ halibut landing with a registered buyer for which the IFQ fisherman retains all 10,000 pounds either for personal use or later sale. If the registered buyer associated with the landing is required to collect the IFQ fee for the entire landing, the buyer would not know how much to collect in this case.

In summary, the problems created by such atypical landings and the additional audit problems when actual prices are used (see the previous paragraph) tend to support the proposed use of standard ex-vessel prices.

"Ex-vessel value": Ex-vessel value would not include value added by at-sea processing.

Analysis: Generally, ex-vessel value excludes the value added by at-sea processing. If it were included, the fee per pound of catch would be substantially higher for catch that is processed at sea and the total CDQ groundfish fees would be substantially higher and the net returns to the CDQ groups and their partners would necessarily be reduced.

Establishing standard ex-vessel prices: NMFS proposes to establish the standard ex-vessel prices by species, gear, area of catch, season, and port group prior to each fishing year based on ex-vessel price information from the most recent 12-month period for which data are available and on factors that are expected to change the average ex-vessel prices in the coming year. The standard ex-vessel prices, the fee percentage(s), and the resulting fees per pound would be made available to registered buyers and CDQ groups.

Analysis: A similar process was used for the Research Plan Fee Program. It made use of the most recent information available to establish the standard ex-vessel prices. The State generates standard ex-vessel prices for the purpose of the State landings tax for at-sea processors; however, because of differences in the timing of the fee collections for the State's landings tax and the IFQ/CDQ fees, the State's standard ex-vessel prices would be quite old by the time they were used for the IFQ/CDQ fees.

The State will estimate the standard ex-vessel prices for 1997 by mid-1998 and then ask at-sea processors to use them to calculate their landing taxes for 1997. If the State prices were used for the IFQ/CDQ fee program, standard prices for 1997 would be used for 1999 because with the IFQ/CDQ program the standard prices have to be available at the beginning of the fishing year, not several months after the end of the fishing year. The four fee collection schedule options in the MSA and the assumption that the IFQ fee is levied on the fishermen, not the processors, would prevent the State system from being used for the IFQ/CDQ fees.

Having the CDQ fees based on the royalties the CDQ groups receive for the use of their CDQs and PSQs is not a viable alternative. The royalties are not a measure of the ex-vessel value of the CDQ catch. Only by chance would the royalties and the ex-vessel values be the same. In addition, basing fees on royalties would be a problem for the CDQs that are used either directly by the CDQ group itself or by members of the CDQ communities without paying royalties. Finally, it would be difficult to estimate the non-monetary part of the payments to the CDQ groups. These include the employment and training opportunities provided by the CDQ partners to the CDQ communities.

Proxies for ex-vessel prices: NMFS proposes that if adequate ex-vessel transactions (i.e., sales of unprocessed fish) do not exist to estimate adequately the actual ex-vessel price for a species, gear, area, season, and port group, those standard ex-vessel prices would be estimated using the best available information concerning product prices and the expected relationships between product and ex-vessel prices.

Analysis: A similar process was used for the Research Plan Fee Program. For species which are predominately taken by at-sea processors, there may not be sufficient ex-vessel price observations on which to base the standard ex-vessel prices. For example, rock sole with roe and Atka mackerel are taken almost exclusively by factory trawlers; therefore, there are ex-vessel transactions and price observations for a very small part of the total catch. In the absence of adequate ex-vessel price data, an alternative method for estimating ex-vessel prices would be required.

Weight measures: NMFS proposes to use net weights and round weight equivalents, respectively, and the corresponding standard ex-vessel prices for halibut and for groundfish and crab.

Analysis: This element would make it explicit that the type of weight that is used for quota monitoring purposes would be used for calculating standard ex-vessel prices. However, to simplify the fee collection calculations for registered buyers, the fee per pound schedule for sablefish could include the fee per pound for several landed forms (e.g., whole, eastern cut and western cut).

e. <u>Ex-vessel value and price adjustment reports</u>

Ex-vessel value reports: NMFS proposes that ex-vessel value information could be collected with landings data for each IFQ landing in order to provide better standard ex-vessel prices for IFQ halibut and sablefish. Similarly, groundfish ex-vessel value data could be collected with the Weekly Processor Reports for processors that report landed weight.

Analysis: Ex-vessel price information would be required to establish standard ex-vessel prices and the corresponding fee per pound schedule. For the IFQ species, collecting ex-vessel value data with landings data could be the most effective, efficient and timely method for obtaining ex-vessel price data. Similarly, collecting groundfish ex-vessel value data with the Weekly Processor Reports could be the most effective, efficient and timely method for obtaining ex-vessel price data for groundfish.

More timely ex-vessel price information would improve the standard ex-vessel prices that would be established. Such price data would have a variety of uses in addition to supporting the determination of the standard ex-vessel prices for the IFQ and groundfish species. NMFS could explore the options of modifying the card swipe system and the Weekly Processor Reports to allow the entry of ex-vessel value data with the landings data.

Price adjustment reports: IFQ registered buyers and groundfish processors that report landed weight in the Weekly Processors Reports could be required to provide information on post landings price adjustments. This would provide more complete estimates of ex-vessel prices.

Analysis: Post landings price adjustment data would be required to accurately estimate actual ex-vessel prices and, therefore, to provide more complete estimates of standard ex-vessel prices.

3. LASAF: System for Deposits and Disbursements

a. LASAF deposits and accounts

LASAF deposits: With the exception of the IFQ fees that are deposited in the Treasury and available to cover the costs of the new IFQ loan obligations and loan guarantee program, all IFQ and CDQ fees will be deposited in the Limited Access System Administration Fund (LASAF).

Analysis: The language for this element is taken almost directly from the Act and requires no justification. The Federal expenditures for the new IFQ loan obligations and loan guarantee program are limited to the cost to guarantee the loans; they do not include providing funds for the loans themselves. For example, in 1998, $100,000 was appropriated to cover the loan costs associated with the $5 million available for new IFQ loans.

LASAF accounts: Within the common LASAF, separate accounts can be created to ensure that: 1) the funds from a specific IFQ (CDQ) fishery are used only to pay for the direct management and enforcement costs of the IFQ (CDQ) program for that fishery and 2) the funds from the permit registration and transfer fees are used only to pay for the cost of administering the central registry system.

Analysis: This element makes it explicit that a separate account would be maintained for each IFQ/CDQ fishery and for the central registry system. This is a strict interpretation of the MSA with respect to the use of the funds from the IFQ/CDQ fees and Central

Registry fees. .

b. Treasury deposits for IFQ loan program

NMFS proposes that none of the CDQ fees would be deposited in the Treasury for the IFQ loan program. The percent of the IFQ fees, up to the 25 percent limit, to be deposited in the Treasury for the IFQ loan obligations and loan guarantee program would be determined annually by the Secretary based on estimates of the funds required for that program and the IFQ fee collections.

Analysis: Section 303(d)(4)(A) of the MSA authorizes fees collected from *a fishery* under section 304(d)(2) to be used to aid in financing the purchase of IFQs in *that fishery*. As stated earlier, for purposes of this cost recovery program, NMFS is proposing to define two fisheries, the IFQ fishery and the CDQ fishery. Fees collected in the IFQ fishery would be used to aid in financing the purchase of IFQs in the IFQ fishery. CDQ fees would not be used to finance the IFQ loan program. Additionally, section 305(h)(B)(ii) of the MSA authorizes the availability of LASAF funds to the Secretary for purposes of administering and implementing the MSA in *the fishery* in which the fees were collected. Section 303(d)(4)(A) provides the Secretary discretion to reserve up to 25 percent of collected fees for the loan purposes. Section 108(g) of the Sustainable Fisheries Act specifically requires the Council to recommend to the Secretary an IFQ loan program that uses the full amount of fees authorized. The Secretary will use the full amount allowed if NMFS determines that the full amount is necessary to guarantee loans to all eligible applicants.

The fees that are diverted from the LASAF and deposited in the Treasury are not earmarked for the loan program, rather they are available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments. Therefore, diverting more of the fees than are necessary for the loan program would decrease the extent to which the management and enforcement costs of the IFQ program are recoverable and without benefitting the loan program.

c. IFQ and CDQ fee collection and submission mechanisms and schedules

IFQ fee collection: NMFS proposes that the IFQ fees would be collected for NMFS from the person making the IFQ landing by the registered buyer at the time of landing. The fees would be collected for the entire IFQ landing including any amount the fisherman retains for personal use or later sale.

Analysis: This proposed method of fee collection is expected to be cost effective for two reasons. First, it would minimize the number of persons who would calculate and submit fees. Second, the registered buyers currently are required to submit landed catch data to NMFS for the IFQ species. It would be difficult for NMFS itself to collect the fees at the time of either the landings or the sale of the fish. This method for collecting the Research Plan fees was effective. The disadvantage of this method is that it would impose some cost on the registered buyers. This cost could be offset, at least partially, by the interest the registered buyers could earn on the fees between the time that they are collected and the time they would be submitted to the DOC. Fee per pound schedules would be provided to registered buyers of IFQ halibut and sablefish to make it simpler for registered buyers to collect the appropriate IFQ fees for the IFQ landings they report.

NMFS will explore the feasibility of modifying the card swipe system to calculate the IFQ fee liability for each IFQ landing. This would simplify IFQ fee collections, submissions and audits for IFQ fishermen, registered buyers and NOAA.

CDQ fee collection: NMFS proposes that the fees, net of the credit for additional observer and reporting costs, would be collected for NMFS by the CDQ group in the last quarter of the calendar year in which the fish is harvested. Each CDQ group would determine if it would collect the fees from the fishing operation, the processor or itself.

Analysis: The MSA does not specify whether the CDQ fees are imposed on the fishing vessel, processor or CDQ group that participates in a CDQ fishery. Therefore, each CDQ group and its partners would be expected to determine from whom the CDQ fees are collected. The CDQ groups are proposed as CDQ fee collection agents of NMFS for several reasons:

1) NMFS issues the CDQ allocation of TAC directly to the CDQ groups;
2) The CDQ groups are responsible for collecting and reporting catch data for all vessels and processors participating in its CDQ fisheries;
3) NOAA administration and enforcement costs would be lower because it would have fewer entities to deal with;
4) Non-payment and late payment problems would be expected to be reduced, in part, due to the ability of the State or NMFS to a) control allocations to individual CDQ groups and b) control fishing activity of CDQ vessels; and

5) It would be difficult for NMFS to collect the fees itself using one of the four collection schedules allowed under the MSA without using a more complex and costly fee collection mechanism.

If the contracts for the use of the multi-species CDQs were agreed to without adequate consideration of who would pay the CDQ fees, the implementation of the CDQ fees could change substantially both the net benefit of the CDQ contracts and the distribution of those benefits between the CDQ groups and their partners.

Fee submission to DOC: The fees proposed to be collected by IFQ registered buyers and CDQ groups would be submitted to the DOC within one month after the end of the calendar year for which the fees were collected. NMFS would specify the information to be submitted with the payment to substantiate the fee liability calculations made by the registered buyer or CDQ group.

Analysis: Fee submission would not be in response to periodic billings as were used with the Research Plan fees. Instead, NMFS proposes that IFQ registered buyers and CDQ groups would be required to submit annual payments based on the fees they collected. In addition, they would submit information that substantiates the payments made. Billings were found to be costly and time consuming to prepare under the Research Plan. The billing process did not provide substantial benefits to those who made the fee payments. With the proposed payment submission alternative, NOAA could focus its fee collection efforts on auditing the payments. Auditing could occur at a time and with the focus that is most beneficial in ensuring adequate compliance as opposed to being locked into a bill preparation schedule.

Annual submissions have several advantages compared to more frequent submissions. The cost to NOAA and to the registered buyers and CDQ groups would be increased by more frequent submissions of fees collected by the registered buyers and CDQ groups. In addition, more frequent submissions would decrease the benefit registered buyers or CDQ groups receive from interest earned on the fees. However, annual submissions delay the initial availability of the fees to support management and enforcement costs for the IFQ and CDQ programs. They may also increase the non-payment problems.

NMFS proposes that the audits of the pre-credit fee liabilities would be based on existing reporting requirements. IFQ landings reports would be used to audit IFQ fee submissions. CDQ group catch reports would be used to audit CDQ fee submissions for groundfish and halibut. ADF&G reports on CDQ crab catch would be

used to audit fee submissions for the crab fishery.

NMFS proposes that a dispute resolution mechanism would be developed to resolve any differences between the payment a registered buyer or CDQ group submits and what the audit indicates should have been submitted.

d. Recoverable program costs

NMFS proposes that the recoverable costs for the IFQ and CDQ programs include Federal management and enforcement costs that would not occur in the absence of these programs. In addition, up to the 33 percent limit, they include State of Alaska management and enforcement costs that would not occur in the absence of the CDQ program. NMFS proposes that they do not include Federal or State overhead costs, stock assessment costs or observer program costs that would occur in the absence of the IFQ and CDQ programs. NMFS would provide more specific guidance on what Federal and State costs are recoverable.

Analysis: The MSA requires the Secretary to collect a fee to recover the actual costs directly related to the management and enforcement of any IFQ and CDQ program. This seems to exclude Federal and State overhead costs as well as the cost of stock assessment. The former is not directly a cost of these programs. The latter is a cost that would occur without such programs and, therefore, would not be considered a cost of these programs. This basically interprets "directly related" to mean additional costs that occur due to these programs. This element attempts to be responsive to the MSA and to the concern that, in an attempt to collect as much as possible, NMFS might propose and use a definition that is too inclusive. The MSA is less specific in defining the recoverable costs for the IFQ/CDQ fee program than it is in defining them for the Research Plan.

e. Reimbursement for State of Alaska CDQ management and enforcement costs

Upon application by the State, up to 33 percent of the CDQ fees collected and deposited in the LASAF will be transferred to the State in order to reimburse it for the actual costs directly incurred in the management and enforcement of the CDQ program. NMFS proposes that these State costs, up to the 33 percent limit, would be included as fee recoverable CDQ program costs. If the State's direct program costs do not exceed the 33 percent limit and if the CDQ account funds in the LASAF are sufficient to cover the State and Federal direct costs for the CDQ program, the State's direct program costs are fully reimbursable. However, if the sum of the State's direct costs, up to the 33 percent limit,

and the direct Federal costs exceeds the CDQ account funds in the LASAF, NMFS proposes that there would be proportional decreases in the amount the State is reimbursed and in the amount of the direct Federal costs that are paid for from the LASAF. That is, neither the reimbursement to the State nor the recoverable Federal costs would come off the top.

Analysis: The 33 percent limit is in the MSA. The MSA does not address explicitly whether the transfer may be limited further by Federal program costs and the total funds available in the appropriate LASAF account. This element of the proposal would not establish an absolute priority for meeting either Federal or State costs. It is an attempt to address this issue in a fair and equitable manner which would not favor either the Federal or State government.

f. Compliance incentives

NMFS proposes to use the following incentives to increase compliance with the fee submission requirements:

1) late payment charges and interest charges;
2) requiring an adequate payment record to complete the annual application process to become a registered buyer; and
3) requiring an adequate payment record for approval of a CDP and to use a CDQ allocation.

Analysis: Administratively simple incentives as well as more cumbersome but more severe penalties would be required to ensure adequate compliance with the fee collection and submission regulations.

4. Deductions for Additional CDQ Observer and Reporting Costs

a. Additional CDQ observer and reporting requirements

CDQ fee credits can be claimed for the costs incurred by participants in the CDQ program for observer and reporting requirements which are in addition to observer and reporting requirements costs of other participants in the fishery from which the CDQ allocation is made. General Counsel has advised NMFS that section 305(i)(3) of the MSA does allow Secretarial discretion to identify the specific observer and reporting requirements for which CDQ cost deductions from fees can be claimed. The statutory language and the legislative history does not provide such guidance.

Given this discretion, NMFS proposes to identify the "other

participants" as the fishermen, vessel owners, processors, registered buyers, etc. who catch and process groundfish, halibut, and crab in the non-CDQ fisheries. Therefore, the credits would be limited to the additional observer and reporting costs of these participants in the CDQ fishery. The costs incurred by the CDQ group for administration and management of the CDQ program and fisheries would not be deductible. NMFS has not yet determined whether the costs of purchasing, installing and maintaining the scales and observer sampling stations required in the CDQ fisheries are deductible costs and seeks Council and public comment on this particular issue.

b. Credits for additional observer costs

NMFS proposes that the credit for additional observer coverage would be based on information provided by the CDQ group, Pacific States Marine Fishery Commission (PSMFC), and observer contractors. The costs that can be claimed would be limited to those associated with the additional coverage required in a CDQ fishery and the requirement of CDQ certified observers. The cost of observer coverage above that required by the CDQ program regulations could not be claimed.

Analysis: The CDQ groups, PSMFC, and the observer contractors are expected to be the principal sources of information concerning additional observer costs.

c. Credits for additional reporting costs

NMFS proposes that claims for credits for additional reporting requirements for participants in CDQ fisheries would need to be itemized and substantiated. NMFS may specify the method for estimating a standard deduction for some specific additional reporting requirements. NMFS wold specify the information that a CDQ group would need to provide to receive a claimed credit.

Analysis: A well specified method of substantiating credits would be required to decrease the compliance costs for the CDQ groups and NOAA. For minor additional reporting requirements or for requirements that are expected to have comparable costs across a class of participants in the CDQ fisheries, the use of standard deductions could reduce compliance costs for the participants and NOAA. The feasibility of standard deductions will be clearer once all of the additional reporting and observer requirements have been identified.

Credits for capital expenditures: As noted previously, NMFS has not determined if the costs of purchasing, installing and maintaining the scales and observer sampling stations required in

the CDQ fisheries are deductible costs. If the capital expenditures for scales and observer sampling stations are determined to be deductible costs, the credit for the capital expenditure (e.g., the cost of buying and installing scales) would be for the year of the capital expenditure and NMFS would specify what information must be provided to substantiate a claimed credit.

Analysis: If Capital Construction Fund (CCF) money is used to pay for the scales, the cost of the scales would be treated as an expense that year for IRS purposes and it does not go on a vessel's depreciation schedule. It generally is a tax advantage for the vessel owner to be able to claim it as a cost in the year of the expenditure; therefore, often CCF money would be used to pay for scales. If CCF money is not used and the cost is added to the vessel's depreciation schedule and if the fee credit was allowed in the years over which the capital equipment was depreciated, the present discounted value of the credits would be decreased and the present discounted value of the post-credit fees would be increased. The length of the depreciation schedules probably would differ by vessel. It may be quite short either if they wear out quickly or if they rapidly become obsolete due to technological innovations. Substantiating costs would be more difficult if the credit is not for the year of the capital expenditure. Allowing the full credit in the year of the capital expenditure compensates the early participants in the CDQ fisheries for helping to determine what scale technologies would be feasible for non-CDQ fisheries. It should be recognized that the use of scales to weigh total catch at-sea on a broad range of vessels is still at the experimental stage. Neither the performance nor cost of the various scale technologies has been determined.

Credits for previous capital expenditures: The following is applicable only if it is determined that CDQ fee credits would be allowed for the costs of purchasing, installing and maintaining the scales and observer sampling stations.

A prorated part of the capital expenditures that occurred before the CDQ fee program was implemented but that were for equipment that is required to meet the additional CDQ reporting requirements during the first year of the fee program can be included as capital expenditures for the first year of the fee program. For example, if a scale was installed to allow participation in the multi-species CDQ fishery in 1998, if the scale is an additional CDQ reporting requirement in 1999, if the CDQ fee program is not implemented until 1999, and if the scale is expected to be used for five years, four fifths of the cost of purchasing and installing the scale in 1998 can be treated as if

it occurred in 1999.

Analysis: This element is in response to the fact that scales probably will be required on vessels prior to the implementation of the CDQ fee program. Without this element, the cost of scales would not be deducted fully from the fees. This element would compensate the early participants in the multi-species CDQ fisheries for their efforts to determine what and if scales provide a feasible means of improving the estimates of total catch by species. This provision would increase the credits that could be claimed and decrease fee collections at least during the first year of the CDQ fee program.

d. Credit carryover

NMFS proposes that credits in excess of pre-credit fee liabilities could not be used in subsequent years.

Analysis: The additional observer and reporting costs could in some cases exceed the pre-credit fee liability of a CDQ group. NMFS proposes to not allow the CDQ group to carryover these credits and apply them against the next years fee assessment. The extent to which this proposed provision affects the amount of the fee paid by a CDQ group would depend on the following:

1) the extent to which the costs of scales and observer sampling stations are deductible;
2) the other additional reporting and observer requirements; and
3) the ability of the costs of scales to be spread over several years by renting as opposed to buying scales or by an accounting method designed to do so.

e. Determining and substantiating CDQ fee credits

NMFS proposes that each CDQ group would calculate its CDQ fee credits based on the following: 1) guidelines established by NMFS and 2) information which substantiates the additional observer and reporting costs for the relevant participants in the CDQ fisheries.

Analysis: The CDQ groups would be required to calculate their fee credits for two reasons. First, the CDQ groups and their partners would have the information necessary to calculate the credits. Second, because the CDQ groups would submit the fees net of the credits without being billed, each CDQ group would need to be able to determine what its credits are.

5. Implementation Date

Three alternative implementation dates are considered. They are:

a. January 1, 1999;

b. later in 1999; and

c. January 1, 2000.

Analysis: Mid-year implementation would raise some equity concerns and would provide an additional incentive to harvest fish early in the year. However, the catch data required for a mid-year implementation would be available. In addition, it would increase the fees that could be collected if the IFQ/CDQ fee program cannot be implemented by January 1, 1999.

APPENDIX A: Magnuson-Stevens Fishery Conservation and Management Act Language Concerning the IFQ And CDQ Fee Programs and Relevant Language Concerning the Central Registry Program and the IFQ Loan Obligation and Guarantee Program

Section 304(d)(2)

(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

Section 305(h)

(5) (A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of--

(i) administering the central registry system; and

(ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

Section 305(i)

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

Section 303(d)

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the--

(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

108(g) North Pacific Loan Program

(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

APPENDIX B: Schedule for Development and Implementation of IFQ/CDQ Fee Collection Program

1998:

February: Begin/continue development of draft proposal/discussion paper to implement an IFQ/CDQ fee collection program

March 11: Meet with group of NMFS and State agency representatives to review and comment on draft proposal/discussion paper (NMFS--SF, RAM, GCAK, Enforcement; ADF&G; State Office of Community and Regional Development; Council)

Mar-Apr: Collect estimated recoverable cost information from Federal and State agencies for purposes of analysis and development of 1999 fee percentage

April: Present draft discussion paper to the public and the Council for comment at the Council meeting

June: Initial EA/RIR/IRFA available for public and Council review at the Council meeting

Sept: Publish proposed rule and proposed 1999 standard ex-vessel price specifications for 30 day public comment period

October: Accept public and Council comment at Council meeting

Nov-Dec: Publish final rule and final 1999 standard price specifications

This schedule with proposed fee collection beginning January 1, 1999 represents one very optimistic alternative. Other alternatives noted in the draft proposal are implementation beginning sometime during 1999 or January 1, 2000.

Implementation date will depend on time necessary to develop the infrastructure of the system supporting the IFQ/CDQ fee collection program. See Appendix D.

APPENDIX C:. Programmatic Considerations During Proposed Development Phase of Program

Public Outreach--beginning in early stages of development
- industry/constituent workshops
- IFQ Implementation Team
- CDQ Implementation Team

Recordkeeping and Reporting Requirements
- revise existing forms or requirements
  (IFQ landing report)
- develop new forms and instructions
  (annual IFQ fee return and worksheet, annual CDQ fee return and worksheet, CDQ fee credit form, `form' to appeal/amend return)
- PRA Supporting Statement on parallel track with proposed rule, even earlier coordination with NMFS-HQ; OMB approval of PRA Supporting Statement must occur before DOC will review proposed rule
- target date for OMB approval is Aug-Sept 1998

Software Development
- coordinate with ARIS as to systems design requirements
- changes to transaction terminal software (price info, IFQ fee calculated for each landing and printed on landing report; target completion date is January 1, 1999)
- data transfer and storage for ADF&G's CDQ crab catch data
- audit mechanism tied in to existing databases for already required reports
- data transfers with NOAA Finance
- target completion date is January 31, 2000

NOAA Finance
- coordinate with NOAA Finance for establishment of lockbox, assignment of LASAF accounting codes, etc.
- establish LASAF account procedures and protocols for deposits and disbursements
- collection data transfers with AKR
- target date to receive first IFQ/CDQ fees is January 31, 2000

APPENDIX D: Figures

Figure 1: MSA requirements for LASAF

Figure 2: Proposed IFQ Fee Collection Data and $ Flow

Figure 3: Proposed CDQ Fee Collection Data and $ Flow

MSA REQUIREMENTS FOR
Limited Access System Administration Fund (LASAF)
Section 305(h)(5)(B)

Secretary shall make LASAF available without appropriation or FY limitation to:

Administer the central registry system

SHALL

Collect reasonable fee of not more than 0.5% of value of LAS permit (registration and transfer) 305(h)(5)(A)

Administer & implement this Act in the fishery in which fees are collected

SHALL

Collect fee of up to 3% of exvessel value to recover actual costs of IFQ/CDQ programs 304(d)(2)

MAY

Up to 25% of fees collected under 304(d)(2) can be used for IFQ loan costs 303(d)(4)

This is subject to annual appropriation to cover costs of new direct loan obligations 304(d)(2)(C)(i)

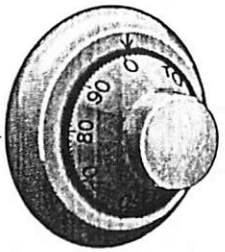
SHALL

Upon application of the State, transfer up to 33% of CDQ fee to State for mgt. & enforcement of CDQ program 304(d)(2)(C)(ii)

SHALL

Deduct from CDQ fees the costs incurred by participants for observer & reporting requirements which are in addn. to requirements of other participants in the fishery (i.e. open access) 305(i)(3)

NOAA LOCK BOX



ANNUAL FEE RETURN
LBS x FEE % x STANDARD EXVESSEL PRICE = FEE

REGISTERED BUYERS

IFQ LANDING REPORT, PRICE INFO
COPY OF FEE RETURNS

PROVIDE INFO. TO CALCULATE FEES, STANDARD EXVESSEL PRICES, FEE%
AUDIT FEE RETURNS

NOAA

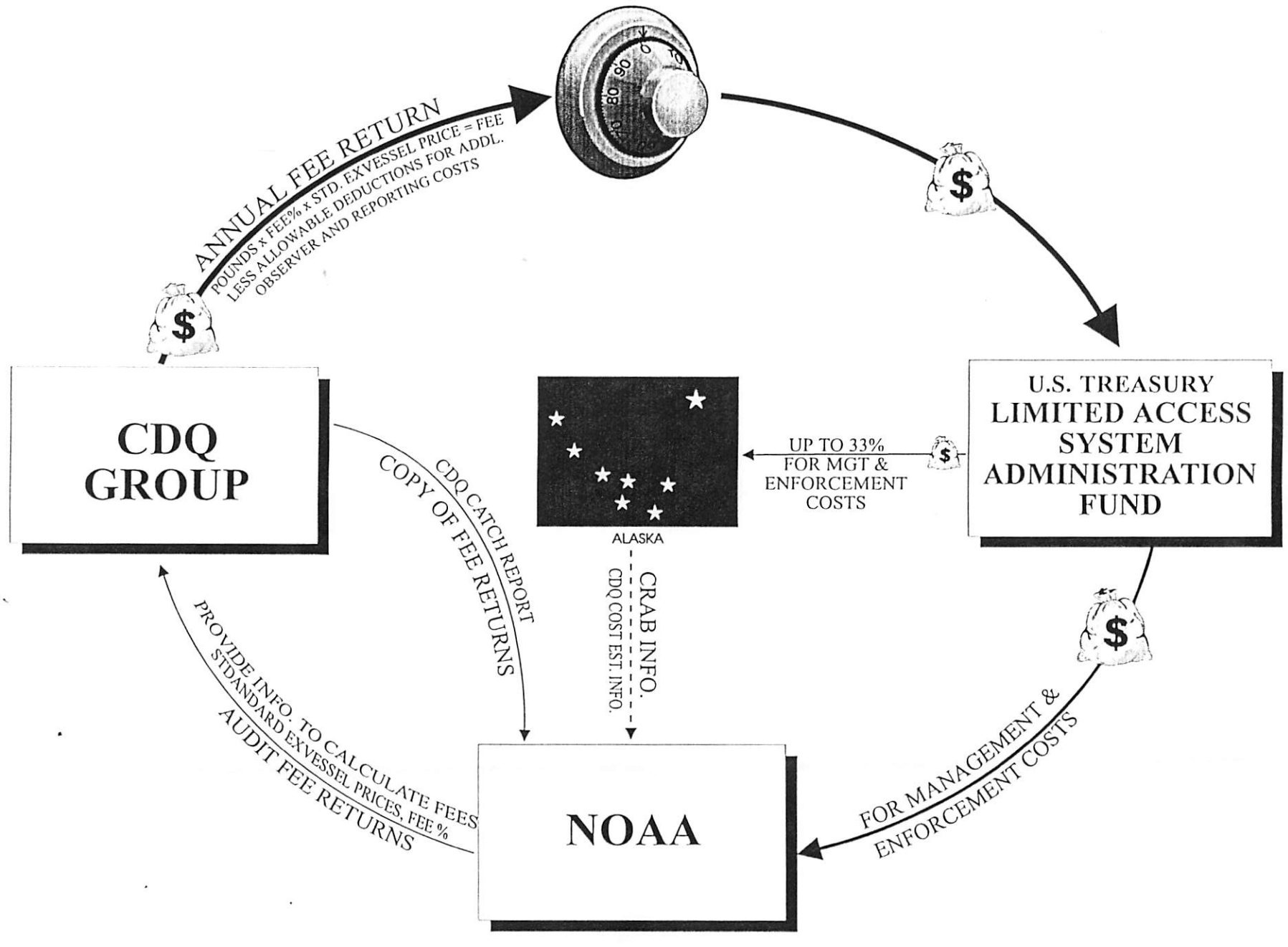
FOR MGT. & ENFORCEMENT COSTS

U.S. TREASURY
LIMITED ACCESS SYSTEM ADMINISTRATION FUND

UP TO 25%
to cover costs of new IFQ loan obligations and loan guarantee program

IFQ FEE COLLECTION DATA & $ FLOW

NOAA LOCK BOX



CDQ FEE COLLECTION DATA & $ FLOW

GULF OF ALASKA COASTAL COMMUNITIES COALITION (GOACCC)
P.O. Box 201236
Anchorage, Alaska 99520-1236

April 23, 1998

Rick Lauber, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue
Anchorage, Alaska 99501

Dear Mr. Lauber:

Due to the extensive agenda before the North Pacific Fishery Management Council for April, we respectfully request that our expected testimony under Item # C-8 Halibut/Sablefish IFQs be deleted from the April agenda.

Additionally, because of the full agenda for the June Council meeting in Unalaska, we do not expect to testify at that time.

However, we do request that the Gulf of Alaska Coastal Communities Coalition (GOACCC) be placed under the Council agenda for September 1998 under an item entitled "Opportunities for Community Development in the Gulf of Alaska."

Thank you very much for your consideration.

Sincerely,

Gulf of Alaska Coastal Communities Coalition Steering Committee

Bob Henrichs, Cordova
Emil Christiansen, Sr. Old Harbor
Arnold "Ole" Olsen, Kodiak
Dick Jacobsen, Sand Point
Edith Jacobsen, Sand Point
Steven A. Suydam, Kodiak
Thomas H. Abel, Hoonah
Marvin Hoff, King Cove
Byron V. Skinna, Sr., Klawock
Freddie Christiansen, Old Harbor

Statement of the Gulf of Alaska Coastal Communities Coalition
to the
North Pacific Fishery Management Council
Anchorage, Alaska

April 20-27, 1998

Chairman Lauber and Members of the North Pacific Fishery Management Council:

The Gulf of Alaska Coastal Communities Coalition includes many fisheries dependent coastal communities, boroughs and municipalities, independent rural fisherman and organizations and other concerned citizens throughout the Gulf of Alaska. We have joined together because of our shared concern that Gulf of Alaska coastal communities are in serious economic jeopardy.

As you know, we requested this opportunity at your February meeting to discuss with you the nature of some of the problems we face and to request your assistance in addressing them. We appreciate the opportunity to address the Council at this time. We want to clarify for the Council that our Coalition is not requesting "excess" halibut per se and is not limiting our focus and analysis to IFQ's which are related to only two of the marine resources necessary to sustain these communities. Our focus is on the sustainability of communities in the Gulf of Alaska; the sustainability of marine resources in the Gulf of Alaska; and the sustainability of commercial fisheries in the Gulf of Alaska.

The mission of our Coalition is to help Gulf of Alaska costal communities become and/or remain economically viable by enabling their residents to access as much as possible <u>all</u> fisheries in the Gulf of Alaska and, through reliance on small boat fishing, to enhance the conservation

and sustainability of the fisheries themselves. Our goals relate to fishing opportunities. . . not fishing entitlements.

As part of the Coalition's effort to date, we have submitted statements to both the Committee to review IFQ's and the Committee to review CDQ's of the Ocean Studies Board, National Academy of Sciences and the National Research Council. Copies of those statements are attached. These statements set forth a brief synopsis of the history and nature of the fisheries-related problems our communities face.

As the Members of the Council know very well, fisheries issues are complex and oftentimes controversial. Economic problems facing coastal communities are primarily, though not exclusively, related to fisheries. Because of the difficulty of analyzing the problems and drafting sensible and workable solutions, we are requesting the assistance of the NPFMC, the U.S. Congress and Executive Branch agencies and Alaska government.

On March 20, 1998 we submitted the attached statement on IFQ's to the Committee to Review Individual Fishing Quotas. As we indicated in the introduction of the statement, it is not our intent to cast aspersions toward, or to ascribe bad intentions to, any individual or public or private sector entity regarding what some of the effects of IFQ's have been. What we have described in those statements are some of the unintended consequences of the policies surrounding IFQ's which have added to the already precarious economic straits of many Gulf of Alaska communities.

It is evident to us who live in the Gulf of Alaska's rural communities, that the IFQ system has had and is having an adverse impact on our communities. Apart from the issue of

how few IFQ shares were issued to small boat rural fishermen and the continuing transfer of small amounts of quota shares from these communities, we continue to see and experience the loss of halibut and sablefish crew and skipper jobs. Fewer than one-half of the pre-IFQ jobs remain in the rural communities.

Also, as rural processing plants have lost product, employee jobs also have declined. As crewman and processing jobs decline, young people and young families in our communities are being forced, because of economic need, to move away to find livelihoods. All of these factors reduce the tax base and other resources needed for rural coastal communities to maintain schools and basic services. Gulf of Alaska coastal communities are consequently in a state of economic crisis.

In formal and informal discussions by Coalition members with many sectors of the fishing industry over the past three months, a large number of modifications to the current IFQ program have been suggested so that rural communities would no longer be as adversely impacted. The number and variety of ideas afloat which could help coastal communities have meaningful access to fisheries reveals an implicit recognition that the IFQ program has had a substantial and devastating impact on these communities and that remedial adjustments are warranted.

Some have predetermined our effort before we even have made conclusions such as to what we would seek. As we work with you, the Knowles administration, the Alaska Legislature and our congressional delegation, the Congress and the Executive Branch to evaluate and clarify the problems that have been caused by IFQ's and other factors, it will be possible to more

clearly determine with you what solutions are appropriate. We respectfully request that the Council, Council staff and NMFS work with our Coalition to develop solutions that will benefit the Gulf of Alaska's fishing economies.

We recognize that the problems in Alaska fishing today extend beyond those we have touched upon. There are allocation, conservation, bycatch, marketing and a host of other problems facing the industry. Our communities, whose very existence is inextricably linked to fishing, need to be at the table to help construct sensible ways to provide coastal residents the opportunity to make their livelihoods through fishing. We request that the Council work with us in the coming months to devise solutions to the problems facing Gulf of Alaska coastal communities.

Our purpose in the attached statements and in this statement has been to convey that the Gulf of Alaska's rural communities are in peril from current fisheries management practices and that IFQ's have had a particularly adverse impact. We believe that it would be a tragic legacy of all those who have worked for the conservation and wise utilization of the common property resources of the Gulf of Alaska if nothing is done to address the deteriorating situation in many coastal communities. We seek your commitment to work with us toward the mission of sustainable fisheries and sustainable coastal communities.

We appreciate your time spent on and consideration of the issues we have outlined. We look forward to working with you in the months ahead to develop prudent and sensible solutions which can facilitate the long-term economic viability of coastal communities in the Gulf of

Alaska and the fisheries upon which they are dependent. We trust that you will work with us toward our mission of sustainable coastal communities in the Gulf of Alaska.

Attachments: (1) Statement to Committee to Review IFQ's, National Academy of Sciences
(2) Statement to Committee to Review CDQ's National Academy of Sciences

F:\BHBC\GENERAL\TKM2800

Statement by
Gulf of Alaska Coastal Communities Coalition
to
The Committee to Review Individual Fishing Quotas (IFQs)
of
The Ocean Studies Board of The National Academy of Sciences and
The National Research Council
March 20, 1998

Purpose

The purpose of this statement is to convey to the members of the Committee to Review Individual Fishing Quotas (IFQs) of the Ocean Studies Board of the National Academy of Sciences and the National Research Council, the serious concerns of the Gulf of Alaska Coastal Communities Coalition regarding the grave economic crisis facing our communities, which have been exacerbated by our inadvertent exclusion from access to the marine resources managed by the federal government under IFQ programs for halibut and sablefish (black cod).

At the outset, our coalition of coastal communities, representing the concerns of most of the smaller fishing dependent communities around the Gulf of Alaska, wants to convey to your Committee that we are not through this statement intending to cast aspersions toward, or to ascribe bad intentions to, any individual or public or private sector entity regarding our dilemma. What we will be describing in this statement is the situation as we see it, including the unintended consequences of the policies surrounding IFQs which have added to the already precarious economic straits of many Gulf of Alaska communities. We have great confidence that if the commitment is made by Federal and State fishery policy makers and managers to remedy some, if not all, of the problems we are outlining, great strides can be made that will help our communities remain viable into the future; and, at the same time, enhance the sustainability of the fisheries involved.

Overview

Issues of fisheries conservation, sustainability, marketability, and the equity of allocation are at a crossroads. Decisions made now will determine the long-term sustainability of commercial fisheries in Alaska; and, literally, whether the small fishing communities in the Gulf of Alaska will continue to exist as viable economic entities.

Our coalition of community representatives and small-boat fishermen includes both Alaska Natives and non-Natives. As such, this statement seeks to deal with issues that impact our *communities* and are not simply "Native" issues. They are *community* economic issues relevant around the Gulf of Alaska.

There are serious and compelling fisheries policy problems related to IFQs, as well as other management issues facing our communities, that need the attention and action of the North Pacific Fishery Management Council, the Secretary of Commerce, the Congress of the United States, the State of Alaska, and in the case of halibut, the International Pacific Halibut Commission. Our communities, which are directly affected by fisheries management policy, seek to be included in discussions at all levels regarding solutions and potential fishery policy changes that affect our ability to exist as communities into the future.

If these fisheries related problems and issues are not addressed promptly and comprehensively, the existence of the small fishing communities adjacent to, and historically dependent upon, fisheries resources will soon move beyond crisis levels.

Congress recognized the importance of considering the problems facing fishing communities when it mandated (under the Magnuson-Stevens Act) the National Academy of Sciences to address the effects of limiting transferability of quota shares, the limitations and duration of IFQ programs, socioeconomic impacts, displaced vessels and shifting of capital value from vessels to IFQs. These congressional concerns regarding the impacts of IFQs mirror the experiential concerns felt by small boat fishermen and coastal communities across the Gulf of Alaska in the three years since the implementation of the IFQ program in 1995.

Through our statement, this coalition seeks to help identify the nature and seriousness of the problem facing the small fishing communities in the Gulf of Alaska. Specific solutions, however, must come through the examination of the implementation of IFQs as well as other limited access United States fisheries policies.

We also urge your committee, and the decision-makers who will refer to your study, to examine the problems we identify, as well as the long-term benefits which can result from a small boat fleet's unique compatibility with the federal government's stated goal of linking marine resource conservation with sustainable human economies. Smaller vessels and the rural communities that support them do not put the same economic pressure on marine resource as larger vessels. Although less efficient in terms of harvesting fish rapidly, smaller vessels are less expensive to operate, have lower insurance and mortgage payments and consequently require less money to be successful. Skippers and crews are employed and make decent incomes without having the vessel and its payments driving all sorts of decisions to increase income — even those that hurt the resource. For example, a 42 foot fiberglass fishing vessel worth about $200,000 dollars has annual insurance and mortgage payments of about $35,000. Traditionally crews are paid 30% of the gross less food, bait and fuel and these expenses are generally in the 10% range. If this vessel could earn gross annual fishing revenues of $125,000 the skipper would earn about $50,000 annually. A 75 foot vessel would require almost $350,000 of gross income to return the same money to the owner/operator. The extra $225,000 is simply paying for a larger fishing platform.

Background

Long before recorded history, halibut as well as sablefish were harvested by Alaska's coastal peoples. Archaeological discoveries throughout the past century confirm that halibut and sablefish were (and are) an important part of the village diet. In fact, the "modern" circle hook, to which as much as a 50% increase in halibut catch efficiency was attributed during the 1980's, was a copy of bone and ivory fishing hooks carved by coastal residents over the past millennium.

Coastal Alaskans started catching halibut beyond their subsistence needs for trade and barter hundreds of years ago and were well established when explorers, traders, hunters and eventually western settlers came into the country. When markets became available, it was a natural transition for these fishermen to initiate and participate in the developing commercial fisheries for halibut, pacific cod and black cod.

For the past 70-plus years, halibut fishing in the Gulf of Alaska has been regulated by the International Pacific Halibut Commission. Coastal residents participated in the fishery as markets and economics dictated, often diversifying their fishing efforts and moving from fishery to fishery throughout the year. With the passage of the Magnuson Act in 1976, the "Americanization" of all fisheries within two hundred miles of Alaska's coastline quickly impacted halibut and sablefish. As foreign trawling declined, halibut and sablefish stocks increased with substantial quota expansion. Immediately, new capital and participants moved into these fisheries to take advantage of the new found economic opportunity. Moreover, federally-supported loans provided capital to existing large-boat fishermen to increase capital investment in catcher vessels as well as increase catch capacity. Many of the small boat fishermen in Alaska's coastal communities lacked the capital or credit history to invest in competitive vessels. Most of whom had ancestors who had fished halibut and black cod in waters adjacent to their villages over the course of more than 7,000 years. Others made their living from their traditional fishing pattern of participation in multiple fisheries -- viewing long-line fishing as one of several fisheries in which they would participate.

Individual Fishing Quotas (IFQs)

Despite rising quotas, increased effort -- both new participants and new vessels -- soon began to reduce season length. The first attempt to limit entry into the halibut fishery occurred between 1978 and 1985. Although this attempt was unsuccessful, it nevertheless accelerated the increase of both capital and participation in the longline fisheries. Initially, diverse small boat fishermen were able to adjust schedules and continued to participate in the halibut and sablefish fisheries. Soon however, these fishermen were forced to choose between primary fisheries, such as salmon or herring and the "derby" openings for halibut or sablefish. Consequently,

even prior to the implementation of IFQs, many small boat coastal fisherman had been eliminated from the race for halibut.

The implementation of the current IFQ system merely sealed the fate of those coastal fishermen who had, by reason of overlapping of salmon-herring-halibut openers, lack of capital, lack of information or understanding of the consequences of the impending IFQ program, and by the reduction of fishing seasons, been phased out of the halibut and sablefish fisheries. In short, those who lacked the financial resources to monitor changing fisheries policies by various fishery policy bodies were left out of any meaningful participation in the fisheries. Many did not qualify for IFQs at all and many of those who qualified received minimal poundage. The sad irony is if the first attempt to limit entry into these fisheries had been successful in the early 80's, most of these same fishermen would have both qualified and received substantially more poundage than under the current IFQ system. One very negative result of waiting 10 years to finalize the IFQ system was the elimination of the smaller, traditional fishermen from meaningful IFQ participation and the rewarding of the newer, highly capitalized entrants in the fishery -- the very people who had helped create the over-capitalization problem in the first place.

Consider the IFQ approach in another resource management context, range management. Picture a limited number of ranchers successfully grazing cattle in a public valley (the commons) for 60 or 70 years. Suddenly, with better rains and increased grass, new ranchers enter the valley with much larger herds of cattle. As the new herds eat more and more of the grass, the established ranchers do not have enough grass for their cattle. In resolving the inevitable disputes between the old and the new ranchers, is it equitable to award the new ranchers virtually all of the grass? This is what IFQs in essence did with the halibut and sablefish fisheries.

Problems in the Gulf of Alaska

Even before many of their residents were excluded from meaningful participation in the IFQ program, many small Gulf of Alaska fishing communities were experiencing severe economic hardship because of the loss of several important fisheries. Shrimp fishing declined in the early 80's, king crab fishing was suspended in 1982 and tanner crab fishing ended in 1993. In addition, salmon prices have

plummeted since the Exxon Valdez oil spill in 1989 and herring fishermen are being asked to fish on consignment only to be paid if their processor can find a market. These are just the type of economic circumstances that, in the past, would have motivated rural small boat fishermen to concentrate more on the remaining fishing opportunities like halibut or sablefish. However, because IFQs have reduced the opportunities to diversify, many of Alaska's rural small boat fishermen, with generations of fishing experience, may no longer be able to survive economically. Their fishing dependent communities as a consequence may now or soon no longer be viable places for people to live.

Common Property Resource in Effect is Being Converted to a Private Commodity

The crux of the Gulf of Alaska's small coastal communities' problems with the current IFQ system rests with multiple, unintended negative consequences which have arisen from the way the common property resource has been allocated and managed to date.

The decision to give common property resources to some individuals and not others based on a "qualifying years system" was skewed against many small community fishermen. This, in effect, converted halibut and black cod resources into private commodities managed for a small group of individuals at the expense of our communities.

This decision created a relatively small class of "winners" among fishermen, many of whom do not live or work in the Gulf of Alaska's small coastal communities and do not hire crew members from these communities. Nevertheless these people are able to use their "gifted" halibut and black cod resources to compete with small boat fishermen who did not receive similar resources. The competition from the IFQ winners against IFQ losers is played out along the following pattern.

In 1995, the first year IFQs were fished, approximately 70 million pounds of halibut and sablefish were harvested in the Gulf of Alaska. The ex-vessel value of these fish was approximately $108,000,000. In addition to collecting the receipts from fishing and delivering halibut and black cod, the gifted IFQ shares carried a

market value in excess of the ex-vessel landing prices. Thus, the total value of the initially gifted IFQ shares was substantial.

The result of the U.S. government giving substantial tax free capital to some individuals, but not others, put the recipients in a dominating position when it came to borrowing money for additional IFQs. Banks, processors and other financial institutions soon began to loan money using IFQs as collateral at a 50% loan to value ratio. Consequently, if an IFQ holder received $1 million worth of gifted shares, he or she could use those shares as collateral to purchase another $1 million worth of IFQs ($2 million of IFQs as collateral would fund a $1 million loan with the loan proceeds used to acquire the additional IFQs), plus spend whatever profit was derived from the fish that were caught to purchase more IFQs.

The windfall profits and asset appreciation which benefitted the original winners actually accelerated in the three years since the system started and, by March 15, 1998, an Area 3A halibut IFQ is worth $13 per pound and Central Gulf sablefish shares are worth $12 per pound. This represents a substantial increase in tax-free capital above what was initially issued when the program was started.

In addition, the halibut quotas themselves have increased since 1995 and the profit derived from the increased IFQ poundages owned by the initial recipients has increased proportionally. This "new" capital owned by the IFQ can again be leveraged for further IFQ acquisitions or other capital investments that help them to broaden the competitive gap between themselves and fishermen who lack IFQs.

Even if those who did not receive IFQs could obtain capital sufficient to be credit worthy for a bank loan to buy IFQs today, they are competing on a tilted playing field with the original IFQ recipients. This circumstance perpetuates and increases the economic disparity between IFQ fishermen and other fishermen of the Gulf of Alaska's coastal communities.

Further, we are now seeing a new and devastating consequence from the original inequity. The IFQ owners are now able to move capital leveraged from IFQ assets into other, currently depressed fisheries and thereby compete with IFQ-poor fishermen. Not only have non-IFQ fishermen lost their ability to participate in the

IFQ fisheries, they are now competing with new, well-capitalized IFQ holders, often with new boats and equipment that have entered the herring, pacific codfish and salmon fisheries. This unexpected consequence of the initial IFQ gifting reduces earnings or earning potential for traditional fishermen in the non-IFQ fisheries.

This disparity in results between fishermen has enabled a select group of IFQ fishermen to dominate and direct the regulatory and political process. IFQ fishermen, although it is stated otherwise in the regulations, believe their IFQs are property rights and use their new found capital to protect these "rights". Over the years, in fish politics and the regulatory process, various fisheries and fishery groups have balanced one another because the fisheries and comparable economic structures based on the profit margins of the fisheries themselves — in other words, earnings from the products fished. Now however, a political juggernaut, not based on the profitability of the fishery, has been created through gifted IFQs and often works against the economic interests and survival of rural small boat fishermen.

Ironically, resource conservation concerns were part of the debate for implementing the IFQ system. Prior to IFQs, fishermen were told that the resource was in trouble and that the current "overcapitalization" needed to be curtailed before the fishery collapsed. Despite these representations, in each of the years since IFQs were implemented in 1995, halibut quotas have *risen* dramatically --- 11% in 1996, 35% in 1997 and 11% in 1998. It has become clear that either the system was sold on a false pretext, i.e. the need for the conservation of halibut stocks or the science was wrong.

Other Results of IFQ "Gifting"

IFQ capital gifting results in other consequences for smaller coastal communities and the fishermen who live there. Since so few IFQs were allocated to these communities, meaningful participation in the system required purchase of IFQs. However, many fishermen without an IFQ capital base as security for loans could not be economically competitive with IFQ recipients because their investment capital was limited to accumulated savings or the mortgage of existing assets. Interestingly, it was only a short time before the price of IFQs became so high that earnings from fishing the resource would not make the payments on the loan and

those without an IFQ capital base, even if they had capital, could not justify an IFQ investment. (In 1997 at $12.00 per pound for IFQs and a market price @ $2.00 for halibut, 10,000# of halibut IFQs cost $120,000 and the fisherman would earn $20,000 in gross revenue. The net revenue to the fisherman, after paying crew and other expenses, would not be more than 40% or approximately $8,000 -- probably less than the interest on the loan.) Nevertheless, fishermen with an IFQ asset base continue to invest because the earnings from the product caught with their gifted IFQs will help pay the debt service on new purchases. As this cycle repeats itself on a larger and larger scale, rural small boat fishermen are *out* of the equation.

Job Loss

Job loss has been another unintended, but chronic, result of IFQs and includes both crewmen and skippers. Prior to IFQs many rural residents found crew jobs during the halibut and sablefish openers and some residents were hired as skippers. Implementation of IFQs reduced crewman and skippering opportunities in several ways. First, IFQs and the subsequent consolidation of quota shares reduced the number of vessels fishing and fewer crewmen were needed. Second, because IFQ fishing is not concentrated into a short time frame, IFQ fishermen fish at their own pace and often do not use as many crewmen. IFQ skippers exchange crews or employ family members to catch their quotas. Third, many IFQ owners eliminate crew altogether by banding together on a single vessel and fishing their quota shares together.

The amount of IFQ shares awarded to larger vessels outside of rural coastal communities shifted what few crew jobs remained to Seattle and Alaska's larger ports. Some have estimated that across the Gulf there are less than one half of the crew jobs that were available prior to IFQs and, in many rural communities, as many as 80% of these jobs have *disappeared.*

Halibut crew jobs provided important opportunities for rural residents to generate income. These jobs were part of the three legged economic stool (salmon/herring, a winter fishery and halibut/sablefish) which sustained rural crewmen throughout the year. Many of these fishermen did not have the capital, or the means of obtaining the capital, necessary to purchase a fishing vessel.

Nevertheless, they were content to provide for their families by working with owners and skippers. The typical crewman might fish salmon and/or herring and some type of winter fishery but always tried to land a job for the halibut or black cod openers. Without IFQ crew jobs the economic stool became unstable and now, with the radical decline in value for salmon and herring, it has collapsed! Simply stated, virtually all crewmen living in rural communities can no longer earn a sustained living from fishing income. Consequently rural coastal communities are experiencing significant population declines.

Loss of Opportunity/Loss of Our Youth

The tragic consequences of IFQs includes the destruction of opportunity in our communities for our young people and future fishermen now growing up in coastal communities. Few current boat owners and captains from rural communities were awarded IFQs; and, as indicated above, cannot compete with the capital of the IFQ recipients. Most of the crew jobs for halibut and sablefish have disappeared. Consequently, there is little or no expectation that the future generations of rural small boat fishermen will ever be able to participate in the harvesting of halibut and sablefish resources located in proximity to their homes unless something is done to change this bleak outlook. Increasingly, young people growing up in rural communities are recognizing that, under the current management regime, they cannot make a living following generation upon generation of family members and ancestors into fishing. These young people are leaving coastal Alaska to pursue jobs elsewhere. If a strategy involving the fisheries is not devised and devised soon, many coastal communities will lose their "critical mass" as communities and will simply exist for awhile, but will ultimately "wither on the vine."

Closing of Processing Plants

Several of the rural coastal communities have one or two processing plants which process halibut and/or sablefish. The IFQ fishery for halibut and sablefish moved much of the product processing to the larger regional centers or out of state. These communities, in addition to the loss of resource revenue and crew jobs, also lost and are losing, processing jobs and services revenue as well as raw fish tax

revenue. IFQ fishermen no longer have time or efficiency pressures when prosecuting their fishery. This allows them to travel from remote areas to a favored port, choose the highest priced market for their fish or market the fish themselves. Comparing the 1994 pre-IFQ fishery and the 1995 IFQ fishery, two coastal communities reported almost a 60% drop in the value of halibut deliveries. Recently, one rural processing plant had to purchase halibut processed elsewhere to preserve one of its traditional markets.

Processors, like fishermen, have depended on several fisheries -- and the profit from those fisheries -- to stay in business. These processors have located processing plants and invested in rural coastal communities because of the proximity of the community to marine resources. In many communities, the processing plant is the primary private employer. Eliminating most of the processing of IFQ fish from rural communities, by itself, would not have put rural processing plants in peril. However, eliminating IFQ processing after the crab collapses and salmon/herring declines may prove fatal to several coastal processing plants.

Unintended Consequences of CDQ's

A disturbing and additional unintended consequence of the effect of the CDQ program of the Bering Sea on the IFQ fishery of the Gulf of Alaska, is the reported investment by Bering Sea Community Development Quota groups in Gulf of Alaska IFQs. Investment capital gifted in another federal fisheries management program is competing and helping to eliminate the possibility of Gulf of Alaska local fishermen and companies acquiring IFQ shares. This result is all the more devastating because, as we understand it, 3.5% of the fishery allocation of the Gulf was actually used to offset the cost of establishing the CDQ program. We urge that your committee look into this situation to determine the facts and to provide the results on this to the Congress. While we are fully supportive of the intent of the CDQ program to benefit the residents of Coastal Communities of the Bering Sea, we strongly oppose this unexpected and ironic twist that exacerbates the already devastated economy of small Gulf of Alaska Communities.

Need to Find Creative Solutions

Numerous other provisions to protect Alaska's gulf communities could have been included in the IFQ management scheme and now need to be pursued to stop the ravaging of the fragile economies of GOA Communities. Reservation of a percentage of the total halibut and sablefish quota for a small boat fishery within 12 miles of shore has been suggested for many years. Others have suggested that some entity, or consortia, be authorized legislatively with the right to purchase IFQs for the perpetual use of local coastal communities. Another suggestion, discussed during the IFQ debates, was allowing a percentage of halibut to be retained as legal bycatch in existing small boat fisheries such as the State of Alaska pacific codfish fishery and the black bass jig fishery. One other concept often discussed by coastal communities is the issuance of a second tier of IFQ quota shares. These shares would be issued to communities based on the communities' dependence on the resource just like the first tier shares were issued to fishermen based on the fishermens' recent dependence on the resource. One distinction could be that tier 2 IFQ shares would not be transferable. Yet another plan would tax all IFQ share transfers a percentage, say 10%, for the transfer of shares. The taxed shares would then be reserved for a fishery beneficial to residents of coastal communities. In addition, some policy makers maintain that the transferability of IFQ's should be eliminated or restricted in some manner. The number and variety of ideas afloat to help coastal communities reveals an implicit recognition that the IFQ program has had a substantial and devastating impact on these communities and some remedial adjustments are warranted.

Welfare Reform

Welfare reform is increasingly creating serious impacts on the economies of rural Alaskan fishing communities. At the same time that the principal focus of Gulf of Alaska rural coastal economies - small boat fishing - is being squeezed out of existence, the public safety net is also being withdrawn. This decline of the fishing economy removes the only realistic source of significant employment opportunities for many coastal communities. The inevitable result is the steady migration of residents to other areas with economic promise, leading to further erosion of most such communities. Welfare reform, therefore, in the context of shrinking fishery

opportunities for the small boat community fishing fleets means population relocation, and the consequent potential end of many Gulf of Alaska fishing communities. What our communities seek are job opportunities – not welfare.

Inability to Develop a Small Community Halibut Sportfish Guiding Business

Another aspect impacting rural communities from IFQ holders' "investing" in the resource is rapacious guardianship of market share. Over the past year, through the efforts of the IFQ holders, the NPFMC has curtailed possible development of commercial halibut sportfish guiding business in rural communities by placing a cap on the amount of fish guided sport fishermen can harvest --- and this despite significant increases in the areas in question. This, in effect, has allocated the majority of the halibut charter business to larger developed communities like Homer, Sitka and Ketchikan. This is doubly disturbing, since there is growing interest in the remote rural community experience among an increased number of tourists to Alaska.

Also, during the past year or so, IFQ fishermen have focused the NPFMC on the subsistence take of halibut. The age-old practice of subsistence fishing for halibut is not specifically designated in the IPHC convention. Throughout the history of the commercial fishery subsistence harvests were not of concern. Now, however, IFQ fishermen believe that subsistence users are taking "their" resource and they want it stopped. Again, this has a direct impact on many of the residents living in rural coastal communities.

Conclusion

As we discussed at the beginning of this paper, our coalition, by this statement, is not impugning the motives or good intentions in establishing the IFQ program of anyone be they policy makers, other fishermen or fishery managers. What we have attempted to do is to describe in general the situation as we see it, as we interpret it and as it is being carried out with respect to fisheries in the Gulf of Alaska, which are subject to individual fishing quotas. As you can see, our focus has been – the statement of and identification of the problem to the exclusion of specific solutions.

While we mentioned several ideas that have been discussed by various concerned people in this arena, we are not, at this time, advocating any one of them but, rather, want to stimulate dialogue that may lead to some real world solutions to the problems that the coastal communities of the Gulf of Alaska face.

We believe that it will be a tragic legacy of all of those who have worked for the conservation and wise utilization of the common property resources of the Gulf of Alaska if nothing is done to address the deteriorating situation many coastal communities face today. We therefore urge this body to consider the concerns that we have expressed to you, and to factor them in to whatever report and recommendations you submit to the U.S. Congress.

In the meantime, we will identify more specific potential strategies and solutions to some of the problems we have raised for submission to the North Pacific Fishery Management Council, the State Board of Fish, as well as the ultimate policy makers for the common property resources of the United States and the State — the Congress, the administration, the State Legislature and our Governor.

We appreciate having this opportunity to submit this statement to you and urge that you do what you can within your mandate to help address the economic problems and the fisheries conservation imperatives we have identified that are facing Gulf of Alaska Coastal Communities.

3765\fishery\08D.018

Statement to the Committee to Review Community Development Quotas (CDQs), Ocean Studies Board, National Academy of Sciences and National Research Council

Gulf of Alaska Small Boat Fishermen
for Marine Resources Conservation and
Sustainable Fishing Communities
P.O. Box 503
Kodiak, Alaska 99615

January 1998

"An Urgent Imperative for the Health of Fisheries and the Viability of Fisheries Dependent Gulf of Alaska Coastal Communities"

Purpose

The purpose of this statement is to convey to the members of the Committee to Review Community Development Quotas (CDQS's) of the Ocean Studies Board of the National Academy of Sciences and the National Research Council, the serious concerns of this coalition of small boat fishermen from a number of Gulf of Alaska fishing communities regarding –

- the health, conservation, and sustainability of marine resources;
- our exclusion from access to marine resources managed by the federal government;
- the need for equitable allocation of fisheries resources in the Gulf of Alaska; and
- the fragile nature of the economy of the Gulf of Alaska's rural coastal communities whose survival is threatened by current fisheries policies.

Overview

Issues of fisheries conservation, sustainability, marketability, and the equity of allocation are at a crossroads. Decisions made now will determine the long-term viability of fisheries and whether the small fishing communities in the Gulf of Alaska will continue to exist.

There are serious, compelling fisheries policy problems that must be addressed by the North Pacific Fisheries Management Council, the Secretary of Commerce, the Congress of the United States, the State of Alaska—its Legislature, and its Governor, and by the fishing communities most directly affected by such policies. If these problems are not addressed quickly and comprehensively, the fisheries resources of the Gulf of Alaska will be depleted and equally devastating, the viability and existence of the small fishing communities who have been heavily dependent on such resources will soon move beyond crisis levels.

Congress recognized the importance of the need to consider the problems facing fishing communities when it adopted through amendments to the Magnuson-Stevens Act a new fishery management standard which mandated that conservation and management

standards ". . . take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." 16 U.S.C. §1851(a)(8). Fishery management councils are also required to include a "fishery impact statement" in any new fishery plan or amendment, which assesses and describes impacts upon fishing communities. See 16 U.S.C. §1853(a)(9). Clearly Congress was concerned about the future of such communities, and with good reason.

Through this statement, this coalition seeks to help identify the nature and seriousness of the problem facing the fishing communities in the Gulf of Alaska. Specific solutions however, must come through the reexamination and the implementation of United States fisheries policies. We urge your committee, and the decision-makers who will refer to your study, to examine the problems we identify, as well as the long-term benefits which can result from a small boat fleet's ability to link marine resource conservation with sustainable human economies in Alaska's rural coastal communities.

Background

Notwithstanding the fact that prior to 1976, little federal law protected American fishermen from the voracious practices of international fisheries, there also were few incentives for Alaska's fishermen to participate in those fisheries operated by the foreign fleets. While, passage of the Magnuson Act in 1976 "Americanized" all fisheries within two hundred miles of Alaska's coastlines, it did little to encourage Alaska's rural coastal community fishermen to participate in those fisheries. The so called "Joint Venture" transition allowed larger, primarily Seattle-based, vessels already in existence to maximize these new fishing opportunities. In addition, federally-supported loans provided capital to existing large-boat fishermen to increase their catch capacities. Many of Alaska's fishing community residents, some of whose ancestors had fished the waters adjacent to their villages for more than 7,000 years, lacked the credit history to obtain the government's large vessel loans, aside from having a historical or cultural reluctance to depart from their small-boat based fishing livelihoods. Consequently, they could not, and did not, meaningfully participate in the Americanization of local fisheries envisioned by the Magnuson Act.

CDQ's

Something obviously was wrong with this picture. Alaska's rural fishing communities, from Saint Matthew to Ketchikan, found themselves sitting in their villages/communities watching factory trawlers, bottom trawlers and other large vessels harvest the marine resources in proximity to their communities at unsustainable levels. The first step in correcting such an obvious inequity was the Bering Sea CDQ program.

This program was developed to aid smaller communities in participating meaningfully in the "Americanization" of marine resources close to their villages. A relatively small portion of the annual total approved catch was allocated to such rural communities, most whom had sustained themselves for generations in part from the fisheries and other marine resources in the waters of their region. Income from the allocation was intended for economic development in the communities and the establishment of village fishing fleets as the basis for new offshore rural fishing economies. Job opportunities in onshore and offshore processing also became available.

At the time CDQ's were implemented for Bering Sea communities, the small fishing communities in the Gulf of Alaska, similar to their cousins to the north, also had not participated in the economic benefits that were able to be realized by the large boat fleets from implementation of the Magnuson Act. Because the CDQ effort was focused on the Bering Sea and because many Gulf of Alaska fishing communities had relied on a patchwork of "near-shore" fisheries, they did not completely fit the profile of the communities which were being targeted by the CDQ effort. What the architects of the CDQ did not, and could not, anticipate was the convergence of several factors that, within a short span of time would, if not addressed, substantially jeopardize the viability and sustainability of the Gulf of Alaska's existing fishing community economies.

Problems in the Gulf of Alaska

Even before they were excluded from CDQ's, for many small Gulf of Alaska fishing communities, the slide toward economic oblivion began back in 1982 with the suspension of king crab fishing. Since it was just one fishery, the small boat fleet refocused on the remaining opportunities: tanner crab, halibut, salmon, herring. Next, the halibut seasons became shorter and shorter, making this "derby fishery" less viable. Then, in 1993, the tanner crab fishery was closed. By 1995 Individual Fishing Quotas (IFQ's) had been implemented for halibut and blackcod. Many rural fishermen didn't qualify for many "Q's" because, during the qualifying years, their chances for income were better in herring fishing and the two seasons conflicted.

Since the Exxon Valdez oil spill, salmon prices have declined and by 1996, had gone so low that, when adjusted for inflation, they were the lowest prices ever paid for salmon. Herring prices collapsed in 1996, and by 1997, *many herring fishermen were simply not paid for their catch.* Finally, by 1996, the federal government had imposed moratoriums on all federally managed fisheries. Small boat rural fishermen could no longer diversify. This signaled the end to finding new fishing opportunities and created an atmosphere of continuing economic crisis as the small boat fleet in the Gulf of Alaska found itself precluded from the benefits of Americanizing the fisheries intended by the Magnuson-Stevens Act.

Magnuson-Stevens Act

One aspect of the problems facing rural fishermen in the Gulf of Alaska is the apparent inability of fishery management policy implementation to conserve marine resources as it should. For example, both king crab and tanner crab have all but disappeared in many bays and estuaries. In the federal fisheries, thousands of tons of fish are disposed of as "bycatch" and bottom trawling is having unknown impacts in reshaping sea bottom habitat. In an attempt to address some of these excesses, in 1996, Congress passed the Stevens revisions to the original Magnuson Act. The revised Magnuson-Stevens Act incorporated some "National Standards" for the conservation of marine resources and to help address the needs of dependent fishing communities. As Congress clearly understood, small boat fishermen in resource dependent communities are a logical choice for helping to deal with the conservation imperative which is inextricably linked to healthy fisheries.

Imbedded in the cultural and work ethic of rural Alaska's small boat fishermen generally is a respect for the conservation of the marine resources on which their families and their communities are dependent. Ironically, the over-capitalization in large vessels which resulted, in part, from federal loans and increased foreign investment, often eroded conservation oriented fishery management decisions, and thereby reduced or eliminated fishing opportunities for small boat rural fishermen. Smaller boats operate a less intensive fishery and do not require the same return on capital or catch per unit effort to earn a meaningful living and maintain rural fishing community economies.

Welfare Reform

A second non-fishing event having increasingly serious impacts on the economies of rural Alaskan fishing communities is the reduction of public assistance as a result of welfare reform. At the same time that the principal focus of Gulf of Alaska rural coastal economies - small boat fishing - is being squeezed out of existence, the public safety net is also being withdrawn. This decline of the fishing economy removes the only realistic source of significant employment opportunities for many coastal communities. The inevitable result is the steady migration of residents to other areas with economic promise, leading to further erosion of most such communities. Welfare reform, therefore, in the context of shrinking fishery opportunities for the small boat village/community fishing fleets means population relocation, and the consequent potential end of many Gulf of Alaska fishing communities.

Conclusion

For centuries, residents of communities around the Gulf of Alaska coastline have relied on the sea for their livelihoods. For many communities, fishing has been and remains the only viable means of earning a living as well as providing for the subsistence needs of residents. Today, virtually all rural fishing communities in the Gulf of Alaska are seriously at risk. Many will not survive the current reductions or loss of fishing incomes and opportunities. National welfare reform, although necessary, is increasing economic pressures on fishing community residents. Most such communities are seeing a number of their young families contemplating or actually moving away which will result in the eventual loss of their cultural heritage as fishermen. The intent of the Magnuson-Stevens Act, as well as the responsibility of our government to properly and equitably manage this common property resource, requires that this crisis occurring today in Alaska's small coastal communities be addressed immediately!

Fisheries issues are complex. We understand and strongly support the emphasis which must be placed on conservation of marine resources . . . without which there is no future. Nonetheless, IFQ's, CDQ's and federal fishery moratoriums all need to be reviewed in order to find solutions that will provide Alaskan small boat fishermen an opportunity to make their living, as they have for centuries, from the marine resources in the waters adjacent to their villages, rural communities, and regions.

We recognize and respect the successes made with CDQ's for the Bering Sea communities. This program established the principle that coastal community residents should have an opportunity to participate in the fisheries conducted adjacent to their communities. It also can help make welfare reform work while creating less turmoil and stress on communities by providing meaningful job opportunities. Without such opportunities, welfare reform will just wreak havoc and itself contribute to the demise of Alaska's rural fishing communities.

While a review of fisheries management policies should possibly include the need for reform of certain aspects of the CDQ program, the blanket moratorium on CDQ's beyond the Bering Sea should *not* be continued. CDQ's may or may not be the perfect answer for the fishing communities of the Gulf of Alaska. That remains to be seen. However, there is an acute need for policy makers at all levels to search for, find, and implement a means, be it CDQ's or some hybrid variation of CDQ's, to help ensure that Gulf of Alaska's fishing communities will remain viable into the future.

Request to the Committee

The fishing community residents in the Gulf of Alaska want the opportunity to work and make a living for themselves and their families. Historically, their principal means of

employment has been through the fisheries. There is a national interest in the continued existence of the fishing communities in the Gulf of Alaska. Its fisheries are a national resource. An allocation to enable the continued economic viability of these communities will therefore serve national as well as state and local interests.

We strongly request that the Committee on Community Development Quotas of the Ocean Studies Board help focus the attention of the nation's fisheries policy-makers and managers on:

(1) the serious need for greater conservation measures in Gulf of Alaska fisheries; and

(2) the desperate need of Gulf of Alaska fishing communities to be included in a meaningful way in the benefits enjoyed by the Americanization of our Nation's 200-mile Exclusive Economic Zone.

Without their attention and remedial action, these policy-makers and managers will be helping to ensure the demise of both the fisheries and the dependent fishing communities . . . a tragedy of historical proportions.

We appreciate the opportunity to submit our views to your Committee. We are available to respond to questions the Committee may have or to meet with you at any time. Thank you for your thoughtful consideration of our views.

Alaska Custom Seafoods

O-n the Corner of Fish Dock and Homer Spit Road
Box 996; Homer, AK 99603
907-235-7512 fax 907-235-7518

April 17, 1998

Att: Don Giles

Re: Two Hour Notice

Dear Don,

Kevin O'Leary has read the attached letter concerning a proposal to try Two Hour Notice of Landing in Homer on an experimental basis.

This would make all of our lives a whole lot easier.

Monday morning is public testimony at the council.

An appearance by you or someone else from Icicle would mean a lot. I am willing to place into the minutes a letter in support by you if you can not make it.

If five buyers go to the meeting, this can happen.

Respectfully,

Brad

Brad Faulkner

Alaska Custom Seafoods

O-n the Corner of Fish Dock and Homer Spit Road
Box 996; Homer, AK 99603
907-235-7512 fax 907-235-7518

North Pacific Fisheries Management Council
605 West 4Th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Att: Mr. Rick Lauber, Chairman

Re: IFQ Implementation

Dear Chairman Lauber:

Last year my company purchased approximately 1.85 million pounds of halibut. We processed 272 landings for an average landing size of @ 6700 pounds. Disregarding the fairness issue in the original allocation, from my standpoint, the IFQ system is working. It is safer, it maximizes the value of the resource, and it is good for the consumer who gets to eat fresh halibut eight months of the year.

As a buyer, I have learned to cope with the paperwork involved. It seemed onerous at first, but, we are all used to the reporting and shipping requirements now, and it goes pretty smooth. I would like to address my comments to the one requirement that makes our life miserable every day we land fish, and that is the Six Hour Notice of Landing requirement.

In Homer, we have eight cranes and all the buyers lined up on one dock. This fosters increased competition among buyers. The Homer prices, minus transportation to Seattle, often lead the state, because of this competition. The reality of the Six Hour Notice requires me to be available for call-ins from 6 AM till Midnight. Missing a call at 11:30 PM means I can't possibly move a fish of the dock till 12:15 PM the next day; if the quota holder gets hold of me by 6 AM.

The reality is that most boats come into the harbor in the middle of the night. They wake, have their coffee and shop their loads for the highest price. Hopefully they make their deals by 10 AM, generating a 4PM offload time. We are not allowed to leave till the paper work is letter perfect and the shipping reports are processed. This means many days we work sixteen or eighteen hours to take a single 7,000 pound load. If I schedule five boats to offload and we get behind more than two hours, due to late arrivals or mechanical breakdown, we have to reschedule all the boats.

File copy

The local NMFS officers can grant a waiver to allow us to move fish in less than six hours. If you look at the number of waivers granted on the Homer dock, you will find a high percentage of the landings waived by the local officers. Rather than load four boats at four different times, it is far easier for the officers and the buyers to line them up an waive them through. Unfortunately, this system of waivers is rife with favoritism. I have documented this to the Council and NMFS in the past, so I will not discuss examples here, but, it leaves the waiver decision in the hands of the local officer on the dock. I have dealt with fifteen different NMFS officers in the first three years on this dock. Whether waivers are granted depends on who the officer is and his mood that day.

The net effect of the waiver system is to hold a huge hammer over the head of all the buyers as to whether you can move fish on schedule. Last Saturday, I had a Russian fisherman, who cannot offload on Sunday due to religious reasons, call in his landing shortly after 12 PM. He was denied a waiver. The local officer would not even bother to talk with the skipper on his cell phone when the officer was in my office. The reason for this was because another skipper had called in Auction waived Sahalee and then again waived Alaska Custom. To process the waiver would have taken five minutes of the officer's time, but he refused and left the dock. The skipper that had requested a second waiver, and got it, made twenty cents extra on his fish that day. The skipper that was denied a waiver made twenty cents less than my written guarantee for Saturday, when he was able to land his fish the following Monday. I ran two half empty trucks down the Alcan and had my crew sitting for over an hour while we searched for the local officer who had said he would be on the dock till we finished the first boat.

My point is that the waiver system, as it exists now, effects competition and the price of fish, every single day. In Homer, we have a NMFS attendance rate of close to 60%. This compares with 15% in the rest of the state. We also have a NMFS office staffed by two officers, ten minutes drive from the dock. I can not find too much fault with the officers. They are all working overtime, buried under mounds of paperwork. NMFS in general is under funded and understaffed. A waiver is extra paperwork for them. When it suits them, they grant waivers. When it doesn't they don't.

My solution is simple. Make the notice in Homer two hours. Get rid of the time waivers as a regular way of doing business. Homer is the perfect place to try this. All the buyers are at one dock. If it works, other docks could be granted two hour waiver status on a case by case basis, depending on the proximity of NMFS enforcement officers.

By allowing two hour notice, competition will be increased and the paper load of the officers that have been granting waivers will be decreased. The local IPHC representative does not have a problem with this. Every quota holder and buyer I have spoken with is in favor of it. Everybody wins and, with one easy change, the rules are the same for everybody, not dependent on the mood or experience level of the fifteen different NMFS officers that have been on this dock.

I understand there have been a number of comments to both the Council and NMFS concerning the Six Hour Notice. I also understand that changes to the IFQ implementation probably won't occur till the year 2000. I am asking you to give it a try on the Homer dock, where every buyer is shoulder to shoulder with every other buyer. We are the perfect port to test out a Two Hour Notice. We have the highest NMFS attendance rate and we are only ten minutes drive from their office. I know my life would be a whole lot easier, trying to schedule multiple boats, trucks, planes, offloading crews and cutting crews, if we had one rule that everyone had to follow all the time.

Thank you for your time.

Respectfully,

Brad Faulkner
President

Chairman Lauber,

Hello, my name is Tom James and I'm a fish buyer, tenderman, fisherman, and IFQ holder.

I don't understand why we work 20 hours per day and NMFS doesn't. We have often missed planes and trucks because of not being able to unload a boat at night or until late afternoon. Even though the fish were in port.

Since buying fish is a competitive business the fisherman often come to town with no idea to whom their fish will be sold. They offer them to various processors until their best price is offered. After the smoke has cleared we then have to wait 6 more hours to offload.

A two hour notice in ports like Seward and Homer would facilitate buying, selling, and shipping.

Please give two hour notice your consideration. It would help the fisherman, the processors, the shippers, and the end user. Let's work together, and refine this IFQ system so its a little more streamlined.

Thanks for your time,

Thomas James

Dear Mr. Lauber

My name is Doug Stuart and I am the owner of His Catch Value Added Seafoods of Homer. My company deals with seafood in many different ways. Last year we started buying halibut for a large company on the west coast. This plus what we buy for our value adding operation greatly changed the nature of our business. I found out exactly what the word lodgistics means. Our complicated and sometimes frustrating system of off-loading has an easy solution. If we could go to a two hour notice of landing instead of the current six hour notice, my life and the lives of all the fisherman, buyers, handlers, loaders, truckers, NMF officers, and all the end users of halibut would get a lot more rational.

Halibut is one of the premium fish in the fresh market. It is one of the main reasons why Alaska has a successful fishing industry. Why are we reducing the quality of this product by a mandatory six hour waiting period when our NMF officers are just down the block? The lodgistics of moving tons of halibut from Homer to the lower 48 at times becomes impossible due to the six hour waiting period. Please give Mr. Faulkner your fullest attention. All of us in Alaska, in the halibut business would applaud a trial period where the six hour waiting time would be blanket waived and a two hour one set in place. Thank you very much for your time.

Douglas J Stuart
Owner
His Catch Value Added Seafood

Jacqueline M. Eisenberg
Dragnet Fisheries
Homer Buying Agent

PO Box 2697; Homer AK 99603
907-235-8023 FAX 907-235-0808

April 19, 1998

North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Chairman and Council

I am currently the Dragnet Fisheries Buying Agent in Homer. I have previously worked for Alaska Custom Seafoods, The Auction Block, Sahlee of Alaska, and Cook Inlet Processing all of whom are active Halibut and Black Cod buyers on the Homer dock. I have worked for these companies as Buying Agent, Office Manager, Personnel Director, Dock Foreman, Crane Operator, Weight Taker, Forklift Operator and Fish Pitcher. I, like the other buyers in Homer have studied and learned how to buy fish using the IFQ system. From the prior notice of landings to the shipping reports, and everything that goes on in between, the rules and regulations of the IFQ system have become second nature to me. I would like to commend the NMFS officers in Homer for their on going efforts to educate and update us so that we can comply with all of the current and changing IFQ rules and regulations.

The IFQ system has drastically changed the Halibut and Black Cod Fisheries. It has allowed Fishermen to go fishing when the weather is good, and to get a little sleep while they are out. The IFQ system has created employment 8 months out of the year for many dock and processing workers rather than a few weeks of work that were available with the derby openers. It has changed the way we as buyers compete with one another and the way we market the product. Finally the IFQ system allows a family in Booneville Missouri to buy fresh Alaskan Halibut at their local grocery store 8 months of the year.

Although there are many advantages to the IFQ system, no one could anticipate all the effects the implementation would have. For this reason we have seen changes in the original system to adapt to the unforeseen problems. After the first year the permit holders were allowed to leave the vessel when they got to port as long as they returned for the offload. This allowed for Russian Orthodox fishermen to observe their holidays, for skippers to run for parts or go to the bank or post office, and for others to go home and take a much needed shower and have a meal with their family. This year we have new product codes to standardize ice and slime deductions and the ability to download the most recent ATM software on our transaction terminals. You now have before you a proposal to shorten the current 6 hour notice of landing requirement to a more practical 2 hour notice.

A 2 hour notice of landing requirement would be beneficial to everyone involved. It is my understanding that the original 6 hour notice requirement was used to give enforcement officers ample time to attend the offload. Other rules were implemented such as offloading between the hours of 6 a.m. and 6 p.m. and calling in prior notice of landings between the hours of 6 a.m. and mid-night to ensure that NMFS enforcement officers are able to enforce the IFQ system and attend offloads. What we have come to realize is that the 6 hour notice is very impractical and hurts the overall function of the IFQ system. NMFS officers are overloaded with paper work every day because any buyer that has more than one offload in a day or whose offload is scheduled very late in the day is going to request a waiver. With out a waiver that fish buyer is going to work a 16 hour day. With out a waiver the buyer has increased labor costs to keep a crew of 5 to 10 people around waiting to offload the next boat. With out a waiver trucks are often sent to Seattle with half a load. With out a waiver fish gets to market as much as 3 days later, 3 days LESS fresh. The majority of waivers are requested because of time restraints that are a constant concern when getting a fresh product to a very competitive and quality conscious market. Waivers and the headaches they cause all of us would be almost completely

April 19, 1998

eliminated if the prior notice of landing time requirement was shortened to 2 hours. It may be necessary to adjust the notice time requirement on a port by port basis. Two hours in Homer would be more than enough notice to allow NMFS officers time to prepare for and attend an offload, as all of the fish bought in Homer are offloaded at the same dock and the NMFS office is located only 5 miles from that dock.

I ask that you consider making this change to update and improve the IFQ system as a whole. This change would save the already overworked and understaffed NMFS officers mountains of paper work. It would be a tremendous relief to the buyers. This change would help promote the Alaskan seafood industry by delivering the freshest Alaskan Halibut possible

Sincerely,

Jacqueline M. Eisenberg
Dragnet Fisheries, Homer Buying Agent