

# CDQ Pacific Cod Directed Fishery Discussion Paper

## February 2014

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### 1. Background

In October 2013, during the staff tasking agenda item, representatives from the Bering Sea/ Aleutian Islands (BSAI) Community Development Quota (CDQ) groups introduced a proposal to make regulatory changes or exemptions that would encourage local development and participation in the harvest of CDQ Pacific cod allocations in both a directed CDQ Pacific cod fishery and while targeting CDQ and Individual Fishing Quota (IFQ) halibut (see attachment). This proposed fishery would allow CDQ village residents with vessels ranging in size from 16’ to 46’ in length, mainly using hook-and-line gear, to develop and actively participate in a CDQ village Pacific cod fishery in the BSAI. Allowing for regulatory changes and exemptions for CDQ Pacific cod fishing will primarily impact CDQ groups in the Aleutian and Pribilof Islands and some Western Alaska villages; however, all CDQ groups supported the proposal. The small vessel directed fishery could occur in both state and federal waters.

The Council chose to move forward on the proposal’s request to initiate a discussion paper, acknowledging the problem statement identified by stakeholders in which they described that:

- Current regulations applicable to vessels targeting Pacific cod with hook-and-line gear are prohibitive for the CDQ village fleets.

- The CDQ groups believe easing certain regulations will make the development of the fishery viable, particularly as the halibut quotas they currently fish continue to decline.
- Regulatory precedence has been set with similar sized vessels in jig fisheries having been exempted from Vessel Monitoring Systems (VMS) and License Limitation Program (LLP) requirements.
- It would be most efficient and conservative to allow retention of CDQ Pacific cod when the village fleet targets CDQ and/or IFQ halibut.

The objective of this discussion paper is to consider proposed regulation changes or exemptions that will: 1) promote the development of a CDQ village directed Pacific cod fishery; and effectively allow CDQ and IFQ halibut harvesters, under 46' in length, to retain CDQ Pacific cod in excess of the 20 percent Maximum Retainable Amount (MRA), as proposed in the handout by the CDQ groups.

In the proposal, the CDQ groups identified regulation changes that they believe would encourage local development and participation in the harvest of CDQ Pacific cod allocations. These four proposed changes include:

- 1) Exempt vessels between 32' and 46' in length from License Limitation Program (LLP) requirements while harvesting CDQ Pacific cod.
- 2) Exempt vessels up to 46' in length from Vessel Monitoring System (VMS) requirements while harvesting CDQ Pacific cod.
- 3) Align observer requirements for hook-and-line catcher vessels targeting CDQ Pacific cod with observer requirements for hook-and-line catcher vessels targeting non-CDQ Pacific cod.
- 4) Require 100% retention of CDQ Pacific cod, on vessels with the exemption in 1) and 2) above, while directed fishing for CDQ halibut and/or IFQ halibut, only if an allocation of CDQ Pacific cod is available to those vessels.

The CDQ groups believe that easing these regulations could allow a CDQ directed Pacific cod fishery to emerge before, during, and after the halibut season; specifically during the months of May to September. There is no CDQ Pacific cod Seasonal Allowance for non-trawl catcher vessels (CV) under 60' in length. Therefore the CDQ allocations committed to the CDQ village fleets could be harvested during the proposed months as opposed to being split up into A and B seasons.

Should these regulation changes be made as proposed, it is difficult to predict the exact characteristics of the newly development fleet. Since 2007, there has been a maximum of three CVs in one year that reported CDQ Pacific cod landings in the <46' length overall (LOA) category. However, if regulations were changed to allow a for 100 percent Pacific cod retention simultaneous with halibut, the CDQ small vessel halibut fleet would be able to provide insight into what a Pacific cod directed fishery may look like in the future (Table 1). The CDQ halibut CV fishery had an average of 219 CVs  $\leq$  32' LOA and an average of 226 CVs < 46' LOA from 2010 through 2013.

**Table 1. 2010- 2013 count of unique vessels landing CDQ halibut by vessel LOA in feet (ft)**

Vessel Length	2010	2011	2012	2013	Average
16 ft - 18 ft	40	47	44	47	45
19 ft – 22 ft	50	58	57	70	59
23 ft – 28 ft	76	84	79	80	80
29 ft – 32 ft	31	33	42	34	35
33 ft – 46 ft	8	9	9	7	8
47 ft – 58 ft	6	11	12	6	9
Greater than 58 ft	6	4	3	2	4
<b>TOTAL (&lt; 46 ft)</b>	205	231	231	238	226
<b>TOTAL (all)</b>	217	246	246	246	239

Source: NMFS, Elandings

## 2. Purpose and Need

The CDQ groups’ interest in the development of a CDQ small vessel Pacific cod directed fishery is prompted by their understanding of the larger benefits that could be derived for the individual small vessel, hook-and-line fishermen in their community, as well as the community as a whole. Currently, this quota is largely either leased to catcher/ processors (C/P) including the Freezer Longliner fleet (FFL) or consolidated onto > 60’ vessels where regulations are relatively more manageable. The CDQ groups anticipate the revenues received from quota leased to be substantially lower than the potential direct and indirect community benefits derived from a small vessel Pacific cod directed fishery. Allocating Pacific cod to a CDQ small vessel hook-and-line fisherman could potentially enable these small vessel fishermen to achieve a sustainable business despite recent declines in halibut catch limits in Western Alaska. Additionally, processing plants in and near villages would have incentive to develop the necessary equipment and permits to expand into the Pacific cod market.

This proposal also encourages progress towards several of the Council’s policy objectives. It aligns with the MSA-stated objectives of the CDQ program to, “provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Areas; to support economic development in western Alaska; and to alleviate poverty and provide economic and social benefits for residents of

western Alaska.”<sup>1</sup> Moreover, the development of a small vessel CDQ Pacific cod directed fishery would reduce Pacific cod discards in the CDQ/IFQ halibut fishery. As can be seen in Table 2, regulations for a CDQ halibut directed fishery and a CDQ Pacific cod directed fishery are not identical. The possibility of aligning these fisheries would increase efficiency, supporting employment and growth in the villages and increase stock conservation, supporting policy objectives.

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<sup>1</sup> 16 USC 1855(i)(A)(i)(ii)(iii) and (iv) of the MSA



### 3. Current State of the Regulatory Obstacles

#### 3.1 License Limitation Program (LLP)

The overall purpose of the LLP is to help resolve the competing and oftentimes conflicting needs of the domestic fisheries that developed under open access and to close the gap between fishing capacity and available fishery resource. The LLP limits the number, size, and specific operation of vessels fishing crab and groundfish in the BSAI and GOA based on historical participation.

Beginning January 1, 2000, an LLP groundfish license has been required for vessels participating in directed fishing for LLP groundfish species in the GOA or the BSAI. LLP groundfish means “target species” and the “other species” category specified annually pursuant to 50 CFR part 679.20(a)(2), except that demersal shelf rockfish east of 140° *W long* and sablefish managed under the IFQ program are not considered license limitation groundfish. The LLP does not apply to Pacific halibut or ling cod, which are not considered groundfish under the Federal FMP. LLP groundfish licenses are issued with area endorsements, operation types, gear endorsements, and a maximum length overall.

There are four exceptions to the LLP license requirement:

1. Vessels that do not exceed 26' LOA in the GOA;
2. Vessels that do not exceed 32' LOA in the BSAI;
3. Vessels that do not exceed 60' LOA and that are using jig gear (but no more than 5 jig machines, one line per machine, and 15 hooks per line) in the BSAI; and
4. Certain vessels constructed for, and used exclusively in Community Development Quota (CDQ) fisheries.

Therefore, CDQ CVs in this proposal, vessels less than or equal 32' LOA, are not required to hold an LLP in BSAI.

Since January 2003, persons wishing to participate in the directed fishery for Pacific cod in the BS and/or AI with vessels  $\geq 60'$  using pot or hook-and-line gear must have a gear-and-operation-type specific Pacific cod endorsement on the LLP license that names their vessel. Pacific cod endorsements are not required for trawl gear or jig gear or fixed gear vessels  $< 60'$ ; for these gears, license only need a trawl or non-trawl gear endorsement respectively; and the appropriate operation type, and area endorsement(s). It is important to note that even with endorsements, an LLP licenseholder may participate in the Pacific cod directed fishery only in the subareas (BS and/or AI) for which their LLP license is endorsed.

Exceptions to the BSAI Pacific cod endorsement requirement at §679.4(k)(9)(iv):

- Any vessel exempted from LLP
- Any CV  $< 60'$  LOA
- Any catch of Pacific cod for personal use bait

Therefore, CDQ CVs relevant to this proposal that are required to hold an LLP license (i.e., 32' to 46' LOA) are not required to have a BSAI endorsement for Pacific cod.

There are approximately 148 LLP groundfish licenses endorsed for the AI groundfish fishery and 366 LLP groundfish licenses endorsed for the BS groundfish fishery authorizing the use of non-trawl gear for 2014. MLOA is a maximum size limit, so an LLP groundfish licenses with a 60' MLOA could be used on a vessel less than 60' LOA. However, LLPs become much more expensive the greater the MLOA, therefore Table 3 demonstrates the pool of LLPs by length only up to 60' MLOA. Several LLPs are endorsed to fish in both the BS and AI; consequently, Table 3 represents 110 unique non-trawl LLPs < 60' MLOA between both locations.

**Table 3. Count of LLP groundfish licenses less than 60 feet authorized using non-trawl gear for 2014**

Vessel Length	Bering Sea	Aleutian Islands
18 ft – 32 ft	5	0
33 ft – 46 ft	21	3
47 ft – 58 ft	27	3
59 ft	55	17
<b>TOTAL ( &lt; 60 ft MLOA)</b>	108	23

Source: NOAA Restricted Access Management (RAM)

### 3.2 Vessel Monitoring System (VMS)

A Vessel Monitoring System (VMS) consists of a National Marine Fisheries Service (NMFS)-approved VMS transmitter that automatically determines a vessel's position and transmits it to a NMFS- approved communications service provider. The communications service provider receives the transmission and relays it to NMFS. VMS is a necessary tool for fisheries management and enforcement. VMS is useful for tracking vessel locations and is important for enforcing Steller sea lion (SSL) closure areas. VMS is also important for enforcing Essential Fish Habitat (EFH) protection areas, which are impacted more by the gear type than the vessel size.

To operate in a Pacific cod directed fishery in Federal waters, a vessel must have a species and gear endorsement on its Federal Fisheries Permit (FFP) under §679.4(b)(5)(vi). Under §679.28(f)(6)(i), any vessel using hook-and-line, pot, or trawl gear, that has a species and gear endorsement on its FFP for directed fisheries for pollock, Pacific cod, and Atka mackerel are required to have an operating VMS unit during those times when these fisheries are open.

This regulation was put in place under the Emergency interim rule to implement SSL protection measures in 2002 (67 FR 956, January 8, 2002). VMS was required to ensure that vessels comply with area restrictions and provide enforcement a tool to monitor compliance. Jig vessels were exempt from VSM due to the fact that they generally are not restricted in the areas they can fish, with the exception of the AI Any vessel that is required to be federally permitted and operating in the Aleutian Islands subarea, and adjacent state waters, are required to have VMS under §679.28(f)(6)(ii). This regulation was put in place under the final rule that identifies and describes EFH, designating habitat areas of particular concern

(HAPC), and measures to minimize to the extent practicable adverse effects on EFH (71 FR 36694, July 28, 2006). VMS was required to efficiently enforce closure areas related to EFH and HAPC.

An alternative to exempt vessels under 32' LOA in the Aleutian Islands was considered during this action. However the council determined that the potential for small vessels to employ bottom contact gear in protected EFH and HAPC waters in the Aleutian Islands subarea makes it necessary for all vessels to carry VMS to efficiently enforce closure areas.

There are both fixed and variable costs associated with the installation and operation of a new VMS. According to a 2012 Council discussion paper<sup>2</sup>, average fixed cost for installation and activation is about \$3,500. The NOAA funded, Pacific States Marine Fisheries Commission (PSMFC) administered, reimbursement program will aid eligible users up to \$3,100 of that initial cost.<sup>3</sup> Variable costs may include monthly transmission costs ranging from \$40 to \$55 dollars depending on the unit installed and potential maintenance and repairs averaging to \$77 per year.

Concerns have been raised about installing VMS on small vessels and skiffs that fish CDQ halibut. VMS units can be installed on all vessels. Several NMFS approved VMS vendors have adapted VMS units specifically for these small vessels and skiffs. The Southeast Region has VMS units working on skiffs as small as 16 feet. These units work off the vessel batteries similar to a VHF radio and should work on most skiffs in the fisheries off Alaska. However VMS antenna placement can be challenging on some vessels.

### **3.3 Observer Coverage and Prohibited Species Quota (PSQ) Accounting**

The Fisheries Monitoring and Analysis Division (FMA), Observer Program, monitors groundfish fishing activities in the U.S. Exclusive Economic Zone (EEZ) off Alaska and conducts research associated with sampling commercial fishery catches, estimation of catch and bycatch mortality, and analysis of fishery-dependent data. The FMA is responsible for providing NMFS-certified observers to obtain information necessary for the conservation and management of BSAI and GOA groundfish and halibut fisheries. The information collected by observers provides scientific information for managing the groundfish fisheries and minimizing bycatch. Observers collect biological samples and fishery-dependent information on total catch and interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources.

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<sup>2</sup> McCracken, Jon. (Dec 2012). Overview of vessel monitoring system. NPFMC Discussion Paper.

<sup>3</sup> For more information on the reimbursement program see <http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms>

In 2013, the restructured Observer Program went into effect and made changes to how observers are deployed in the groundfish and halibut fisheries. The new Observer Program defines a full coverage category for all C/Ps and CVs participating in programs with prohibited species catch (PSC) limits or transferable prohibited species quota (PSQ). The CDQ Program is a program with transferable PSQ limits. CVs using hook-and-line gear or trawl gear to fish for groundfish CDQ species, other than sablefish or pollock, are in the full coverage category because their PSC accrues against the CDQ group's transferable PSQ limit. This limit on incidental halibut creates a potentially expensive limitation on the full harvest of allocated CDQ groundfish species, thereby creating an incentive to misreport. CVs using pot or jig gear to fish for CDQ groundfish species are in the partial observer coverage category because halibut PSC by these vessels does not accrue against the CDQ group's transferable halibut PSQ allocation. Similarly non-CDQ hook-and-line CVs harvesting Pacific cod are in the partial observer coverage category because they are not in a program with an allocation of a transferable PSC limit.

The accounting of halibut landed under IFQ is treated the same as halibut landed under CDQ. If the CV is retaining halibut under the IFQ or CDQ halibut fishery then the retained halibut accrues to an IFQ or CDQ halibut allocation and not a PSC or PSQ halibut limit. Any halibut that is discarded (i.e., it is less than the minimum legal size) during halibut fishing is considered "wastage" and is not considered PSQ.

Prior to 2013, shoreside and stationary floating processors were required to have observer coverage if there was a CV CDQ groundfish delivery. In 2013, observer coverage requirements for shoreside or stationary floating processors not receiving or processing Bering Sea pollock changed under the new observer program. These non-pollock shoreside or stationary floating processors are in the partial coverage category. Shoreside or stationary floating processors in the partial coverage category are only required to have a plant observer when they are selected by NMFS. They no longer contract independently with an observer provider for plant observers.

### **3.4 Maximum Retainable Amounts (MRA)**

Each vessel operator that is required to have a FFP onboard must comply with the Improved Retention/Improved Utilization Program (IR/IU). Pacific cod is an IR/IU species so when directed fishing is open for Pacific cod, all fish of that species must be brought onboard the vessel and be retained until a lawful transfer. According to § 679.27(b) (2) the Pacific cod fishery may be in one of three categories for a CV:

1. If Pacific cod is closed for directed fishing for a vessel then all Pacific cod must be retained up to the maximum retainable amount (MRA), which is 20 percent of the weight of retained species open for directed fishing.
2. If Pacific cod is open to directed fishing for a vessel then all catch of Pacific cod must be retained.
3. If Pacific cod is on prohibited species catch (PSC) status for a vessel then all Pacific cod must be discarded. (This case only would occur for a CDQ group if catch by all sectors approached an over fishing limit (OFL).)

Many CDQ 32' to 46' LOA CVs fall into the first category. Under current regulations, if a CV is targeting CDQ or IFQ halibut and does not meet the regulations required to direct fish for Pacific cod (e.g. no VMS, no observer, no LLP groundfish license, etc.), then the CV must not retain Pacific cod in amounts that exceed the MRA. Additional amounts of Pacific cod that would otherwise exceed the MRA are required to be discarded and returned to the sea (i.e., regulatory discard).

CVs targeting halibut in the BSAI are required to retain Pacific cod up to 20 percent of the aggregated amount of non-groundfish species, including CDQ halibut or IFQ halibut (see Table 11 to §679). The MRA of an incidental catch species is calculated as a portion of the species open for directed fishing, basis species, retained onboard the vessel (see §679.20(e)(2)). In this case, the basis species is either CDQ halibut or IFQ halibut with an incidental catch species of retained Pacific cod; not including Pacific cod that were returned to the sea. Only fish harvested under the CDQ Program may be used to calculate retainable amounts of other CDQ species (see §679.20(f)(2)). Therefore, halibut harvested while fishing halibut IFQ are not considered when calculating the MRA for incidentally caught Pacific cod in the CDQ halibut fishery. Pacific cod taken when IFQ halibut fishing must be retained up to the MRA for halibut IFQ unless the vessel is authorized with an LLP license that is endorsed to fish for Pacific cod. If the vessel operator is authorized to directed fish for Pacific cod, the Pacific cod must not be discarded unless that retention is otherwise prohibited (i.e., prohibited species status).

#### **4. Discussion of Proposed Changes**

##### **4.1 LLP**

The proposal requests to increase the vessel length of those exempted from LLP licenses to include vessels up to 46' LOA in the BSAI.

In addition to a direct LLP license exemption, the Council also may consider creating new LLP licenses to annually allocate to the CDQ groups. In 2011, the LLP regulations were amended to authorize some of the Gulf of Alaska Community Quota Entities (CQE) eligible communities to request non-trawl groundfish LLP licenses endorsed for Pacific cod in the central or western Gulf of Alaska. Under these regulations the CQE must annually, in an authorization letter, assign each community LLP to a user and a vessel and must provide a copy of the authorization letter, and any subsequent amendment to that authorization letter to both NMFS and the vessel operator. There are additional residency and other requirements for the community LLP users and the CQEs have an annual reporting requirement. These licenses are non-transferable and have a specified MLOA of < 60'. A model similar to this GOA CQE LLP model could be modified and adopted for use by CDQ groups.

There is a small possibility of impacts on the LLP market or on the fishery in other ways, should the Council choose to pursue an option that creates new LLP groundfish licenses for the CDQ small vessels. The CQE LLP model was propagated by a fixed gear recency action that first limited the number of LLPs in circulation in the GOA. This is an area that could be explored more carefully should the Council consider such action.

Alternatively, if the Council chooses to directly extend exemptions in the BSAI for all CDQ vessels 32' to 46' LOA from LLP licenses, there may be concerns of equity in the corresponding non-CDQ fleet to consider.

#### **4.2 VMS**

The change proposed is to exempt VMS from CDQ hook-and-line vessels up to 46' that are fishing CDQ Pacific cod. Several concerns arise from the proposal to ease VMS regulations. Since all non-jig vessels fishing Pacific cod, regardless of size or CDQ status, are required to carry VMS there is likely to be equity and enforcement issues with exempting CDQ small vessel without also exempting the correspondent non-CDQ fleet.

Additionally, exempting CDQ or all vessels directed fishing for Pacific cod from VMS requirements will likely create significant enforcement concerns with SSL closure areas in the BSAI and HAPC in the AI. The limited ability to monitor compliance is particularly a concern in the AI due to the complexity of closure areas, HAPC, and the increased concern with Steller sea lion population trends in that area. Even if a new directed fishery is unlikely to approach protected SSL or HAPC area, there is no other currently enforced compliance tool to confirm this activity. A better approach may be to exempt small hook-and-line vessels from SSL closure areas similar to jig vessels. The Council may consider alternative vessel size thresholds for such a proposal. Either approach likely will require Protected Resources consultation.

#### **4.3 Observer Coverage and PSQ Accounting**

The proposal requests to align observer coverage for hook-and-line vessels harvesting CDQ Pacific cod with requirements for hook-and-line vessels fishing non-CDQ Pacific cod. This would move the hook-and-line CDQ Pacific cod vessels from full observer coverage to partial observer coverage. The 2014 Annual Deployment Plan for partial coverage places observers on CVs  $\geq 40'$  to  $< 57.5'$  LOA length overall.

The catch of most target species is determined using landings data because the target species must be retained, landed, and sold for the vessel owner to receive earnings from that catch. However, the catch of PSQ is determined based on observer data. In the absence of CDQ halibut quota, PSC is required to be discarded and its catch often limits the catch of economically valuable target species. The greater the potential to limit the target species catch, the greater the incentive created to avoid enumeration of prohibited species. If CDQ groundfish catch, including Pacific cod, is forgone as a result of a halibut PSQ limit then vessel owners or CDQ groups will not earn the income that could have been generated by the harvest and sale of that groundfish. Halibut PSC properly accounted for contributes to the potential limit on the catch of groundfish. Any halibut PSC that is caught but does not get counted by an observer does not accrue against a halibut PSQ limit and does not increase the potential limit on the catch of groundfish.

The proposed change in observer coverage would implement a different level of monitoring from all other management programs that have been implemented by the Council with transferable PSC/PSQ limits allocated to an entity, the quota holder. Management programs

that allocate PSC/PSQ limits to entities give recipients more specific control over their fisheries. Therefore, the management measures change with such allocations. PSC/PSQ limits made to a specific entity, such as the CDQ groups, are enforced through regulatory provisions that prohibit the entity from exceeding its limits. If they exceed a limit, NOAA may initiate an enforcement action against the entity. To enforce this prohibition, NMFS must demonstrate that the entity did have catch that exceeded its limit. This requires a more accurate catch monitoring and accounting system than is required when managing limits at a fishery or sector level. This is particularly true when catch or bycatch data collected by observers must be used as a basis for enforcement action should an entity exceed a limit. Supporting a quota overage case is much more challenging for an unobserved catcher/processor, mothership, or CV for which NMFS must estimate catch based on rates from other similar observed vessels. The smaller the pool from which to draw similar observed vessels and trips, the more difficult it is to construct representative at-sea discard and PSC/PSQ rates for individual vessels.

Under the proposed change to observer coverage, NMFS would modify the method used to account for halibut PSC. Since CDQ vessels would be in partial coverage there would be trips when they were not selected to carry an observer. In those instances, NMFS would be unable to account for halibut PSC based on the activity of the unobserved vessels. Therefore, for any unobserved CDQ vessel targeting Pacific cod and not retaining CDQ halibut, the amount of halibut PSC rates would be calculated from other non-CDQ and CDQ vessels that were carrying an observer. One approach to mitigate the impact of this change and still maintain the PSC accounting at the entity level would be for NMFS to only use observer data from vessels fishing for a particular CDQ group to create a rate for any unobserved trips also fishing for the same CDQ group. However, there could be instances when there were no observed vessels fishing for a particular CDQ group using hook-and-line gear targeting Pacific cod. In that case, the observer data from vessels fishing for other CDQ groups would be used to estimate halibut PSC on the non-observed CDQ CVs. Either way NMFS would no longer be accounting for PSC using data at the entity level.

Another approach would be to change the way PSC is managed in the CDQ program. Under this option, for hook-and-line vessels harvesting CDQ Pacific cod, the halibut PSC would not accrue against the halibut PSQ. Instead the halibut PSC would accrue to the non-CDQ halibut PSC limit for non-trawl fisheries. This approach may justify allowing CDQ hook-and-line CVs to be placed in the observer partial coverage category; however, this approach would also differ significantly from how the CDQ Program currently operates, by allowing the CDQ groups to use a portion of the non-CDQ non-trawl halibut PSC limit as opposed to working within their hard caps.

#### **4.4 MRA**

Should the Council choose to modify the LLP program authorizing additional vessels to target Pacific cod in Federal waters, those vessels would be required to retain all Pacific cod under the IR/IU regulations, if a Pacific cod season is open. The CDQ fixed gear Pacific cod fishery opens January 1 and does not close until the end of the fishing year, in this case, the end of the calendar year. Therefore, no modification of the Pacific cod MRA structure is necessary to achieve 100 percent retention of Pacific cod.

The Council could also consider exempting or increasing CDQ small vessels from the Pacific cod MRA requirements. Exempted vessels, however, would not be authorized to target Pacific cod without further modifications to the LLP requirements. Currently, federal regulations prohibit a vessel owner from conducting directed fishing for LLP groundfish, including Pacific cod, without a valid groundfish LLP license (see §679.7(i)(2)).

Alternatively, the Council may want to consider an option that recommends increasing the MRAs for certain CVs, rather than only exempting vessels from the MRA in the absence of LLP authorization. Increased MRAs would allow these vessels to retain additional Pacific cod that is incidentally caught while targeting CDQ halibut or IFQ halibut, while not authorizing the vessels to target Pacific cod.

The Council should note that removing or revising MRA requirements for a subsample of participants in the fishery may be complicated to monitor and may raise equity concerns among fishery participants that do not benefit from the MRA increase.

The current proposal would allow CDQ groups to choose whether or not Pacific cod CDQ was available to an individual vessel while they were fishing for CDQ or IFQ halibut. This could be done on a vessel-by-vessel basis, or a trip-by-trip basis. Under this proposal, the CDQ groups would determine whether a vessel was required to retain up to the current 20 percent MRA, or the full 100 percent in the current proposal. The Council may consider whether the CDQ groups should have this ability, or if 100 percent Pacific cod retention is required on all CDQ vessels that are able to retain Pacific cod as a result of the exemptions in this proposal. If the Council were to allow CDQ groups to designate this status on a vessel or trip basis, the Council may need to consider methods for designating a vessel's status for enforcement and catch accounting purposes.

#### **4.5 State/Federal Overlap**

The CDQ fishery is separate from the state managed fisheries for Pacific cod in the AI and BS (Area O fishery starting in 2014). If the Council allows for these exemptions and regulation changes that would facilitate Pacific cod CDQ being harvested with small longline CVs or jig vessels, existing management would not change.

In the AI, these CDQ vessels would be able to fish in state waters only when the parallel AI Pacific cod fishery is open. When the state GHL fishery is open (to all gear types), they could not fish CDQ in state waters. The state-waters A season opens January 1 from 175° W long to 178° W long to vessels 60 feet or less using trawl, pot, and jig gear, and vessels 58 feet or less using longline gear. Harvest occurring between 175° W long. to 178° W long. accrues toward the GHL, while harvest occurring in state waters outside of 175° W long to 178° W long. is managed under parallel rules and accrues toward the federal TAC. CDQ longline vessels could fish in state waters outside of 175° W long. to 178° W long. starting January 1. The GHL fishery outside of this small area in state waters opens in March, typically after the parallel fishery closes, and stays open (with intermittent closures) almost the rest of the year.

In the BS, these CDQ vessels would be able to fish in state waters only when the parallel BS cod fishery is open. The new state GHL fishery in Area O is limited to pot vessels <58', and the fishery management plan establishes that the fishery will open 7 days after the federal BSAI <60' fixed gear fishery closes. This is typically in early February and closes the

parallel fishery only to pot vessels <58', therefore longline vessels would still be able to fish in the parallel fishery even when the state GHF fishery is open.

#### **4.6 Paperwork Reduction Act (PRA)**

Federally used collections of information, using identical questions, by ten or more persons require approval from the Office of Management and Budget (OMB) in order to satisfy the Paperwork Reduction Act (PRA)<sup>4</sup>. LLP, VMS, and the Observer Program all constitute programs that have been required to receive OMB clearance and approval and have previously been issued an OMB control number. Modifications to these requests, which include the removal of information collection in the form of exemptions, will likely require additional effort to satisfy the PRA. That effort may be as minimal as a "Change Request" form, reserved for minimal nonsubstantive changes and not usually associated with a rule. Depending on the actions taken, that effort may otherwise include a more comprehensive revision of an existing request along with the proposed rule.

#### **5. Possible Council Action**

The intent of this discussion paper was to provide the Council with background on the feasibility of developing of a small vessel CDQ fishery for targeting Pacific cod with hook-and-line gear based on the current regulatory landscape of the CDQ fisheries. A first examination indicates that this goal may be achievable, noting that there are challenges associated with the changes requested in each component.

The Council may consider several actions in response to the CDQ proposal and this discussion paper. They may choose to do nothing; which in this case would maintain the status quo use of the CDQ Pacific cod. The Council could request additional information through an expanded discussion paper, or the Council may choose to move the action forward into an analysis by clarifying a problem statement and the purpose and need for the action.

If the Council chooses to move this issue forward to initiate an analysis, this discussion paper outlines several approaches.

- 1) Increase the MRA to 100 percent of the CDQ halibut landings for hook-and-line CVs that hold Pacific cod CDQ. All Pacific cod caught accrues towards this Pacific cod CDQ. This would not allow for a directed Pacific cod fishery but would allow these vessels to retain more Pacific cod against their halibut landings.

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<sup>4</sup> Please see [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf) for more information about PRA requirements.

- 2) Create a new CDQ LLP for participating hook-and-line CVs <46' LOA to participate in the CDQ Pacific cod directed fishery. The number of LLPs provided annually to each CDQ group would be restricted and made non-transferable. This approach would likely require CDQ groups to register vessels and operators in the < 46' LOA hook-and-line category in order to receive a license. Additional provisions, such as observer and VMS requirements could be considered for vessels holding such a license.
  - The Council may consider the option of placing these vessels in the partial observer coverage category.
  - The Council may also consider the option of exempting these vessels from VMS requirements. VMS exemptions for all CDQ vessels less than 46' targeting Pacific cod will likely prove to be the most challenging component given enforcement concerns. Any approach to easing VMS requirements would likely require knowledge of the risk these vessels could pose to SSL and HAPC areas and consultation with Alaska Region, Protected Resources as a prerequisite for a regulatory change. For any approach that eases VMS restrictions, the Council may wish to consider limiting the scope the changes would be applied to in terms of location (i.e., different regulations for the AI versus the BS) or vessel length.
  - Under this approach, vessels would be required to retain all Pacific cod if cod CDQ is held; thus, modification of the MRA would not be necessary.
  
- 3) The Council may consider directly exempting hook-and-line CV < 46' that hold Pacific cod CDQ from groundfish LLP, and VMS requirements, and placing the vessels in partial observer coverage, allowing these vessels to direct fish Pacific cod. All Pacific cod caught must be retained and accrue towards the CDQ Pacific cod allocations. In this option it may be necessary to devise a system of at-sea identification for these vessels. This approach most closely mirrors the proposal.

While it appears the Council has the ability to reduce some barriers to entry for a small vessel CDQ Pacific cod directed fishery, this process would likely require several regulatory changes and potentially require amending the BSAI groundfish FMP. Should the Council take action to move this discussion forward, further analysis would consider the broader extent of the impacts that could occur through these changes.

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## CDQ Village Pacific Cod Fishery

### Introduction

The six CDQ organizations: Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation and Yukon Delta Fisheries Development Association, are seeking regulatory changes or exemptions that would encourage local development and participation in the harvest of CDQ Pacific cod (Pcod) allocations, both in a directed cod fishery and when targeting CDQ and IFQ halibut. This proposed fishery would allow CDQ village residents with vessels ranging in size from 16' to 46' in length, mainly using hook-and-line gear, to develop and participate in a CDQ village Pacific cod fishery.

The proposal is consistent with the National Standards (NS) established in the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1851 et seq.) regarding fisheries management measures. These standards where practicable include: preventing overfishing while achieving optimum yield (NS 1); managing interrelated stocks as a unit or in close coordination (NS 3); promoting efficiency, minimizing costs, and avoiding duplications (NS 5 & 7); taking into account the importance of fishery resources to fishing communities (NS 8); minimizing bycatch or mortality from bycatch (NS 9); and promoting the safety of human life at sea (NS 10). The CDQ Village Pcod Fishery Proposal meets all of the above standards.

In addition, the proposal fulfills the objectives of 16 U.S.C. 1855(i)(1)(A)(i)(ii)(iii) and (iv) of the MSA, which establishes the Community Development Quota (CDQ) program in order to: provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area; and support economic development, alleviate poverty and provide economic and social benefits, and achieve sustainable and diversified economies for the residents of western Alaska.

### Problem Statement

Current federal regulations for the direct harvest of CDQ Pacific cod allocations are restrictive and discourage village fleets from participating in a directed CDQ Pcod fishery. The regulations of concern are:

- 1) License Limitation Program permit (LLP) – Vessels over 32' in length are required to have an LLP to harvest CDQ Pcod with hook-and-line gear. There are only eighty-seven (87) <60' hook-and-line/pot LLP's endorsed to fish Pcod in the Bering Sea. The supply of permits for sale on the major brokerage websites is very limited and the price per Bering Sea endorsed LLP is often in excess of \$100,000 – prohibitively expensive for small vessel operators in CDQ villages. The CDQ village fleets of 105-116 small vessels, for the most part, do not possess Pcod endorsed LLP's. As there is no LLP category specific to the smaller vessels in the Bering Sea, they must compete with the larger vessels for the available LLP's and there are not nearly enough available to accommodate the CDQ village small boat fleets. It is important to note that the jig

fishery is exempted from the Pcod LLP requirement, and the CDQ village fleets are very similar in size and vessel type to those participating in the jig fishery.

2) Vessel Monitoring System (VMS) – All vessels, regardless of size, are required to have VMS while targeting CDQ Pcod with hook-and-line gear. The CDQ village fleets are more similar to vessels that participate in the Pcod jig fishery than larger catcher vessels or catcher processors utilizing hook-and-line gear. There is no regulation requiring VMS for the small vessels participating in the Bering Sea Pcod jig fishery. In addition, VMS systems are not currently designed for the many open boats in the CDQ small boat fleets. Although the systems are weatherproof they have AC power requirements and electronic components that are not conducive to successful installation in small open vessels. The range of the CDQ small boat fleets is very limited and their participation will be in close proximity to CDQ villages. There may need to be VMS coverage for vessels fishing near SSL restricted areas, however.

3) Observer Coverage – The current observer coverage regulation for hook-and-line catcher vessels harvesting CDQ Pcod is more restrictive than for non-CDQ state and federal Pcod fisheries, and requires full (100%) observer coverage regardless of vessel size. The CDQ village fleets, with vessels up to 46' in length, range from small open skiffs to gillnet style vessels. Having 100% observer coverage for fifty or more small vessels seems problematic. A better solution would be to adopt observer coverage regulations currently utilized in non-CDQ CV Pcod fisheries, which require only partial coverage. This would put CDQ village boats over 40' in length in the Vessel Selection pool.

4) Maximum Retainable Amount (MRA) – The MRA of Pcod while targeting halibut is 20% of the target weight. Any additional Pcod harvested must be discarded and returned to sea. This constitutes an unnecessary waste of the Pcod resource. Pcod in excess of the 20% MRA could be retained and used as a source of income for the CDQ village fishermen, if the CDQ organizations allocate Pcod to their small boat halibut fleets, and these vessels comply with or are exempt from the regulations to be in the Pacific cod directed fishery.

## **Proposal**

The CDQ groups request the Council to initiate a discussion paper, considering the problem statement, and the adoption of proposed regulation changes or exemptions that will: 1) promote the development of a CDQ village directed Pacific cod fishery; and 2) allow village CDQ and IFQ halibut harvesters to retain CDQ Pacific cod in excess of the 20% MRA.

Proposed regulation changes:

- 1) Exempt vessels between 32' and 46' in length from LLP requirements while harvesting CDQ Pacific cod.
- 2) Exempt vessels up to 46' in length from VMS requirements while harvesting CDQ Pacific cod.

3) Align observer requirements for hook-and-line catcher vessels targeting CDQ Pacific cod with observer requirements for hook-and-line catcher vessels targeting non-CDQ Pacific cod. As part of a discussion paper, it would be useful to identify and address options for determining discard mortality rates, particularly for halibut in a directed CDQ Pcod fishery.

4) Require 100% retention of CDQ Pacific cod, on vessels with the exemption in 1) and 2) above, while directed fishing for CDQ and/or IFQ halibut, only if an allocation of CDQ Pcod is available to those vessels.

## **Discussion**

The CDQ organizations would like to develop a directed CDQ Pcod fishery that would take place before, during and/or after directed halibut fishing. Currently, regulations applicable to vessels targeting CDQ Pcod with hook and line gear are prohibitive for the CDQ village fleets, but easing the regulations identified above would make the development of these local fisheries more viable. The proposed changes would also require the CDQ groups to set aside an adequate amount of Prohibited Species Quota (PSQ) and other allocated species to adequately cover bycatch.

Because of the nature of the CDQ villages' small boat fleets and the harsh Bering Sea conditions, fishing would likely occur between the months of May and September. The number of vessels that may participate will vary from community to community and within the six CDQ regions. It is expected that the number of participating vessels, in total, will increase with time as CDQ groups continue to gain expertise and equip processing plants and platforms with necessary processing equipment. It is anticipated that vessels will fish both state and federal waters in close proximity to CDQ villages along the western Alaska coast and Aleutian and Pribilof Islands.

There is no CDQ Pacific cod Seasonal Allowance for non-trawl catcher vessels (CV) under 60' in length. Therefore the CDQ allocations committed to the CDQ village fleets could be harvested during the proposed months of May through September as opposed to being broken up into A and B seasons.

Considering current and future anticipated declines in the halibut TAC's in Western Alaska, the CDQ village fishermen would benefit from the removal of impediments to the opportunity to harvest Pcod with small vessels. In addition, the development of a regional Pcod fishery would supplement halibut production and increase processing efficiencies for plants in and near the villages.

For the same reasons, and the added reason of avoiding wastage of the Pcod resource, the CDQ organizations would also like the ability to retain up to 100% of the Pacific cod caught while directed CDQ and IFQ halibut fishing, as described in proposed change 4 above. Throughout the halibut season, CDQ village vessels catch Pcod as bycatch, much of which has to be returned to sea due to MRA limitations. It is common practice for some CDQ village fleets to target both CDQ and IFQ halibut in the same trip. It would be most efficient and conservative to allow retention of CDQ Pcod when an allocation is available to the village fleets targeting CDQ and/or IFQ halibut.

## CDQ Village Pacific Cod Fishery Proposal

