

**Environmental Assessment/Regulatory Impact Review/
Final Regulatory Flexibility Analysis**

for a

**Regulatory amendment to revise harvest regulations associated with the
Community Development Quota fisheries in accordance with the
Magnuson-Stevens Fishery Conservation and Management Act,
as amended by the Coast Guard and Maritime Transportation Act of 2006**

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Abstract: This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis evaluates the environmental effects, as well as costs and benefits, of different alternatives to modify fishery management regulations for the Community Development Quota (CDQ) fisheries conducted in the Bering Sea and Aleutian Islands. Proposed changes to 50 CFR part 679 include revising CDQ regulations associated with fisheries observer coverage requirements, bycatch retention, vessel licensing, and reporting requirements to ensure that they are no more restrictive than the regulations in effect for comparable individual fishing quota fisheries and fisheries managed with cooperatives. These proposed changes are necessary to comply with the requirements of Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Coast Guard and Maritime Transportation Act of 2006.

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Executive Summary

Background and purpose of this action

This document evaluates proposed regulatory amendments to revise fishery management regulations associated with the Community Development Quota (CDQ) Program. These revisions are associated with statutory changes made to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in 2006. The fisheries primarily affected by this action include the halibut CDQ, fixed gear sablefish CDQ, and pollock CDQ fisheries. Proposed regulatory changes include revising regulations associated with fisheries observer coverage requirements, catch retention, vessel licensing, recordkeeping, and catch reporting to ensure that they are no more restrictive than the regulations in effect for comparable individual fishing quota (IFQ) fisheries and fisheries managed with cooperatives. The proposed revisions address regulations that may be considered more “restrictive” because they subject CDQ fishery participants to additional costs or additional catch reporting requirements, or they were designed to control some aspect of CDQ fishing activities beyond measures in place for comparable fisheries.

This action is necessary to ensure that CDQ fishery management regulations in 50 CFR part 679 are consistent with the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that the “harvest of allocations under the [CDQ] program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.” This proposed action would make revisions to regulations governing the halibut, sablefish, and pollock CDQ fisheries to ensure that they are no more restrictive than those in place for comparable IFQ fisheries or fisheries managed with cooperatives. Additionally, this action would establish an application process for relief from more restrictive CDQ harvest regulations for vessels operating in a voluntary fisheries cooperative.

In addition to amendments to fisheries management regulations, this action proposes revising or removing other regulations in 50 CFR parts 679 and 680 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act. The changes proposed under this action would clarify which regulations are currently applicable to CDQ Program participants and also would enhance administrative efficiency with respect to regulatory relevance and compliance. Furthermore, this action proposes to revise regulations in § 679.31 to allow CDQ groups to transfer groundfish CDQ and halibut prohibited species quota (PSQ) between themselves either before or after such allocations are harvested.

Alternatives considered for this action

This analysis assesses three alternatives. The first is a status quo alternative. The second and third alternatives address the requirement in section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act that the regulation of harvest in CDQ fisheries shall be no more restrictive than regulations associated with the harvest of comparable IFQ fisheries or cooperative fisheries. NMFS has not identified any aspects of the crab CDQ fisheries that are managed more restrictively than the crab IFQ fishery; therefore, no changes to crab CDQ regulations in 50 CFR parts 679 or 680 are proposed by this action.

Alternative 1. Status quo—do not amend CDQ fisheries management regulations.

Alternative 1 is the status quo (no action) alternative. This alternative would maintain the existing regulatory requirements for the CDQ fisheries of the Bering Sea and Aleutian Islands (BSAI). No changes to regulations would be made to revise CDQ-specific regulations so that they are equivalent to regulations in effect for comparable IFQ fisheries or fisheries managed with cooperatives. There currently are three IFQ fisheries (fixed gear sablefish, halibut, and crab) and two fisheries conducted with cooperatives.

While the CDQ fisheries generally are a subset of comparable IFQ fisheries and fisheries managed with cooperatives, some of the regulations for the CDQ fisheries impose different conditions than those in place for similar non-CDQ fisheries. Regulations that may be considered more restrictive include those associated with catch retention and accounting, observer coverage, vessel licensing, and recordkeeping. Maintaining existing CDQ fishery management regulations would not comply with the requirements of the Magnuson-Stevens Act.

Alternative 2. Revise regulations associated with the CDQ fisheries to incorporate certain changes made to the CDQ Program by the Magnuson-Stevens Act. This includes changes that would ensure that the CDQ fisheries are not managed more restrictively than comparable non-CDQ fisheries. Under Alternative 2, the sablefish CDQ fishery would continue to be managed with other groundfish CDQ fisheries. **[preferred alternative/proposed action]**

Alternative 2 would amend specific sections in 50 CFR part 679 related to the regulation of harvest of the CDQ fisheries. The general changes proposed for Alternative 2 would:

- exempt vessels fishing for sablefish CDQ from having to have a License Limitation Program (LLP) license,
- revise definitions in section (§) 679.2 to add definitions of sablefish CDQ and pollock CDQ fishing and to include a sablefish CDQ exemption in the definition of “license limitation groundfish,”
- revise § 679.5 to remove a requirement that CDQ groups annually submit a request to NMFS to designate specific vessels as eligible to harvest groundfish CDQ on their behalf,
- remove a prohibition in § 679.7 against harvesting groundfish CDQ unless a vessel is listed as eligible by a CDQ group,
- revise CDQ catch monitoring requirements in § 679.32 to incorporate applicable changes to the basis for CDQ catch accounting for the halibut, sablefish, and pollock CDQ fisheries,
- establish an application process for relief from more restrictive CDQ harvest regulations for vessels operating in a voluntary fisheries cooperative,
- eliminate the requirement that groundfish incidental catch be retained by catcher vessels targeting halibut, sablefish, or pollock CDQ, and
- revise regulations in § 679.50 to align observer coverage requirements for the sablefish CDQ, halibut CDQ, and pollock CDQ fisheries with comparable non-CDQ fisheries.

Alternative 3. Revise regulations associated with the CDQ fisheries to incorporate certain changes made to the CDQ Program by the Magnuson-Stevens Act. This would include revising regulations to ensure that the CDQ fisheries are not managed more restrictively than comparable non-CDQ fisheries. Under this alternative, the management of the sablefish CDQ fishery would be incorporated into the sablefish IFQ Program.

Alternative 3 would amend the same regulations in 50 CFR part 679 that are described under Alternative 2. In addition, the management of the fixed gear sablefish CDQ fisheries would be integrated into the regulations governing the IFQ fisheries. The management functions associated

with the sablefish CDQ fishery would shift from the Alaska Region's Sustainable Fisheries Division to the Restricted Access Management (RAM) Program. This would align both the regulatory requirements and the management functions associated with the regulation of harvest of the fixed gear sablefish CDQ with those established for the IFQ fisheries. In addition to the general changes proposed for Alternative 2, Alternative 3 would:

- add a requirement for sablefish CDQ permits to § 679.4,
- revise regulations in § 679.5 to incorporate sablefish CDQ into IFQ recordkeeping and reporting requirements,
- revise § 679.7 to incorporate sablefish CDQ into the prohibitions that apply to the sablefish IFQ fishery, and amend §§ 679.41 and 679.42 to incorporate sablefish CDQ into regulations governing the sablefish IFQ fishery, and
- incorporate management of the sablefish CDQ fishery into the RAM Program.

The North Pacific Fishery Management Council (Council) recommended Alternative 2 as its preferred alternative for this action. This is based on an assessment of the effects of each alternative. In summary, the selection of Alternative 2 primarily is based on an evaluation the potential changes that each alternative would bring to the sablefish CDQ fishery. NMFS recommended that the Council consider selecting Alternative 2 as the preferred alternative, based on the NMFS's assessment that Alternative 2 would result in the least disruptive change to the CDQ groups and CDQ fisheries, while meeting the regulation of harvest requirements in the Magnuson-Stevens Act. Alternative 2 would amend regulations for the CDQ fisheries affected by this action so that they match those regulations in place for comparable fisheries, but would not make as many changes to the program as Alternative 3. Alternative 2 would not integrate the sablefish CDQ fishery into the sablefish IFQ Program. CDQ groups would not be subject to sablefish CDQ permits and additional IFQ-related reporting requirements, nor would NMFS have to implement such requirements. Furthermore, retaining fixed gear sablefish under the comprehensive groundfish CDQ accounting and management system would make it easier for NMFS to monitor the catch and transfer of the multiple categories of sablefish CDQ allocated to the CDQ Program and CDQ groups.

Potential Effects of this Action

The Environmental Assessment prepared for this action examines potential effects on resource components of the BSAI, per the requirements of the National Environmental Policy Act. The primary effect of Alternatives 2 and 3 would be a decrease in fisheries observer coverage, with a corresponding decrease in observer data and its use for CDQ catch accounting. This principally affects the groundfish and prohibited species resource components. Selection of either Alternative 2 or Alternative 3 would require NMFS to modify its CDQ catch accounting procedures to match those in place for comparable IFQ fisheries or fisheries managed with cooperatives. NMFS would still have the information it needs to manage the CDQ fisheries. Existing catch monitoring and accounting procedures support NMFS's objective of monitoring the catch of various BSAI resource components across various industry sectors as well as controlling the overall catch to annual BSAI TAC limits. No adverse effects on BSAI resource components were identified.

A Regulatory Impact Review was conducted to comply with Executive Order (E.O.) 12866. Alternatives 2 and 3 were evaluated with respect to the economic effects each could have on the entities affected by this action. This review concluded that the CDQ groups could, in general, benefit from the changes proposed by this action. Both Alternative 2 and Alternative 3 would amend regulatory restrictions that have historically been identified by CDQ groups and their harvesting partners as expensive and burdensome, particularly observer requirements and bycatch

retention requirements. Implementation of the fisheries management alternatives considered under this action may have a positive economic impact on the halibut, fixed gear sablefish, and pollock CDQ fisheries by decreasing or modifying certain management restrictions. Correspondingly, these fisheries could enjoy increased operational flexibility. NMFS would be subject to short term costs associated with implementing the changes proposed under each of the action alternatives. This does not appear to be a “significant regulatory action” based on the E.O. 12866 criteria used to assess the potential effects of a given action.

In addition to the fisheries management regulatory amendments necessary to implement Magnuson-Stevens Act section 305(i)(1)(B)(iv), this action also proposes revising or removing other regulations in 50 CFR parts 679 and 680 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act. These inconsistencies were created as a result of the 2006 amendments to the Magnuson-Stevens Act. These amendments made comprehensive changes to how NMFS administers the CDQ Program. NMFS has adopted many of these changes through policy determinations. The changes proposed under this action would clarify which regulations are currently applicable to CDQ Program participants and also would enhance administrative efficiency with respect to regulatory relevance and compliance. Furthermore, this action proposes to revise regulations in § 679.30 to allow CDQ groups to transfer groundfish CDQ and halibut prohibited species quota (PSQ) between themselves either before or after such allocations are harvested, although CDQ groups would still be prohibited from exceeding their annual CDQ and halibut PSQ limits.

The Final Regulatory Flexibility Analysis prepared for this action examines potential impacts on regulated small entities, per Regulatory Flexibility Act requirements. For this action, those entities are the six CDQ groups that represent 65 western Alaska communities. Each of the proposed alternatives is intended to modify, by some degree, the regulation of harvest in the halibut, sablefish, and pollock CDQ fisheries and reduce economic impacts and reporting burdens imposed upon directly regulated small entities. The proposed alternatives are intended to provide some degree of benefit to CDQ groups; none of the alternatives appear to have any negative economic impacts on these small entities.

1.0 Introduction

This document evaluates proposed regulatory amendments to revise fishery management regulations associated with the Community Development Quota (CDQ) Program. These revisions are associated with statutory changes made to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in 2006. Affected fisheries include the halibut CDQ, fixed gear sablefish CDQ, and pollock CDQ fisheries. Proposed regulatory changes include revising CDQ-related regulations related to fisheries observer coverage requirements, bycatch retention, vessel licensing, recordkeeping, and catch reporting to ensure that they are no more restrictive than the regulations in effect for comparable individual fishing quota (IFQ) fisheries and fisheries managed with cooperatives.

Analytical components contained in this analysis include an Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), as described in Section 1.4.

1.1 Background

CDQ Program

In accordance with the Magnuson-Stevens Act, the CDQ Program is established in order:

- (i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;
 - (ii) to support economic development in western Alaska;
 - (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska;
- and
- (iv) to achieve sustainable and diversified local economies in western Alaska.

The CDQ Program receives apportionments of the annual catch limits for a variety of commercially valuable species in the Bering Sea and Aleutian Islands management area (BSAI), which are in turn allocated among six different non-profit managing organizations representing different affiliations of communities (CDQ groups). There are 65 communities participating in the program. CDQ groups use the revenue derived from the harvest of their fisheries allocations as a basis both for funding economic development activities and for providing employment opportunities. Thus, the successful harvest of CDQ Program allocations is integral to achieving the goals of the program. The fisheries management regulations governing the CDQ fisheries are integrated into the regulations governing the non-CDQ fisheries for groundfish, halibut, and crab. The National Marine Fisheries Service (NMFS) and the State of Alaska (State) administer the CDQ Program.

CDQ fisheries management regulations have been developed incrementally since the creation of the CDQ Program in 1992. These regulations were developed to ensure that catch of all species allocated to the CDQ Program should be limited to the amount of the allocations, with no catch from CDQ fisheries accruing against non-CDQ allocations. They also were developed to ensure that NMFS and the CDQ groups had timely, accurate catch information during the course of CDQ fishing activities. Fisheries regulations may subject CDQ fishery participants to additional costs, additional catch reporting requirements, or be designed to control some aspect of CDQ fishing activities. Thus, regulatory requirements for some CDQ fisheries differ from those in effect for comparable non-CDQ fisheries.

The original fishery management objectives for the groundfish, halibut, and crab CDQ fisheries include, in general, limiting the catch of all species to the amount allocated to the program and not allowing catch made under the program to accrue against non-CDQ portions of total allowable catch (TAC) limits or prohibited species catch (PSC) limits. These objectives also included managing target and non-target species allocations made to the CDQ groups with the same level of strict quota accountability, and holding each CDQ group responsible not to exceed any of its groundfish CDQ allocations.

Magnuson-Stevens Act requirements for CDQ fisheries management

This action proposes alternatives that would amend regulations governing the regulation of harvest of select CDQ fisheries, per requirements of the Magnuson-Stevens Act. The Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act) amended Section 305(i)(1) of the Magnuson-Stevens Act by replacing all of the existing language in this section with new language.¹ This particular Magnuson-Stevens Act amendment substantially altered many facets of the CDQ Program, including the oversight roles of the Federal and State governments, CDQ allocations and the allocation process, and fisheries management requirements. Other changes to the CDQ Program required by the Coast Guard Act have been or are being addressed in other regulatory actions. This action addresses specific provisions of the Magnuson-Stevens Act and proposes potential revisions specific aspects of CDQ fisheries management regulations.

The regulation of CDQ harvest is directly addressed in the Magnuson-Stevens Act at section 305(i)(1)(B)(iv). This paragraph states:

The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of non-target species.

Accordingly, this analysis is focused on those BSAI fisheries with IFQs or those BSAI fisheries managed with fishing cooperatives. The former includes the Pacific halibut (*Hippoglossus stenolepis*), fixed gear sablefish (*Anoplopoma fimbria*), and crab fisheries. Each of the three IFQ fisheries has an equivalent CDQ fishery. The BSAI fisheries that include components managed with regulatory cooperatives include the Bering Sea (BS) pollock (*Theragra chalcogramma*) fishery, as well as the allocations of Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod made to the non-American Fisheries Act (AFA) trawl catcher/processor sector. Each of these BSAI fisheries also include allocations to the CDQ Program. In general, the CDQ component of these fisheries is prosecuted in conjunction with the non-CDQ portion of these fisheries, but is compartmentalized with respect to CDQ catch monitoring and accounting requirements. In 2011, NMFS received information demonstrating that a voluntary fisheries cooperative has formed in the BSAI Pacific cod hook-and-line catcher/processor sector. For purposes of this analysis, the term “fishery” refers to some combination of fish species, harvesting gear, and vessel type.

NMFS interprets “in a manner no more restrictive than for other participants in the applicable sector” to mean that the fishery management regulations associated with regulating the harvest of CDQ allocations should be no more costly, complex, or burdensome than those that apply to comparable IFQ fisheries or fisheries managed with cooperatives.² Exceptions to this provision may exist if there are specific CDQ management objectives that do not exist in the IFQ or cooperative fisheries and existing regulations provide the means to meet such objectives.

Furthermore, NMFS interprets “including with respect to the harvest of non-target species” to be applicable to species that potentially could be retained while directed fishing for halibut, sablefish, pollock or crab CDQ. In the BSAI groundfish fisheries, any given amount of catch may be composed of target species, some bycatch or incidental catch species, and some prohibited species. Current BSAI fisheries management regulations define “harvesting or to harvest” as the catch and retention of any fish.

¹ Pub. L. No. 109-241, 120 Stat. 516, 540-45 (2006).

² The Conference Committee report on H.R. 889 (the Congressional action associated with the Coast Guard Act) states that “The Conference substitute requires that the harvest of the CDQ allocations to be regulated in a manner no more restrictive or costly than for other participants in the applicable sector of the fishery.” (April 6, 2006, page H1660).

Prohibited species³ may not be retained if caught while groundfish fishing in the BSAI, with limited exception. Therefore, NMFS is not proposing to amend regulations associated with the management of prohibited species quota (PSQ) as part of this action, except to incorporate the Council's 2005 recommendation⁴ to allow post delivery transfers of halibut PSQ, just as the Magnuson-Stevens Act provides that groundfish CDQ may be transferred between groups either before or after such quota is harvested. Prohibitions on exceeding annual CDQ and halibut PSQ limits would continue to be maintained.

One of the other Magnuson-Stevens Act's CDQ Program provisions affecting this action requires that "the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary [of Commerce], or established by Federal law, as of March 1, 2006." Prior to this amendment, the Magnuson-Stevens Act stated that "a percentage of the total allowable catch of any Bering Sea fishery is allocated to the program." Since 1998, NMFS has allocated to the CDQ Program a percentage of each BSAI groundfish TAC category, except squid. The amended language in the Magnuson-Stevens Act requires that only those species or species groups with a directed fishery in the BSAI be allocated to the CDQ Program. This is a more limited list of species or species groups than has been allocated to the CDQ Program in the past.

NMFS determined that the phrase "directed fishery" for purposes of section 305(i)(1) of the Magnuson-Stevens Act means a fishery for which sufficient TAC exists to open a directed fishery, and the species or species group is economically valuable enough for vessel operators to conduct directed fishing for that species or species group. NMFS applied this interpretation in the 2007 and 2008 final harvest specifications for the groundfish of the BSAI (72 FR 9451, March 2, 2007). This affects catch retention and accounting aspects considered under Alternative 2 and Alternative 3.

Appendix A contains the CDQ Program language in the Magnuson-Stevens Act, as amended by both the Coast Guard Act and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Magnuson-Stevens Reauthorization Act).

1.2 Purpose and Need

This action is necessary to ensure that CDQ fishery management regulations in 50 CFR part 679 are consistent with the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that the "harvest of allocations under the [CDQ] program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species." That requirement is described in detail in Section 1.1. This proposed action would make revisions to regulations governing the halibut, sablefish, and pollock CDQ fisheries to ensure that they are no more restrictive than those in place for comparable IFQ fisheries or fisheries managed with cooperatives.

1.3 Action Area

The action considered in this analysis would occur in the BSAI management area.

³ Prohibited species categories include halibut, Chinook salmon, non-chinook salmon, various crab species, and herring. These species either are commercially valuable to other fishing industry sectors or are managed restrictively for conservation reasons. Hence, they may not be targeted or used for commercial purposes in the groundfish fisheries. The BSAI groundfish FMP describes both prohibited species and their associated management measures.

⁴ In 2005 the Council approved an action to modify elements of the CDQ Program, including allowing post-delivery transfers of halibut PSQ and groundfish CDQ. Rulemaking to implement the Council's action was not completed, as most of the elements (except halibut PSQ post-delivery transfers) in that action were subsumed by changes to the Magnuson-Stevens Act.

1.4 Relationship of this action to Federal law

The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed by the NMFS under the authority of the Magnuson-Stevens Act. The mission of NMFS is the stewardship of living marine resources for the benefit of the nation, through science-based conservation and management and the promotion of a healthy marine environment. The goals of this mission are maintaining sustainable fisheries, recovering protected species, and protecting the living marine habitat. Guidance for achieving these goals is taken from relevant Federal legislation.

The groundfish fisheries of the BSAI are managed under a Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) (NPFMC 2007) approved by the Secretary. The BSAI FMP was developed under the Magnuson-Stevens Act and other applicable statutes to manage groundfish fisheries for optimal yield and to allocate catch limits among different fishery components, while preventing overfishing and conserving marine resources. The BSAI FMP was originally implemented in 1981 and has been amended numerous times. Implementing regulations for the BSAI groundfish fisheries in general and the groundfish CDQ fisheries in particular, are found in 50 CFR part 679.

The BSAI crab fisheries also are managed under a fishery management plan approved by the Secretary—the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) (NPFMC 1998). Implementing regulations for the BSAI crab rationalization fisheries, including associated crab CDQ fisheries, are found in 50 CFR parts 679 and 680.

Actions taken to amend regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, the most important of these are National Environmental Policy Act of 1969 (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA). Each of these is discussed in subsequent sections of this analysis.

An EA is required by NEPA to determine whether the action considered will result in a significant impact on the human environment. If the action is determined not to be significant, based on an analysis of relevant considerations, the EA and resulting finding of no significant impact would be the final environmental documents required by NEPA. If the EA determines that the proposed action is a major or significant action, then an environmental impact statement (EIS) must be prepared.

NEPA requires that an EA discuss: 1) the purpose and need for the proposed action; 2) the proposed action and alternatives; 3) the probable environmental impacts of the proposed action and alternatives; and 4) the agencies and persons consulted during preparation of the EA. A description of the purpose and need for the proposed action is included in **Section 1.2**. Descriptions of the alternatives, including the proposed action, that may address the objectives of this action are included in **Section 2**. **Section 3** contains a summary description of the affected natural, physical, and human environments, **Section 4** contains information on the impacts of the alternatives on those environments, and a list of consulted agencies and persons is provided in **Section 9**.

Executive Order 12866 requires preparation of an RIR to assess the social and economic costs and benefits of available regulatory alternatives, as well as their distribution, in order to determine whether a proposed regulatory action is economically “significant,” as defined by the order. **Section 5** contains a description and analysis of the economic and social impacts of each of the alternatives, and their implication for net benefits to the Nation.

Section 6 addresses the requirements of other applicable laws, including the Magnuson-Stevens Act, MMPA, and RFA, including an FRFA. The RFA requires analysis of adverse economic impacts on small

entities which would be directly regulated by the proposed action. The major goals of the RFA are to: 1) increase agency awareness and understanding of the impact of their regulations on small businesses, 2) require that agencies communicate and explain their findings to the public, and 3) encourage agencies to use flexibility and to provide regulatory relief to small entities. The preparation of an FRFA emphasizes predicting significant adverse economic impacts on small entities as a group, distinct from other entities, and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action.

The references cited in this document are listed in **Section 7** and a list of the preparers is provided in **Section 8**.

2.0 Description of Alternatives

This section contains an overview of the alternatives considered for this action (Section 2.1), as well as a description of relevant fisheries programs (Section 2.2) to provide the context for the regulatory revisions considered in this action.

2.1 Overview of Alternatives

This analysis evaluates three alternatives, including a status quo alternative (the no action alternative). The second and third alternatives address the requirement in section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act that the regulation of harvest in CDQ fisheries shall be no more restrictive than regulations associated with the harvest of comparable IFQ fisheries or fisheries managed with cooperatives. As discussed in “Alternatives considered but not carried forward” (below), an assessment of the regulations governing the harvest of crab CDQ did not identify regulations that were more restrictive than those applied in the crab IFQ fisheries.

***Alternative 1.** Status quo. Do not amend CDQ fisheries management regulations.*

Alternative 1 is the status quo, or no action, alternative. This alternative would maintain the existing regulations applicable to the groundfish, halibut, and crab CDQ fisheries of the BSAI. No changes to regulations would be made to align CDQ-specific regulations with regulations in effective for comparable IFQ and cooperative fisheries. There currently are three IFQ fisheries (fixed gear sablefish, halibut, and crab) and one fishery managed with cooperatives (the BS pollock fishery). Regulations governing each of these fisheries programs were developed separately over time as described in Section 2.2. Regulations for the CDQ fisheries have been developed both separately from and concurrently with these other fisheries programs, depending on the scope and circumstance of applicable regulatory changes.

While the CDQ fisheries generally are a subset of comparable IFQ and cooperative fisheries, some of the regulations for the CDQ fisheries impose different conditions than those in place for similar non-CDQ fisheries. Regulations that may be considered more restrictive than IFQ-related regulations or regulations associated with fisheries managed with cooperatives include those associated with catch retention and accounting, observer coverage, vessel licensing, and recordkeeping. Maintaining existing CDQ fishery management regulations would not comply with the requirements of the Magnuson-Stevens Act.

Alternative 2.** Revise regulations associated with the CDQ fisheries to incorporate certain changes made to the CDQ Program by the Magnuson-Stevens Act. This includes changes that would ensure that the CDQ fisheries are not managed more restrictively than comparable non-CDQ fisheries. Under Alternative 2, the sablefish CDQ fishery would continue to be managed with other groundfish CDQ fisheries. **[preferred alternative/proposed action]

The second alternative would revise CDQ fishery management regulations for applicable species to ensure that they are no more restrictive than those regulations in effect for comparable IFQ or cooperative fisheries. Associated CDQ regulations include those that address fisheries observer coverage requirements, bycatch retention, vessel licensing, recordkeeping, and reporting with the regulations in effect for comparable IFQ and cooperative fisheries. The fixed gear sablefish CDQ fishery would continue to be managed in conjunction with other groundfish CDQ fisheries, rather than separating it from the existing CDQ fisheries management regulations and integrating this species into sablefish IFQ fisheries management regulations.

Alternative 2 would amend specific sections in 50 CFR part 679 related to the regulation of harvest of the CDQ fisheries. The general changes proposed for Alternative 2 would

- exempt vessels fishing for sablefish CDQ from having to have a LLP license,
- revise definitions in § 679.2 to add definitions of sablefish CDQ and pollock CDQ fishing and to include a sablefish CDQ exemption in the definition of “license limitation groundfish,”
- revise § 679.5 to remove a requirement that CDQ groups annually submit a request to NMFS to designate specific vessels as eligible to harvest groundfish CDQ on their behalf,
- remove a prohibition in § 679.7 against harvesting groundfish CDQ unless a vessel is listed as eligible by a CDQ group,
- prohibit the discard of Pacific cod and rockfish taken when halibut or sablefish CDQ are onboard a vessel,
- revise CDQ catch monitoring requirements in § 679.32 to incorporate applicable changes to the basis for CDQ catch accounting for the halibut, sablefish, and pollock CDQ fisheries,
- establish an application process for relief from more restrictive CDQ harvest regulations for vessels operating in a voluntary fisheries cooperative,
- eliminate the requirement that groundfish bycatch be retained by catcher vessels targeting halibut, sablefish, or pollock CDQ, and
- revise regulations in § 679.50 to align observer coverage requirements for the sablefish CDQ, halibut CDQ, and pollock CDQ fisheries with comparable non-CDQ fisheries.

The Council selected Alternative 2 as the preferred alternative for this action. NMFS also has identified Alternative 2 as the preferred alternative/proposed action.

***Alternative 3.** Revise regulations associated with the CDQ fisheries to incorporate certain changes made to the CDQ Program by the Magnuson-Stevens Act. This would include revising regulations to ensure that the CDQ fisheries are not managed more restrictively than comparable non-CDQ fisheries. Under this alternative, the management of the sablefish CDQ fishery would be incorporated into the sablefish IFQ Program.*

Alternative 3 would amend the sections in 50 CFR part 679 associated the CDQ fisheries that are identified under Alternative 2. In addition, the management of the fixed gear sablefish CDQ fisheries would be integrated into the regulations governing the IFQ fisheries. The management functions associated with the sablefish CDQ fishery would shift from the Alaska Region’s Sustainable Fisheries Division to the Restricted Access Management (RAM) Program.

The Sustainable Fisheries Division currently provides the overall administrative oversight for the CDQ Program. It also provides inseason fisheries management and catch accounting functions for Federal groundfish CDQ fisheries, including the fixed gear sablefish CDQ fishery. The RAM Program provides permitting, catch monitoring, and catch accounting for the halibut, sablefish, and crab IFQ fisheries, in addition to diverse variety of other permitting and program management functions for other Federal limited access fisheries programs off Alaska. Significant difference between the sablefish CDQ and IFQ fisheries include the basis for catch accounting on catcher/processers (observer data versus product

weight), permit requirements (not required in the sablefish CDQ fishery), quota transfer procedures, and reporting requirements. Alternative 3 would align both the regulatory requirements and the management functions associated with the regulation of harvest of the fixed gear sablefish CDQ with those established for the IFQ fisheries. This would be a more comprehensive change in management for the sablefish CDQ fishery than Alternative 2.

Alternative 3 would amend specific sections in 50 CFR part 679 related to the regulation of harvest of the CDQ fisheries. In addition to the general changes proposed for Alternative 2, Alternative 3 would

- add a requirement for sablefish CDQ permits to § 679.4,
- revise regulations in § 679.5 to incorporate sablefish CDQ into the IFQ recordkeeping and reporting requirements,
- revise §679.7 to incorporate sablefish CDQ into the prohibitions that apply to the sablefish and halibut IFQ fisheries, and
- amend §§ 679.41 and 679.42 to incorporate sablefish CDQ into regulations governing the sablefish IFQ fishery.

The required revisions to the regulations resulting from the alternatives considered for this action on different fisheries are summarized in the following table.

Table 2.1. Summary of Alternatives

	<i>Alternative 1</i>	<i>Alternative 2</i>	<i>Alternative 3</i>
<i>General description of effects of the alternative on the following CDQ fisheries:</i>	No revisions would be made to CDQ harvest regulations that are more restrictive than IFQ and cooperative regulations: this would not comply with the MSA.	Revise CDQ regulations so that they are not more restrictive than regulations governing IFQ fisheries or fisheries managed with cooperatives. The sablefish CDQ fishery would continue to be managed with other groundfish CDQ fisheries.	Revise CDQ regulations so that they are not more restrictive than regulations governing IFQ fisheries or fisheries managed with cooperatives. The sablefish CDQ fishery would be managed with the sablefish IFQ fishery.
<i>Pollock CDQ</i>	No revisions would be made to regulations.	- Revise observer coverage requirements. - Revise retention and reporting requirements.	- Revise observer coverage requirements. - Revise retention and reporting requirements.
<i>Halibut CDQ</i>	No revisions would be made to regulations.	- Eliminate observer coverage requirements. - Eliminate groundfish retention requirements. - Revise recordkeeping and reporting requirements.	- Eliminate observer coverage requirements. - Eliminate groundfish retention requirements. - Revise recordkeeping and reporting requirements. - Assess whether additional IFQ regulations should apply to the halibut CDQ fishery, such as those associated with transfers.
<i>Fixed gear sablefish CDQ</i>	No revisions would be made to regulations.	- Revise observer coverage requirements. - Revise recordkeeping and reporting requirements. - Apply exemption to requirement for LLP to vessels fishing for sablefish CDQ. - Landed or product weight used as basis for all catch accounting.	- Revise observer coverage requirements. - Revise recordkeeping and reporting requirements. - Apply LLP exemption to sablefish CDQ vessels. <u>Integrate sablefish CDQ into IFQ Program.</u> Applicable IFQ regulations would apply to fixed gear sablefish CDQ fishery: 1. Landed or product weight used as basis for all catch accounting. 2. Permitting requirements. 3. Transfers. 4. Prohibitions. 5. Reporting.
<i>Crab CDQ</i>	No revisions would be made to regulations.	No revisions would be required.	No revisions would be required.

The preferred alternative

The Council received an overview of the public review draft of this analysis in June 2007. Following discussion and deliberation, it identified Alternative 2 as its preferred alternative, with one exception. This exception was the element that would revise §679.7(f)(8) to prohibit the discard of Pacific cod and rockfish in the halibut and sablefish CDQ fishery. This prohibition was established in 1993 as part of the implementation of the IFQ Program. It was intended to discourage fishermen from discarding Pacific cod and rockfish in order to save space aboard vessels for additional amounts of halibut or sablefish IFQ. The Council noted that the relative amount of Pacific cod and rockfish caught by small vessels (which catch the majority of halibut CDQ) is minimal, and that there may not be a market for this small amount of bycatch at many of the shoreside processors that take deliveries of halibut CDQ. Additionally, CDQ groups receive Pacific cod allocations that are managed with hard caps, i.e., such quotas may not be exceeded. The Council noted that CDQ groups already have an incentive to minimize the bycatch of Pacific cod in fisheries other than their directed fishery for Pacific cod. Thus, the Council did not recommend that this prohibition be extended to applicable CDQ fisheries.

NMFS recommended that the Council identify Alternative 2 as the preferred alternative for this action in the draft analysis presented to the Council. This is based on NMFS' assessment of the effects of each alternative. These effects are described in detail in Section 5.7 of the RIR. In summary, the selection of Alternative 2 primarily is based on the potential changes that each alternative would bring to the sablefish CDQ fishery. NMFS believes that Alternative 2 would result in the least disruptive change to the CDQ groups and CDQ fisheries, while meeting the regulation of harvest requirements in the Magnuson-Stevens Act. Alternative 2 would amend regulations for the CDQ fisheries affected by this action so that they match those regulations in place for comparable fisheries, but would not make as many changes to the CDQ Program as Alternative 3. Alternative 2 would not integrate the sablefish CDQ fishery into the sablefish IFQ Program. CDQ groups would not be subject to sablefish CDQ permits and additional IFQ-related reporting requirements, nor would NMFS have to implement such requirements. Furthermore, retaining fixed gear sablefish under the comprehensive groundfish CDQ accounting and management system would make it easier for NMFS to monitor the catch and transfer of the multiple categories of sablefish CDQ allocated to the CDQ Program and CDQ groups.

The primary factors associated with NMFS' recommendation that Alternative 2 be selected as the preferred alternative include the following:

- some of the elements of Alternative 3 could actually implement more restrictive requirements for the fixed gear sablefish CDQ fishery than existing requirements because additional permitting and reporting requirements associated with the IFQ Program would be applied to the sablefish CDQ fishery;
- retaining fixed gear sablefish CDQ management within the overall groundfish CDQ fisheries management system would allow NMFS the flexibility necessary to manage both fixed gear CDQ allocations and non-gear specific CDQ allocations. CDQ groups may harvest the latter allocations with any gear type, including fixed gear. The Sustainable Fisheries Division has developed the experience and expertise to account for sablefish CDQ catch and integrate such catch into the comprehensive groundfish CDQ accounting system; and
- the Magnuson-Stevens Act requires that CDQ groups be allowed to transfer quota either before or after its harvest. This transfer provision allows CDQ groups to avoid being cited for overages that can be covered by subsequent transfers. Exceeding allocations is prohibited; infractions result in CDQ groups being subject to enforcement actions. Participants in the halibut and sablefish IFQ fisheries may transfer quota, but IFQ transfer provisions are more restrictive than CDQ transfer provisions.

Alternatives considered but not carried forward

Changes to Crab CDQ regulations

NMFS considered the need to propose changes to the regulations that govern the regulation of crab CDQ harvest during the development of this proposed action. The crab CDQ fisheries are managed under the regulations developed for the Crab Rationalization (CR) Program, which was implemented in 2005.⁵ The CR Program is discussed in further detail below under *Existing conditions in the BSAI Fisheries*. One particular aspect of this program is that it contains various community protection measures that apply to the crab IFQ fisheries, but not to the crab CDQ fishery. These include a “cooling off period” that restricts the use of processing quota share (PQS) outside of applicable communities; “right of first refusal” provisions that allow eligible crab communities to be first in line to purchase PQS; and, allowing communities to form entities that may then purchase PQS. An additional community protection measure was implemented for the crab CDQ fishery: no less than 25 percent of annual crab CDQ be delivered to shoreside processors.⁶ This particular crab CDQ fisheries management requirement was deferred to the State in the final rule implementing the CR Program and is not promulgated in Federal regulation. NMFS has not identified any crab CDQ regulations that are more restrictive than those in effect for the crab IFQ fishery. Furthermore, NMFS has informed the State of Alaska (State) of the new Magnuson-Stevens Act requirements associated with the CDQ fisheries and recommended that the State review its crab CDQ regulations to ensure consistency with these new requirements.⁷

2.2 Existing conditions in the BSAI fisheries

CDQ Program

The CDQ Program was designed to improve the social and economic conditions in western Alaska communities by facilitating their economic participation in the BSAI fisheries. The large-scale commercial fisheries of the BSAI developed in the eastern BS without significant participation from rural western Alaska communities. These fisheries are capital-intensive and require large investments in vessels, infrastructure, processing capacity, and specialized gear. The CDQ Program was developed to redistribute some of the BSAI fisheries’ economic benefits to adjacent communities by allocating a portion of commercially important BSAI species to such communities as fixed shares, or quota, of groundfish, halibut, and crab. The percentage of each annual BSAI catch limit allocated to the CDQ Program varies by both species and management area. These allocations, in turn, provide an opportunity for residents of these communities to both participate in and benefit from the BSAI fisheries.

Currently, 65 communities participate in the CDQ Program. Approximately 27,000 people reside in CDQ communities. Communities are listed in Appendix C. These communities have formed six non-profit corporations (CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. The six CDQ groups are as follows:

- 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
- Yukon Delta Fisheries Development Association

⁵ See 70 FR 10174, March 2, 2005 and <http://www.alaskafisheries.noaa.gov/sustainablefisheries/crab/> for more information about this program.

⁶ The objective of this provision is intended to ensure that the majority of crab CDQ is delivered to shoreside processors (thereby bringing economic benefits to communities), rather than being harvested and processed at sea.

⁷ Letter to Denby Lloyd, Commissioner, Alaska Dept. of Fish and Game from Robert D. Mecum, Acting Regional Administrator, NMFS Alaska Region, March 13, 2007.

The 2006 CDQ allocations included approximately 188,000 metric tons (mt) of groundfish, about 2 million pounds of halibut, and approximately 5.7 million pounds of crab. Appendix B portrays groundfish CDQ harvest between 1999 and 2006. Annual CDQ allocations provide a revenue stream for CDQ groups through various channels, including the direct catch and sale of some species, leasing quota to various harvesting partners, and income from a variety of investments. The six CDQ groups had total revenues in 2005 of approximately \$134 million, primarily from pollock royalties.

One of the most tangible direct benefits of the CDQ Program has been employment opportunities for western Alaska village residents. CDQ groups have had some successes in securing career track employment for many residents of qualifying communities, and has opened opportunities for non-CDQ Alaskan residents, as well. Jobs generated by the CDQ program included work aboard a wide range of fishing vessels, internships with the business partners or government agencies, employment at processing plants, and administrative positions.

The fishery resources allocated under the CDQ Program are under Federal jurisdiction, but the program was historically managed by both NMFS and State. The State primarily was responsible for the day-to-day administration and oversight of the economic development aspects of the program, recommending quota allocations for each CDQ group, and the management of the CDQ crab fisheries. Recent Magnuson-Stevens Act changes have decreased the State's role in administering the program. NMFS primarily is responsible for groundfish and halibut CDQ fisheries management. CDQ fisheries are managed similarly to the fisheries described below.

IFQ Program

The IFQ Program is a limited access system for managing the Pacific halibut fisheries in the North Pacific Halibut Convention waters in and off Alaska, and sablefish fisheries in waters of the EEZ off Alaska. The Council, under authority of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982, adopted the IFQ Program and halibut CDQ Program in 1991, and implementing regulations were published in the *Federal Register* on November 9, 1993 (58 FR 59375). Fishing began under the program in 1995. The program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based; to allocate specific harvesting privileges among U.S. fishermen; to resolve management and conservation problems associated with "open access" fishery management; and to promote the development of fishery-based economic opportunities in western Alaska.

The IFQ approach was chosen to provide fishermen with the authority to decide how much and what type of investment they wished to make to harvest the resource. By guaranteeing access to a certain amount of the total catch at the beginning of the season, and by extending the season over a period of eight months, those who held the IFQ could determine where and when to fish, how much gear to deploy, and how much overall investment in harvesting they would make.

IFQ Program restrictions are intended to prevent the IFQ fisheries from being dominated by large boats or by any particular vessel class. Quota shares (QS) were initially assigned to vessel categories based on vessel size and kind of fishery operation. QS are issued specifically to a vessel class and to an IFQ regulatory area. There are eight areas and four vessel categories for halibut, and six areas and three vessel categories for sablefish.

A detailed description of the IFQ fisheries can be found in reports prepared by the RAM Program (see <http://www.alaskafisheries.noaa.gov/ram/default.htm>). In 2006, approximately 53 million pounds of halibut were allocated among halibut QS holders in the eight halibut IFQ regulatory areas. Also, 36 million pounds of sablefish were allocated among sablefish QS holders in the six sablefish IFQ regulatory

areas. Ninety eight percent of the halibut IFQ and 86 percent of the sablefish harvest was harvested across all areas in 2006.

Both the halibut and sablefish IFQ and CDQ fisheries are prosecuted in a similar manner. Each fishery uses similar vessels and gear types. In some cases, the same vessel may fish for both IFQ and CDQ either on the same trip or at different times of the year. However, the regulations developed for these fisheries are not completely equivalent due to differences between the development of the halibut and sablefish IFQ and CDQ programs. Some of the differences between the programs include

- single species versus multi-species quota programs,
- the types of recipients receiving annual quota (individuals or corporations versus CDQ groups),
- the means used to allocate annual catch limits among IFQ recipients (QS based on catch history or purchase) versus the means used to apportion annual catch limits among CDQ groups (administrative allocation process),
- strict limitations on the use of IFQ, and
- the different policy objectives associated with of developing both the IFQ and the CDQ programs.

These factors led to the implementation of different management structures for very similar fisheries. Both Alternative 2 and Alternative 3 would amend regulations to align more closely the sablefish CDQ fishery with the sablefish IFQ fishery, but the latter alternative would implement a greater degree of change to how the sablefish CDQ fishery would be managed.

BS and AI pollock fishery

The directed pollock fishery in the BS is the largest fishery in the EEZ off Alaska. Since 1977 the average annual catch eastern BS pollock catch has been approximately 1.2 million mt. The fishery is prosecuted by both inshore and offshore industry components. The inshore component uses catcher vessels to harvest pollock for delivery to onshore processing plants. The offshore component is comprised of both catcher processors (vessels that both catch and process fish) and motherships (vessels that process fish delivered to them by catcher vessels).

In 1998 Congress passed the American Fisheries Act (AFA). The pollock fishery in the BS is now managed under the AFA⁸ which significantly changed the nature of what previously had been a limited access fishery. The AFA both reduced fishing capacity in the existing fishery and prohibited new entry into the pollock fishery. Some of the major changes associated with the AFA include the following:

- limits on the number of harvesting and processing vessels allowed to participate in the BS pollock fishery,
- BS pollock TAC allocations of 10 percent to the CDQ Program, with the remainder of the TAC (after deduction of an incidental catch allowance) being apportioned 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector,
- establishing the authority and mechanisms by which the pollock sectors can form fishing cooperatives,
- establishing harvesting and processing restrictions (commonly known as “sideboards”) on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA, to protect the interests of fishermen and processors who have not directly benefited from the AFA, and

⁸ Note that section 803 of the Consolidated Appropriations Act of 2004 (Pub. L. 108–199) allocated the AI directed pollock fishery to the Aleut Corporation for economic development in Adak, Alaska. Prior to Pub. L. 108–199, the AI directed pollock fishery was managed pursuant to the AFA. Public Law 108–199 supersedes portions of the AFA and allocates all the AI directed pollock fishery to the Aleut Corporation. The allocation of pollock to the AFA directed pollock fisheries now only pertains to the BS pollock TAC. This change was implemented in 2005 (70 FR 9856, March 1, 2005). The CDQ Program receives 10 percent of both the BS and AI pollock TACs.

- changing catch monitoring and measuring practices in the pollock fishery, including increasing observer coverage and at-sea scale requirements for AFA catcher/processors and motherships.

Currently, there is one catcher/processor cooperative, one mothership cooperative, and eight inshore cooperatives. Each cooperative receives an allocation of the annual pollock TAC based on the historic harvest percentages of each member in the cooperative. The pollock cooperatives actively monitor their pollock harvest and cease fishing when their catch equals their allocation. NMFS also monitors the pollock harvest and can close a cooperative fishery if needed. CDQ groups have made significant investments in the companies and vessels that participate in the at-sea BS and AI pollock fisheries. Five CDQ groups have invested in companies operating catcher/processors and a sixth CDQ group has invested in a company operating a mothership and its affiliated catcher vessels.

The CDQ pollock fishery is conducted similarly to the non-CDQ pollock fishery. Pollock CDQ harvesting is done by the same vessels conducting non-CDQ pollock harvesting. As noted above, one major element associated with implementation of the AFA was the implementation of additional catch accounting and monitoring requirements in the pollock fisheries. With limited exception, the requirements implemented for the AFA were the same as those already in place for the multispecies groundfish CDQ fisheries. Alternatives 2 and 3 would provide a means to amend regulations to address minor differences between CDQ and non-CDQ observer coverage and catch accounting requirements in the pollock fishery.

Crab Rationalization Program

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the CR Program to accommodate the specific conditions and needs of the BSAI crab fisheries, building on experiences encountered with the halibut and sablefish IFQ program and the AFA cooperative program for BS pollock. The program is a limited access system that balances the interests of various crab fisheries participants. Program components include: harvester and processor quota share allocations; quota transfer provisions; quota share use caps; provisions for crab harvesting cooperatives; protection measures for Gulf of Alaska groundfish fisheries; an arbitration system; enhanced monitoring mechanisms; economic data collection requirements; community protection measures; and cost recovery (fee) requirements for fisheries participants.

As discussed previously, the CR Program was implemented in 2005. This affected the management of the predominant crab species commercially harvested in the BSAI, including Bristol Bay red king crab, Pribilof Islands red and blue king crab, Saint Mathew Island blue king crab, Bering Sea snow (*Chionoecetes opilio* crab, Bering Sea Tanner (*C. bairdi*) crab, Aleutian Islands golden king crab, and Adak red king crab. CDQ allocations in each crab species included in the CR Program increased to ten percent from 7.5 percent of the annual TAC limits. This increase does not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the CR Program.

NMFS administers both the allocation of crab IFQ and individual processing quota and the permitting requirements for the crab fisheries, but much of the management of the BS and AI crab fisheries is delegated to the State of Alaska through the Crab FMP.

Under the CR Program, compliance monitoring is shared among the State, NMFS, NOAA Office for Law Enforcement (NOAA OLE), and the U.S. Coast Guard. Crab harvested under CDQ allocations (other than Norton Sound king crab) are subject to most Federal requirements that apply to all CR Program fisheries, including permitting, recordkeeping and reporting, a vessel monitoring system, and cost recovery fees. Inseason management of BSAI crab fisheries is conducted by the State. CDQ fisheries are managed as commercial fisheries by the State under authority deferred to it under the crab FMP. Some of the State's major duties include the following:

- specifying observer coverage and permitting requirements,
- establishing transfer provisions among the CDQ groups,
- monitoring catch to determine when CDQ allocations have been reached, and
- enforcing penalties associated with CDQ overages.

License Limitation Program

The License Limitation Program (LLP) limits access to the commercial groundfish fisheries in the EEZ off Alaska. This program limits the number, size, and operational mode of vessels participating in Alaska groundfish and crab fisheries. The program was intended to limit new entry into these fisheries. The LLP was developed by the Council at part of Amendment 67 the BSAI FMP. The program was implemented in 2000. Original LLP requirements are detailed in the final rule implementing the program (63 FR 52642; October 1, 1998). Two species were excluded from the original program. This includes demersal shelf rockfish east of 140° W. longitude (because this fishery is managed by the State of Alaska) and fixed gear sablefish managed under the IFQ Program.

LLP licenses were issued to eligible applicants based on a suite of qualifying criteria based on a vessel's activities during the LLP qualifying period. Licenses are transferable. Vessels operating within the BSAI or GOA must have a LLP license on board while engaged in directed fishing activities, with limited exemptions. A LLP vessel license authorizes the license holder to deploy a vessel in accordance with specific area and species endorsements, vessel and gear designations, and vessel length restrictions. This program has been modified since its inception to incorporate additional requirements for receiving a Pacific cod license endorsement and to remove LLP requirements for vessels fishing for selected crab species as part of the CR Program. Vessels participating in groundfish CDQ fisheries, including the fixed gear sablefish CDQ fishery, are required to have a LLP license.

NMFS has issued approximately 1,840 groundfish LLP licenses. Of these licenses, approximately 379 of the non-trawl groundfish licenses have BS area endorsements, 158 have AI area endorsements, and 145 have both.⁹

⁹ Tracy Buck, NMFS, RAM Program, pers. comm., 4/3/07.

3.0 Affected Environment

The National Environmental Policy Act (NEPA) requires an assessment of both the biological, social, and economic consequences of fisheries management alternatives. It provides the members of the public an opportunity to be involved in and influence decision-making on Federal actions.

The purpose of this EA is to analyze the effects of potential revisions to CDQ fisheries management regulations, specifically revisions associated with the halibut, sablefish, and pollock CDQ fisheries conducted in the BSAI. Thus, the BSAI is the action area for purposes of this EA. The purpose and need for this action are described in Section 1.2 and the action alternatives in Section 2.1.

An EA is prepared pursuant to NEPA to determine whether an action will result in significant effects on the human environment. An effect on a part of the environment may be either direct or indirect and beneficial or adverse. If the environmental effects of the action are determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact are the final environmental documents required by NEPA. If an analysis concludes that the action is a major Federal action significantly affecting the human environment, an environmental impact statement (EIS) must be prepared.

The marine environment of the BSAI is made up of physical, biological, and human components that may be affected by the groundfish fisheries and the halibut fishery off Alaska. The physical components include geological, oceanographic, and climatic conditions. The proposed alternatives address revisions to observer coverage requirements, catch accounting and licensing requirements. The alternatives are more likely to potentially affect the biological and human components of the marine environment because the alternatives propose changes to fisheries management measures. These measures are most likely to affect the biological component (by modifying how the catch of fisheries resource components are estimated) and socioeconomic component (by modifying factors associated with participation in the fisheries affected by this action).

3.1 Natural and Physical Environment

This section describes the affected human environment, including the natural, physical, and human environment. The effects of the alternatives are the subject of Section 4.0.

The documents listed below contain extensive information about the fishery management areas, fisheries, marine resources, ecosystem, social, and economic elements of the BSAI groundfish fisheries, including CDQ fisheries. Rather than duplicate an affected environment description here, readers are referred to these documents, which are incorporated by reference into this document. This list is a partial listing of NEPA documents that have been prepared for BSAI fishery management measures. Internet links to these documents, as well as a comprehensive list of NEPA documents that have been prepared by NMFS, Alaska Region and the Council are at <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>. Any additional information beyond what is included in the following references is contained in the section addressing each particular resource component in Section 4.0.

[Alaska Groundfish Harvest Specifications Final Environmental Impact Statement](#) (NMFS 2007).

This EIS provides decision makers and the public with an evaluation of the environmental, social, and economic effects of alternative harvest strategies for the federally managed groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands management areas. The EIS examines alternative harvest strategies that comply with Federal regulations, the BSAI FMP, and the Magnuson-Stevens Act. These strategies are applied to the best available scientific information to derive the total allowable catch estimates for the groundfish fisheries. The EIS evaluates the effects of different alternatives on the resource components of the BSAI, which include target species, non-specified species, forage species,

prohibited species, marine mammals, seabirds, essential fish habitat, ecosystem relationships, as well as, economic aspects of the BSAI fisheries.

Stock Assessment and Fishery Evaluation (SAFE) Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Region (NPFMC 2010).

Annual SAFE reports contain a review of the latest scientific analyses and estimates of each BSAI species' biomass and other biological parameters. This includes the acceptable biological catch specifications used by NMFS in the annual harvest specifications. The SAFE report also includes summaries of the available information on the BSAI ecosystem and the economic condition of the groundfish fisheries off Alaska.

Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (NMFS 2004).

A final programmatic SEIS (Final PSEIS) was prepared to evaluate the fishery management policies embedded in the BSAI and GOA groundfish FMPs against policy level alternatives. NMFS issued a Record of Decision for the Final PSEIS on August 26, 2004, effectively implementing a new management policy that is ecosystem-based and more precautionary when faced with scientific uncertainty. The PSEIS serves as the primary environmental document for subsequent analyses of environmental impacts on the groundfish fisheries. For more information, see the Final PSEIS and related documents at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/seis/default.htm>.

The Final PSEIS provides a recent complete description of the environment that may be affected by groundfish CDQ fishing activities in the following PSEIS sections:

- Features of the physical environment, Section 3.3.
- Threatened and endangered species, Section 3.4.
- Groundfish Resources, Section 3.5.
- Habitat, Section 3.6.
- Seabirds, Section 3.7.
- Marine mammals, Section 3.8.
- Socioeconomic conditions, Section 3.9 (See also Section 3.2 of this document).
- Ecosystem, Section 3.10.

Chapter 3 of the PSEIS establishes an environmental baseline, which is a description of the existing conditions that serve as the starting point for the document's analyses. This chapter provides a detailed description of the affected environment, including extensive information on fishery management areas, marine resources, and marine habitat in the North Pacific Ocean. The description of baseline environmental conditions was developed using the best available scientific information, which at the time that the PSEIS was drafted incorporated data up to 2002. This EA uses the PSEIS baseline as a starting point for the present evaluation of environmental effects and, therefore, incorporates the PSEIS baseline by reference.

EA/RIR/FRFA for a Regulatory Amendment to Modify the Management of "Other Species" Community Development Quota in the BSAI (NMFS 2003).

This document discusses the CDQ fisheries management requirements and alternatives to modify the management of the "other species" CDQ reserve with soft caps, rather than by allocating this reserve among individual CDQ groups and managing allocations with hard caps.

Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska (NMFS 2005a)

This document evaluates alternatives for three separate actions. These actions include describing essential fish habitat (EFH), identifying a means to identify Habitat Areas of Particular Concern (HAPC),

and minimizing the adverse effects of Council-managed fishing on EFH. The EFH EIS provides a thorough description of EFH in the BSAI, as well as a discussion of the past and present effects of different gear types on EFH.

3.2 Economic and Social Conditions

The documents referenced in Section 3.1 contain comprehensive economic and social information about both the CDQ Program and the communities participating in the program. Section 2.2 and Section 5.5 contain additional information about both the qualitative and the quantitative benefits CDQ Program.

In brief, the purpose of the Western Alaska CDQ Program is to help western Alaska communities strengthen their local economies by investing in both commercial fisheries and other fisheries-related projects, and to provide residents with education, training, and job opportunities in the fishing industry. The original CDQ Program regulations went into effect on November 18, 1992, and have been amended numerous times. In 1996 the Magnuson-Stevens Act institutionalized the program as part of the BSAI Groundfish FMP.

The 65 communities in the CDQ Program are predominantly Alaska Native villages. The communities are typically remote, isolated settlements with few natural assets with which to develop and sustain a viable diversified economic base. Basic community and social infrastructure is often underdeveloped or lacking, and transportation and energy costs are high. Historically, economic opportunities have been few, unemployment rates have been chronically high, and these communities (and the region) have been economically depressed. A complete list of CDQ communities is in Appendix C.

The CDQ Program receives apportionments of the annual catch limits for a variety of commercially valuable species in the BSAI, which are in turn allocated among six different non-profit CDQ groups. CDQ groups derive revenue from such allocations, which is then used for the economic benefit of the 65 communities participating in the program. Thus, the CDQ Program acts as an economic engine to help ameliorate some of the economic challenges face by CDQ communities. NMFS is responsible both for broad administrative aspects and for specific fisheries management aspects related to the CDQ Program.

4.0 Environmental Effects of the Alternatives

This section assesses the impact of this action's alternatives on the resource components of the BSAI.

4.1 Natural and Physical Environment

4.1.1 Effects on Target Species

This action proposes three alternatives that would modify fisheries management regulations in 50 CFR part 679 that are applicable to the halibut, sablefish, and pollock CDQ fisheries. The specific sections include those associated with definitions, permits, vessel licensing, recordkeeping and reporting, prohibitions, prohibited species bycatch management, CDQ catch monitoring, sablefish and halibut quota share use provisions, limitations on use of halibut and sablefish quota share (QS) and IFQ, and fisheries observer requirements.

The status quo alternative would not amend CDQ fisheries management regulation to ensure that the halibut, sablefish, and pollock CDQ fisheries are not managed more restrictively, i.e., with different conditions or requirements, than comparable halibut and sablefish IFQ or non-CDQ pollock fishery. Maintaining the status quo would continue to subject CDQ groups to existing regulations associated with the management of these fisheries. This alternative would not comply with the Magnuson-Stevens Act requirement at section 305(i)(1)(B)(iv), which states:

The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of non-target species.

Alternative 2 would amend regulations in 50 CFR part 679 to comply with the Magnuson-Stevens Act directive that CDQ fisheries with corresponding IFQ or cooperative fisheries should not be subject to more restrictive regulations than those in effect for such fisheries. In general, many of the regulations that could be affected by this action are related to modifying CDQ observer coverage requirements and to modifying the groundfish retention requirements for the fisheries subject to this action. Regulations developed for the existing CDQ fisheries management system for the halibut, sablefish, and pollock CDQ fisheries require observer coverage requirements that differ from similar IFQ fisheries. This is due to the different conditions present in the CDQ fisheries, i.e., the CDQ Program (and more specifically, CDQ groups) receive discrete allocations for a broad range of groundfish species, rather than quotas for a single species, as is the case in the IFQ and non-CDQ pollock fisheries. Different observer coverage requirements, as well as different catch retention and accounting requirements, were originally intended to ensure that catch in both the groundfish and halibut CDQ fisheries was attributed towards CDQ groups' quotas as accurately as possible. In the IFQ sablefish and halibut fisheries, the reported or estimated catch of non-allocated groundfish species accrues towards the annual TAC for each such species, not towards an IFQ account.

Catch History

The following tables display the allocation and catch of halibut, fixed gear sablefish, and pollock CDQ between 2002 and 2006.

Table 4.1. Halibut CDQ catch, 2002-2006.

Year	Allocation (lbs)	Catch (lbs)	Percent of allocation caught	Number of landings
2002	2,850,000	2,491,463	87	2,280
2003	2,850,000	2,178,184	76	1,856
2004	2,283,000	1,721,317	75	1,274
2005	2,263,000	2,043,262	90	1,611
2006	1,952,000	1,908,673	98	1,695

Table 4.2. Fixed gear sablefish CDQ catch, 2002-2006.

Year	Bering Sea			Aleutian Islands		
	Allocation (mt)	Catch (mt)	Percent of allocation caught	Allocation (mt)	Catch (mt)	Percent of allocation caught
2002	193	150	78	383	129	34
2003	290	66	23	465	103	22
2004	290	143	49	465	14	3
2005	244	220	90	393	296	75
2006	282	192	68	450	246	55

Table 4.3. BS pollock CDQ catch, 2002-2006.

Year	Allocation (mt)	Catch (mt)	Percent of allocation caught
2002	148,497	148,427	100
2003	149,176	149,121	100
2004	149,200	149,169	100
2005*	149,750	149,720	100
2006*	150,400	150,376	100

*2005 and 2006 catch data includes the rollover of 1,900 mt of pollock to the BS CDQ reserve from the AI CDQ reserve.

Effects of Alternatives 2 and 3 on target species

Under Alternative 2, the sablefish CDQ fishery would continue to be managed in conjunction with other groundfish CDQ fisheries, although NMFS would not use observer data to account for the catch of fixed gear sablefish CDQ. Observer coverage requirements would be altered to match those in place for the sablefish IFQ fishery. These requirements are based on vessel length and vessel category. NMFS is proposing that catcher vessels and catcher/processors that are greater than 60 ft length overall (LOA) be subject to 30 percent observer coverage requirements. Vessels that are greater than 60 ft LOA that participate in the halibut CDQ fishery would no longer be required to carry an observer at any time. These changes are comparable to what is required in the IFQ sablefish fishery.

Similarly, NMFS proposes to amend observer coverage requirements for trawl catcher vessels operating in the pollock CDQ fishery to correspond with requirements in the non-CDQ pollock fishery. Observer coverage levels on catcher vessels fishing for pollock CDQ would be based on vessel length, rather than the existing requirement that all catcher vessels have 100 percent observer coverage. This is the same that is required in the AFA pollock fishery. Note that in the pollock CDQ fishery, 100 percent of the catch has been monitored by fisheries observers since 1998. No changes are proposed to observer coverage requirements for catcher/processors or motherships that are fishing for pollock CDQ.

If current industry participation in the pollock CDQ fishery continues (i.e., the use of catcher/processors and a mothership), this would have no effect on pollock CDQ catch monitoring, as catcher vessels delivering to shoreside processors are not used. If groups began using such vessels at some point in the future, then some pollock CDQ fishing trips might not be subject to observer coverage requirements.

Alternative 2 would amend groundfish retention and reporting requirements for those target fisheries affected by this action. Vessels would no longer have to retain most groundfish caught in conjunction with halibut, sablefish, or pollock CDQ for delivery and reporting against a CDQ group's groundfish quotas. This change stems from the less restrictive retention and reporting requirements in place for the IFQ and non-CDQ pollock fisheries. This decrease means that information about whether vessels are retaining all groundfish caught incidentally in these CDQ fisheries would no longer be available to NMFS. Vessels that are greater than 60 ft LOA operating in the halibut CDQ fishery would no longer be required to carry an observer. Similarly, catcher vessels that are greater than or equal to 60 ft LOA and less than 125 ft LOA would not have to carry an observer 100 percent of the time they are sablefish CDQ fishing. This is comparable to existing requirements for the halibut and sablefish IFQ fishery. In the IFQ fishery, data derived from delivery information is submitted through existing reporting mechanisms (such as State fish tickets or industry production reports) is used to monitor the catch of incidentally caught species.

NMFS initially proposed prohibiting the discard of Pacific cod and rockfish in the halibut and sablefish CDQ fisheries as part of this action in order to make this prohibition consistent between the IFQ and CDQ fisheries. The Council explicitly excluded this provision as part of its recommendation for a preferred alternative for this action, in consideration of two factors. First, such a prohibition could actually place an additional burden on low volume fish processing operations taking CDQ deliveries in western Alaska. Much of the halibut CDQ that is harvested is delivered to small processors that are not configured to process or market cod or rockfish. Extending the prohibition against discarding Pacific cod and rockfish to the halibut and sablefish CDQ fisheries. Secondly, the estimated volume of groundfish caught incidentally in the halibut CDQ fishery is relatively low, so requiring the retention and reporting of such species in these two fisheries would not appreciably affect the account for Pacific cod and rockfish in the CDQ fisheries as a whole.

Alternative 3 would amend groundfish retention and reporting requirements for those CDQ fisheries affected by this action. This includes amending sections in 50 CFR part 679 associated with the CDQ fisheries, as described under Alternative 2. In addition, the management of the fixed gear sablefish CDQ fisheries would be integrated into the regulations governing the IFQ fisheries. The management functions associated with the sablefish CDQ fishery would shift to another organizational unit within NMFS (the RAM Program). This alternative is described in greater detail in Section 2.0. The changes associated with integrating the management of the sablefish CDQ fishery into the sablefish IFQ fishery primarily are administrative in nature. This alternative would subject CDQ groups and participants in the sablefish CDQ fishery to the permitting, catch reporting, and quota transfer requirements in place for the sablefish IFQ fishery.

The proportion of groundfish species caught in the sablefish and halibut CDQ fisheries in 2002-2006 is portrayed in Tables 4.4 and 4.5. Relative to the amounts of groundfish caught in the BSAI groundfish fisheries as a whole, these amounts are small. For example, an average of 32 mt of arrowtooth flounder was reported caught in the sablefish CDQ fishery each year from 2002 to 2006. In contrast, the arrowtooth flounder catch in the BSAI groundfish fisheries in those same years ranged from a low of 11,540 mt in 2002 to a high of 17,803 mt in 2004. Current and historic BSAI groundfish TACs and annual catch amounts are available from the NMFS, Alaska Region web site: <http://www.fakr.noaa.gov/sustainablefisheries/catchstats.htm>.

NMFS expects that CDQ groups would still prosecute the halibut, sablefish, and pollock CDQ fisheries to the fullest extent possible under the changes proposed under either Alternative 2 or Alternative 3. The catch of these CDQ species would still be managed under existing quota management measures. CDQ groups are required to monitor their fishing activities and cease fishing when their quotas are reached. In recent years, CDQ groups have been very successful at catching their BS pollock CDQ and halibut CDQ, but only moderately successful at harvesting all of their sablefish CDQ. Note that one key difference between the status quo and the proposed changes under Alternatives 2 and 3 is the basis used for sablefish catch accounting on catcher/processors. NMFS uses production data (the weight of processed fish) for catcher/processors operating in the IFQ fishery, whereas it uses observer data to estimate the weight of sablefish caught by catcher/processors operating in a CDQ fishery. Sablefish CDQ catch accounting on catcher/processors would be based on product weights under the changes proposed by this action. However, participation by this vessel category in the sablefish CDQ fishery has been minimal in recent years.

Although these alternatives are intended to put the affected CDQ fisheries on par with comparable non-CDQ fisheries, NMFS notes that the proposed changes may offer incentives to participate in CDQ fisheries in the future because they would decrease the direct costs associated with observer coverage requirements. NMFS also notes that reduced observer coverage levels could lead to some degree of unmonitored changes in fishing behavior in the CDQ fisheries (e.g., increased discards of non-target species, high-grading of target species, as well as exceeding quotas) that could result in some level of impacts on target species.

In sum, however, NMFS anticipates that the effects of either Alternative 2 or Alternative 3 would not adversely affect the halibut or groundfish target species affected by this action. In the case of the primary CDQ species considered by this action (halibut, fixed gear sablefish, and pollock), NMFS would continue to prohibit CDQ groups from exceeding their allocations of these species. NMFS' catch accounting methodology for assessing total catch of these species in the CDQ fisheries would be changed to align it with those in place for the sablefish IFQ and the non-CDQ pollock fishery. This methodology is based on assessing total groundfish and prohibited species catch (PSC) through a combination of observer data, production data, catch and discard information provided by catcher vessels to processors, and estimates of discard rates for both groundfish and PSC species. Such rates are applied to the weight of retained species landed by unobserved catcher vessels to estimate the at-sea catch and discard of non-retained species.

Prohibitions against exceeding CDQ allocations would be maintained for all CDQ species. This would maintain the status quo of annually allocating the CDQ Program fixed amount of BSAI target species and containing CDQ catch to those amounts. The alternatives considered for this action are not expected to have a significant effect on BSAI groundfish target species, as described by current TAC categories. The catch of CDQ target species would be constrained to that amount annually apportioned to the CDQ Program. NMFS inseason fishery management measures, as well as proscribed BSAI fishery management restrictions, provide the means to limit annual catch amounts to specified TAC limits.

Table 4.4 Fixed gear sablefish CDQ fishery average catch and species composition, 2002-2006.

Species category	Catcher vessels less than 60 ft LOA		Catcher vessels equal to or greater than 60 ft but less than 125 ft LOA		Catcher vessels equal to or greater than 125 ft LOA		Catcher/processors, any length		Average total catch (mt)	Average annual percent
	Average catch (mt)	Percent of total catch	Average catch (mt)	Percent of total catch	Average catch (mt)	Percent of total catch	Average catch (mt)	Percent of total catch		
BS Sablefish, fixed gear	25.404	65.48	117.431	39.32	44.568	74.82	0	0	187.403	44.11
AI Sablefish, fixed gear	8.303	21.40	142.000	47.54	0	0	23.028	82.89	173.330	40.80
<i>Total sablefish catch, all areas and vessel categories</i>									<i>360.733</i>	<i>84.91</i>
Arrowtooth Flounder	1.667	4.30	17.066	5.71	9.93	16.67	3.188	11.48	31.851	7.50
BS Greenland Turbot	1.670	4.30	6.246	2.09	3.419	5.74			11.335	2.67
BS Sablefish, trawl gear species category	0.364	0.94	4.223	1.41					4.587	1.08
Pacific Cod			1.975	0.66	0.259	0.43	0.147	0.53	2.381	0.56
AI Sablefish			0.992	0.33					0.992	0.23
EAI/BS Atka Mackerel			0.097	0.03	0.448	0.75	0.003	0.01	0.548	0.13
Rock Sole			0.022	0.01	0.001				0.023	0.01
EAI Pacific Ocean Perch			0.001				0.009	0.03	0.010	
Flathead Sole			0.004						0.004	
WAI Atka Mackerel			0.001						0.001	
BS Pacific Ocean Perch*			0.002						0.002	
Northern Rockfish*			0.002						0.002	
AI Greenland Turbot*	0.410	1.06	4.449	1.49			1.066	3.84	5.925	1.39
AI Other Rockfish*	0.952	2.45	2.376	0.80			0.28	1.01	3.608	0.85
Other Species*	0.012	0.03	1.142	0.38	0.011	0.02	0.06	0.22	1.225	0.29
Shortraker Rockfish*	0.011		0.308	0.10	0.302	0.51			0.620	0.15
BS Other Rockfish*	0.002		0.213	0.07	0.318	0.53			0.532	0.13
Rougheye Rockfish*			0.070	0.02	0.31	0.52			0.380	0.09
Other Flatfish*			0.047	0.02	0.001				0.048	0.01
Total groundfish	38.793		298.667		59.567		27.281		424.808	

Source: NMFS CDQ catch report data from reports with 'sablefish' targets.

For species categories, BS denotes Bering Sea, AI denotes Aleutian Islands, no area designation denotes species managed at BSAI level.

*Species which, beginning in 2007, are no longer allocated to either the CDQ Program or among CDQ groups.

Table 4.5. Halibut CDQ fishery average catch and species composition, 2002-2006.

Species category	Catcher vessel less than 60 ft		Catcher vessels equal to or greater than 60 ft and less than 125 ft		Grand total, average catch (mt)	Average annual percent
	Average catch	Percent of total catch	Average catch	Percent of total catch		
Halibut CDQ	21.754	86.10	101.844	89.42	123.599	88.81
Halibut IFQ	0.004	0.02	6.919	6.07	6.923	4.97
Pacific Cod	0.318	1.26	3.069	2.69	3.386	2.43
BS Sablefish, fixed gear	1.124	4.45			1.124	0.81
Arrowtooth Flounder	0.272	1.08	0.548	0.48	0.821	0.59
AI FG Sablefish	0.752	2.98	0.005		0.757	0.54
BS Greenland Turbot	0.112	0.44			0.112	0.08
Rock Sole			0.044	0.04	0.044	0.03
Yellowfin Sole			0.007	0.01	0.007	
EAI/BS Atka Mackerel			0.005		0.005	
Sablefish IFQ	0.004	0.02			0.004	
Other Species*	0.907	3.59	1.093	0.96	2.000	1.44
AI Other Rockfish*	0.023	0.09	0.094	0.08	0.118	0.08
AI Greenland Turbot*			0.053	0.05	0.053	0.04
BS SR/RE Rockfish*			0.060	0.05	0.060	0.04
AI SR/RE Rockfish*			0.058	0.05	0.058	0.04
BS Other Rockfish*			0.014	0.01	0.014	0.01
Other Flatfish*			0.002	0.00	0.002	
Pollock ICA			0.014	0.01	0.014	0.01

source: NMFS CDQ catch report data designated as halibut targets. Includes some catch by unobserved catcher vessels <60 ft LOA.

For species categories, BS denotes Bering Sea, AI denotes Aleutian Islands, no area designation denotes species managed at BSAI level.

*Species which, beginning in 2007, are no longer allocated to either the CDQ Program or among CDQ groups.

4.1.2 Effects on Prohibited Species

FMP prohibited species include both finfish and invertebrate species. Finfish species include Pacific salmon (Chinook, coho, sockeye, chum, and pink), steelhead trout, Pacific halibut, and Pacific herring (herring is not allocated to the CDQ Program). Invertebrate species include king, Tanner, and snow crab. A full description of each prohibited species is in the BSAI FMP. PSC limits in place in the BSAI fisheries accrue halibut catch (by most gear types) in groundfish fisheries towards halibut PSC limits. Salmon and crab bycatch in the groundfish fisheries apply to PSC limits only when caught with trawl gear.

If either Alternative 2 or Alternative 3 were selected, information about the catch of prohibited species could be affected by the loss of observer data from select CDQ fisheries, as described above. However, NMFS expects that this action would have minimal effects on prohibited species, for the following reasons:

- The halibut CDQ fishery is not subject to halibut PSQ accounting and accrual requirements.
- The fixed gear sablefish CDQ fishery is subject to halibut PSQ accrual, except for halibut PSC caught with pot and jig gear. Most sablefish CDQ in recent years has been caught with longline pot gear as fishing vessel operators attempt to thwart sablefish predation by whales, which strip hooked fish off of longline fishing gear.
- The halibut IFQ fishery historically has been exempt from halibut PSC catch accrual during the annual groundfish harvest specifications process.
- The pollock CDQ fishery is prosecuted by vessel types that are unaffected by the changes proposed in the alternatives presented in this action. Should catcher vessels that deliver to shoreside processors begin to fish for pollock CDQ in the future, NMFS would use standard inseason management practices to estimate the catch of PSC on catcher vessels without observers.
- This action does not propose to amend prohibitions against exceeding annual PSQ catch limits. However, it would amend regulations to allow the transfer of halibut PSQ either before or after such quota is caught, as is proposed to be allowed for groundfish CDQ transfers.

4.1.3 Effects on Forage Fish

NMFS cannot identify any potential negative effects of this action's alternatives on forage fish. Forage fish include those species which are a critical food source for many marine mammal, fish, and seabird species. NMFS does not believe that the alternatives considered under this action would have an adverse effect on forage fish, as it does not expect that the catch of forage fish species will increase should Alternative 2 or 3 be selected and implemented. The catch of non-CDQ and CDQ groundfish would still be constrained by existing management measures applicable to annual TAC and acceptable biological catch limits, which should limit the catch and impacts on forage fish.

4.1.4 Benthic Habitat and Essential Fish Habitat (EFH)

The alternatives considered under this action are not expected to change the gear types, general locations, or operational practices of the fisheries in which halibut, sablefish, or pollock CDQ is caught. Therefore, none of the alternatives considered in this action are expected to adversely affect marine benthic habitat or EFH in any manner or to an extent not already addressed in previous NEPA analyses, including the EFH Final EIS (NMFS 2005a).

4.1.5 Ecosystem Considerations

Alternatives 2 and 3 primarily address regulatory amendments that would modify CDQ observer coverage requirements for select fisheries, catch retention and accounting requirements for these fisheries, and other non-biological, administrative changes to elements of the CDQ Program. These changes primarily

are administrative in nature, and are intended to comply with statutory requirements. These alternatives are unlikely to produce population-level impacts for marine species, or changes to community-level or ecosystem-level attributes beyond the range of natural variability for the system. Thus, these alternatives are not expected to result in adverse impacts at an ecosystem level.

4.1.6 Marine Mammals

The alternatives considered under this action would change CDQ fisheries management regulations to align them with regulations in effect for comparable IFQ and cooperative fisheries. NMFS does not expect that the overall harvest of CDQ or non-CDQ groundfish species would increase beyond levels already considered under previous NEPA analyses, or that the number of marine mammal interactions would increase. Therefore, no adverse impacts on marine mammals are expected.

4.1.7 Endangered or Threatened Species

The alternatives considered in this action would revise CDQ fishery management regulations with comparable regulations in place for IFQ and non-CDQ pollock cooperative fisheries, per the requirement of the Magnuson-Stevens Act. Those species listed as threatened and endangered are fully described in the previously referenced NEPA analyses. The western population of Steller sea lions (SSL) is listed as endangered under the ESA, and NMFS has implemented comprehensive SSL protection measures to mitigate the adverse effects of commercial fishing activities on this species. None of this action's alternatives are expected to modify gear or operational practices used in the groundfish CDQ fisheries. Groundfish CDQ fisheries would still be subject to all applicable SSL protection measures, which disperse fishing effort over time and area. Thus, the effects of Alternatives 2 or 3 on threatened or endangered species are not expected to be significant.

4.1.8 Effects on Seabirds

The alternatives considered under this action are not expected to adversely affect seabirds in the BSAI. Halibut and groundfish fishery interactions with seabirds are discussed in Chapter 9 of the Alaska Groundfish Harvest Specifications EIS (NMFS 2007). The CDQ fisheries affected by this action would continue to be subject to seabird avoidance measures specified in NMFS regulations under any of the alternatives proposed by this action. It is unlikely that selection and implementation of any these alternatives would have a discernible effect on seabird populations, thus, NMFS expects that this action's impact on seabirds would not be significant.

4.2 Socioeconomic Effects

The expected economic effects are discussed in detail in Section 5.7 of the RIR. The expected effects of the considered alternatives are summarized below.

4.2.1 Effects of Alternative 1

Alternative 1 would result in no change to the economic or socioeconomic environment. CDQ groups have exclusive harvesting privileges to a portion of the annual catch limits for halibut and BSAI groundfish species. CDQ fishery management regulations provide a structured means for CDQ groups to harvest their CDQ allocations and impose additional conditions on the harvest of such allocations beyond what may be required in the non-CDQ fisheries. However, maintaining all of the conditions associated with regulating the harvest of the halibut, sablefish, and pollock CDQ fisheries would not comply with the requirements of the Magnuson-Stevens Act.

4.2.2 Effects of Alternatives 2 and 3

Both Alternative 2 and Alternative 3 would have an economic effect on the entities directly regulated by this action. CDQ groups are expected to benefit from the regulatory changes proposed under either Alternative 2 or Alternative 3, because costs associated both with observer coverage requirements and with other administrative aspects of the CDQ Program would be reduced or eliminated. These alternatives would amend regulatory restrictions that have historically been identified by CDQ groups and their harvesting partners as expensive and burdensome, particularly observer requirements and bycatch retention requirements. Implementation of the alternatives considered under this action may potentially have a positive economic impact on the halibut, fixed gear sablefish, and pollock CDQ fisheries by decreasing or modifying certain management restrictions. Correspondingly, these fisheries could enjoy increased operational flexibility. Additional information about the economic effects of this proposed action are contained in Section 5.7.

NMFS recommended that the Council identify Alternative 2 as its preferred alternative for this action. This is based on NMFS' assessment of the effects of each alternative. These effects are described in detail in Section 5.7 of the RIR. In summary, the selection of Alternative 2 is primarily based on the potential changes that each alternative would bring to the sablefish CDQ fishery. NMFS believes that Alternative 2 would result in the least disruptive change to the CDQ groups and CDQ fisheries, while meeting the regulation of harvest requirements in the Magnuson-Stevens Act. Alternative 2 would amend regulations for the CDQ fisheries affected by this action so that they match those regulations in place for comparable fisheries, but would not make as many changes to the program as Alternative 3. Alternative 2 would not integrate the sablefish CDQ fishery into the sablefish IFQ Program. CDQ groups would not be subject to sablefish CDQ permits and additional IFQ-related reporting requirements, nor would NMFS have to implement such requirements. Furthermore, retaining fixed gear sablefish under the comprehensive groundfish CDQ accounting and management system would make it more efficient for NMFS to monitor the catch and transfer of the multiple categories of sablefish CDQ allocated to the CDQ Program and CDQ groups. None of the alternatives considered by this action are expected to have significant, adverse effects on BSAI resource components.

4.3 Cumulative Effects

NEPA requires that EAs analyze the potential cumulative effects of a proposed action and its alternatives. An EA must consider cumulative effects when determining whether an action significantly affects environmental quality. Cumulative effects are those combined effects on the quality of the human environment that result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. (40 CFR 1508.7, 1508.25(a), and 1508.25(c)) Cumulative impacts can result from individually minor, but collectively significant, action taking place over time. The concept behind cumulative effects analysis is to capture the total effects of many actions over time that would be missed by evaluating each action individually.

The potential effects of the BSAI groundfish fisheries on BSAI resource components are detailed in the Final PSEIS (NMFS 2004, Chapter 4) and in the Groundfish Harvest specification EIS (NMFS 2007). The CDQ fisheries are a subset of these fisheries. Direct effects of fish harvesting include fishing mortality, changes in biomass, and changes in population structure due to the spatial and temporal concentration of catch. Indirect effects include the changes in prey availability and changes in habitat suitability. Indirect effects are not anticipated to occur with any of the alternatives analyzed because the proposed action would not change overall fishing practices that indirectly affect prey availability and habitat suitability. Significance criteria are explained in Appendix A of the PSEIS. To the extent practicable, this analysis incorporates the cumulative effects analyses contained in the two referenced EISs.

No additional past present, or reasonably foreseeable cumulative negative impacts on the natural and physical environment have been identified that would accrue for the proposed action. Cumulatively significant negative impacts on these resources are not anticipated with the proposed action because no negative direct or indirect effects on BSAI resources have been identified. There may be some effects on the groundfish CDQ fishery participants and groundfish stocks as a result of the proposed action in combination with other actions. These effects are described below.

4.3.1 Future considerations and recent actions

There are a number of actions that have been implemented or that currently are being developed that will affect the BSAI groundfish fisheries, including the CDQ fisheries. Some of these changes stem from changes to the Magnuson-Stevens Act in 2006, as described in Section 1.0. These reasonably foreseeable future actions may have a continuing, additive, and meaningful relationship to the effects of the alternatives considered by this action. These and other actions are described below.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

The Magnuson-Stevens Reauthorization Act also amended additional aspects of Section 305(i)(1) of the Magnuson-Stevens Act.¹⁰ This includes the requirements for both CDQ Program allocations and for associated allocations to CDQ entities. The Magnuson-Stevens Reauthorization Act amended section 305(i)(1)(B)(ii)(I) of the Magnuson-Stevens Act to require that the allocation of TAC to the CDQ Program “for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation of 10.7 percent effective January 1, 2008.” These increases were implemented through the Amendments 80 and 85 to the BSAI FMP (described below). Furthermore, the Magnuson-Stevens Reauthorization Act specified that “voluntary [quota] transfers by and among [CDQ groups] shall be allowed, whether before or after harvesting.” This is different from transfer provisions allowed under the halibut and sablefish IFQ Program. NMFS proposes to implement the Magnuson-Stevens Act’s voluntary transfer provisions for groundfish CDQ as well as the Council’s 2005 recommendation to allow post-delivery transfers of halibut PSQ as part of this action.

Amendment 80 to the BSAI FMP

NMFS has implemented Amendment 80 to the BSAI FMP.¹¹ This action created sector allocations of five different target species (Atka mackerel, flathead sole, Pacific ocean perch, rock sole, yellowfin sole) for the non-AFA catcher/processor sector and also allows this sector to form cooperatives. Under Amendment 80, the authorization for allocations of Amendment 80 species to fishing cooperatives triggered the requirements of section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act. This particular action increased CDQ percentage allocations for Amendment 80 species, other groundfish species allocated to the CDQ Program, and select PSQ species to 10.7 percent of annual TAC.

However, note that the CDQ Program allocations for the primary species affected by this action were not affected by the action implementing Amendment 80. No increases to the CDQ Program allocations for halibut, fixed gear sablefish, or pollock were proposed. The bycatch species caught in the CDQ fisheries affected by this action are affected to the degree that the CDQ Program as a whole, as well as CDQ groups individually, will have access to additional amounts of BSAI groundfish species each year. The combined effect of Amendment 80 and this action will be that, while the halibut, sablefish, and pollock CDQ fisheries would be subject to diminished observer and bycatch accounting requirements, there will be proportionately more groundfish allocated to CDQ groups for both their target and non-target needs.

As part of the implementation of Amendment 80, NMFS proposed that the regulation of harvest in applicable CDQ fisheries (i.e., Atka mackerel or flatfish) may be no more restrictive than the regulation

¹⁰ Pub. L. No. 109-479, § 116, 120 Stat. 3575, 3606 (2006).

¹¹ NMFS issued a final rule for Amendment 80 on 72 FR 52668, September 14, 2007.

of the harvest in the fisheries in which the Amendment 80 cooperatives participate. Consistent with the requirements of section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act, NMFS now applies the same monitoring, enforcement, and groundfish retention standard requirements to any non-AFA trawl catcher/processors harvesting groundfish in the CDQ Program with the regulation of harvest in the non-CDQ fisheries as the program proposed to apply to Amendment 80 vessels harvesting groundfish in the BSAI. Furthermore, NMFS removed the requirements for CDQ catch reports and CDQ delivery reports, which are unique reports used for CDQ catch monitoring, from regulation under Amendment 80. This change was applicable to all CDQ fisheries, including those affected by this action.

BSAI Pacific cod allocations

NMFS implemented the Council's recommendation for Amendment 85 to the BSAI FMP in 2007, which addresses BSAI Pacific cod allocations.¹² That action revised the current BSAI Pacific cod allocations that were implemented in 1997 among trawl, jig, and fixed gear sectors. The basis for determining sector allocations was catch history, as well as considerations of various socioeconomic factors. This action also includes an increased allocation of the annual Pacific cod TAC to the CDQ Program to 10.7 percent, rather than 7.5 percent. This increase also is the result of the Magnuson-Act changes described above.

BSAI salmon bycatch

In 2007, NMFS implemented an action (Amendment 84 to the BSAI FMP) to modify the existing bycatch reduction measures for Chinook and chum salmon in the BSAI.¹³ This exempted vessels participating in an inter-cooperative agreement to reduce salmon bycatch from Chinook and chum salmon savings area inseason closures, and exempted vessels participating in non-pollock trawl fisheries from chum salmon savings area inseason closures. This action modified the location and fishing practices of the trawl fleet in the BSAI. Vessels within this fleet prosecute the pollock, Atka mackerel, and flatfish CDQ fisheries. CDQ groups are parties to the ICA; their partner vessels are subject to the bycatch reduction measures required by their ICA manager. This action's effect on the catch of groundfish CDQ in the future is unknown.

In addition, NMFS prepared an associated action (Amendment 91 to the BSAI FMP) to implement additional measures to mitigate the amount of Chinook salmon caught in the Bering Sea pollock fishery. This includes the 2011 implementation of hard caps on the amount of Chinook that may be caught per year; attainment of a cap will result in the closure of directed fishing for pollock. These caps are applicable to each pollock fishing sector, including the CDQ sector.

4.4 Environmental Assessment Conclusions

A primary purpose of an EA is to provide the evidence and analysis necessary to decide whether an agency must prepare an EIS. A Finding of No Significant Impact (FONSI) is the decision maker's determination that the proposed action will not result in significant impacts to the human environment and, therefore, further analysis in an EIS is not necessary. As stated above in Section 1.2, the purpose of this action is to meet the requirements of the Magnuson-Stevens Act by ensuring that CDQ fishery management regulations in 50 CFR part 679 are consistent with the Magnuson-Stevens Act. Specifically, this act requires that the "harvest of allocations under the [CDQ] program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species."

NEPA significance is determined by considering both the context in which the action will occur and the intensity of the action. The context in which the action will occur includes the specific resources, ecosystem, and the human environment affected. The intensity of the action includes the type of impact

¹² NMFS issued a final rule for Amendment 85 on September 4, 2007 (72 FR 50788).

¹³ NMFS issued a final rule for Amendment 84 on October 28, 2007 (72 FR 61070).

(beneficial versus adverse), duration of impact, and other factors (see 40 CFR 1508.27(b)). This regulation contains a listing of considerations to use to determine intensity, as does NOAA Administrative Order (NAO) 216-6.

Context: The setting of the proposed action is the groundfish and Pacific halibut fisheries of the BSAI management area. Any effects of this action are directly limited to these areas. The effects on society within these areas are on individuals directly and indirectly participating in the groundfish fisheries and on those who use BSAI ocean resources. The proposed action would make various revisions to fisheries observer coverage requirements, bycatch retention requirements, licensing requirements, and various other fishery management regulations governing the CDQ Program. This action would have no significant impacts on society as a whole or regionally.

Intensity: A listing of considerations to determine the intensity of the impacts are in 40 CFR 1508.27(b) and in NAO 216-6. Each consideration is addressed below in order as it appears in the NMFS Instruction 30-124-1 dated July 22, 2005, Guidelines for Preparation of a FONSI. The sections of the EA that address the considerations are identified.

1. *Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and identified in fishery management plans?* No significant adverse impacts on habitat were identified (EA Sections 4.1.4 and 4.1.5).

2. *Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?* No effects are expected on biodiversity, the BSAI ecosystem, or seabirds. This action incrementally affects regulations governing subsets of existing BSAI fisheries for sablefish, pollock, and halibut. However, it does not propose amending the overarching fisheries management structure in place for these BSAI fisheries as a whole (EA Section 4.1.5).

3. *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?* No public health and safety impacts were identified in any of the proposed alternatives (EA Section 2.1).

4. *Can the proposed action be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat for these species?* No. None of the alternatives would change groundfish TAC limits, prohibited species catch limits, CDQ allocations, or the seasons in which CDQ fisheries occur. The alternatives would not change Steller sea lion protection measures or other measures designed to protect threatened or endangered species or their critical habitat (EA Section 4.1.4).

5. *Are significant social or economic impacts inter-related with natural or physical environmental effects?* Risks to the human environment by the fisheries affected by this action are expected to be minimal. This action is limited in scope and likely would not impact the human environment beyond issues discussed in the Groundfish Harvest Specifications Final EIS (EA Section 4.2.2).

6. *Are the effects on the quality of the human environment like to be highly controversial?* These alternatives considered for this action are not expected to be controversial. They propose a means to revise regulations for the CDQ fisheries associated with this action so that they are consistent with regulations in place for comparable non-CDQ fisheries (EA Section 4.2).

7. *Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?* No. This action would have no substantial impact on such unique areas in the BSAI.

General effects on ecologically critical marine areas are discussed in the Essential Fish Habitat Final EIS prepared by NMFS in 2005 (EA Section 4.1.4).

8. *Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?* No. This action does not present such risks. The potential effects are well understood in the context of the fisheries, species, and areas associated with this action (EA Sections 4.2.2 and 4.3).

9. *Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?* No such actions were identified among the pending Federal actions under development for the BSAI groundfish fisheries (EA Sections 4.3 and 4.3.1).

10. *Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources?* This action would not have an effect on such features, objects listed or eligible for listing in the National Register of Historic Places, or cause loss or destruction of significant scientific, cultural, or historical resources. This consideration is not applicable to this action.

11. *Can the proposed action be reasonably expected to result in the introduction or spread of a non-indigenous species?* No introduction or spread of non-indigenous species is expected as a result of this action. The regulatory changes associated with the action would not change fishing, processing, or shipping practices (EA Section 4.1.1).

12. *Is the proposed action likely to establish a precedent for future action with significant effects or represents a decision in principle about a future consideration?* No. Future actions taken by NMFS may further modify fishery management regulations associated with the BSAI groundfish fisheries. Pursuant to NEPA, appropriate environmental analyses will be prepared to inform the public and decision makers of potential impacts of future impacts on the human environment (EA Section 4.3.1).

13. *Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?* The alternatives considered for this action do not pose a known violation of Federal, State, or local laws or requirements for protection of the environment. This action is intended to ensure that CDQ fisheries management regulations are consistent with the Magnuson-Stevens Act (EA Sections 1.1 and 1.2).

14. *Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on target species or non-target species?* Beyond the cumulative impact analysis in the Groundfish Harvest Specifications Final EIS, NMFS has not identified any additional past or present cumulative impact issues that would accrue from this action (EA Section 4.3).

5.0 Regulatory Impact Review

5.1 Introduction

This Regulatory Impact Review (RIR) evaluates the benefits and costs of alternatives to modify fisheries management regulations associated with the Community Development Quota (CDQ) Program. The proposed action is necessary to ensure that CDQ fishery management regulations in 50 CFR part 679 are consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Statutory requirements associated with the regulation of harvest of CDQ fisheries in relation to fisheries managed with individual quota fisheries (IFQ) and fisheries managed with cooperatives are described in detail in Section 5.5.

Federal regulations in various sections of 50 CFR part 679 contain CDQ fishery management regulations that could be considered more restrictive than comparable regulations governing fisheries managed with individual fishing quota (IFQ) or cooperative programs. This action proposes alternatives that would amend regulations governing the regulation of harvest for select CDQ fisheries, per the requirements of the Magnuson-Stevens Act. The affected fisheries include the halibut CDQ, sablefish CDQ, crab CDQ, and pollock CDQ fisheries. Proposed regulatory changes include amending CDQ-related regulations related to fisheries observer coverage requirements, retention of non-target species, vessel licensing, quota transfer provisions, recordkeeping, and reporting so that they match the regulations in effect for comparable IFQ and cooperative fisheries to the extent practicable. Proposed changes also include allowing voluntary fisheries cooperatives and their associated vessels to apply to use non-CDQ regulations while fishing for groundfish CDQ .

In addition to the fisheries management regulatory amendments necessary to implement Magnuson-Stevens Act section 305(i)(1)(B)(iv), this action also proposes revising or removing other regulations in 50 CFR parts 679 and 680 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act. These inconsistencies were created as a result of the 2006 amendments to the Magnuson-Stevens Act. These amendments made comprehensive changes to how NMFS administers the CDQ Program. NMFS has adopted many of these changes through policy determinations. These changes would clarify which regulations are currently applicable to CDQ Program participants and also would enhance administrative efficiency with respect to regulatory relevance and compliance.

5.2 Requirements for a Regulatory Impact Review

This RIR addresses the requirements of Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

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

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

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

5.3 Statutory Authority

The National Marine Fisheries Service (NMFS) manages the groundfish CDQ fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) under the Fishery Management Plan (FMP) for that area. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP are at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Management of the halibut fishery in and off Alaska is based on an international agreement between Canada and the United States and is given effect by the Northern Pacific Halibut Act of 1982. Regulations governing the commercial halibut fishery off Alaska also are at 50 CFR part 679.

5.4 Purpose and Need

This action proposes alternatives that would amend regulations governing the harvest in select CDQ fisheries, per requirements of the Magnuson-Stevens Act. The Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act)(Pub.L. No 109-241, 120 Stat.) amended section 305(i)(1) of the Magnuson-Stevens Act by replacing all of the existing language in this section with new language. This substantially altered many components of the CDQ Program, including the oversight roles of the Federal and State governments, CDQ allocations and the allocation process, and fisheries management requirements. This action addresses specific fishery management provisions of the Magnuson-Stevens Act and proposes potential revisions to certain CDQ fisheries management regulations, as described in Section 5.6.

The regulation of CDQ harvest is directly addressed in the Magnuson-Stevens Act at section 305(i)(1)(B)(iv). This paragraph states:

The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of non-target species.

Accordingly, this analysis is focused on those BSAI fisheries with IFQs or those BSAI fisheries governed with fishing cooperatives. The former includes the Pacific halibut, fixed gear sablefish, and crab fisheries. The latter includes the BS pollock fishery and the BSAI Pacific cod fishery conducted by hook-and-line catcher/processors. Each of the three IFQ fisheries has an equivalent CDQ fishery. Each of the cooperative fisheries are conducted in conjunction with CDQ fisheries. Appendix A contains section 305(i)(1) of the Magnuson-Stevens Act.

5.5 CDQ Program Description and Background

5.5.1 CDQ Program Background

The CDQ Program was designed to improve the social and economic conditions in western Alaska communities by facilitating their economic participation in the BSAI fisheries. The large-scale commercial fisheries of the BSAI developed in the eastern BS without significant participation from rural western Alaska communities. These fisheries are capital intensive and require large investments in vessels, infrastructure, processing capacity, and specialized gear. The CDQ Program was developed to redistribute some of the economic benefits from BSAI fisheries to adjacent communities by allocating to them a portion of commercially important BSAI species as fixed shares, or quota, of groundfish, halibut, and crab. The percentage of each annual BSAI catch limit allocated to the CDQ Program varies by species. These allocations, in turn, provide an opportunity for residents of these communities to participate in the BSAI fisheries.

Currently, 65 communities participate in the CDQ Program. Approximately 27,000 people reside in CDQ communities. These communities have formed six non-profit corporations (CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. The six CDQ groups are the following:

- 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
- Yukon Delta Fisheries Development Association

The 2006 CDQ allocations included approximately 188,000 metric tons (mt) of groundfish, about 2 million pounds of halibut, and approximately 5.7 million pounds of crab. Annual CDQ allocations provide a revenue stream for CDQ groups through various channels, including the direct catch and sale of some species, leasing quota to various harvesting partners, and income from a variety of investments. The six CDQ groups had total revenues in 2005 of approximately \$134 million, primarily from pollock royalties. Since 1992, the CDQ groups have accumulated net assets worth approximately \$369 million (as of 2005), including ownership of small local processing plants, catcher vessels, and catcher/processors that participate in the groundfish, crab, salmon, and halibut fisheries.

One of the most tangible direct benefits of the CDQ Program has been employment opportunities for western Alaska village residents. CDQ groups have had some successes in securing career track employment for many residents of qualifying communities, and have opened opportunities for non-CDQ Alaskan residents, as well. Jobs generated by the CDQ program included work aboard a wide range of fishing vessels, internships with the business partners or with government agencies, employment at processing plants, and administrative positions. In recent years, annual CDQ-related jobs have ranged from 1,339 people in 1999 to 2,025 in 2005. CDQ wages have ranged from \$10.6 million in 1999, to \$16.6 million in 2005.¹⁴ CDQ groups continue to explore the means to provide both continuing and additional employment opportunities for local residents.

The fishery resources allocated under the CDQ Program are under Federal jurisdiction, but the program was historically managed by both NMFS and the State of Alaska (State). The changes made to the Magnuson-Stevens Act in 2006 (described above) have shifted administrative oversight responsibilities to an administrative panel comprised of the six CDQ groups. Prior to 2006, the State primarily was responsible for the day-to-day administration and oversight of the economic development aspects of the program, recommending quota allocations for each CDQ group, and the management of the CDQ crab fisheries. NMFS was, and remains, primarily responsible for groundfish and halibut CDQ fisheries

¹⁴ Revenue, employment, and wage information derived from State of Alaska CDQ Program information. Accessed at <http://www.commerce.state.ak.us/bsc/CDQ/cdq.htm>.

management. The State of Alaska continue to manage the crab CDQ fisheries, in conjunction with the management of other non-CDQ crab fisheries in the BSAI.

5.5.2 CDQ Fisheries Management

CDQ fisheries management regulations have been developed incrementally since the creation of the CDQ Program in 1992. These regulations were developed to ensure that catch of all species allocated to the CDQ Program should be limited to the amount of the allocations, with no catch from CDQ fisheries accruing against non-CDQ allocations. These regulations also were intended to ensure that NMFS and the CDQ groups had timely, accurate catch information during the course of CDQ fishing activities. Thus, regulatory requirements for some CDQ fisheries differ from those in effect for equivalent non-CDQ fisheries.

The original fishery management objectives for the groundfish, halibut, and crab CDQ fisheries include, in general, limiting the catch of all species to the amount allocated to the program and not allowing catch made under the program to accrue against non-CDQ portions of total allowable catch (TAC) limits or prohibited species catch (PSC) limits. These objectives also included managing target and non-target species allocations made to the CDQ groups with the same level of strict quota accountability, and holding each CDQ group responsible not to exceed any of its groundfish CDQ allocations. A complete description of the original basis for the multispecies CDQ catch accounting regime is in the final rule implementing the multispecies CDQ Program (63 FR 30381, June 4, 1998).

Catch monitoring and accounting requirements in the halibut and groundfish CDQ fisheries were developed to ensure that all groundfish CDQ catch information (of both target and non-target species) could be estimated on a timely basis. This is necessary to allow CDQ groups to have the information needed to manage the catch of all of their allocations, in order not to exceed any particular quota. Existing CDQ catch monitoring and reporting requirements are structured to ensure that CDQ groups actively monitor the harvest of their allocations, and that groups take action to constrain their fishing activities should they reach or approach a particular allocation.

In general, NMFS manages the CDQ fisheries so that overall catch is limited to the amounts allocated to the CDQ Program, while individual CDQ groups are expected to manage their own allocations. Each CDQ groups has numerous fishing partners and vessels fishing for different species. The various CDQ fisheries are conducted in different areas of the BSAI, and at different times, during the course of a given year. CDQ fisheries often occur in conjunction with non-CDQ fisheries (as in the pollock and flatfish fisheries). They may also occur when some non-CDQ fisheries are closed. CDQ groups are in the best position to monitor and manage the harvest of their quotas; the existing catch monitoring and management structure was intended to facilitate this process.

5.6 Description of Alternatives

Overview of Alternatives

Three alternatives are presented in this analysis. The second and third alternatives address the requirement in section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act that the regulation of harvest in CDQ fisheries shall be no more restrictive than regulations associated with the harvest of comparable IFQ fisheries or cooperative fisheries. As described in Section 2.0, NMFS has not identified any aspects of the crab CDQ fisheries that are managed more restrictively than the crab IFQ fishery; therefore, no changes to crab CDQ regulations in 50 CFR parts 679 or 680 are proposed by this action.

Alternative 1. Status quo—do not amend CDQ fisheries management regulations.

Alternative 1 is the status quo alternative. This alternative would maintain the existing regulatory requirements for the CDQ fisheries of the BSAI. No changes to regulations would be made to revise CDQ-specific regulations so that they are equivalent to regulations in effect for comparable IFQ fisheries or fisheries managed with cooperatives. There currently are three IFQ fisheries (fixed gear sablefish, halibut, and crab) and two fisheries conducted through cooperatives (the BS pollock fishery and hook-and-line catcher/processor BSAI Pacific cod fishery). Regulations governing each of these fisheries programs were developed separately over time. Regulations for the CDQ fisheries have been developed both separately from, and concurrently with, these other fisheries programs, depending on the scope and circumstance of applicable regulatory changes.

While the CDQ fisheries generally are a subset of comparable IFQ and cooperative fisheries, some of the regulations for the CDQ fisheries impose different conditions than those in place for similar non-CDQ fisheries. Regulations that may be considered more restrictive than IFQ-related regulations or regulations associated with fisheries managed with cooperatives, include those associated with catch retention and accounting, observer coverage, vessel licensing, and recordkeeping. Maintaining existing CDQ fishery management regulations would not comply with the requirements of the Magnuson-Stevens Act, as amended.

Alternative 2. Revise regulations associated with the CDQ fisheries to incorporate certain changes made to the CDQ Program by the Magnuson-Stevens Act. This includes changes that would ensure that the CDQ fisheries are not managed more restrictively than comparable non-CDQ fisheries. Under Alternative 2, the sablefish CDQ fishery would continue to be managed with other groundfish CDQ fisheries. [**preferred alternative**]

The second alternative would revise CDQ fishery management regulations for applicable species to ensure that they are no more restrictive than those regulations in effect for comparable IFQ fisheries or fisheries managed with cooperatives. Associated CDQ regulations include those that address fisheries observer coverage requirements, bycatch retention, vessel licensing, recordkeeping, and reporting with the regulations in effect for comparable IFQ and cooperative fisheries. The sablefish CDQ fishery would continue to be managed in conjunction with other groundfish CDQ fisheries. This would be an incremental change in the management for the sablefish CDQ fishery.

Alternative 2 would amend specific sections in 50 CFR part 679 related to the regulation of harvest of the CDQ fisheries. The following are the general changes proposed for Alternative 2:

- exempt vessels fishing for sablefish CDQ from having to have a LLP license,
- revise definitions in section (§) 679.2 to add definitions of sablefish CDQ and pollock CDQ fishing and to include a sablefish CDQ exemption in the definition of “license limitation groundfish,”
- revise § 679.5 to remove a requirement that CDQ groups annually submit a request to NMFS to designate specific vessels as eligible to harvest groundfish CDQ on their behalf,
- remove a prohibition in § 679.7 against harvesting groundfish CDQ unless a vessel is listed as eligible by a CDQ group,
- revise CDQ catch monitoring requirements in § 679.32 to incorporate applicable changes to the basis for CDQ catch accounting for the halibut, sablefish, and pollock CDQ fisheries,
- establish an application process for voluntary fisheries cooperatives to apply for relief from more restrictive CDQ harvest regulations,
- eliminate the requirement that groundfish bycatch be retained by catcher vessels targeting halibut, sablefish, or pollock CDQ, and
- revise regulations in § 679.50 to align observer coverage requirements for the sablefish CDQ, halibut CDQ, and pollock CDQ fisheries with comparable non-CDQ fisheries.

Halibut and sablefish CDQ

Both the halibut and sablefish IFQ and CDQ fisheries are conducted in a similar manner. Each fishery uses similar vessels and gear. In some cases, the same vessel may fish for both IFQ and CDQ either on the same trip or at different times of the year. However, the regulations developed for these fisheries are not completely equivalent, due to differences between the development of the halibut and sablefish IFQ and CDQ programs. Key differences include the types of recipients receiving annual quota (individuals or corporations versus CDQ groups); quota share based on catch history or purchase (quota share is used to allocate annual catch limits among IFQ recipients); an administrative allocations process (the means used to apportion annual catch limits among CDQ groups); limitations on the use of IFQ and CDQ; single species versus multi-species quota programs; and the different policy purposes associated with developing both the IFQ and the CDQ programs. These factors led to the implementation of different management structures for what are otherwise very similar fisheries. Alternative 2 would amend regulations to align more closely the sablefish CDQ fishery with the sablefish IFQ fishery.

Pollock CDQ

The CDQ pollock fishery is conducted similarly to the non-CDQ pollock fishery. Pollock CDQ harvesting is done by the same vessels conducting non-CDQ pollock harvesting. CDQ groups have made significant investments in the at-sea pollock fleet. The BSAI pollock fishery organized at-sea and in-shore fisheries cooperatives in 1999, following the passage of the American Fisheries Act (AFA) in 1998. This act rationalized the BSAI pollock fishery. This eliminated some participants, allowing the remaining pollock vessels and processors to improve their fishing and processing practices. One major element associated with the AFA was the implementation of more stringent catch accounting and monitoring requirements. These requirements apply equally to the CDQ and non-CDQ fisheries, with very limited exceptions. Alternative 2 would provide a means to amend regulations to address the few remaining differences between CDQ and non-CDQ observer coverage and catch accounting requirements for catcher vessels participating in the pollock CDQ fishery.

Other changes

In addition to amendments to fisheries management regulations, this action proposes revising or removing other regulations in 50 CFR parts 679 and 680 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act. The changes proposed under this action would clarify which regulations are currently applicable to CDQ Program participants and also would enhance administrative efficiency with respect to regulatory relevance and compliance. Furthermore, this action proposes to revise regulations in § 679.31 to allow CDQ groups to transfer groundfish CDQ and halibut prohibited species quota (PSQ) between themselves either before or after such allocations are harvested.

Alternative 3. Revise regulations associated with the CDQ fisheries to incorporate certain changes made to the CDQ Program by the Magnuson-Stevens Act. This would include revising regulations to ensure that the CDQ fisheries are not managed more restrictively than comparable non-CDQ fisheries. Under this alternative, the management of the sablefish CDQ fishery would be incorporated into the sablefish IFQ Program.

Alternative 3 would amend numerous sections in 50 CFR part 679 associated with the CDQ fisheries, as described under Alternative 2. In addition, the management of the halibut and fixed gear sablefish CDQ fisheries would be integrated into the regulations governing the IFQ fisheries. The management functions associated with the sablefish CDQ fishery would shift from the Alaska Region's Sustainable Fisheries Division to the Restricted Access Management (RAM) Program.

The Sustainable Fisheries Division currently provides the overall administrative oversight for the CDQ Program. It also provides inseason fisheries management and catch accounting functions for Federal groundfish CDQ fisheries, including the fixed gear sablefish CDQ fishery. The RAM Program provides permitting, catch monitoring, and catch accounting for the halibut, sablefish, and crab IFQ fisheries, in addition to a diverse variety of other permitting and program management functions for other Federal limited access fisheries programs off Alaska. Significant difference between the sablefish CDQ and IFQ fisheries include the basis for catch accounting on catcher/processors (observer data versus landed weight), permit requirements (not required in the sablefish CDQ fishery), quota transfer procedures, and miscellaneous reporting requirements.

Alternative 3 would align both the regulatory requirements and the management functions associated with the regulation of harvest of the fixed gear sablefish CDQ with those established for the IFQ fisheries. This would be a comprehensive change in management for the sablefish CDQ fishery. Such a change essentially would reverse the action that NMFS took in 1998 to remove the sablefish CDQ fishery from the sablefish IFQ management system, in order to incorporate it into the broader multispecies groundfish CDQ management system.

Alternative 3 would amend specific sections in 50 CFR part 679 related to the regulation of harvest of the CDQ fisheries. In addition to the general changes proposed for Alternative 2, Alternative 3 would require the following changes:

- add a requirement for sablefish CDQ permits to § 679.4,
- revise regulations in § 679.5 to incorporate sablefish CDQ into IFQ recordkeeping and reporting requirements,
- revise § 679.7 to incorporate sablefish CDQ into the prohibitions that apply to the sablefish IFQ fishery, and
- amend §§ 679.41 and 679.42 to incorporate sablefish CDQ into regulations governing the sablefish IFQ fishery.

The general changes noted above are described in more detail in the following section.

5.7 Expected Effects of the Alternatives

5.7.1 Effects of Alternative 1

The status quo alternative would not amend CDQ fisheries management regulation to ensure that the halibut, sablefish, and pollock CDQ fisheries are not managed more restrictively, i.e. with different and more burdensome conditions or requirements, than comparable halibut and sablefish IFQ or non-CDQ pollock fishery. Maintaining the status quo would continue to subject CDQ groups to existing regulations associated with the management of these CDQ fisheries. This would not comply with the Magnuson-Stevens Act. NMFS does not believe the amended Magnuson-Stevens Act requires that CDQ-related regulations that are less restrictive than regulations in effect for non-CDQ fisheries be amended to make them as restrictive as those in place for other fisheries.

5.7.2 Effects of Alternative 2

Alternative 2 would amend various sections of 50 CFR part 679, as described above in Section 5.6. The effects of the proposed regulatory changes considered under Alternative 2 are described below.

Changes to existing CDQ observer overage regulations

The majority of CDQ fishing activities are monitored by fisheries observers. Such observers are specially trained, certified by NMFS, and deployed to fishing vessels and processors by independent contractors. All groundfish catch on vessels equal to or greater than 60 ft LOA and all groundfish CDQ deliveries to shoreside processors must be monitored by a certified groundfish observer. Observers monitoring CDQ fisheries must meet certain performance standards beyond those required for basic certification. This includes prior experience as an observer, meeting or exceeding certain performance ratings, and completion of Level 2 observer training. Observer data provides:

- estimates of total catch weight for all groundfish CDQ species (not just retained catch);
- an independent source of information about groundfish CDQ catch, rather than vessel operator estimates; and
- catch data that is available to vessel operators, NMFS, and CDQ groups in a timely manner.

Alternative 2 would align observer coverage requirements for the halibut, sablefish, and pollock CDQ fisheries by amending regulations in 50 CFR 679.50. This alignment is necessary because the observer requirements in these CDQ fisheries are greater than comparable non-CDQ fisheries. This imposes additional costs than those borne by participants in the IFQ fisheries, AFA pollock fisheries, and the BSAI Pacific cod fishery conducted by hook-and-line catcher/processors, which is contrary to current Magnuson-Stevens Act requirements.

Observer coverage requirements for vessels directed fishing for sablefish CDQ would be amended to match those in place for the sablefish IFQ fishery. These requirements are based on vessel length, gear type, the fishery category in which a vessel is operating, and the amount of time spent fishing during a calendar quarter and include the following:

- catcher vessels that are equal to or greater than 60 ft LOA would be subject to 30 percent or 100 percent observer coverage;
- catcher/processors that are greater than 60 ft LOA, but less than 125 ft LOA would be subject to 30 percent observer coverage requirements, while catcher processor equal to or greater than 125 ft LOA would be subject to 100 percent coverage; and
- catcher/processors of any length using pot gear would be subject to 30 percent observer coverage.

The requirement for 30 percent observer coverage refers to the requirement applicable to catcher/processors or catcher vessels equal to or greater than 60 ft LOA, but less than 125 ft LOA. Such a vessel must carry an observer during at least 30 percent of its fishing days per calendar quarter and at all times for at least one complete fishing trip per calendar quarter. In the case of vessels using pot gear, observer coverage is predicated on the total number of pots retrieved per calendar quarter: at least 30 percent of total pot retrievals must be observed, along with one complete trip per quarter. A reference to 100 percent coverage means that a vessel must carry an observer each day it is operating in a groundfish fishery.

Vessels that are greater than 60 ft LOA that participate in the halibut CDQ fishery would no longer be required to carry an observer at any time. Vessels that are halibut IFQ fishing are not required to carry observers. The requirement for halibut CDQ catcher vessels to carry observers originally was intended to ensure that such vessels retained and delivered all groundfish caught while halibut CDQ fishing; this groundfish was reported and debited from applicable groundfish CDQ accounts.

Similarly, Alternative 2 proposes to amend observer coverage requirements for trawl catcher vessels operating in the pollock CDQ fishery to correspond with requirements in the non-CDQ pollock fishery. Observer coverage levels on catcher vessels fishing for pollock CDQ would be based on vessel length, rather than the existing requirement that all catcher vessels have 100 percent observer coverage. This is the same as required in the AFA pollock fishery, in which catcher vessels must have either 30 percent or 100 percent observer coverage, depending on length. Note that in the pollock CDQ fishery, 100 percent

of the pollock catch has been made by observed vessels since 1998. No changes are proposed to observer coverage requirements for catcher/processors or motherships that are fishing for pollock CDQ.

Observer coverage requirements for vessels operating in the BSAI groundfish fisheries are applicable to explicit fishery categories. These include pollock, Pacific cod, sablefish, rockfish, flatfish, and other species. NMFS is proposing to clarify that observer coverage for vessels directed fishing for sablefish be based on both IFQ and CDQ sablefish fishing activities combined, rather than considering sablefish IFQ and sablefish CDQ to be separate fishery categories. The fixed gear sablefish fishery may be conducted as a combined fishery, i.e., vessels directed fishing for sablefish may split sablefish landed in a given delivery between applicable IFQ permits and CDQ accounts.

Finally, for each of the fisheries affected by this action, Alternative 2 proposes to modify observer coverage requirements for shoreside processors to comport with those in place for corresponding IFQ and cooperatives fisheries. This would amend regulations to remove requirements that each CDQ delivery be observed; in lieu of this requirement, processors taking deliveries of sablefish or pollock CDQ would be subject to different observer coverage requirements that are based on the volume of groundfish processed during each calendar month. The coverage requirements for the general groundfish fishery and the pollock fishery include the following:

- one observer present each day when receiving or processing 1,000 mt or more of groundfish per month,
- one observer present at least 30 percent of the days during the month when receiving or processing 500 mt to 1,000 mt of groundfish, and
- for AFA inshore processors, one observer for each 12 consecutive hour period of each day during which the processor takes delivery of or processes groundfish harvested by a vessel engaged in a directed pollock fishery.

The following tables summarize the observed vessels, number of observers, and number of deliveries to shoreside processors in the sablefish, halibut, and pollock CDQ fisheries between 2002 and 2006.

Table 5.1 Number of vessels with observer coverage in halibut and sablefish CDQ fisheries, 2002-2006.

Species and vessel category	2002	2003	2004	2005	2006	Annual average
Sablefish catcher vessel >125', pot gear	0	0	1	0	0	0
Sablefish catcher vessel 60' to <125', pot gear	4	4	4	5	3	4
Sablefish catcher vessel 60' to <125', hook and line gear	1	0	1	0	0	0
Halibut catcher vessel 60' to <125', hook and line gear	3	2	2	2	2	2
sablefish CP > 125', hook and line gear	1	0	0	1	0	0
Pollock catcher vessel, trawl gear	0	0	0	0	0	0

Source: NMFS observer data.

Table 5.2 Number of fishing days observed in the halibut and sablefish fisheries, 2002-2006.

Species and vessel category	Fishing days per year					
	2002	2003	2004	2005	2006	Annual average
Sablefish catcher vessel >125', pot gear	0	0	36	0	0	7
Sablefish catcher vessel 60' to <125', pot gear	142	97	95	216	138	138
Sablefish catcher vessel 60' to <125', hook and line gear	37	0	8	0	0	9
Halibut catcher vessel 60' to <125', hook and line gear	31	28	14	35	19	25
sablefish CP > 125', hook and line gear	2	0	0	3	0	1
Pollock catcher vessels, trawl gear	0	0	0	0	0	0

Table 5.3 Number of shoreside deliveries of sablefish, halibut, and pollock CDQ , 2002-2006.

Species Category	Number of deliveries by vessels greater than 60 ft					
	2002	2003	2005	2005	2006	Annual average
Sablefish CDQ (based on CDQ catch reports)	38	19	32	41	29	32
Halibut CDQ (based on RAM Program landing reports)	10	5	3	5	3	5
Pollock CDQ	0	0	0	0	0	0

Effects on CDQ groups and their industry partners

The changes proposed for the regulations governing observer coverage in the halibut, sablefish, and pollock CDQ fisheries would decrease the observer-related expenses borne by participants in these fisheries. For example, based on the average number of CDQ fishing days described in Table 5.2, the amount paid for additional observer coverage in the sablefish and halibut CDQ fisheries is approximately \$47,600.¹⁵ The estimated cost for CDQ and non-CDQ observer coverage for this number of observer days is portrayed in the following table. The estimated number of coverage days under non-CDQ requirements is based on 30 percent coverage requirements.

Table 5.4. Comparison of CDQ and non-CDQ observer costs.

Vessel category	Average CDQ fishing days, 2002-2006	Coverage days under CDQ requirements	(A) Cost of coverage in CDQ operations	Coverage days under non-CDQ requirements	(B) Cost of coverage, non-CDQ fisheries	Cost difference [A - B]
Sablefish catcher vessels >125 ft LOA, pot gear	7	7	\$2,556	2	\$767	\$1,789
Sablefish catcher vessels 60 ft LOA to <125 ft LOA, pot gear	138	138	\$48,848	41	\$14,654	\$34,194
Sablefish catcher vessels 60 ft LOA to <125 ft LOA, hook and line	9	9	\$3,195	3	\$959	\$2,237
Halibut catcher vessels 60 ft LOA to <125 ft LOA, hook and line	25	25	\$9,017	0	\$0	\$9,017
Sablefish catcher/processors >125 ft LOA, hook and line	1	2	\$710	1	\$355	\$355
Total			\$64,326		\$16,735	\$47,591

In the CDQ fisheries, observer costs typically are paid by the vessels contracting for such services. The observer costs that exceed observer costs for non-CDQ operations may be integrated into the contractual arrangements between vessels and CDQ groups. Thus, while CDQ groups may not directly pay for observer costs, such costs may be a factor considered by industry partners when determining the royalty rate they are willing to pay to harvest CDQ. Decreased observer costs resulting from the revised CDQ observer coverage requirements proposed in this action could result in adjustments to the royalty arrangements (or other contractual adjustments) between CDQ groups and their harvesting partners. It could also result in increased willingness to participate in the halibut and sablefish CDQ fisheries, either by existing partners or by vessels that currently are not affiliated with any of the CDQ groups.

With respect to the halibut CDQ fishery, note that the majority of the annual landings are made by small, unobserved catcher vessels. Much of the halibut CDQ fishery is conducted as a near-shore fishery by CDQ community residents. Such catch typically is delivered to local processors, many of which are owned and/or operated by the CDQ groups. Catcher vessels equal to or greater than 60 ft LOA

¹⁵ These estimates are based on an estimated daily average cost of \$355/day for 2000-2003. This rate includes estimated travel costs of \$25/day and meal costs of \$15/day. A current description of the groundfish observer program and the costs associated with observer coverage are contained in the EA/RIR/IRFA for a Proposed Regulatory Amendment to Extend the Program for Observer Procurement and Deployment in the North Pacific (NPFMC 2006a).

historically are used to harvest halibut CDQ in IPHC management area 4D, which is in the central Bering Sea. They also are used to conduct clean-up quota harvesting operations during the fall months, when inclement weather precludes the use of smaller vessels. The following table illustrates the proportion of halibut CDQ caught by vessels requiring observer coverage between 2002 and 2006. The highest proportion of the annual halibut CDQ caught by observed vessels is 19 percent in 2002, while the annual average between 2002 and 2006 is 14 percent.

Table 5.5 Amounts and percentage of halibut CDQ caught by observed vessels, 2002-2006.

	2002	2003	2004	2005	2006	Annual average
Catcher/processors	0	12,948	50,101	62,863	42,342	33,561
Catcher vessels equal to or greater than 60 ft LOA	471,561	175,149	227,040	239,580	121,722	247,010
Total catch, observed vessels	471,561	188,097	277,141	302,443	164,064	280,661
Total catch, all vessels	2,491,463	2,178,184	1,721,089	1,772,996	1,908,673	2,014,481
Percent of total catch made by vessels with observers	19	9	16	17	9	14

Source: RAM Program halibut CDQ landings data. All amounts in pounds, net weight.

As with the proposed decrease to observer coverage requirements for vessels, decreasing the CDQ observer coverage requirements for shoreside processors could decrease the costs associated with such coverage. This cost savings is more difficult to assess than the costs associated with observer coverage for two reasons. First, most of the large-volume processors that historically have taken deliveries of halibut and sablefish CDQ from observed vessels concurrently are taking deliveries of halibut and sablefish IFQ, as well as other non-CDQ groundfish species. This means that the processors already may be required to have a fisheries observer on-site to meet other applicable coverage requirements. Two of the eight shoreside processors have taken deliveries of sablefish CDQ in the past are relatively low volume processors and may not have an observer present much the time. These are processors that ordinarily may not be required to have an observer present 100 percent of the time that they are taking deliveries of groundfish. Second, current CDQ observer coverage regulations have a provision that allows, under some circumstances, vessel observers to monitor the offload of catch from the vessel on which they are deployed. Thus, some of the deliveries noted in Table 5.3 may not have required separate or additional CDQ observer coverage.

In the context of Alternative 2, no longer requiring observer coverage for processors that are taking deliveries of sablefish CDQ or groundfish CDQ caught by vessels that are halibut CDQ fishing could offer some degree of cost savings to shoreside processors. The estimated average annual observer coverage cost to shoreside observers is approximately \$13,135, based on average observer costs per day and the average number of CDQ deliveries per year in recent years (\$355 multiplied by 37). This is solely based on the requirement that an observer monitor each CDQ delivery and does not account for other observer coverage requirements (and costs) a processor may be subject to at the same time it takes deliveries of CDQ.

Under Alternative 2, we expect some cost savings for processors if they were no longer required to monitor each sablefish CDQ delivery or each halibut CDQ delivery by vessels equal to or greater than 60 ft LOA. However, we do not have enough information to provide an estimate of the amount of this savings. These savings also could apply to shoreside deliveries of pollock CDQ, were CDQ groups to use pollock catcher vessels at some point in the future.

Effects on Non-CDQ Industry Components

Reducing observer coverage requirements under Alternative 2 should not directly affect vessel operators or processors who do not participate in the CDQ fisheries. The proposed changes may offer incentives to participate in CDQ fisheries in the future because they would decrease the direct costs associated with observer coverage requirements. NMFS also notes that reduced observer coverage levels could lead to substantial unmonitored changes in fishing behavior in the CDQ fisheries (e.g., increased discards of non-target species, high-grading of target species, as well as exceeding quotas) that could result in adverse impacts accruing towards the non-CDQ fisheries.

Effects on Management Costs

NMFS does not anticipate that Alternative 2 would result in long-term, additional management costs for the CDQ fisheries. The fixed gear sablefish and halibut CDQ fisheries are a relatively small component of the overall CDQ fisheries. The majority of annual halibut CDQ is harvested by unobserved vessels. Aligning observer coverage requirements for the fisheries affected by this action could both simplify and decrease the oversight and management costs for the principal NMFS agency components responsible for observer coverage, fisheries management, and enforcement. These components include the Fisheries Monitoring and Analysis Division of the Alaska Fisheries Science Center (observer training, deployment, debriefing, and data analysis), the Sustainable Fisheries Division of the Alaska Regional Office (BSAI fisheries inseason management and CDQ Program oversight), and the NOAA Office for Law Enforcement (compliance and enforcement of fisheries regulations). The amount of administrative resources that these components expend could decrease if observer coverage requirements matched those in effect for the comparable non-CDQ fisheries. Management effects of the potential decrease in observer data in the affected CDQ fisheries are described below.

Retention and Reporting Requirements

The original CDQ Program design stipulated that all groundfish CDQ and PSQ harvested by vessels participating in the groundfish CDQ Program must be accounted for in the allocations made to CDQ groups. This was the premise for the original catch accounting structure for the multispecies CDQ Program, as implemented in 1998. The CDQ catch accounting system was structured so that none of the groundfish or PSQ catch made in the groundfish CDQ fisheries accrued to the non-CDQ TACs or PSC limits. However, the following exceptions have been made to this original design:

- removing squid from being allocated to the CDQ Program,
- modification of the management of the other species CDQ reserve,
- modification of the management of various rockfish species, and
- removal of certain groundfish species from the CDQ Program.

The CDQ Program's retention and catch reporting requirements, in conjunction with observer data, allows NMFS to monitor the catch of the various CDQ and PSQ species categories on a timely, ongoing basis throughout the year. CDQ catch reporting requirements were designed to provide the data needed for NMFS to monitor the catch of each species allocated both to the CDQ Program and among CDQ groups, including bycatch and discarded species. This included additional observer coverage requirements (described in the previous section) and increased requirements for accurately weighing catch made in the CDQ fisheries.

Catch weighing requirements implemented for various components of the groundfish CDQ fisheries, included requiring the use of NMFS-approved total catch weighing flow scales aboard catcher/processors and motherships, as well as State of Alaska inspected scales at shoreside plants. For catcher/processors and motherships, observer estimates of species composition are applied to the weight of each haul or set

in order to derive an estimate of the weight of individual species in a particular haul. Shoreside processors must sort the catch in each CDQ delivery and weigh each species separately.

Furthermore, groundfish CDQ accounting requirements extend to the halibut CDQ fishery. Halibut CDQ vessels that are equal to or greater than 60 ft LOA are required to comply with all groundfish CDQ and PSQ catch accounting requirements, including retention of all groundfish CDQ by catcher vessels. This means that groundfish caught while a CDQ groups is harvesting its halibut CDQ must be reported to NMFS for debiting from the appropriate groundfish CDQ allocation. Groundfish catch by vessels less than 60 ft LOA is not subject to this reporting requirement, as catch on these vessels is unobserved and they catch relatively small amounts of groundfish while halibut fishing.

Alternative 2 would amend CDQ catch monitoring requirements for the fixed gear sablefish, halibut, and pollock CDQ fisheries in § 679.32 and other applicable sections of 50 CFR part 679 to align regulations with the retention and reporting requirements in place for equivalent non-CDQ fisheries. These proposed amendments also are related to the changes in observer coverage requirements described in the preceding section. Changes to observer coverage on vessels that could be affected by this action is directly related to the availability of observer data, which is the basis for many aspects of CDQ catch accounting.

Following are proposed regulatory revisions:

- separating CDQ monitoring requirements into the following fisheries categories: halibut, fixed gear sablefish, pollock, and groundfish (other than pollock), rather than by vessel category,
- defining the terms “pollock CDQ fishing” and “sablefish CDQ fishing” in regulations at § 679.2 (halibut CDQ fishing and groundfish CDQ fishing already are defined),
- exempting vessels fishing for sablefish CDQ from LLP groundfish license requirements,
- describing CDQ retention and reporting requirements for each class of vessel operating in a given CDQ fishery category, and
- identifying the data sources that will be used for sablefish CDQ catch accounting.

Groundfish CDQ catch in the fixed gear sablefish and halibut CDQ fisheries is summarized in Section 4.0—see Tables 4.4 and 4.5. In general, while there has been some amount of various groundfish species caught in these fisheries, the primary target species (sablefish or halibut) comprise the majority of the catch. The average amounts of bycatch and incidental catch are a small proportion of the overall catch of groundfish in the groundfish CDQ fisheries and a very small proportion of the catch of such species in the BSAI groundfish fisheries as a whole.

Effects on CDQ groups and their industry partners

The proposal to eliminate the requirement that vessels fishing for halibut or fixed gear sablefish CDQ retain all of the groundfish caught in these fisheries could decrease the amount of incidentally caught species that is retained to be delivered to shoreside processors. Much of the non-target species retained and delivered in the halibut and fixed gear sablefish CDQ fisheries is either discarded by the processor once sorted and weighed, or processed into fish meal, based on product codes submitted by processors.

In the fixed gear sablefish CDQ fishery, the average amount of sablefish caught between 2002 and 2006 was about 361 mt, or about 85 percent of total groundfish caught in this fishery. According to information submitted on associated CDQ catch reports, there was an additional aggregate amount of 65 mt of groundfish caught, retained, and delivered with this sablefish. Those species were predominately arrowtooth flounder and Greenland turbot.

For those catch reports that were designated as halibut targets between 2002 and 2006, the average annual catch of halibut (both CDQ and IFQ combined) was approximately 131 mt, or about 94 percent of the total catch. Associated groundfish catch totaled about 8.6 mt. This reflects the data from CDQ catch

reports submitted for vessels fishing for halibut CDQ and retaining groundfish CDQ for delivery to shoreside processors. The actual annual catch of halibut CDQ is discussed in greater detail in the preceding section.

Under Alternative 2, removing the requirement that groundfish catch made by catcher vessels in the fixed gear sablefish, halibut, or pollock CDQ fisheries be retained and delivered likely would result in decreased costs associated with retaining, storing, and offloading of fish that vessels otherwise might discard. This also could allow catcher vessels to catch and retain additional amounts of halibut and sablefish CDQ on a given trip, since additional hold space could become available. Note that the CDQ fisheries affected by this action thus would be subject to decreased catch accountability. Some amounts of fish harvested in the CDQ fisheries affected by this action will not be counted towards applicable CDQs, but will nonetheless be part of the aggregate catch accruing towards applicable BSAI TACs.

Additionally, CDQ vessel operators have noted that some non-commercially valued species that must be retained may decompose more quickly than some target species, such as halibut. This could have a bearing on the duration of a fishing trip, should vessel operators wish to avoid affecting the product quality of retained target species. Although this action proposes eliminating the requirement that groundfish species caught while fishing for the species affected by this action be retained and/or accounted for, participants in these CDQ fisheries could selectively choose which species other than halibut or sablefish CDQ to retain and market. Note that participants in the halibut and sablefish IFQ fisheries must retain and deliver all catch of Pacific cod and rockfish taken when IFQ halibut or IFQ sablefish are on-board. NMFS initially proposed to clarify regulations at § 679.7(f) to apply this requirement to the halibut and sablefish CDQ fisheries. However, the Council did not recommend that this revision be included in Alternative 2, the Council's preferred alternative.

As a result of the proposed changes to retention and delivery requirements, processors accepting deliveries of halibut and sablefish CDQ from catcher vessels could no longer be required to sort and weigh incidentally caught groundfish CDQ species in future CDQ deliveries. The amount of groundfish delivered by vessels participating in the halibut and sablefish CDQ fisheries from 2002 to 2006 total about 74 mt or 163,170 pounds. This averages about 32,600 pounds a year, which is a small proportion of the total weight of groundfish received by the processors that historically have taken CDQ deliveries. NMFS does not have information associated with the costs borne by processors for sorting, weighing, and disposing of groundfish CDQ delivered with halibut or sablefish CDQ. We expect that there would be some cost savings associated with modifying groundfish CDQ retention and delivery requirements, but cannot quantify that amount.

One of the most significant change associated with this proposed change is that the basis for catch accounting for sablefish CDQ caught by catcher/processors would change. Instead of using observer data to account for such catch, the product weight of sablefish product at offload would be used for sablefish CDQ catch accounting (after converting to round weight). These are the data used to account for the catch of sablefish IFQ by catcher/processors.

Effects on Non-CDQ Industry Components

Amending retention and reporting requirements under Alternative 2 should not directly affect vessel operators or processors who do not participate in the CDQ fisheries. It may indirectly impact them if future amounts of unaccounted for CDQ bycatch adversely impact BSAI resource components.

Effects on Management and Enforcement Costs

The NMFS Alaska Region groundfish catch accounting system utilizes data sources that include observer data, shoreside processor landings data, and processor weekly production report data. This system

accounts for data at the haul (observer data) and delivery (shoreside landing data) level and allows the agency to account for catch attributed to different management programs, quotas, areas, seasonal allocations, and various other combinations of vessel and gear type categories. Both retained and discarded fish is credited against applicable TAC limits. NMFS estimates total groundfish removals through a combination of observer data, shoreside processor data, and production reports from industry sources, as well as agency estimates of at-sea discards by vessels without observers. The latter estimates are made by applying calculated catch rates (for all species) derived from observed vessels to the catch reported by unobserved vessels. Groundfish delivered by vessels that are targeting halibut IFQ or CDQ are incorporated into NMFS' estimates of total groundfish catch when available (Mary Furuness, NMFS, Alaska Region, pers. comm., May 4, 2007).

The impacts on NMFS' management costs and effectiveness due to decreasing groundfish retention and reporting requirements for the fisheries affected by this action likely would be minimal. NMFS would adapt its CDQ catch reporting protocols to incorporate a diminished level of catch information from the fisheries affected by this action. Groundfish species that may continue to be landed with sablefish or halibut CDQ would be accounted for through the existing recordkeeping and reporting structure in place for the Alaska groundfish fisheries. NMFS would use established catch accounting practices to estimate the bycatch of groundfish species in the halibut and sablefish CDQ fisheries, although such estimates would not be used to debit allocated species from CDQ accounts, resulting in a *de facto* increase in CDQ fisheries' use of these species, although to an unknown degree. NMFS would debit from groups CDQ accounts any groundfish that was retained, delivered, and reported to NMFS by a processor.

Aligning groundfish retention requirements also could simplify and decrease the management costs for the other agency components (as described in the preceding section about the management effects of revising observer coverage requirements) that are responsible for managing the CDQ fisheries. The proposed changes also would make NMFS' management of the CDQ fisheries less effective.

Alternative 2 would decrease observer requirements for trawl catcher vessels while such vessels are pollock CDQ fishing. This could increase the potential that unobserved vessels would sort catch at sea and not deliver some species to shoreside processors, particularly prohibited species. However, pollock catcher vessels typically dump their codends directly into fish holds and there is little opportunity for such sorting to occur (Jason Anderson, Observer Program Coordinator, NMFS Alaska Region, pers. comm., May 4, 2007). NMFS would have to modify its catch accounting practices to account for the catch of all groundfish and prohibited species by catcher vessels fishing for pollock CDQ. This would involve incorporating such vessels into the catch accounting algorithms used to estimate the overall catch of groundfish and prohibited species by unobserved vessels, as described previously. NMFS does not expect that this would involve substantial long-term costs to the agency.

LLP exemption for sablefish CDQ vessels

Alternative 2 would allow vessels that fish for sablefish CDQ to do so without having a LLP groundfish license. This exemption already exists for vessels that are sablefish IFQ fishing. The LLP is described in Section 2.2. In brief, licenses issued under this program authorize a person to deploy a vessel to conduct directed fishing for license limitation groundfish only within the area and for the species listed on the endorsements specified on the license. During the inception and implementation of the LLP, sablefish IFQ was excluded from the program because it was already managed through the IFQ program. In other words, participation in the fixed gear sablefish IFQ fishery already was limited by virtue of it being a quota-based, restricted access fishery.

NMFS proposes to amend the definition of "license limitation groundfish" in § 679.2 to exclude sablefish CDQ from being considered a license limitation groundfish species (as is already done for sablefish IFQ). This, in turn, would eliminate the requirement that operators of vessels fishing for sablefish CDQ to

possess a LLP groundfish license while directed fishing for sablefish CDQ. This would be comparable to, and no more restrictive than, the LLP requirement for the sablefish IFQ fishery.

Effects on CDQ Groups

This change would not impose additional costs on CDQ groups. On the contrary, it would allow CDQ groups to contract with vessels that do not have an AI-endorsed LLP groundfish license to fish for AI sablefish CDQ. In the past, NMFS has received anecdotal information from CDQ groups' harvest managers that they have, on occasion, encountered difficulty procuring a vessel with the proper AI area endorsement associated with its LLP groundfish license to enable it to fish for AI sablefish CDQ. Thus, this proposed change could benefit a CDQ group if it were able to more readily contract with vessels to fish for either AI or BS fixed gear sablefish CDQ. This would be a positive economic impact.

Effects on Non-CDQ Industry Components

NMFS does not anticipate that this proposed change would place additional costs on non-CDQ fishery participants. However, implementing this exemption could subject operators of vessels with LLP groundfish licenses, endorsed for the BS and/or AI, some loss of economic leverage. Such operators could face new competition from vessels without properly-endorsed LLP licenses. This could result in some degree of adverse economic effects on such vessel operators should they have to forego participation in the sablefish CDQ fisheries. NMFS does not have the information necessary to assess the potential monetary effects of the LLP groundfish license exemption.

Effects on Management Costs

This change could decrease the amount of time and resources that agency components expend to monitor and detect compliance with LLP licensing requirements in the CDQ fisheries.

Eligible vessel requirement

CDQ allocations are made to the CDQ groups, not to individual vessels participating in the CDQ fisheries. Currently, in order to harvest CDQ, a vessel must be designated as an eligible vessel by each CDQ group intending to use the vessel to fish on its behalf. This requirement is applicable to each vessel of any length that will be fishing for groundfish CDQ, and each vessel equal to or greater than 60 ft LOA that will be fishing halibut CDQ. This requirement originally was implemented to provide specific information about which vessels would be participating in groundfish CDQ fisheries. In the first few years of the multispecies groundfish CDQ fisheries (1998 through 2000), NMFS required CDQ groups to submit detailed operational information about such vessels. This was intended to ensure that both CDQ groups and vessels were complying with increased observer coverage and catch reporting requirements. The eligible vessel designation also provided a means for NOAA and Coast Guard enforcement personnel to ascertain that a vessel was authorized to participate in the CDQ fisheries. Since, 1999 NMFS has detected approximately five instances in which vessels fished for groundfish CDQ before the CDQ group had completed the vessel eligibility process. The most recent event occurred in 2002.

As the groundfish CDQ fishery matured and stabilized, the information submitted as part of the vessel eligibility process no longer was necessary for management purposes or became available from other sources, such as observer data. In 2005, NMFS amended regulations governing the eligible vessel requirements to decrease the type of information collected about each vessel and to remove the State of Alaska from the administrative review process associated with vessel eligibility (70 FR 15010, March 24, 2005). Currently, vessel operators are required to maintain a copy of NMFS' eligibility approval onboard the vessel at all times while harvesting, transporting, or offloading groundfish CDQ. A publicly available list of CDQ eligible vessels is maintained on the NMFS, Alaska Region website.

Between 2002 and 2006 (inclusive), the average annual number of eligible vessels included 68 catcher/processors, 45 catcher vessels, and one mothership. Note that the actual number of vessels was smaller than portrayed, as individual vessels often fish on behalf of multiple CDQ groups. However, these numbers are reflective of the total number of eligible vessel requests prepared by CDQ groups and submitted to NMFS for review and approval each year.

There is no equivalent requirement for vessels fishing in the halibut IFQ, sablefish IFQ, or non-CDQ pollock fishery.¹⁶ Alternative 2 proposes to eliminate the CDQ vessel eligibility requirement from regulation. This includes the general requirement to request and remove vessels from CDQ eligibility at § 679.32(c) and the specific information required to be submitted at § 679.5(n)(4). NMFS proposes to eliminate this requirement in its entirety, rather than just for the primary fisheries affected by this action. NMFS does not believe that the CDQ eligible vessel designation continues to serve a necessary fisheries management purpose. Information about which vessels are fishing for groundfish CDQ and the groups these vessels are fishing for is readily available from other reporting and data sources. Furthermore, the U.S. Coast Guard, which is the enforcement entity most likely to board vessels at sea and need to ascertain a vessel's fishing status, has indicated that it does not currently use the CDQ vessel eligibility status for enforcement purposes.¹⁷ Instead, Coast Guard personnel use the fishery logbooks, required by NMFS, to determine if a vessel is CDQ fishing or fishing under another management program.

Effects on CDQ groups and their industry partners

Removing the regulatory requirement to designate vessels as eligible to fish on behalf of a CDQ groups, or to request the removal of such eligibility could yield modest cost savings to CDQ groups. NMFS estimates that each eligible vessel request (for approval or removal) takes one hour for a CDQ group to complete and submit to NMFS. Based on estimated personnel costs of \$25 per hour (the cost currently used when NMFS prepares recordkeeping cost estimates), the estimated total annual cost of completing eligible vessel requests is \$2,860. Additionally, if Alternative 2 were implemented and the vessel eligibility requirement were eliminated, CDQ groups could be subject to fewer enforcement actions, as well as the costs associated with them.

Effects on Non-CDQ Industry Components

If implemented, this element of Alternative 2 would not affect other components of the fishing industry, since they are not subject to this requirement.

Effects on Management and Enforcement Costs

The removal of the eligible vessel requirements from CDQ fisheries regulation could eliminate the administrative costs associated with reviewing and approving of CDQ eligible vessel requests. NMFS estimates these costs to be approximately \$625 per year. This is based on administrative costs of \$25 per hour (the hourly personnel cost NMFS uses for recordkeeping cost estimates) and annual staff time expenditures of 25 hours.¹⁸ Additionally, future costs associated with the detection, investigation, and settlement of violations related to CDQ vessel eligibility requirements would be eliminated.

¹⁶ However, sablefish IFQ fishery participants must comply with requirements associated with IFQ permits, hired master permits, and prior notice of landing reports.

¹⁷ LCDR Lisa Ragone, USCG, 17th District Enforcement Division, pers. comm., April 12, 2007.

¹⁸ Patty Britza, NMFS-AKR, Inseason Management, pers. comm., April 4, 2007.

Other Revisions for Consistency with the Magnuson-Stevens Act

In addition to the fisheries management regulatory amendments necessary to implement section 305(i)(1)(B)(iv), NMFS also proposes revising or removing other regulations in 50 CFR part 679 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act. These inconsistencies were created as a result of the previously described amendments to the Magnuson-Stevens Act made through the Coast Guard Act and the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. NMFS also proposes updating and clarifying regulations and cross-references to support the proposed, primary regulatory amendments made by this action. The proposed revisions associated with Magnuson-Stevens Act consistency would

- revise the CDQ Program purpose statement,
- remove the definitions of “CDQ project” and “qualified applicant,”
- revise the definition of “CDQ community,”
- remove regulations that are not consistent with requirements associated with CDQ allocations, the allocation adjustment process, and the submission and maintenance of community development plans,
- revise regulations in § 679.30 to allow CDQ groups to transfer groundfish CDQ and halibut PSQ between themselves either before or after such allocations are harvested, and
- implement other revisions to remove obsolete regulations and clarify CDQ-related terminology.

Effects on CDQ groups and their industry partners

The proposal to amend regulations to ensure that applicable CDQ regulations are consistent with the Magnuson-Stevens act would reduce confusion about whether existing regulations are effective or not. Such clarification would reduce CDQ groups’ administrative costs by allowing them to decrease the amount of time that they could otherwise spend determining whether they must comply with regulations that appear to be in effective, but that have actually been superseded by statutory changes or administrative policy.

Effects on Management and Enforcement Costs

Amending regulations for consistency with the CDQ provisions in the Magnuson-Stevens Act would decrease management costs, as NMFS staff and Enforcement personnel would no longer have to clarify or explain to the public which CDQ regulations are effective and which are not effective.

5.7.3 Effects of Alternative 3

Alternative 3 would, if implemented, revise the regulations associated with the halibut, sablefish, and pollock CDQ fisheries in exactly the same manner described under Alternative 2. This includes changes to observer coverage requirements, retention and reporting requirements, removing the requirement to have a LLP license to fish for sablefish CDQ, and removing the CDQ eligible vessel requirement. The effects of such changes are discussed in the Section 5.7.2 and are not repeated here.

In addition to the above changes, Alternative 3 would segregate fixed gear sablefish CDQ management from the management system for other groundfish CDQ species. Sablefish CDQ management would be done with the management measures in effect for the sablefish IFQ fishery. The administration and management of the fixed gear sablefish CDQ fishery would be done by the RAM Program, which is the NMFS, Alaska Region organizational unit responsible both for issuing permits and for quota accounting in the halibut and sablefish IFQ fisheries. Those fisheries are further described in Section 2.2.

Integrating the fixed gear sablefish CDQ fishery with the sablefish IFQ fishery is being proposed as one way to ensure these fisheries are managed comparably. Consider that the halibut CDQ fishery already is

managed, for the most part, the same as the halibut IFQ fishery. The two halibut fisheries share equivalent permitting requirements, as well as catch landing and reporting requirements. From 1995 until 1998, the sablefish CDQ fishery also was managed under the RAM Program. It then was integrated into the multispecies groundfish CDQ Program, and has been managed under the groundfish CDQ regulations since 1999.

The other proposed revisions to the sablefish CDQ fishery (as described under Alternative 2) would compartmentalize this particular fishery to the extent that is more analogous to a single target species fishery than the other groundfish CDQ fisheries. Therefore, this analysis includes the alternative of applying management practices in place for IFQ sablefish to the CDQ sablefish fishery. Affected regulatory sections are described in Section 5.6. In brief, Alternative 3 proposes regulatory revisions that would require sablefish CDQ permits, revise recordkeeping and reporting requirements, incorporate sablefish CDQ into the prohibitions applicable to the sablefish IFQ fishery (including prohibiting the discard of Pacific cod or rockfish when sablefish CDQ is onboard), and shift administrative functions such as sablefish CDQ transfers to the RAM Program.

Permitting requirements

Alternative 3 would revise regulations at § 679.4(e) to require that CDQ groups obtain an annual sablefish CDQ permit from NMFS. These permits would follow the same format already in use for halibut/sablefish IFQ and halibut CDQ permits. Each permit would identify the CDQ group associated with the permit, sablefish management area(s) in which quota was issued, and the amount of CDQ available to harvest. Permits would be required to be maintained aboard vessels fishing for sablefish CDQ. Additionally, CDQ groups would be required to obtain a hired master permit for each person authorized to fish for, and make landings of, sablefish on the group's behalf. Furthermore, regulations at § 679.4(d) would be revised to incorporate sablefish CDQ into the requirements associated with Registered Buyer permits. Registered Buyer permits authorize persons to receive sablefish/halibut IFQ and halibut CDQ from harvesters; they also require permit holders to report such landings with an IFQ landing report.

Effects on CDQ Groups and their Industry Partners

Implementing this requirement would mean that CDQ groups and their sablefish harvesting partners would have to ensure that they have the appropriate permits necessary to conduct sablefish CDQ fishing operations. CDQ groups already are accustomed to such a process, as comparable permits are required in the halibut CDQ fishery. Thus, the costs associated with obtaining and maintaining sablefish CDQ permits are expected to be minimal. In addition, there may be short-term costs to CDQ groups as they adjust to changes in sablefish CDQ permit requirements in the context of which NMFS organizational units they must coordinate with to meet sablefish CDQ fishery permitting and reporting requirements. However, many vessels that fish for sablefish CDQ also fish for halibut CDQ and sablefish IFQ. Furthermore, four CDQ groups currently own sablefish QS and, thus, receive annual allocations of sablefish IFQ. Thus, the majority of CDQ groups and their affiliated sablefish fishing partners already are familiar with IFQ permitting and reporting requirements.

In addition, Registered Buyers would have to report sablefish CDQ on IFQ landing reports, as they currently do for sablefish IFQ. Such reports are submitted through an Internet-based reporting system, with limited exceptions. However, NMFS does not expect that processors accepting deliveries of sablefish CDQ would have to obtain a Registered Buyer permit, since the entities that historically take deliveries of sablefish CDQ also accept deliveries of sablefish IFQ, and are permitted accordingly. NMFS expects the costs associated with these permitting changes would be minimal, given the relatively low number of sablefish CDQ deliveries per year (approximately 36 landings per year, for the years 2002-2006).

Effects on Management and Enforcement Costs

The proposed changes to sablefish CDQ permitting requirements could pose additional costs to NMFS, but such costs are expected to be minimal. The number of sablefish CDQ permits that would be issued annually is six (one per CDQ group). In contrast, NMFS issued over 5,000 halibut and sablefish IFQ permits in 2005. This includes permits issued to approximately 95 AI QS holders and 115 BS QS holders.

The number of hired master sablefish CDQ permits that could be issued is unknown, but NMFS estimates that it would be fewer than 20 permits per year. This is based on the number of vessels (and, by extension, the number of masters operating such vessels) participating in the sablefish CDQ fishery in recent years. Issuing additional permits also could increase the administrative expense associated with modifying IFQ permit system software, but that probably would be a non-recurring cost.

Reporting requirements

Alternative 3 would revise regulations at § 679.5(l) to require that entities involved in the sablefish CDQ fishery on behalf of CDQ groups comply with the reports and authorizations required in that paragraph. These reports include IFQ Prior Notice of Landing, Product Transfer Report, IFQ Landing Report, IFQ Transshipment Authorization, and IFQ Departure Report. The reports already are applicable to the halibut CDQ fishery. This suite of reports provides the IPHC and NMFS with the means to monitor vessel landings, the date, location, and weight of landed species, as well as other pertinent information associated with the movement or transport of halibut IFQ, sablefish IFQ, and halibut CDQ. Practically speaking, the Prior Notice of Landing and the Landing Report are the two most commonly used reports.

Effects on CDQ Groups and their Industry Partners

If the fixed gear sablefish CDQ fishery were integrated into the sablefish IFQ fishery management system, participants in the sablefish CDQ fishery would be subject to applicable IFQ reports. There were 32 landings of fixed gear sablefish CDQ in 2006, including 9 deliveries of AI sablefish and 23 deliveries of BS sablefish. If Alternative 3 were to be selected and implemented, participants in the sablefish CDQ fishery would be subject to any costs associated with future sablefish CDQ reports, although NMFS does not expect these costs to be significant due to the relatively small number of sablefish CDQ landings per year.

In contrast to the number of sablefish CDQ landings, there were 2,075 sablefish landings in each of the six sablefish management areas combined in the 2006 sablefish IFQ fishery. This includes the four Gulf of Alaska management areas, the BS, and the AI. Of these landings, 87 occurred in the AI and 139 occurred in the BS. This represents approximately 4 percent and 7 percent of the total sablefish landings in 2006. If Alternative 3 were implemented, Registered Buyers would have to complete and submit IFQ landing reports for each sablefish CDQ delivery they accepted, in lieu of the currently required CDQ delivery report (which tabulates all groundfish CDQ species in a given delivery). Vessel operators would have to submit a Prior Notice of Landing report for each delivery. NMFS anticipates that the cost associated with submitting such reports would be small, since historically there have not been very many sablefish CDQ deliveries per year.

Effects on Management and Enforcement Costs

One significant management complexity associated with sablefish CDQ is that there are different sablefish CDQ quota categories than those associated with the IFQ sablefish fishery. The annual sablefish TACs in the BS subarea and the AI subarea are first allocated between hook-and-line or pot gear

(fixed gear) and trawl gear industry components. After those gear allocations are made, 20 percent of the fixed gear allocation and 7.5 percent of the trawl allocation is allocated to the CDQ Program as two separate sablefish CDQ reserves in each subarea. Thus, the CDQ Program receives four distinct sablefish allocations: BS fixed gear, BS non-gear specific, AI fixed gear, and AI non-gear specific. The sablefish IFQ fishery receives the balance of the fixed gear sablefish TAC for each subarea.

Under current regulations, only catch of sablefish with fixed gear may accrue against the fixed gear sablefish CDQ reserve. However, any gear type may be used to harvest sablefish that accrues against the sablefish CDQ reserve that originated from the trawl allocation of sablefish. In addition, although directed fishing for sablefish using trawl gear is prohibited for the non-CDQ sectors, this prohibition is not applicable to the CDQ fisheries. Instead, the CDQ groups are prohibited from exceeding either type of their sablefish allocations. They must decide how to allocate their sablefish among gear types and directed fisheries to stay within their allocations. The indirect result of these allocations is that NMFS has allowed directed fishing for sablefish with fixed gear on the sablefish CDQ reserve that originates from the trawl allocation of sablefish. Concurrently, sablefish caught by vessels using trawl gear also accrues towards this sablefish CDQ category. This practice is not allowed in the sablefish IFQ Program, since this solely is a fixed gear fishery that does not overlap with the trawl gear fishery.

If Alternative 3 were implemented, the change in sablefish CDQ reporting requirements could result in some management costs to NMFS. NMFS anticipates that some of these costs would be the transitional costs associated with segregating fixed gear sablefish CDQ from the groundfish CDQ reporting information system and integrating it into the sablefish IFQ reporting system. However, the separation between these two catch accounting systems is diminishing as NMFS progresses towards a comprehensive interagency catch accounting system for all species and management programs. NMFS does not have sufficient information to estimate the management costs of this element of Alternative 3.

Moreover, there also could be longer-term management costs associated with trying to coordinate the reporting of sablefish CDQ caught by two different industry components (fixed gear and trawl). This could require increased communication and coordination between CDQ harvesters, CDQ groups, and the different NMFS components responsible for catch monitoring and accounting. Sablefish CDQ reporting historically has been more complex than many of the other groundfish fisheries. Reasons for this include the different sablefish reserve categories (described above), the ability for vessels to fish for fixed gear sablefish IFQ and CDQ on the same trips, and different CDQ reporting requirements for bycatch caught with sablefish CDQ (although Alternative 3 would partially eliminate that requirement). Thus, one complicating aspect of segregating sablefish CDQ catch accounting from existing groundfish CDQ management practices is the multiple sablefish CDQ categories present in the CDQ Program. A second complicating aspect of fisheries management that only is specific to the sablefish CDQ fishery is the CDQ-specific transfer provisions described below.

Alternative 3 also could introduce some incremental enforcement costs if sablefish CDQ were integrated into the IFQ reporting system. Enforcement personnel would have to monitor reporting compliance for an additional component of the fixed gear sablefish fishery. As discussed previously, the average annual number of sablefish CDQ deliveries is relatively small. Thus, NMFS believes that potential incremental increases to the cost of enforcing these reporting provisions would be minimal.

Quota transfers and other provisions

In addition to the permitting and reporting changes to the sablefish CDQ fisheries described above, Alternative 3 would integrate sablefish CDQ into other applicable administrative requirements in place for the sablefish IFQ fishery. This includes incorporating fixed gear sablefish CDQ transfers into IFQ transfer regulations at § 679.41. The Sustainable Fisheries Division currently is responsible for processing and implementing groundfish quota transfers between CDQ groups. Halibut CDQ transfers

are conducted by the RAM Program, since that administrative unit establishes and maintains the halibut IFQ/CDQ databases and associated catch accounting system. Furthermore, this alternative would integrate sablefish CDQ into § 679.42. This section proscribes limitations on the use of QS and IFQ. There is no quota share associated with CDQ, so quota share restrictions are not relevant. However, applicable restrictions associated with gear requirements, landing requirements, and information sources used to debit quota accounts would be applied to the sablefish CDQ fishery. These requirements currently apply to the halibut CDQ fishery, which remained integrated with the halibut IFQ fishery when management of the sablefish CDQ fishery was combined with other groundfish CDQ fisheries.

NMFS is not proposing to integrate certain provisions in § 679.40 related to (1) a ten-percent adjustment policy, and (2) underages provisions in this action. The former provides a means to deduct annual IFQ overages from a subsequent year's IFQ allocation depending on certain circumstances. The latter provision allows the under-harvest of an annual IFQ to be additive to a quota share holder's IFQ in the following year. Both of these provisions are structured in the context of calculating such adjustments based on quota share ownership. As described earlier, there is no quota share associated with either halibut or sablefish CDQ.

Recent changes to the CDQ Program made by 2006 amendments to the Magnuson-Stevens Act (at section 305(i)(1)(C)) include a provision that allows CDQ be transferred between CDQ groups either before or after its harvest. This offers flexibility for CDQ groups to accommodate the over-harvest of their annual harvest within the bounds of CDQ Program level allocations by conducting inter-group quota transfers. This is a mechanism that is not available to participants in the halibut or sablefish IFQ fisheries.

Effects on CDQ Groups and their industry partners

If the fixed gear sablefish CDQ fishery were integrated into the administrative requirements governing the sablefish IFQ fishery management system, CDQ groups would have to modify their quota transfer procedures for fixed gear sablefish CDQ. This would entail submitting such requests to the RAM Program for processing, approval (or disapproval), and adjustment of CDQ accounts. CDQ groups already do this in association with halibut CDQ transfers. The process in place for IFQ transfers places limitations on who may receive quota or quota share, as well as an assortment of caps and restrictions that only are applicable to the halibut and sablefish IFQ fisheries. CDQ groups made approximately 179 quota transfers between 2001 and 2006, or about 30 per year. Such transfers are typically bundled, so that a single transfer request encompasses multiple CDQ species categories, including target species, non-target species, and prohibited species. In 2006 there were eight fixed gear sablefish CDQ transfers. By contrast, the RAM Program processed about 720 IFQ transfers in 2006, including 260 sablefish IFQ transfers.

NMFS does not anticipate that sablefish CDQ transfer procedures and requirements would be significantly different from existing requirements even if another organizational unit is responsible for such transfers. However, due to the volume and complexity of IFQ transfers and other permit applications processed by RAM Program staff each year, CDQ transfer requests may not be processed at the same pace as they are currently. This could have a detrimental effect on CDQ groups if sablefish CDQ transfers took longer to process, and CDQ groups and their fishing partners were not able to fish for the quota being transferred as soon as they had planned. However, the allowance for transfers to occur either before or after quota is harvested means that sablefish CDQ activities would not be delayed during the time it takes for transfer requests to be processed.

Effects on Management Costs

NMFS does not anticipate that there would be significant, long-term costs to the government associated with integrating sablefish CDQ into regulations governing IFQ transfers and limitations on use of IFQ.

However, there may be some short-term costs associated with re-aligning functions between organizational units and modifying computer programs associated with IFQ and CDQ catch accounting and transfers. Additionally, implementation of Alternative 3 could mean introducing an additional degree of complication associated with unique transfer provisions that only are specific to the sablefish CDQ fishery into the IFQ management system.

5.7.4 The preferred alternative

The Council received an overview of the public review draft of this analysis in June 2007. Following discussion and deliberation, it identified Alternative 2, with a minor modification, as its preferred alternative. The Council did not recommend a proposal to revise § 679.7(f)(8) to prohibit the discard of Pacific cod and rockfish in the halibut and sablefish CDQ fishery. This prohibition currently applies to the halibut and sablefish IFQ fisheries. It was established in 1993, as part of the implementation of the IFQ Program. It was intended to discourage fishermen from discarding Pacific cod and rockfish in order to save space aboard vessels for additional amounts of halibut or sablefish IFQ. The Council noted that the relative amount of Pacific cod and rockfish caught by small vessels (which catch the majority of halibut CDQ) is minimal, and that there may not be a market for this small amount of bycatch at many of the shoreside processors that take deliveries of halibut CDQ. Additionally, CDQ groups receive Pacific cod allocations that are managed with hard caps, i.e., such quotas may not be exceeded. The Council noted that CDQ groups therefore already have an incentive to minimize the bycatch of Pacific cod in fisheries other than their directed fishery for Pacific cod. The absence of observer coverage of the halibut CDQ fleet makes verification of this assertion problematic. This notwithstanding, the Council chose not to recommend that the discard prohibition be extended to applicable CDQ fisheries.

Prior to the Council's review and deliberation about this action, NMFS recommended that Alternative 2 be identified as the preferred alternative. This was based on an assessment of the preceding effects of each alternative. In summary, the recommendation for Alternative 2 is primarily based on the potential changes that each alternative would bring to the fixed gear sablefish CDQ fishery. NMFS believes that Alternative 2 would result in the least disruptive change to the CDQ groups and CDQ fisheries, while meeting the regulation of harvest requirements in the Magnuson-Stevens Act. Alternative 2 would amend regulations for the CDQ fisheries affected by this action, so that they match those regulations in place for comparable fisheries, but would not make as broad of changes to the program as Alternative 3. Alternative 2 would not integrate the sablefish CDQ fishery into the sablefish IFQ Program. CDQ groups would not be subject to sablefish CDQ permits and additional IFQ-related reporting requirements, nor would NMFS have to implement such requirements. Furthermore, retaining fixed gear sablefish under the comprehensive groundfish CDQ accounting and management system would make it easier for NMFS to monitor the catch and transfer of the multiple categories of sablefish CDQ allocated to the CDQ Program and CDQ groups.

The primary factors associated with the recommendation of Alternative 2 to the Council are as follows:

- Some of the elements of Alternative 3 could actually implement more restrictive requirements for the fixed gear sablefish CDQ fishery than the status quo requirements because permitting and reporting requirements would increase (although this would not be inconsistent with the Magnuson-Stevens Act).
- Retaining fixed gear sablefish CDQ management within the overall groundfish CDQ fisheries management system would allow NMFS the flexibility necessary to manage both fixed gear CDQ allocations and non-gear specific CDQ allocations. CDQ groups may harvest the latter allocation with fixed gear. The Sustainable Fisheries Division has developed the experience and expertise to account for this catch and integrate it into the comprehensive groundfish CDQ accounting system.
- CDQ groups have the ability to transfer quota either before or after its harvest. This transfer provision could allow CDQ groups to avoid being cited for potential inseason overage violations.

Participants in the halibut and sablefish IFQ fisheries also may transfer quota, but IFQ transfer provisions are more restrictive than CDQ transfer provisions.

5.8 Summary of E.O. 12866 Significance Criteria

A “significant regulatory action” under E.O. 12866 means any action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.

The combined value of CDQ royalties in 2005, the most recent year for which complete CDQ royalty information is available, was approximately \$60.5 million. Pollock CDQ royalties accounted for \$48.5 million of this amount, or about 80 percent of total royalties. Harvests of other groundfish, crab, and halibut CDQ yielded the remainder of CDQ royalties. Implementation of the alternatives considered under this action may potentially have a positive impact on the halibut, fixed gear sablefish, and pollock CDQ fisheries by decreasing or modifying certain management restrictions and increasing operational flexibility, but the additional amount of CDQ royalties or other benefits that CDQ groups might receive under these alternatives are unknown. Proposed regulatory changes associated with this action do not appear to have the potential to result in 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.

NMFS has not identified any factors that would (a) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (b) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (c) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.

6.0 Consistency with Other Applicable Laws

6.1 Regulatory Flexibility Act (RFA)

6.1.1 Introduction

This Final Regulatory Flexibility Analysis (FRFA) evaluates the impacts on directly regulated small entities of an action to modify the fisheries management regulations governing the Western Alaska Community Development Quota (CDQ) Program. The action encompasses a range of alternatives that amend regulations associated with the harvest of select CDQ fisheries to ensure that they are no more restrictive than those in effect for comparable non-CDQ fisheries. These fisheries include the halibut, fixed gear sablefish, and pollock CDQ fisheries. These changes encompass licensing, permitting, catch retention and reporting, and fisheries observer coverage requirements for the applicable fisheries. The purpose of this action is to comply with a specific directive of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as explained below in Section 6.1.6.

This FRFA addresses the statutory requirements of the RFA of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

6.1.2 The purpose of a FRFA

The Regulatory Flexibility Act, first enacted in 1980, was designed to place 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 entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are (1) to increase each agency's awareness and understanding of the impact of its regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and considering alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant (adverse) economic impacts on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file amicus briefs in court proceedings involving an agency's alleged violation of the RFA.

In determining the scope, or "universe," of the entities to be considered in a FRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis"

upon which to certify that the preferred alternative does not have the potential to result in “significant economic impacts on a substantial number of small entities” (as those terms are defined under RFA). Because, based on all available information, it is not possible to “certify” this outcome, should the proposed action be adopted, a formal FRFA has been prepared and is included in this package for Secretarial review.

6.1.3 What is required in a FRFA?

Under the RFA (5 U.S.C. 604(a)), each FRFA is required to contain the following:

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

6.1.4 What is this Action?

This action amends regulations governing the harvest of CDQ fisheries, per requirements of the Magnuson-Stevens Act. The Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act) (Pub.L. No 109-241, 120 Stat.) amended section 305(i)(1) of the Magnuson-Stevens Act by replacing all of the existing language in this section with new language. This substantially altered many components of the CDQ Program, including the oversight roles of the Federal and State governments, CDQ allocations and the allocation process, and fisheries management requirements. This action addresses specific fishery management provisions of the Magnuson-Stevens Act and makes revisions to applicable CDQ fisheries management regulations.

6.1.5 Reason for considering the proposed action

The reason for considering the proposed action is described in detail in Section 5.4 of the RIR. In summary, the regulation of CDQ harvest is directly addressed in the Magnuson-Stevens Act at section 305(i)(1)(B)(iv). This paragraph states:

The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of non-target species.

Accordingly, this analysis primarily is focused on those BSAI fisheries with IFQs or those BSAI fisheries governed through fishing cooperatives. The former includes the Pacific halibut, fixed gear sablefish, and crab fisheries. The latter includes the BS pollock fishery and the BSAI Pacific cod fishery conducted by hook-and-line catcher/processors. Each of the three IFQ fisheries has an equivalent CDQ fishery. Appendix A contains section 305(i)(1) of the Magnuson-Stevens Act.

In addition to the fisheries management regulatory amendments necessary to implement Magnuson-Stevens Act section 305(i)(1)(B)(iv), this action also revises or removes other regulations in 50 CFR parts 679 and 680 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act. These inconsistencies were created as a result of the 2006 amendments to the Magnuson-Stevens Act. These amendments made comprehensive changes to how NMFS administers the CDQ Program. NMFS already has adopted many of these changes through policy determinations.

The changes made by this action will clarify which regulations are currently applicable to CDQ Program participants and also will enhance administrative efficiency with respect to regulatory relevance and compliance. Furthermore, this action revises regulations in § 679.30 to allow CDQ groups to transfer groundfish CDQ and halibut prohibited species quota (PSQ) between themselves either before or after such allocations are harvested, although CDQ groups would still be prohibited from exceeding their annual CDQ and halibut PSQ limits.

6.1.6 Objectives and legal basis for the proposed action

The objectives of this action are fully described in Section 5.1 of the RIR. The objective for this action is to align fisheries management regulations governing the CDQ fisheries with comparable regulations in effect for Alaska groundfish fisheries managed with quota programs or fisheries cooperatives to ensure that CDQ regulations are not more restrictive.

The legal basis for this action falls under the BSAI FMP prepared by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 et seq., and implemented by regulations at 50 CFR part 679.

NMFS manages the groundfish fisheries of the BSAI under the fishery management plan (FMP) prepared for this area. The Council prepared this FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq. This FMP is implemented by regulations at 50 CFR part 679. Regulations implement the FMP at 50 CFR part 679. General fisheries regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Management of the halibut fishery in and off Alaska is based on an international agreement between Canada and the United States, which is given effect by the Northern Pacific Halibut Act of 1982. The Magnuson-Stevens Act specifically requires the elements addressed by this action; not taking action would not be consistent with this statutory requirement.

6.1.7 Public Comment

The proposed rule for this action was published in the Federal Register on July 13, 2010 (75 FR 39892). An Initial Regulatory Flexibility Analysis was prepared for the proposed rule, and described in the classifications section of the preamble to the proposed rule. The public comment period ended August 12, 2010. NMFS received two public responses with five unique comments about the proposed rule prepared for this action. None of the comments contained specific comments about the IRFA.

6.1.8 Description and Number of Small Entities to which the Proposed Action would apply

6.1.8.1 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of Title 5 of the USC defines a “small business” as having the same meaning as “small business concern” which is defined under Section 3 of the Small Business Act. “Small business” or “small business concern” includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor... A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products (i.e., a catcher-processor) is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation also may be based on stock ownership: (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock; or (2) if two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these

minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor or subcontractor is treated as a participant in a joint venture if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

6.1.8.2 Description and Estimate of the Number of Small Entities Directly Regulated by the Proposed Action

The entities that are directly regulated by this proposed action are the six non-profit CDQ groups that currently participate in the CDQ Program. The CDQ groups include 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. As noted, each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a “small entity” under the RFA.

All six CDQ groups annually are allocated groundfish, halibut, and crab CDQ. Each has received periodic CDQ allocations since 1992. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. Commercially valuable allocations include (among others) Alaska pollock, Pacific cod, sablefish, Pacific halibut, Greenland turbot, Atka mackerel, various flatfish species, as well as king and Tanner crab. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities’ residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. In 2009 the CDQ groups received approximately \$60 million in royalties from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 5.5 of the RIR associated with this action.

The entities directly regulated by this action are the six CDQ groups that participate in the halibut, sablefish, and pollock CDQ fisheries in the BSAI. The potential impacts of this action were described in Section 5.7 of the RIR. This action could be expected to reduce the costs associated with various aspects associated with participating in these CDQ fisheries. These include costs associated with different CDQ fisheries regulatory requirements associated with: 1) fisheries observer coverage levels, 2) catch retention and accounting, 3) vessel eligibility designation, and 4) licensing. Participants in the CDQ fisheries affected by this action will no longer be subject to regulations that are more costly, complex, or burdensome than those that apply to comparable IFQ fisheries or fisheries managed with cooperatives. Thus, this action is not expected to have an adverse economic on the small entities affected by this action.

6.1.9 Recordkeeping and Reporting Requirements

This action will have the potential to change some aspects of the current recordkeeping and reporting requirements of CDQ Program participants. Alternative 2 (the preferred alternative) will decrease requirements, as CDQ groups would no longer have to retain and report non-target species caught along with the target fisheries affected by this action. Furthermore, CDQ groups would no longer have to submit eligible vessel requests to NMFS to identify which vessels would be fishing for them each year.

Alternative 3 would mandate additional reporting, if participants in the sablefish CDQ fishery were subject to IFQ sablefish reporting requirements, but these would parallel those already in place for participants in the halibut CDQ fishery. Such reports include Prior Notice of Landings and IFQ Landing Reports. The professional skills that are necessary to prepare and submit such reports include:

1. The ability to read, write, and understand English.
2. The ability to use computer and communication equipment.
3. Knowledge of the participant's fishing activities and quota balances, and
4. The authority to sign (if necessary) and submit documents and/or reports required by NMFS on behalf of a CDQ group.

Prior notice of landing reports are estimated to take six minutes to complete. The average number of sablefish CDQ landings in 2002 through 2006 was 32. This level of response equates to 3.2 hours of potential burden per year. Landing reports are submitted electronically to NMFS via the internet. They take an estimated 20 minutes to complete. At an estimated submittal of 32 responses per year, participants in the sablefish CDQ fishery would face a burden of 10.7 hours to complete and submit such reports.

6.1.10 Comparison of alternatives

A FRFA must include a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect small entities was rejected.

The three alternatives under consideration for this action are described in detail in Section 2, and summarized below. Reasons for proposing this action are presented in Section 1.2. The general economic impacts on directly regulated small entities are addressed in detail in Section 5. Alternative 1, status quo, would maintain existing fisheries management regulations for the halibut, fixed gear sablefish, and pollock CDQ fisheries. Each of these fisheries has a comparable IFQ or cooperative fishery. However, due to the different policies and objectives associated with the original development of the CDQ fisheries, CDQ harvest regulations sometimes differed from those in place for the non-CDQ fisheries associated with this action. Maintaining an existing CDQ regulation, which is more restrictive than those in place for the IFQ and cooperative fisheries, would not comply with the amended Magnuson-Stevens Act.

Both Alternatives 2 and 3 would meet the requirement of the Magnuson-Stevens Act that CDQ fisheries be managed no more restrictively than fisheries managed with IFQs or harvesting cooperatives. This would be accomplished by matching regulations for relevant CDQ and non-CDQ fisheries as closely as possible. In the case of Alternative 3, the sablefish CDQ fishery would be fully integrated into both the regulations and the administrative structure in place for the sablefish IFQ fishery. Each alternative also would align existing CDQ Program regulations with current Magnuson-Stevens Act requirements with respect to CDQ fisheries management.

Alternative 2 would

- revise regulations in 50 CFR part 679 to segregate fixed gear sablefish CDQ and pollock CDQ from regulations associated with the other groundfish CDQ fisheries;
- exempt participants in the sablefish CDQ fishery from having to have a license limitation program groundfish license by excluding fixed gear sablefish CDQ from the definition of “license limitation species;”
- remove a requirement that CDQ groups annually submit a request to NMFS to designate specific vessels as eligible to harvest groundfish CDQ on their behalf;
- revise CDQ catch monitoring requirements to incorporate changes to the basis for CDQ catch accounting, based on adjusting CDQ observer coverage requirements for the halibut, sablefish, and pollock CDQ fisheries;
- revise regulations to align observer coverage requirements for the sablefish CDQ, halibut CDQ, and pollock CDQ fisheries with comparable non-CDQ fisheries;
- establish an application process for relief from more restrictive CDQ harvest regulations for vessels operating in a voluntary fisheries cooperative;
- revise regulations to allow the transfer of groundfish CDQ and halibut PSQ either before or after such quota is caught; and
- revise or remove other regulations in 50 CFR parts 679 and 680 that are no longer consistent with section 305(i)(1) of the Magnuson-Stevens Act.

In addition to these actions, Alternative 3 would amend specific sections in 50 CFR part 679 related to fully integrating sablefish CDQ into the sablefish IFQ fisheries management system. In addition to the general changes proposed for Alternative 2, Alternative 3 would

- require CDQ groups to obtain sablefish CDQ permits prior to conducting directed fishing for sablefish;
- incorporate sablefish CDQ into the IFQ recordkeeping and reporting requirements and make IFQ prohibitions applicable to the sablefish CDQ fishery; and incorporate the sablefish CDQ fishery into IFQ regulations associated with quota transfers and catch accounting.

The Council selected Alternative 2 as the preferred alternative for this action. On the basis of the best available information, this preferred alternative imposes the minimum adverse economic impact on directly regulated small entities, while achieving the objectives of the regulatory action, among all the alternatives available to the agency. The preferred alternative incorporates regulatory revisions that *reduce* the potential economic and operational burden on small entities.

6.2 Marine Mammal Protection Act (MMPA)

The MMPA of 1992 (16 U.S.C. 1361 *et seq.*) as amended through 1996, establishes a Federal responsibility to conserve marine mammals with management responsibility for cetaceans (whales) and pinnipeds (seals) vested in NMFS. The U.S. Fish and Wildlife Service is responsible for all other marine mammals in Alaska, including walrus, sea otters, and polar bears.

Species listed under the ESA that are present in the BSAI are listed in the groundfish PSEIS described in Section 3. Marine mammals not listed under the ESA that may be present in the BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall’s porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [Pacific harbor seal (*Phoca vitulina*), northern fur seal (*Callorhinus ursinus*), spotted seal (*Phoca largha*), and ribbon seal (*Phoca fasciata*)], and the sea otter (*Enhydra lutris*).

The primary management objective of the MMPA is to maintain the health and stability of the marine ecosystem, with a goal of obtaining an optimum sustainable population of marine mammals within the carrying capacity of the habitat. The Secretary is required to give full consideration to all factors regarding regulations applicable to the "take" of marine mammals, including the conservation, development, and utilization of fishery resources, and the economic and technological feasibility of implementing the regulations. If a fishery affects a marine mammal population, then the potential impacts of the fishery must be analyzed in the appropriate EA or EIS, and the Council or NMFS may be requested to consider regulations to mitigate adverse impacts.

Take of marine mammals has been and continues to be monitored through fishery observer programs. Because of the low incidence of problems with marine mammal interactions and the likelihood that the considered alternatives would not appreciably affect the size of the groundfish CDQ fishery or alter the gear types used in it, no additional effects on marine mammals are anticipated should any of the alternatives considered for this action be recommended and implemented.

6.3 Coastal Zone Management Act (CZMA)

On July 1, 2011, the federally approved Alaska Coastal Management Program expired, resulting in a withdrawal from participation in the CZMA's National Coastal Management Program. The CZMA Federal consistency provision in section 307 no longer applies in Alaska.

6.4 Consistency with National Standards

Below are the ten National Standards contained in the Magnuson-Stevens Fishery Conservation and Management Act, as well as a brief discussion of the consistency of the proposed action and alternatives with these standards, where applicable.

National Standard 1: *Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

Under any of the alternative considered in this action, the Alaska groundfish fisheries will continue to be managed to achieve TACs without overfishing. Stocks of groundfish in target fisheries in the BSAI currently are not in danger of overfishing and are considered stable. Overall yield in term of the groundfish CDQ catch, in conjunction with the catch of non-CDQ catch, will not be affected by any of the alternatives selected for this action.

In terms of achieving "optimum yield" from the BSAI fishery (of which CDQ fisheries are subset), the Magnuson-Stevens Act defines "optimum" as the amount of fish which

1. will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
2. is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by relevant economic, social, or ecological factor; and,
3. in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

Overall benefits to the Nation may be affected by these factors, though the ability to quantify those effects is limited.

National Standard 2: *Conservation and management measures shall be based on the best scientific information available.*

Information in this analysis represents the most current and comprehensive set of information available to decision makers, recognizing that some information (such as operational costs) is unavailable.

National Standard 3: *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

All the alternatives considered in this analysis are consistent with this standard. The groundfish stocks in the BSAI would continue to be managed as single stocks, based on NMFS and the Council's harvest specifications process.

National Standard 4: *Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

Although the CDQ Program as a whole receives discrete allocations of BSAI species, the alternatives considered by this action propose changes that could modify existing fisheries management regulations, and do not further allocate or assign fishing privileges to individuals, nor are discriminations made among fishermen based on residency or other criteria.

National Standard 5: *Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*

The analysis of the effects of the different alternatives considered in this action presents information relative to the perspective of economic efficiency, but does not highlight any particular alternative in terms of this standard.

National Standard 6: *Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.*

None of the alternatives considered would reduce the flexibility of fishery managers or fishermen.

National Standard 7: *Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

All of the alternatives under consideration appear to be consistent with this standard.

National Standard 8: *Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks) take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.*

The subject action is directed at considering alternatives that could ensure that certain CDQ fisheries are managed no more restrictively than other BSAI fisheries. This could provide additional opportunities for CDQ communities to participate in CDQ fisheries, thereby benefiting from CDQ allocations. None of the alternatives considered are expected to have a significant individual or cumulative effect on the sustained participation of any fishing community in the groundfish CDQ fisheries.

National Standard 9: *Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

Section 3 presents information about groundfish CDQ catch, including that of both target and non-target (bycatch) species affected by this action. In general, the alternatives considered for this action would align regulatory requirements across different management programs for what are very similar fisheries. This could result in some decrease in available observer data associated with the catch of bycatch species in affected CDQ fisheries. However, the affected fisheries historically have not accrued significant amounts of bycatch species in the context of overall catch of the groundfish species allocated to the CDQ Program. Furthermore, absent observer data, NMFS routinely uses other data sources (production data or catch estimates calculated via bycatch rates from observed vessels and fisheries) to monitor the overall catch of BSAI groundfish fisheries. These practices could be used to monitor groundfish catch in the CDQ fisheries, as well. CDQ groups and their fishing partners have historically attempted to minimize their catch of bycatch species, as the excess catch of such non-target CDQ allocations can be a factor affecting the complete harvest of valuable target species allocations. NMFS expects this practice to continue in the future.

National Standard 10: *Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.*

All of the alternatives considered appear to be consistent with this standard. None of the alternatives would change safety requirements for fishing vessels.

7.0 References

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Appendix A: Magnuson-Stevens Fishery Conservation and Management Act: Section 305(i)(1), as amended by the Coast Guard Act and Magnuson-Stevens Reauthorization Act of 2006.

(1) WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.—

(A) IN GENERAL.—There is established the western Alaska community development quota program in order—

- (i) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the Bering Sea and Aleutian Islands Management Area;
- (ii) to support economic development in western Alaska;
- (iii) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and
- (iv) to achieve sustainable and diversified local economies in western Alaska.

(B) PROGRAM ALLOCATION.—

(i) **IN GENERAL.—**Except as provided in clause (ii), the annual percentage of the total allowable catch, guideline harvest level, or other annual catch limit allocated to the program in each directed fishery of the Bering Sea and Aleutian Islands shall be the percentage approved by the Secretary, or established by Federal law, as of March 1, 2006, for the program. The percentage for each fishery shall be either a directed fishing allowance or include both directed fishing and nontarget needs based on existing practice with respect to the program as of March 1, 2006, for each fishery.

(ii) **EXCEPTIONS.—**Notwithstanding clause (i)—

(I) the allocation under the program for each directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) shall be a total allocation (directed and nontarget combined) of 10.7 percent effective January 1, 2008; and;

(II) the allocation under the program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent.

The total allocation (directed and nontarget combined) for a fishery to which subclause (I) or (II) applies may not be exceeded.

(iii) **PROCESSING AND OTHER RIGHTS.—**Allocations to the program include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006.

(iv) **REGULATION OF HARVEST.—**The harvest of allocations under the program for fisheries with individual quotas or fishing cooperatives shall be regulated by the Secretary in a manner no more restrictive than for other participants in the applicable sector, including with respect to the harvest of nontarget species.

(C) ALLOCATIONS TO ENTITIES.—Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H). Such allocation shall include all processing rights and any other rights and privileges associated with such allocations as of March 1, 2006. Voluntary transfers by and among eligible entities shall be allowed, whether before or after harvesting. Notwithstanding the first sentence of this subparagraph, seven-tenths of one percent of the total allowable catch, guideline harvest level, or other annual catch limit, within the amount allocated to the program by subclause (I) or subclause (II) of subparagraph (B)(ii), shall be allocated among the eligible entities by the panel established in subparagraph (G), or allocated by the Secretary based on the nontarget needs of eligible entities in the absence of a panel decision.

(D) ELIGIBLE VILLAGES.—The following villages shall be eligible to participate in the program through the following entities:

(i) The villages of Akutan, Atka, False Pass, Nelson Lagoon, Nikolski, and Saint George through the Aleutian Pribilof Island Community Development Association.

(ii) The villages of Aleknagik, Clark's Point, Dillingham, Egegik, Ekuk, Ekwok, King Salmon/Savonoski, Levelock, Manokotak, Naknek, Pilot Point, Port Heiden, Portage Creek, South Naknek, Togiak, Twin Hills, and Ugashik through the Bristol Bay Economic Development Corporation.

(iii) The village of Saint Paul through the Central Bering Sea Fishermen's Association.

(iv) The villages of Chefnak, Chevak, Eek, Goodnews Bay, Hooper Bay, Kipnuk, Kongiganak, Kwigillingok, Mekoryuk, Napakiak, Napaskiak, Newtok, Nightmute, Oscarville, Platinum, Quinhagak, Scammon Bay, Toksook Bay, Tuntutuliak, and Tununak through the Coastal Villages Region Fund.

(v) The villages of Brevig Mission, Diomede, Elim, Gambell, Golovin, Koyuk, Nome, Saint Michael, Savoonga, Shaktoolik, Stebbins, Teller, Unalakleet, Wales, and White Mountain through the Norton Sound Economic Development Corporation.

(vi) The villages of Alakanuk, Emmonak, Grayling, Kotlik, Mountain Village, and Nunam Iqua through the Yukon Delta Fisheries Development Association.

(E) ELIGIBILITY REQUIREMENTS FOR PARTICIPATING ENTITIES.—To be eligible to participate in the program, an entity referred to in subparagraph (D) shall meet the following requirements:

(i) **BOARD OF DIRECTORS.**—The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity's member villages. The board shall include at least one director selected by each such member village.

(ii) **PANEL REPRESENTATIVE.**—The entity shall elect a representative to serve on the panel established by subparagraph (G).

(iii) **OTHER INVESTMENTS.**—The entity may make up to 20 percent of its annual investments in any combination of the following:

(I) For projects that are not fishery-related and that are located in its region.

(II) On a pooled or joint investment basis with one or more other entities participating in the program for projects that are not fishery-related and that are located in one or more of their regions.

(III) For matching Federal or State grants for projects or programs in its member villages without regard to any limitation on the Federal or State share, or restriction on the source of any non-Federal or non-State matching funds, of any grant program under any other provision of law.

(iv) **FISHERY-RELATED INVESTMENTS.**—The entity shall make the remainder percent of its annual investments in fisheries-related projects or for other purposes consistent with the practices of the entity prior to March 1, 2006.

(v) **ANNUAL STATEMENT OF COMPLIANCE.**—Each year the entity, following approval by its board of directors and signed by its chief executive officer, shall submit a written statement to the Secretary and the State of Alaska that summarizes the purposes for which it made investments under clauses (iii) and (iv) during the preceding year.

(vi) **OTHER PANEL REQUIREMENTS.**—The entity shall comply with any other requirements established by the panel under subparagraph (G).

(F) ENTITY STATUS, LIMITATIONS, AND REGULATION.—The entity—

(i) shall be subject to any excessive share ownership, harvesting, or processing limitations in the fisheries of the Bering Sea and Aleutian Islands Management Area only to the extent of the entity's proportional ownership, excluding any program allocations, and notwithstanding any other provision of law;

(ii) shall comply with State of Alaska law requiring annual reports to the entity's member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel;

(iii) shall comply with State of Alaska laws to prevent fraud that are administered by the Alaska Division of Banking and Securities, except that the entity and the State shall keep confidential from public disclosure any information if the disclosure would be harmful to the entity or its investments; and

(iv) is exempt from compliance with any State law requiring approval of financial transactions, community development plans, or amendments thereto, except as required by subparagraph (H).

(G) ADMINISTRATIVE PANEL.—

(i) ESTABLISHMENT.—There is established a community development quota program panel.

(ii) MEMBERSHIP.—The panel shall consist of 6 members. Each entity participating in the program shall select one member of the panel.

(iii) FUNCTIONS.—The panel shall—

(I) administer those aspects of the program not otherwise addressed in this paragraph, either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and

(II) coordinate and facilitate activities of the entities under the program.

(iv) UNANIMITY REQUIRED.—The panel may act only by unanimous vote of all 6 members of the panel and may not act if there is a vacancy in the membership of the panel.

(H) DECENNIAL REVIEW AND ADJUSTMENT OF ENTITY ALLOCATIONS.—

(i) IN GENERAL.—During calendar year 2012 and every 10 years thereafter, the State of Alaska shall evaluate the performance of each entity participating in the program based on the criteria described in clause (ii).

(ii) CRITERIA.—The panel shall establish a system to be applied under this subparagraph that allows each entity participating in the program to assign relative values to the following criteria to reflect the particular needs of its villages:

(I) Changes during the preceding 10-year period in population, poverty level, and economic development in the entity's member villages.

(II) The overall financial performance of the entity, including fishery and nonfishery investments by the entity.

(III) Employment, scholarships, and training supported by the entity.

(IV) Achieving of the goals of the entity's community development plan.

(iii) ADJUSTMENT OF ALLOCATIONS.—After the evaluation required by clause (i), the State of Alaska shall make a determination, on the record and after an opportunity for a hearing, with respect to the performance of each entity participating in the program for the criteria described in clause (ii). If the State determines that the entity has maintained or improved its overall performance with respect to the criteria, the allocation to such entity under the program shall be extended by the State for the next 10-year period. If the State determines that the entity has not maintained or improved its overall performance with respect to the criteria—

(I) at least 90 percent of the entity's allocation for each species under subparagraph (C) shall be extended by the State for the next 10-year period; and

(II) the State may determine, or the Secretary may determine (if State law prevents the State from making the determination), and implement an appropriate reduction of up to 10 percent of the entity's allocation for each species under subparagraph (C) for all or part of such 10-year period.

(iv) **REALLOCATION OF REDUCED AMOUNT.**—If the State or the Secretary reduces an entity's allocation under clause (iii), the reduction shall be reallocated among other entities participating in the program whose allocations are not reduced during the same period in proportion to each such entity's allocation of the applicable species under subparagraph (C).

(I) SECRETARIAL APPROVAL NOT REQUIRED.—Notwithstanding any other provision of law or regulation thereunder, the approval by the Secretary of a community development plan, or an amendment thereof, under the program is not required.

(J) COMMUNITY DEVELOPMENT PLAN DEFINED.—In this paragraph, the term 'community development plan' means a plan, prepared by an entity referred to in subparagraph (D), for the program that describes how the entity intends—

(i) to harvest its share of fishery resources allocated to the program, or

(ii) to use its share of fishery resources allocated to the program, and any revenue derived from such use, to assist its member villages with projects to advance economic development, but does not include a plan that allocates fishery resources to the program.

(b) **NO INTERRUPTION OF EXISTING ALLOCATIONS.**—The amendment made by subsection (a) shall not be construed or implemented in a way that causes any interruption in the allocations of fishery resources to the western Alaska community development quota program or in the opportunity of an entity participating in that program to harvest its share of such allocations.

Appendix B. Groundfish CDQ catch, 1999-2006.

Species or category	1999	2000	2001	2002	2003	2004	2005	2006
Atka Mackerel, BS/EAI	1,166	1,192	519	320	696	771	476	523
Atka Mackerel, CAI	822	1,807	2,467	1,591	2,129	2,248	2,520	2,821
Atka Mackerel, WAI	601	1,788	1,991	1,341	1,203	1,476	1,436	1,084
Flathead Sole	724	439	223	464	392	545	889	403
Rock Sole	575	401	221	553	641	892	1,825	2,175
Yellowfin Sole	1,968	219	182	1,972	5,564	6,321	6,150	6,390
Pacific Ocean Perch, WAI	317	372	318	355	404	336	315	356
Pacific Ocean Perch, CAI	129	216	152	155	185	170	159	204
Pacific Ocean Perch, EAI	159	167	162	167	249	165	130	211
BS Pollock	99,113	113,554	138,883	148,427	149,121	149,169	149,720	150,375
AI Pollock	16	0	0	0	0	0	12	0
Bogoslof Pollock	0	0	0	0	0	0	0	1
Pacific Cod	12,495	13,527	12,363	14,128	14,465	16,009	14,727	13,845
BS FG Sablefish (hook-and-line/pot)	18	66	40	150	66	143	220	192
AI FG Sablefish (hook-and-line/pot)	103	120	87	129	103	14		
BS Sablefish (trawl)	14	6	4	27	6	21	296	246
AI Sablefish (trawl)	3	1	0	6	7	0		
BS Greenland Turbot	196	244	26	53	48	31	11	35
AI Greenland Turbot	37	65	35	46	33	29	17	8
Arrowtooth Flounder	787	286	139	302	437	432	40	20
Other Flatfish	283	80	35	56	89	72	31	23
Alaska Plaice	n/a	n/a	n/a	137	184	302	576	689
BS Pacific Ocean Perch	35	1	8	9	15	2	61	168
BS Other Red Rockfish	10	7	3	2	n/a	n/a	121	n/a
BS Northern Rockfish	n/a	n/a	n/a	n/a	2	n/a	5	n/a
AI Sharpchin/Northern	247	346	328	n/a	n/a	n/a	n/a	n/a
AI Northern Rockfish	n/a	n/a	n/a	342	276	n/a	n/a	n/a
BS Shortraker/Rougheye Rockfish	n/a	n/a	n/a	n/a	8	n/a	n/a	n/a
Northern Rockfish (BSAI)	n/a	n/a	n/a	n/a	n/a	403	n/a	407
Shortraker Rockfish (BSAI)	n/a	n/a	n/a	n/a	n/a	29	n/a	9
Rougheye Rockfish (BSAI)	n/a	n/a	n/a	n/a	n/a	3	218	3
AI Shortraker/Rougheye Rockfish	28	35	17	14	25	n/a	9	n/a
BS Other Rockfish	6	6	2	2	4	4	4	11
AI Other Rockfish	27	36	18	32	10	17	n/a	11
Other Species	1,908	2,060	1,650	2,311	2,330	3,294	4	2,148
Squid	n/a	51	n/a	n/a	n/a	n/a	8	1,416

Source: NOAA Fisheries 2006. All amounts in metric tons, except for crab and salmon (listed in number of animals).

Appendix C. CDQ Groups and Communities

CDQ group	Represented communities	
Aleutian Pribilof Island Community Development Association	Akutan Atka False Pass Nelson Lagoon Nikolski Saint George	
Bristol Bay Economic Development Corporation	Aleknagik Clark's Point Dillingham Egegik Ekuk Ekwok King Salmon Levelok Manokotak	Naknek Pilot Point Port Heiden Portage Creek South Naknek Togiak Twin Hills Ugashik
Central Bering Sea Fishermen's Association	Saint Paul	
Coastal Villages Region Fund	Chefornak Chevak Eek Goodnews Bay Hooper Bay Kipnuk Kongiganak Kwigillingok Mekoryuk Napakiak	Napaskiak Newtok Nightmute Oscarville Platinum Quinhagak Scammon Bay Toksook Bay Tuntutuliak Tununak
Norton Sound Economic Development Corporation	Brevig Mission Diomede Elim Gambell Golovin Koyuk Nome Saint Michael	Savoonga Shaktoolik Stebbins Teller Unalakleet Wales White Mountain
Yukon Delta Fisheries Development Association	Alakanuk Emmonak Grayling	Kotlik Mountain Village Nunam Iqua

odavis: August 2010, January 2011, May 2011, July 2011 per Aberle, Oct/Nov 2011 per Smoker.

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