

REGULATORY IMPACT REVIEW
FOR A
FISHERY PLAN AMENDMENT
TO ALLOW
HALIBUT/SABLEFISH COMMUNITY DEVELOPMENT QUOTA
COMPENSATION QUOTA SHARE
BLOCK EXEMPTION AND ONE-TIME TRANSFER

Bering Sea / Aleutian Islands Plan Amendment #32

and

Gulf of Alaska Plan Amendment #36

Prepared by

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EXECUTIVE SUMMARY

This amendment addresses two issues related to Community Development Quota (CDQ) compensation shares for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQs in CDQ areas, which resulted from allocations of those fishery resources to the CDQ program. This document analyzes the environmental, economic, and social impacts of the status quo (CDQ Block/Vessel Category Exemption, Alternative 1 and CDQ/IFQ One-Time Transfer, Alternative 1) and the proposed management actions (Block Exemption, Alternative 2 and One-Time Transfer, Alternatives 2 and 3) for modifying the halibut and sablefish CDQ compensation system by allowing a block exemption and one-time transfer of shares. This document is intended to comply with the requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12866.

The first problem identified by the North Pacific Fishery Management Council is the large number of small allocations of CDQ compensation quota share. The provisions of the Block Amendment [BSAI FMP Amendment 31/GOA FMP Amendment 35] hinder the efficiency of trading these small allocations by limiting the size and number of blocks an individual would be permitted to hold.

Block Exemption, Alternative 2 would exempt quota share (QS) allocations issued as CDQ compensation from the provisions of the Block Amendment. One alternative would allow small allocations of CDQ compensation to be consolidated beyond the 1,000 lb limit for halibut and 3,000 lb limit for sablefish (status quo), with an option to allow consolidation across all vessel categories (except freezer/longline vessels). The consolidated allocations would then be subjected to the “block test” to determine if they are “blocked” or “unblocked” QS. The creation of blocked CDQ compensation QS adds a new category of QS to the current system. Unblocked CDQ compensation QS, i.e., allocations exceeding the 20,000 lb minimum, would be treated the same as initially issued unblocked QS. Small, blocked CDQ compensation QS allocations may be difficult to transfer under the current 2-block cap, but may be desirable by small volume fishermen or new entrants to the fisheries.

A second option would fully exempt consolidated allocations from the block provisions (treating them as unblocked QS) in perpetuity. A further modification under both Alternative 2 options would allow consolidation across all vessel categories (except freezer/longline vessels). A full exemption to the Block Amendment would make transfers of small allocations easier for both fishermen and the National Marine Fisheries Service, the agency which must account for them, by leaving the IFQ Program unburdened by an additional regulatory QS category. The Council's original intent in developing CDQ compensation QS was to replace QS lost to the CDQ program. An exemption to the block provision allows the unrestricted exchange of QS among fishermen to fishing areas closest to their traditional grounds (where the QS/IFQ were originally foregone).

The second problem concerns regulations within the current management regime that restrict the transfer of QS. Residents of CDQ areas have traditionally employed smaller vessels than the non-residents who qualified and received initially issued QS in the CDQ areas. In Area 4C for example, all residents who qualified for initially issued halibut QS used small vessels (< 35 ft). All non-residents who qualified for initially issued QS in 4C used larger vessels and thus have QS for larger vessel categories. In order for residents of CDQ areas to increase their holding of QS in the CDQ area they must purchase larger vessels, as well as initially issued QS in the larger vessel categories. This is the case under the status quo.

However, if the residents of the CDQ area could use the larger vessel QS of non-residents on their own smaller vessels, they would not have to purchase both vessels and QS. Therefore, the residents

of CDQ areas have proposed a “one-time trade” which will transfer initially issued QS from larger vessel categories to smaller vessel categories within the CDQ areas. Because the residents of the CDQ area also qualified for initially issued QS in the CDQ area, they will receive CDQ Compensation QS in the non-CDQ areas; areas which are likely to be the home of many of the “non-residents” who fished and qualified with large vessels in the CDQ area. This CDQ compensation QS would be the other portion of the “one-time trade.” However, in order for this trade to occur, the CDQ compensation QS offered as trade would also have to be exempt from vessel categories.

One-Time Transfer, Alternative 2 would allow a one-time transfer of CDQ compensation QS for those vessel owners or lease holders who receive halibut and/or sablefish CDQ compensation in non-CDQ areas for initially issued QS across all vessel categories. Alternative 3 would exclude freezer/longline vessels from these transfers. Transferability of CDQ compensation QS and initially issued QS allows the marketplace to efficiently reallocate QS to those who will use them most productively, regardless to whom they were initially assigned. The one-time transfer essentially continues the philosophy the Council implemented with the CDQ compensation program of allocating fishery resources to traditional users.

Block Exemption, Alternative 1 and One-Time Transfer, Alternative 1 (status quo) do not require an environmental assessment because they were previously analyzed in the environmental documents for the CDQ program and the Block Amendment. Block Exemption and One-Time Transfer alternatives are also categorically excluded from an 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 analysis.

Block Exemption, Alternative 2 will also be less obstructive than the current process, since it would not require pooled CDQ compensation QS to be “blocked.” Unblocked QS would likely be more marketable as it would not be counted against the 2-block cap implemented under the Block Amendment. Alternative 2 would encourage cooperation among fishermen and efficient use of combined capital. 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.

The CDQ compensation program allocates QS in fishing areas some fishermen do not actively fish. One-Time Transfer, Alternatives 2 and 3 would allow increased economic efficiency in the fisheries by allowing fishermen in different fishing areas to transfer their QS. Alternatives 2 and 3 would encourage cooperation among fishermen and efficient use of combined capital. Alternatives 2 and 3 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.

The two actions presented in this document (CDQ Block/Vessel Category Exemption and CDQ/IFQ One-Time Transfer) are independent management decisions. Either or both of these actions will facilitate the full utilization of the allocated halibut and sablefish resources by easing restrictions recently placed on the fisheries. The Council must weigh the complexity and burden of additional regulations addressing the creation of small allocations of CDQ compensation QS against the total amount of affected quota (less than 3%). A maximum of 297 halibut and 161 sablefish fishermen may be affected by the proposed actions.

1.0 INTRODUCTION

This document is the draft Regulatory Impact Review (RIR) for Amendment 32 to the Bering Sea and Aleutian Islands (BSAI) FMP and Amendment 36 for the Gulf of Alaska (GOA) FMP. It addresses two issues related to Community Development Quota (CDQ) compensation shares for reductions in the amount of Pacific halibut and sablefish available for harvest with Individual Fishing Quotas (IFQ) in CDQ areas, which resulted from allocations of those fishery resources to the CDQ program.

The groundfish fisheries in the exclusive economic zone (EEZ) (3 to 200 miles offshore) of the GOA and the BSAI are managed under the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fisheries of the BSAI. Both FMPs were developed by the Council under the Magnuson 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.

Actions taken to amend FMPs or implement amendments to regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. Among 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 is included in Section 1 of this document. 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 also 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. Section 4 contains an analysis, pursuant to the RFA, to assess whether small businesses or entities will be affected by bearing the direct or indirect costs of regulations.

1.1 MANAGEMENT BACKGROUND

Current regulations specify that the National Marine Fisheries Service (NMFS) Regional Director will compensate persons who receive reduced halibut quota share (QS) in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. This compensation will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocations. The RD will also compensate persons who receive reduced sablefish QS in any Bering Sea and Aleutian Islands IFQ regulatory area because of the sablefish CDQ program by taking sablefish QS from the IFQ regulatory areas (Western Gulf, Central Gulf, West Yakutat, and East Yakutat) of the Gulf of Alaska and allocating it in proportion to the loss suffered by persons in the BSAI area.

Compensated persons are those who were initially issued QS in CDQ areas. This one-time compensation adjustment is in the form of QS in each of the non-CDQ areas [See 50 CFR 676.24 for a description of this program]. The CDQ compensation formula affected all persons who were initially issued QS, including those who did not historically participate in the Pacific halibut or sablefish fisheries in CDQ areas, by decreasing their proportionate share. The Council intended that all persons who are initially issued QS share the burden for compensating persons for reductions in the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas. This was

accomplished by creating additional QS in the non-CDQ areas as compensation and reducing the harvest privilege of all persons initially issued QS by a fixed percentage. Persons receiving compensation QS also shared the burden by having their compensation harvest privileges reduced by same percentage as used for initially issued QS.

CDQ compensation QS is issued by vessel category, and under the current halibut/sablefish IFQ program are transferable only within the same vessel category. Further, under the Block Amendment [BSAI FMP Amendment 31/GOA FMP Amendment 35] effective in November 1994, all initially issued QS in an amount that will generate less than 20,000 lb of IFQ in any IFQ area will be “blocked.” Amounts that would yield 20,000 or more pounds will be “unblocked.” Blocked QS may not be subdivided into smaller amounts upon transfer, although very small amounts of QS may be “swept up” into a new QS block that would yield up to 1,000 lb of halibut IFQ or 3,000 lb of sablefish IFQ. Also, no person may hold more than two QS blocks for any species in any regulatory area or blocked and unblocked QS up to limits specified under the amendment.

Once CDQ compensation QS is issued to a person who holds initially issued QS, both are combined and reissued under one certificate. The proposed action under the CDQ Block/Vessel Category Exemption would benefit only recipients of CDQ compensation QS in non-CDQ areas where they do not possess initially issued QS. The amount of CDQ compensation QS may be too small to warrant travel to remote areas and fishermen may prefer to transfer them for QS closer to their primary fishing area. The proposed action under the CDQ/IFQ One-Time Trade, however, would likely benefit all holders of CDQ compensation QS and holders of initially issued QS with whom they might trade. Table 3.1 lists the number of halibut and sablefish fishermen who would be affected by the proposed actions.

1.2 PURPOSE AND NEED FOR ACTION

The two management actions (CDQ Block/Vessel Category Exemption and CDQ/IFQ One-Time Transfer) presented in this document are independent management actions. Either or both of these actions will facilitate the full utilization of the allocated halibut and sablefish resources by easing restrictions placed on the fisheries.

One problem in the fishery is described as follows: Most CDQ compensation QS will be issued in small allocations and therefore will be blocked. An exemption from the provisions of the Block Amendment would relieve the 2-block cap restriction and thus ease a significant barrier to transfers.

A Block/Vessel Category Exemption for CDQ compensation QS would allow holders to consolidate and trade their CDQ Compensation QS for QS from another area. The Council may choose from alternatives which exempt the transfers from the vessel length categories and the 2-block ownership cap. Without an exemption, the industry will face an extreme economic burden because there will be so many small allocations of CDQ compensation QS that must be transferred as blocked QS. This may be mitigated somewhat by the “sweep-up” provision that allows consolidation up to the 1,000 lb limit for halibut and 3,000 lb limit for sablefish. But a substantial number of small allocations of CDQ compensation QS will still be held by fishermen living and actively fishing in areas geographically distant from the areas for which the QS was designated. Fishing these small allocations will not be feasible for all fishermen, and matching such blocked allocations with other blocked allocations in a different areas may be difficult.

One management alternative under the Block Exemption would allow small allocations to be consolidated beyond the 1,000 lb limit for halibut and 3,000 lb limit for sablefish. After consolidation, the CDQ Compensation QS would be subjected to the “block test.” Amounts that exceed the block size (20,000 lb) would be unblocked. Amounts that are below the threshold would

be blocked. For example, in Area 4E, there are 54 individuals who will be awarded CDQ compensation QS in four other fishing areas (2C, 3A, 3B, and 4A). Consolidation would mean that single amount QS, rather than as many as 54 individual amounts of QS, may be marketed for transfer. A total of 216 individual amounts of QS (approximately 50,000 lb of IFQ) will be more difficult to transfer than if these can be pooled into four consolidated amounts (one in each area). These consolidated amounts could be treated as fully exempt, or subjected to the block test. If the consolidated amounts exceed the block threshold, then they would be treated as unblocked QS.

A second alternative would allow an exemption in perpetuity from the provisions of the Block Amendment up front. Designating all CDQ compensation QS as “unblocked” increases the marketability of those shares since they would not be counted against the 2-block cap. A full exemption would result in maximum flexibility for the recipients and would minimize transfer and administrative burden on the implementing agency, again noting that CDQ compensation QS amounts to less than 3% of the total QS in existence. The analysis of the Block Amendment concentrated on the number of blocks (and maximum possible fleet consolidation) based on initial QS allocations irrespective of CDQ compensation QS. As such, exempting CDQ compensation QS from the Block Amendment would not change the maximum potential fleet consolidation as described in that analysis.

An option under both alternatives would allow pooling of CDQ compensation QS across all vessel categories, except freezer/longline vessels. Any form of block exemption would minimize the limitations on the fisheries caused by the 2-block cap, however a full block and vessel category exemption (except freezer/longliners) would free the industry of unintended regulatory and economic burden.

A second problem identified is that residents of CDQ areas have traditionally employed smaller vessels than the non-residents who received initially issued QS in the CDQ areas. In area 4C for example, all residents who qualified for initially issued halibut QS used small vessels (> 35 ft). All non-residents who qualified for initially issued halibut QS in Area 4C used larger vessels and thus have QS for larger vessel categories. In order for residents of CDQ areas to increase their holding of initially issued QS in the CDQ area they must purchase larger vessels as well as initially issued QS in the larger vessel categories. This is the case under the status quo.

However, if the residents of the CDQ area could use the larger vessel QS of non-residents on their own smaller vessels, they would not have to purchase both vessels and shares. Therefore, the residents of CDQ areas have proposed a “one-time trade” which will allow the transfer initially issued QS from a larger vessel category to a smaller one. Because the residents of the CDQ area also qualified for initially issued QS in the CDQ area, they will receive CDQ Compensation QS in the non-CDQ areas; areas which are likely to be the home of many of the “non-residents” who fished and qualified with larger vessels in the CDQ area. This CDQ compensation QS would be the other part of the “one-time trade.” However, in order for this trade to occur, the CDQ compensation QS offered as trade would also have to be exempt from vessel length categories.

A One-Time Transfer alternative would permit the transfer of CDQ compensation QS for QS in another fishing area across vessel length categories. Another alternative would prohibit freezer/longline vessels from these transfers. A sunset provision would end the program after one year following its effective date. Quota share transfers under this provision may be exempt from the block restriction so that persons that make such transactions will not be assigned two blocks of QS (see Block Exemption discussion).

1.3 MANAGEMENT ACTION ALTERNATIVES

CDQ Compensation QS Block/Vessel Category Exemption

<u>Alternative 1:</u>	Status Quo. No exemption, but current “sweep-up” provisions allowed.
<u>Alternative 2</u> (preferred):	Allow CDQ compensation QS allocations to be exempt from the block provisions.
<u>Option A:</u>	At transfer, subject consolidated CDQ compensation QS to the “block test.” (Allow <u>initial</u> pooling ¹ with other CDQ compensation holders, then apply block test at <u>transfer</u> .)
<u>Option B</u> (preferred):	Exempt CDQ compensation QS from the block provisions in perpetuity and exempt CDQ compensation QS issued in a catcher vessel category from vessel length categories until transfer (i.e., may be used on any catcher vessel of any length). If the consolidated amount is transferred to someone outside the pool, a vessel length category will be assigned based on the purchaser's choice.

CDQ/IFQ One-Time Trade

<u>Alternative 1:</u>	Status Quo. Trade or transfer across vessel categories is not allowed.
<u>Alternative 2:</u>	Allow a “one-time trade” exempt from vessel category restrictions. The “one-time trade” would be defined as a paired transaction involving initially issued large vessel QS in CDQ areas and small vessel CDQ Compensation QS in non-CDQ areas.
<u>Alternative 3</u> (preferred):	Allow a “one-time trade” exempt from vessel length category restrictions (this exemption does not include the freezer vessel category).

¹Pooling is allowed for only CDQ compensation QS, and must be owned by a person who initially received CDQ compensation QS.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 provides the policies and procedures to be followed by 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 general categories.

Section 6.02b.3.(b)(ii) of NAO 216-6 categorically excludes “[a]ctions 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.”

The final rule implementing Amendments 32 and 36 is a minor change to the IFQ program and will not result in a significant change in the supplemental environmental impact statement prepared for the IFQ program.

The foregoing analysis supports the determination that this action should be categorically excluded from further environmental assessment under NAO 216-6, section 6.02b.3.(b)(ii)(aa).

3.0 REGULATORY IMPACT REVIEW: SOCIAL AND ECONOMIC 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, quantifying the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs.

A Regulatory Impact Review (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.

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 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 IDENTIFICATION OF THE ISSUES TO BE RESOLVED BY THE PROPOSED ACTION

As explained in detail in the Introduction, the current Pacific halibut and sablefish CDQ compensation quota share program currently restricts the size and number of “blocked” quota shares which an individual may possess. The current program also restricts the transfer of quota shares between vessels of different size categories.

Modification of these restrictions may increase the regulatory and economic efficiency of trading blocked or unblocked CDQ compensation shares and unburden the individual from applying CDQ compensation block or unblocked QS against the 2-block cap.

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

Table 3.1 lists the maximum number of fishermen who could be affected by the proposed actions. Only those individuals who receive CDQ compensation QS in an IFQ regulatory area in which they do not have initially issued QS would benefit from the proposed actions under the Block/Vessel Category Exemption, since CDQ compensation QS and IFQ QS issued to a fisherman are indistinguishable and inseparable. In addition to CDQ compensation recipients, all individuals participating in the Pacific halibut and sablefish IFQ program would potentially benefit by the proposed alternatives under the CDQ/IFQ One-Time Transfer. The number of affected fishermen under either management action may be less than the maximum number of fishermen listed since not all eligible fishermen will want to participate in pooling their CDQ compensation QS or transferring them.

TABLE 3.1 NUMBER OF HALIBUT AND SABLEFISH FISHERMEN BY FISHING AREA WHO WOULD BE POTENTIALLY AFFECTED BY THE PROPOSED ACTIONS			
FISHING AREA	FISHERMEN WITH ONLY CDQ COMPENSATION QS	FISHERMEN WITH INITIALLY ISSUED AND CDQ COMPENSATION QS	TOTAL
Halibut--2C	268	29	297
Halibut--3A	144	153	297
Halibut--3B	153	144	297
Halibut--4A	173	124	297
Sablefish--W. Gulf	40	121	161
Sablefish--C. Gulf	18	143	161
Sablefish--W. Yakutat	47	114	161

3.3 MANAGEMENT ACTION ALTERNATIVES

CDQ Compensation QS Block/Vessel Category Exemption

Alternative 1: Status Quo. No exemption, but current “sweep-up” provisions allowed.

Under Alternative 1, no action would be taken. The status quo would remain in effect, whereby individuals are allowed to “sweep-up” quota share to the 1,000 lb limit for halibut and 3,000 lb limit for sablefish, as specified under the Block Amendment. As a result, the potential economic benefits that could occur under Alternative 2 would not be realized. Some of the approximately 3% of total QS assigned as CDQ compensation could be underutilized each year.

Alternative 2: Allow CDQ compensation allocations to be exempt from the block provisions.

Option A: At transfer, subject consolidated CDQ compensation QS to the “block test.” (Allow initial pooling² with other CDQ compensation holders, then apply block test at transfer.)

Option B: Exempt CDQ compensation QS from the block provisions in perpetuity and exempt CDQ compensation QS issued in a catcher vessel category from vessel length categories until transfer (i.e., may be used on any catcher vessel of any length). If the consolidated amount is transferred to someone outside the pool, a vessel length category will be assigned based on the purchaser's choice.

Alternative 2 would allow initial consolidation of total CDQ compensation QS by an individual or group of individuals. Option A would subject the consolidated amounts to the block provisions to determine whether the consolidated amount will be transferred (where transfer means “to someone outside the pool”) as blocked or unblocked shares. This “partial exemption” would allow a group to consolidate their individual, CDQ compensation QS above the current limits. If the consolidated amount is greater than the 20,000 lb threshold for unblocked shares, that amount would be transferred as unblocked quota shares and be treated as such. They would remain unblocked QS in all subsequent transfers. If the consolidated amount is below the threshold, it will be “blocked,” and could only be transferred as a “block.” An incentive is then created for individual fishermen to efficiently consolidate small amounts of CDQ compensation QS to meet the 20,000 lb limit for unblocked quota shares.

Option B would exempt all CDQ compensation QS from the block provisions in perpetuity and would allow consolidation across all vessel categories, except freezer/longline vessels. This is the least burdensome alternative in easing the regulatory restrictions placed on the CDQ compensation program from actions implemented under the Block Amendment. Although small block amounts would provide an opportunity to small volume fishermen and new entrants to the fishery, it is likely that these small block amounts would be difficult to transfer because the 2-

²Pooling is allowed for only CDQ compensation QS, and must be owned by a person who initially received CDQ compensation QS.

block cap provision restricts the marketability of small blocked quota shares. The difficulty in transferring these small blocks would create a net loss to the nation from foregone economic revenue from unused shares. The Council did not fully consider the effect of the provisions of the Block Amendment on the multitude of new “blocks” created by CDQ compensation. Blocked shares owned by 738 halibut fishermen and 191 sablefish fishermen, at most, may be affected, although this maximum number will be reduced by fishermen receiving compensation in more than one fishing area, by pooling of very small amounts up to the current “sweep-up” limits, and by eliminating the restriction on sweeping-up across vessel categories, if chosen.

It was not the Council's intent to allocate valuable quota shares to fishermen unable to utilize them due to economic (e.g., some compensation QS may be too small to fish economically) and vessel safety concerns (e.g., some compensation QS are allocated in areas geographically distant from traditional fishing grounds and may exceed the safe cruising range of smaller vessels). A permanent exemption of the block provisions for CDQ compensation quota shares will ease the regulatory burden on industry and the implementing agency.

Table 3.2 illustrates how a group of fictional CDQ compensation shareholders may be affected by options under the proposed action. There are 47 halibut fishermen who reside in Fishing Bay, Alaska. Thirteen small boat fishermen, 30 fishermen in the 35 - 60 ft vessel category, and 4 fishermen in the > 60 ft vessel category received CDQ compensation quota shares in Areas 2C, 3A, 3B, and 4A.

Vessel Category	Number of Fishermen	Pooled CDQ Compensation QS by Area			
		2C	3A	3B	4A
< 35 feet	13	1825	5360	1400	350
35 - 60 feet	30	20100	58600	15340	3860
> 60 feet	4	6600	19200	5010	1260
TOTAL	47	28525	83160	21680	5470

Alternative 1 (status quo) allows only the 13 small boat fishermen who have a total of 350 lb of CDQ compensation and 4 fishermen in the > 60 ft category who have 420 lb of CDQ compensation to pool (or “sweep-up”) their CDQ compensation QS in Area 4A. All other consolidated totals would exceed the 1,000 lb “sweep-up” allowance for halibut. Fishermen within each vessel category would, however, be allowed to “sweep-up” to multiple 1,000 lb blocks.

Alternative 2, Option A would allow fishermen within a vessel category to pool their CDQ compensation QS. If the pooled QS is transferred to someone outside the pool, a “transfer” of the newly consolidated amount would be subjected to the “block test.” If the new amount exceeds 20,000 lb, it would be exempt from the block provisions and treated as unblocked QS. If it is below the 20,000 lb threshold, it will be treated as a “block” at its new, consolidated total in perpetuity. In Table 3.2, all new amounts, if consolidated by all fishermen within a vessel category, would be transferred as a block, except for the amounts created by the 30 (35 - 60 ft) fishermen in Areas 2C (20,100 lb) and 3A (58,600 lb).

Under Option B, which would allow consolidation across vessel categories, not including freezer/longline vessels, all new amounts in each area would exceed the 20,000 lb block threshold, except for Area 4A (5,470 lb) which could remain as blocked QS. When and if these consolidated amounts are transferred to a person outside the pool, they would be assigned a vessel length according to the purchaser's choice.

Option B also would exempt all consolidated CDQ compensation QS from the block provisions in perpetuity (i.e., no minimum threshold to exceed) and allow them to be transferred as unblocked quota shares. Suboption A would allow a further exemption from the block provisions by eliminating vessel category restrictions from consolidation, except for freezer/longline vessels.

CDQ/IFQ One-Time Trade

<u>Alternative 1:</u>	Status Quo. Trade or transfer across vessel categories is not allowed.
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Under Alternative 1, no action would be taken. The status quo would remain in effect, whereby CDQ compensation QS may not be transferred across vessel categories.

<u>Alternative 2:</u>	Allow a “one-time trade” exempt from vessel category restrictions. The “one-time trade” would be defined as a paired transaction involving regular large vessel QS in CDQ areas and small vessel CDQ Compensation QS in non-CDQ areas.
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Table 3.3 summarizes the problem for Area 4C. Under the status quo, if residents of 4C are to increase their holdings of initially issued QS in the area, they would have to purchase large vessels shares and use them on large vessels. If, however, an exemption from the vessel class restriction were put into effect they would not have to obtain the use of larger vessels; they would only have to purchase available QS.

TABLE 3.3 INITIALLY ISSUED QS FOR AREA 4C BY VESSEL CATEGORY AND AREA OF RESIDENCE				
Residence	QS for vessels under 35 feet	QS for vessel 35 to 60 feet	QS for vessels over 60 feet	QS for freezer vessels
Inside Area 4C	X	0	0	0
Outside Area 4C	0	X	X	X

Table 3.4 shows the number of CDQ compensation QS residents of 4C will receive. Under Alternative 2, these would be available to non-residents under the “one-time trade.” Alternative 2 would allow the unrestricted transfer of CDQ compensation shares to facilitate the efficient reallocation of QS to those individuals who will use them most productively. Some fishermen may wish to trade their CDQ compensation QS in remote fishing areas for QS closer to home. In some fishing areas, there may be no other fishermen who possess IFQ in their vessel category for which to trade their CDQ compensation QS. Fishermen in small boat category in the western Aleutians area (including the Pribilofs) may want to transfer their CDQ compensation QS in Areas 2C, 3A, 3B, and 4A for initially issued QS in 4C, since there are no other fishermen in their vessel category with which to trade their CDQ compensation QS.

In the following example, 30 western Aleutian Islands small boat fishermen have combined their 3A CDQ compensation into a single amount (58,600 lb). They may prefer to trade their 3A CDQ compensation QS for some of the 417,800 lb owned by other fishermen in the 35 - 60 ft and > 60 ft vessel categories (see Table 3.5).

TABLE 3.4 AREA 4C RESIDENT CDQ COMPENSATION QS ISSUED IN OTHER AREAS					
Vessel Category	Number of Fishermen	2C	3A	3B	4A
< 35 feet	30	20100	58600	15340	3860
35 - 60 feet	0	0	0	0	0
> 60 feet	0	0	0	0	0

TABLE 3.5 INITIALLY ISSUED QS IN AREA 4C CURRENTLY HELD BY AREA 4C NONRESIDENTS		
Vessel Category	Number of Fishermen	4C
< 35 feet	0	0
35 - 60 feet	25	228750
> 60 feet	20	189050

The prohibition on the transfer of CDQ compensation QS across categories poses a substantial impediment to their use. It was not the Council's intent to allocate commercially valuable QS to fishermen unable to utilize them due to economic (e.g., some compensation QS may be too small to fish economically) and vessel safety concerns (e.g., some compensation QS are allocated in areas geographically distant from traditional fishing grounds; fishing grounds may exceed the safe cruising range of smaller vessels).

However, an allowance for a one-time transfer of CDQ compensation QS will create a regulatory burden on industry and the implementing agency. Regulations to allow a one-time transfer of QS will create a complex and burdensome administrative process to track and reissue QS in the first year of the IFQ program. The costs and administrative burden for tracking the transfers may not be warranted given the small amount of quota and numbers of fishermen affected.

Alternative 3: Allow one-time trade only across vessel categories (not freezer/longliner category).

Alternative 3 would allow the unrestricted transfer (through sale or trade in a single, paired transaction) of CDQ compensation QS, as described under Alternative 2, but would exclude freezer/longline vessels from the one-time transfer provision. This would eliminate approximately ten vessels from the transfer allowance. A total of nine freezer/longline vessels would be excluded from transfer under this alternative.

3.4 QUALITATIVE ANALYSIS OF THE EXPECTED BENEFITS AND COST OF THE PROPOSED ACTIONS

As explained above, the proposed action under CDQ Compensation QS Block/Vessel Category Exemption would enable the consolidation of compensation QS into fewer, larger pieces to enhance their marketability and provide economic return to holders of QS. The proposed action allows a group to pool their resources and reduce the administrative burden accompanying the transfer of QS. The principles of economies of scale provide for a more efficient use of fishery resources accomplished from loosening the block provision restrictions on CDQ compensation QS. Cooperation would be beneficial because less time and effort would be needed to effect the QS transfer for a consolidated pool of shares. A full exemption from the block provisions allows for the full utilization of the allocated resource, while providing enhanced opportunities for smaller volume fishermen and new entrants to obtain additional and affordable (i.e., small quantity) quota shares in preferred fishing areas while not being restricted by the 2-block cap.

One of the primary purposes of CDQ compensation was to replace harvest privileges foregone because of allocations to CDQ communities. The proposed action under the CDQ/IFQ One-Time Trade would allow those individuals who were compensated for lost revenue to recoup those losses which would be made permanent in fishing areas outside their geographical area or unsafe, given their vessel size, in which to fish. Allowing the unencumbered transfer of fishing rights on a one-time basis would assure the attainment of the goals of the Council in initially awarding the compensation QS.

3.5 ADMINISTRATIVE, ENFORCEMENT AND INFORMATION COSTS

Significant costs will be borne by the administrative agency in the first year of the IFQ program in monitoring the consolidation and transfer of CDQ compensation QS. However, this burden may be substantially reduced by an exemption for CDQ compensation QS from the block provisions. The complexity of the regulatory changes required to allow for the one-time transfer across vessel categories may also be significant in the first year of the program.

No additional enforcement costs are expected from either of the proposed actions.

4.0 REGULATORY FLEXIBILITY ACT

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 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 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

Every vessel participating in the Alaska Pacific halibut and sablefish IFQ fisheries would be affected by the management measures proposed under the CDQ/IFQ One-Time Trade. Vessels receiving CDQ compensation, but not IFQ, in a given fishing area would be affected by the proposed action under Block/Vessel Category Exemption. The proposed actions would mostly affect small boat (< 35 ft) fishermen, since they would have received relatively small CDQ compensation QS and would be more affected by safety concerns, if fishing in geographically distant areas from their traditional fishing grounds. A majority of the small boat halibut fishermen reside in the Western Aleutian Islands, Bethel, Bristol Bay, Dillingham, and the Kenai Peninsula area.

Most vessels harvesting halibut and sablefish off Alaska meet the definition of a small entity under the RFA. As many as 297 halibut fishermen and 161 sablefish fishermen may potentially be affected by the proposed action under CDQ Block/Vessel Category Exemption and CDQ/IFQ One-Time Trade. However, because CDQ Compensation QS accounts for less than 3 percent of all QS, this action would not cause significant economic impact on the affected small entities.

Furthermore, this action relieves restrictions to transfers of CDQ Compensation QS, thereby allowing participants of the IFQ program to harvest our Nation's fishery resource in a more efficient manner.

5.0 LIST OF PREPARERS

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