

July 1994 30/34 20pp BCRIR)

REGULATORY IMPACT REVIEW
FOR FISHERY MANAGEMENT PLAN AMENDMENTS CHANGING THE LIMIT
FOR ALLOCATION OF THE COMMUNITY DEVELOPMENT
QUOTA RESERVE FOR SABLEFISH

Prepared by

National Marine Fisheries Service
Juneau, Alaska 99802-1668
July 1994

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1.0 INTRODUCTION	2
1.1 BACKGROUND OF THE ISSUE	2
1.2 PURPOSE OF AND NEED FOR ACTION	4
1.3 ALTERNATIVES	4
1.3.1 ALTERNATIVE 1: THE STATUS QUO	4
1.3.2 ALTERNATIVE 2: THE PROPOSED ACTION.	4
2.0 NATIONAL ENVIRONMENTAL POLICY ACT: ENVIRONMENTAL REVIEW OF THE ALTERNATIVES	5
3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES	6
3.1 IDENTIFICATION OF THE ISSUES TO BE RESOLVED BY THE PROPOSED ACTION	8
3.2 IDENTIFICATION OF THE INDIVIDUALS OR GROUPS THAT MAY BE AFFECTED BY THE PROPOSED ACTION	8
3.3 MANAGEMENT OBJECTIVES OF THE PROPOSED ACTION	9
3.4 QUALITATIVE ANALYSIS OF THE EXPECTED BENEFITS AND COSTS OF THE PROPOSED ACTION	10
3.5 SUMMARY	11
4.0 REGULATORY FLEXIBILITY ACT	11
4.1 DESCRIPTION OF REASONS WHY THE PROPOSED ACTION IS BEING CONSIDERED	12
4.2 STATEMENT OF THE OBJECTIVES AND LEGAL BASIS FOR THE PROPOSED ACTION	13
4.3 DESCRIPTION OF, AND ESTIMATE OF THE NUMBER OF, SMALL BUSINESSES OR ENTITIES TO WHICH THE PROPOSED ACTION WILL APPLY	13
4.4 DESCRIPTION OF THE PROJECTED REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED ACTION	15

TABLE OF CONTENTS (con't)

4.5	IDENTIFICATION OF RELEVANT FEDERAL RULES THAT MAY DUPLICATE, OVERLAP, OR CONFLICT WITH THE PROPOSED ACTION	15
4.6	SUMMARY	15
5.0	CONCLUSION	16
6.0	REFERENCES	17
7.0	AGENCIES AND INDIVIDUALS CONSULTED	17
8.0	LIST OF PREPARERS	17

EXECUTIVE SUMMARY

This document analyzes the environmental, economic, and socioeconomic impacts of the current process (alternative 1) and the proposed process (alternative 2) for limiting Community Development Quota (CDQ) reserve allocations, including the impacts both alternatives may have on small businesses or entities. This document is intended to comply with the requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12866.

The current Fishery Management Plan and implementing regulatory scheme, because of its low limit and its terminology, prevents the total allocation of the CDQ sablefish reserve. This inability to distribute the total reserve will occur because the 55 communities determined to be eligible for allocations decided to form six groups to apply for distribution, rather than applying as 55 separate entities.

Alternative 2, by raising the limit and changing the terminology, will ensure that the total amount of the CDQ reserve for sablefish can be allocated to eligible applicants. Alternative 2 will also be less obtrusive than the current process, in that groups formed for distribution can apply in their present form; under the current process, some communities would have to apply individually to have the entire reserve allocated.

Alternative 1 does not require an environmental assessment because it was previously assessed in the environmental documents for the Individual Fishing Quota program, of which the CDQ program is a part. Alternative 2 can be categorically excluded from environmental assessment, under National Oceanic and Atmospheric Administration Administrative Order 216-6, section 6.02b.3.(b)(ii)(aa), because it is a minor change to a Fishery Management Plan that does not result in a significant change in the original environmental action.

Alternative 1 would require the communities to apply individually, and not as the six groups that have already formed. This would mean that 55, rather than six, Community Development Plans (CDP) would have to be produced. Alternative 1 would also encourage excessive, and needless, competition between the 55 communities for the sablefish reserve. Alternative 2 would allow the six groups to apply for allocations, encouraging cooperation among the communities and efficient use of combined capital. Alternative 2 would also permit allocation of the total reserve among those six groups.

Alternative 2 would not adversely impact small businesses or entities within the meaning and intent ascribed to the Regulatory Flexibility Act, nor would it prevent fair competition between large and small businesses or entities.

1.0 INTRODUCTION

The groundfish fisheries in the exclusive economic zone (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan (FMP) for the Groundfish Fisheries of the Gulf of Alaska (GOA) and the FMP for the Groundfish Fisheries of the Bering Sea/Aleutian Islands Area (BSAI). Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The GOA FMP was approved by the Secretary of Commerce (Secretary) and became effective in 1978 and the BSAI FMP became effective in 1982.

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 Act, the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the Regulatory Flexibility Act (RFA), the Administrative Procedure Act (APA), and Executive Order (E.O.) 12866.

NEPA, E.O. 12866, and the RFA require a description of the purpose and the need for the proposed action as well as a description of alternative actions that may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the environmental impacts of the alternatives as required by NEPA. Section 3 contains a Regulatory Impact Review (RIR), which addresses the requirements of E.O. 12866 and the RFA to consider the economic impacts of the alternatives. Section 4 contains information designed to comply with the requirements of the RFA and that specifically addresses the impacts of the proposed action on small businesses.

1.1 BACKGROUND OF THE ISSUE

According to 50 CFR 676.24(b), "the Secretary will allocate no more than 12 percent of the total CDQ [reserve for sablefish] for all subareas combined to any one applicant with an approved CDQ application." This language in the implementing regulations was consistent with the language of the FMP text for GOA Groundfish Fisheries, section 4.4.1.1.8 (B)(2), and for BSAI Groundfish Fisheries, section 14.4.7.1.8 (B)(2). The 12 percent limit for allocation to CDQ applicants was placed in the FMPs and the implementing regulations "to prevent monopolization of CDQ allocations and ensure an adequate distribution of benefits from the CDQ program[.]"¹

¹Quoted from the preamble to the proposed rule published December 3, 1992, 57 FR 57130, 57141.

The 12 percent limit for sablefish CDQ allocations was set by the Council during the development phase of the Pacific halibut and sablefish Individual Fishing Quota (IFQ) program. During the development phase, 55 communities were initially determined to be eligible to apply for sablefish CDQ allocations. If the limit had been set too high there would have been the potential for communities to expend unnecessary resources competing for large portions of a limited sablefish CDQ reserve. The 12 percent limit was designed to ensure that there would be sufficient amounts of the sablefish CDQ reserve for all communities without excessive, and inefficient, competition.

No limit was set for Pacific halibut CDQ allocations because the Pacific halibut CDQ reserve will be allocated to eligible applicants according to their geographical proximity to the IPHC management area. This means that the Pacific halibut CDQ reserve from a IPHC management area will go to the community group or groups within that management area.²

The 12 percent limit for sablefish CDQ allocations was a reasonable percentage given the number of communities determined to be eligible for sablefish CDQ allocations. What was not anticipated by the Council during the development phase of the Pacific halibut and sablefish IFQ program was the amount of cooperation that would be demonstrated by the communities eligible to apply.

The pollock CDQ program was implemented while the Pacific halibut and sablefish CDQ program was waiting Secretarial approval. In anticipation of participating in the pollock CDQ program, the 55 eligible communities joined together in six groups,³ deciding to pool their efforts in producing the CDP and managing the CDQ harvest. This number of eligible community groups participating in the pollock CDQ program, six, was an amount that made the 12 percent limit on allocation in the Pacific halibut and sablefish

²IPHC management area 4E is an exception--it will receive some CDQ reserves from IPHC management area 4D to supplement its own--because its Pacific halibut quota is insufficient to meet the CDQ program requirements for that area.

³These six groups, roughly based on geographical location, are: Aleutian Pribilof Island Community Development Association; Bristol Bay Economic Development Corporation; Central Bering Sea Fisherman's Association; Coastal Villages Fisheries Cooperative; Norton Sound Economic Development Corporation; and Yukon Delta Fisheries Development Association.

CDQ program infeasible because it did not allow total use of the allocated resource.⁴

The Council, after being made aware of the cooperation that was being demonstrated by the eligible communities in the pollock CDQ program, decided to raise the limit on sablefish CDQ allocations in the Pacific halibut and sablefish CDQ program so the limit would be of sufficient size to permit the total allocation of the sablefish CDQ reserve among the six CDQ groups.

1.2 PURPOSE OF AND NEED FOR ACTION

This document addresses the need to raise the CDQ allocation limit so that the total sablefish CDQ reserve can be allocated. Under the current regulatory regime, the Secretary would be unable to allocate the full amount of the sablefish CDQ reserve among the six CDQ groups. By changing the CDQ allocation limit, the Secretary would be able to allocate the entire sablefish CDQ reserve, providing for a more efficient use of the public resource. Full allocation would also be consistent with Council intent and the resource management objectives of the Magnuson Act.

1.3 ALTERNATIVES

1.3.1 ALTERNATIVE 1: THE STATUS QUO

Alternative 1 is the current regulatory scheme that provides for the Secretary to allocate up to 12 percent of the sablefish CDQ reserve to each CDQ community. Given the current number of CDQ groups participating in the pollock CDQ program, six, the 12 percent limit would prevent the Secretary from allocating the total sablefish CDQ reserve to them.

1.3.2 ALTERNATIVE 2: THE PROPOSED ACTION

Alternative 2 is the proposed action that would raise the sablefish CDQ reserve allocation limit from 12 percent to 33 percent. It would also change "community" and "communities" to "CDQ applicant" and "CDQ applicants" respectively. The Council's intent, through this proposed action, is to assure that the Pacific halibut and sablefish CDQ program operates under the same CDQ reserve allocation limits as the pollock CDQ program. A 33 percent CDQ reserve allocation limit would be a sufficient amount to ensure that the Secretary would be able to allocate 100 percent of the sablefish CDQ reserves to the CDQ applicants, given the present number of pollock CDQ program applicants.

⁴6 groups * 12 percent = 72 percent, 28 percent shy of the total CDQ reserve.

Alternative 2 would not change the amount of sablefish available for harvest by fishers participating in the IFQ program. The CDQ reserve, 20 percent of the annual fixed-gear total allowable catch (TAC) of sablefish for each management area in the BSAI, would be the same under alternative 2 as it is under alternative 1.

2.0 NATIONAL ENVIRONMENTAL POLICY ACT: ENVIRONMENTAL REVIEW OF THE ALTERNATIVES

The effects of Federal activities on the environment are required to be assessed under NEPA. Federal activities include approval of amendments to fishery management plans and implementing regulatory language. The primary purpose of NEPA is to ensure that Federal officials weigh and give appropriate consideration to environmental values in policy formulation, decision making, and administrative actions, and that the public is provided adequate opportunity to review and comment on major Federal actions.

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

Section 6.02b.3.(b)(ii) of NAO 216-6 categorically excludes "actions which do not result in a significant change in the original environmental action." Included within this general category are "minor technical additions, corrections, or changes to a management plan or regulation."⁵

Alternative 1, status quo, does not require further environmental assessment. The environmental impacts associated with alternative 1 were analyzed in a series of environmental documents produced for the Pacific halibut and sablefish IFQ

⁵NAO 216-6, section 6.02b.3.(b)(ii)(aa).

program.⁶ Alternative 1 would not require any changes to the program as analyzed in the above documents.

Alternative 2, the proposed action, would not result in a significant change in the original environmental action. The amount of the total allocation of sablefish, 20 percent of the annual fixed-gear TAC for each management area in the BSAI, would remain the same as it is under alternative 1. The number of communities that would be eligible to receive a portion of the allocation, 55, would also remain the same. The only difference between alternative 1 and alternative 2 is a change in the method of allocation--alternative 2 would allow the total allocation of the sablefish CDQ reserve by raising the limit on the amount of sablefish that could be allocated to any one applicant from 12 percent to 33 percent--necessitated because of the formation of CDQ groups by the individual eligible communities.

Alternative 2 would not change the total amount of sablefish allocated to the CDQ reserve, nor would it change the amount of communities eligible to receive that sablefish allocation. Alternative 2 would only change the method of distribution, an action that could be categorized as one that would not result in a significant change in the original environmental action. Alternative 2, as an amendment to a FMP, could be further categorized as a minor technical change to a management plan.

The foregoing analysis supports the decision that alternative 2 should be categorically excluded from further environment assessment under NAO 216-6, section 6.02b.3.(b)(ii)(aa).

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

This chapter provides information about the economic and socioeconomic impacts of the alternatives, including, identification of the issue to be resolved by this action, identification of individuals or groups that may be affected by this action, the nature and degree of impacts that affected individuals or groups may experience because of this action, and a qualitative analysis of the expected benefits and costs of this action.

⁶These documents are: (1) Draft SEIS/RIR/IRFA regarding sablefish dated November 16, 1989; (2) revised supplement to the Draft SEIS/RIR/IRFA dated May 13, 1991; (3) Draft EIS/RIR/IRFA regarding halibut dated July 19, 1991; (4) Draft SEIS/EIS/RIR/IRFA regarding sablefish and halibut dated March 27, 1992; and (5) Final SEIS/EIS/FRFA dated September 15, 1992.

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 executive order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order deals with 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 that maximize net benefits to society.

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 the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.

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

Executive Order 12866 requires that the Office of Management and Budget (OMB) 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 in item (1) above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant".

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

As explained in detail in the Introduction, the Pacific halibut and sablefish CDQ program in its current state would prevent total allocation of the sablefish CDQ reserve because only 12 percent of the sablefish CDQ reserve can be allocated to any one community. By raising the sablefish CDQ allocation limit from 12 percent to 33 percent, and by changing "community" and "communities" to "CDQ applicant" and "CDQ applicants" respectively, this allocation issue can be resolved.

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

The 55 eligible communities within the six CDQ groups (CDQ applicants) would be affected by the proposed action. Alternative 1, the status quo, allows the Secretary to allocate up to 12 percent of the sablefish CDQ reserve to each eligible community. As explained above, this means that only 72 percent of the sablefish CDQ reserve could be allocated. Alternative 2, the proposed action, would increase the sablefish CDQ allocation limit to 33 percent, an amount sufficient to allow total allocation of the resource among the six CDQ applicants. Alternative 2 would also change "community" and "communities" to "CDQ applicant" and "CDQ applicants" respectively, allowing the eligible communities to apply as groups.

Individual fishers would not be affected by alternative 2. The sablefish CDQ reserve, 20 percent of the annual fixed-gear TAC of

sablefish for each management area in the BSAI, would be the same under alternative 2 as it is under alternative 1. This means that individual fishers in the Pacific halibut and sablefish IFQ program would have the same resource allocations under both alternatives. However, this is not true for CDQ applicants. Under alternative 1 the Secretary can only allocate 72 percent of the total sablefish CDQ reserve to eligible CDQ applicants. Under alternative 2, the Secretary would be able to allocate 100 percent of the total sablefish CDQ reserve to eligible CDQ applicants.

3.3 MANAGEMENT OBJECTIVE OF THE PROPOSED ACTION

The management objective of the proposed action is to allow full utilization of the CDQ reserve for sablefish by allowing the Secretary to allocate more than 12 percent of the CDQ reserve to CDQ applicants. If the proposed action is not adopted, either the Secretary would be unable to fully allocate the CDQ reserve, or communities that are eligible for CDQ allocations would be encouraged to apply individually, and consequently not cooperate, to receive allocations that total the entire CDQ reserve.

The first possibility, the Secretary being unable to allocate the entire reserve, is inconsistent with the intent of the Council and the underlying resource allocation principles embodied in the Magnuson Act. The intent of the Council, when it proposed the CDQ program for Pacific halibut and sablefish, was to provide communities within certain geographical boundaries⁷ a portion of the Pacific halibut and sablefish fisheries resource. The portion that was to be provided to the eligible communities through the sablefish CDQ reserve was set at 20 percent of the annual fixed-gear TAC of sablefish for each management area in the BSAI. The intent of the Council could not be fully realized because of the low number of CDQ applicants due to the formation of cooperative CDQ groups. This problem can be corrected through the proposed action, which would raise the sablefish CDQ allocation limit to 33 percent of the total sablefish CDQ reserve and would allow the eligible communities to apply as groups.

The second possibility, encouraging communities to apply individually, and not cooperate, to receive allocations that total the entire CDQ reserve, would be inconsistent with the

⁷In order for communities to be eligible to apply, they had to be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the Gulf of Alaska coast even if it is within 50 nautical miles of the baseline of the Bering Sea.

directives of E.O. 12866. Executive Order 12866 begins: "The American People deserve a regulatory system that works for them, not against them..."⁸ By forcing CDQ groups to break apart so they could achieve sufficient numbers to receive allocations that total the entire CDQ reserve would be counterproductive, or in other words, a regulatory system working against the American People.

The proposed action would avoid both of these unsatisfactory possibilities and better reflect the intent of the Council when it developed the Pacific halibut and sablefish CDQ program. This intent was to provide each eligible CDQ applicant a share of the entire 20 percent of the annual fixed-gear TAC of sablefish for each management area in the BSAI.

3.4 QUALITATIVE ANALYSIS OF THE EXPECTED BENEFITS AND COSTS OF THE PROPOSED ACTION

As explained above, the proposed action would enable the Secretary to allocate the entire sablefish CDQ reserve to eligible CDQ applicants without forcing the applicants to break apart their current cooperatives. Allowing the CDQ applicants to maintain their current status, rather than forcing them to fragment, would be economically beneficial. The principles of economies of scale provide for a more efficient use of fishery resources through large-scale operations. Consolidated groups of eligible communities can pool resources and share administrative responsibilities. Cooperativeness in these two areas, as well as others, would be beneficial because less time and effort would be needed to produce plans for eligible applicants (six plans for the six eligible CDQ groups, as opposed to 55 plans for the 55 eligible CDQ communities) and the groups could create a larger capital pool (communities within a group could combine resources) for investment and assisting in the harvest of fishery resources.

One of the primary purposes of the CDQ program was to assist in the survival and revitalization of rural communities in Western Alaska by allowing those communities to take part in harvesting the fishery resources within their geographical area. Allowing communities to remain within their groups, rather than forcing the communities to break apart to obtain the total sablefish CDQ reserve, is complementary to that goal. An important part of survival and revitalization is efficient use of available resources. Forcing communities to use a portion of their individually available resources to compete with one another over

⁸Quoted from Executive Order 12866, issued September 30, 1993, published October 4, 1993, 58 FR 51735.

their share of the sablefish CDQ reserve would be inefficient.⁹ This inefficiency would impede the beneficial properties of the CDQ program and thereby not contribute to the survival and revitalization of the rural communities in Western Alaska.

There is no expected increase in administrative, enforcement, information, or reporting costs anticipated with this action.

3.5 SUMMARY

This action would be consistent with the intent of the Council (i.e., to fully allocate the CDQ reserve), and the purpose of the CDQ program (i.e., to revitalize rural communities in Western Alaska by developing a commercial fishing industry). This action would not likely: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way 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 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 E.O. 12866. Therefore, the action raising the CDQ reserve allocation limit for sablefish from 12 percent to 33 percent, and changing "community" and "communities" to "CDQ applicant" and "CDQ applicants" respectively, should not be considered "significant" under E.O. 12866.

4.0 REGULATORY FLEXIBILITY ACT

The objectives of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small businesses or entities; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to provide regulatory relief to small businesses or entities. The RFA puts the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small businesses or entities to compete.

⁹Of course, there will still be competition between the CDQ groups for the CDQ reserve, however, since the number of CDQ groups will be less than the number of CDQ eligible communities, there should be less resources expended on competition.

Each agency must analyze how its regulations affect the ability of small businesses or entities to invent, to produce, and to compete. Agencies must balance the burdens imposed by regulations against their benefits, and propose alternatives to regulations that create economic disparities between different-sized businesses or entities. The RFA directs agencies to analyze the impact of their regulatory actions, and to review existing rules, planned regulatory actions, and actual proposed rules. The RFA applies to every Federal rule on which public comment is required by section 553(b) of the Administrative Procedure Act, or any other law.

4.1 DESCRIPTION OF REASONS WHY THE PROPOSED ACTION IS BEING CONSIDERED

Raising the sablefish CDQ reserve allocation limit from 12 percent to 33 percent and changing "community" and "communities" to "CDQ applicant" and "CDQ applicants" respectively is being considered because total allocation of the sablefish CDQ reserve cannot be achieved with the existing limit and the current number of CDQ applicants. As explained, the 12 percent limit was set during the development phase of the Pacific halibut and sablefish IFQ program, of which the Pacific halibut and sablefish CDQ program is a part.

If the 55 communities eligible to apply for sablefish CDQ allocations were to apply individually, as was originally anticipated by the Council, the 12 percent limit would have accomplished its objective. Instead, the communities are expected to apply as six groups, the same number of groups that participate in the pollock CDQ program.¹⁰ This creates an inability to allocate all of the sablefish CDQ reserve because there will be an insufficient number of CDQ applicants, with the 12 percent limit, to achieve 100 percent allocation.

To accommodate this situation, the Council decided to raise the limit from 12 percent to 33 percent. The 33 percent limit would be sufficient to allow total allocation of the sablefish CDQ reserve. Total allocation of the sablefish CDQ reserve would be consistent with the intent of the Council and the management objectives of the Magnuson Act.

¹⁰There is nothing in the proposed action preventing any group from changing its composition of eligible communities or preventing an eligible community from applying on its own rather than as a member of a group. The proposed action is merely designed to accommodate behavior initiated by the eligible applicants.

4.2 STATEMENT OF THE OBJECTIVES AND LEGAL BASIS FOR THE PROPOSED ACTION

The objective of this action, as explained above, is to allow full utilization of the resource. The Pacific halibut and sablefish CDQ program was developed to assist in the survival and promote the revitalization of rural communities in Western Alaska. A set-aside of 20 percent of the annual fixed-gear TAC of sablefish for each management area in the BSAI (i.e., the CDQ reserve) was made available to eligible CDQ applicants.

The current allocation limit for each applicant, 12 percent, would make it impossible to allocate the entire sablefish CDQ reserve. This would be inconsistent with the objective of providing sufficient fishery resources, 20 percent of the annual fixed-gear TAC of sablefish for each management area in the BSAI, to rural communities in Western Alaska to assist in their survival and promote their revitalization.

The Council is authorized, under the Magnuson Act, to amend FMPs to "promote efficiency in the utilization of fishery resources."¹⁶ This action would promote efficiency by allowing total allocation of the sablefish CDQ reserve. The current limit would not promote efficiency in that it would only allow 72 percent of the sablefish CDQ reserve to be allocated to eligible CDQ applicants.

4.3 DESCRIPTION OF, AND ESTIMATE OF THE NUMBER OF, SMALL BUSINESSES OR ENTITIES TO WHICH THE PROPOSED ACTION WILL APPLY

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, and 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 employees or less, not-for-profit enterprises, and governmental jurisdictions with a population of 50,000 or less, are considered small entities.

A "substantial number" of small businesses or entities would generally be 20 percent of the total universe of small businesses or entities affected by the regulation. An action would have a "significant impact" on these small businesses or entities if it resulted in: (1) a reduction in the annual gross revenues by more than 5 percent; (2) annual compliance costs that increased total costs of production more than 5 percent; or (3) compliance costs for small businesses or entities that are at least 10 percent

¹⁶16 U.S.C. 1851(a)(5). Also known as National Standard Number 5.

higher than compliance costs as a percent of sales for large businesses or 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 businesses or entities and total number of businesses or entities in a particular affected sector, and the total number of small businesses or entities affected; and
- (2) an analysis of economic impact on small businesses or entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small businesses or entities, effect on the small businesses' or entities' cashflows or liquidities, and the ability of small businesses or entities to remain in the market.

Of the businesses or entities in the particular affected sector, only the estimated six CDQ applicants (made up of the 55 CDQ eligible communities) would be affected by this action. Since the amount of the annual fixed-gear TAC of sablefish allocated to the sablefish CDQ reserve would remain at 20 percent, fishers participating in the Pacific halibut and sablefish IFQ program would not be affected by this action.

The 55 CDQ eligible communities are considered small entities by the NMFS, which defines government jurisdictions with a population of 50,000 or less as small entities. Even if the communities are classified as their CDQ groups, rather than individually, they would still be under the 50,000 population limit.

The communities to be affected by this action are located in Western Alaska, ranging in population from three (Ekuk) to 3500 (Nome).¹² The largest CDQ Group (in population), Norton Sound Economic Development Corporation, contains 15 communities with a total population of 7621. The smallest CDQ Group, Aleutian Pribilof Island Community Development Association, contains five communities with a total population of 397. The Central Bering Sea Fishermen's Association contains one community, St. Paul, with a population of 763. The other CDQ groups are: Bristol Bay Economic Development Corporation, 13 communities with a total population of 5030; Coastal Villages Fishing Cooperative, 17 communities with a total population of 5781; and Yukon Delta Fisheries Development Association, four communities with a total

¹²These populations, and all other populations in this report, are based on the 1990 U.S. Census.

population of 1538. The total population for all six CDQ groups combined (55 communities) is 21130.

4.4 DESCRIPTION OF THE PROJECTED REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE PROPOSED ACTION

To be eligible for a sablefish CDQ allocation, an eligible applicant must submit a CDP. The CDP must first be approved by the Governor of Alaska in consultation with the Council, and then be approved by the Secretary. The reporting, recordkeeping, and other compliance requirements for the CDP was addressed in the documents produced for the proposed and final regulations for the Pacific halibut and sablefish IFQ program. A complete listing of these documents can be found at footnote 6.

Also, the reporting burdens for the Pacific halibut and sablefish CDQ program was reviewed by OMB, Paperwork Reduction Project (OMB control number 0648-0269 for the Western Alaska CDQ Program). It is not anticipated that the reporting and recordkeeping requirements addressed in the above documents and approved by OMB would increase under the proposed action.

4.5 IDENTIFICATION OF RELEVANT FEDERAL RULES THAT MAY DUPLICATE, OVERLAP, OR CONFLICT WITH THE PROPOSED ACTION

Research of the appropriate subject areas did not locate any Federal Rules that would duplicate, overlap, or conflict with the proposed action. All relevant provisions (i.e., FMP text and implementing regulations) would be amended by this action. Criteria used by the Governor of the State of Alaska when evaluating the CDPs submitted by eligible applicants would also be adjusted to reflect the increase from 12 percent to 33 percent.

4.6 SUMMARY

As the above analysis shows, a substantial number of small businesses or entities (i.e., the CDQ groups) would be affected by this action, however, there is no evidence that this action would have a significant impact on the CDQ groups. Significant impact is defined as reduction in the annual gross revenues by more than 5 percent, annual compliance costs that increased total costs of production more than 5 percent, or compliance costs for small businesses or entities that are at least 10 percent higher than compliance costs as a percent of sales for large businesses or entities. There is no indication that any of the criteria of significant impact outlined above would occur; in fact, it is very likely that the compliance costs under the current regulatory scheme would be greater than the compliance costs under the proposed action.

5.0 CONCLUSION

Alternative 2, raising the sablefish CDQ allocation limit from 12 percent to 33 percent and changing "community" and "communities" to "CDQ applicant" and "CDQ applicants" respectively, was developed so that communities would be able to apply as CDQ groups and still receive allocations that total the entire sablefish CDQ reserve. Under the current process, alternative 1, communities would either have to apply individually, rather than as the CDQ groups already established, or suffer the consequence of not having the entire sablefish CDQ reserve allocated.

Alternative 2, as a minor change to a FMP, would not result in a significant change in the original environmental action. Alternative 2 would not change the amount of sablefish that would be placed in the sablefish CDQ reserve, it would only change the process for allocating that amount. Since there would be no increase in the amount of sablefish placed into the reserve, there would be no increase in the amount impact on the fishery resource. Furthermore, the same 55 communities would be the recipients of the CDQ reserve, the only difference is that they would produce CDPs and harvest the fishery resource as six CDQ groups rather than as 55 individual communities.

Alternative 2 would be more efficient in that it would allow communities to pool their resources for the Pacific halibut and sablefish CDQ program. Resource pooling would be beneficial administratively (i.e., when producing CDPs), as well as when actual harvesting is commenced. The current program would encourage excessive, and needless, competition between the 55 communities. The current program would also require 55, rather than six, CDPs, expending more time in producing, and reviewing, CDPs.

Alternative 2 would not cause a significant impact under the RFA, as defined by NMFS; in fact, it is likely that compliance costs would actually decrease under alternative 2. The ability of small businesses or entities to compete, as compared to large businesses or entities, would not be disadvantaged under the process proposed in alternative 2.

Dated: AUG 3 1991

Gary Matlock

6.0 REFERENCES

Alaska Population Overview. U.S. Census. 1990.

Building Your Future: The CDQ Program. Mt. Edgecumbe High School. (no date available)

Executive Order 12866. September 30, 1993.

National Oceanic and Atmospheric Administration Administrative Order 216-6. August 6, 1991.

The CDQ Program: New Economic Potential for Western Alaska. Bering Sea Fishermen's Association. March, 1993.

16 U.S.C. 1851. As amended as of November 28, 1990.

50 CFR Part 676. October 1, 1992.

57 Federal Register 57130. December 3, 1992.

7.0 AGENCIES AND INDIVIDUALS CONSULTED

Laura Walters
State of Alaska
Dept. of Community and Regional Affairs
150 Third Street
Juneau, Alaska 99801

Jay Ginter, Dave Ham
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

Chris Oliver
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

8.0 LIST OF PREPARERS

John Lepore
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802