12-4-03

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
PROGRAM PLANNING AND INTEGRATION
Silver Spring, Maryland 20910

3679
COG "other species"
57 pp

DEC - 4 2003

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

TITLE: Final Rule to Modify the Management of "Other Species" Community Development Quota (CDQ) Reserve in the Bering Sea and Aleutian Islands Management Area (BSAI)

LOCATION: The exclusive economic zone of Alaska waters.

SUMMARY: This final rule would modify the management of the "other species" Community Development Quota (CDQ) reserve by eliminating specific allocations of "other species" CDQ to individual CDQ managing organizations (CDQ groups) and instead allowing NMFS to manage the "other species" CDQ reserve with the general limitations used to manage the catch of non-CDQ groundfish in the BSAI. This action would also eliminate the CDQ non-specific reserve and makes other changes to improve the clarity and consistency of CDQ Program regulations. This action is necessary to improve NMFS' ability to effectively administer the CDQ Program.

RESPONSIBLE OFFICIAL: James W. Balsiger
Administrator, Alaska Region
National Marine Fisheries Service
P. O. Box 21668
Juneau, AK 99802-1668 Phone: 907-586-7228

The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact, including the environmental assessment, is enclosed for your information.

Please submit any written comments to the responsible official named above. Also, please send one copy of your comments to me at NOAA Program Planning and Integration, Strategic Planning Office, room 15603, 1315 East-West Highway, Silver Spring, Maryland 20910.

Sincerely,

Susan Kennedy
Acting NEPA Coordinator

**Finding of No Significant Impact**

Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA)
for a Regulatory Amendment to Modify the Management of the "Other Species" Community Development Quota (CDQ) Reserve in the Bering Sea and Aleutian Islands Area (BSAI)
November 2003

The action analyzed is a change to the management of the "other species" CDQ reserve category in the groundfish CDQ fishery in the Bering Sea and Aleutian Islands management area (BSAI). This change will allow NMFS to discontinue apportioning the "other species" CDQ reserve among CDQ managing organizations (CDQ groups) and instead directly manage this reserve. Modifying the management of the "other species" CDQ reserve will relieve a constraint that could curtail some groundfish CDQ fisheries and will result in increased economic benefits for communities participating in the western Alaska CDQ Program.

One of the purposes of an EA is to provide the evidence and analysis necessary to decide whether an agency must prepare an environmental impact statement (EIS). This 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 needed. The Council on Environmental Quality regulations define significance in terms of context and intensity (40 CFR 1508.27). An action must be evaluated at different spatial scales and settings to determine the context of the action. Intensity is evaluated with respect to the nature of impacts and the resources or environmental components affected by the action. NOAA Administrative Order (NAO) 216-6 provides guidance on National Environmental Policy Act (NEPA) specific to line agencies within NOAA. It further specifies the definition of significance in the fishery management context by listing factors that should be used to test the significance of fishery management actions (NAO 216-6 § 6.01 and 6.02). These factors form the basis of the analysis presented in Section 3.0 of the attached EA/RIR/FRFA. The results of that analysis specific to changes to the management of the "other species" CDQ reserve are summarized here for each factor.

*Context*: The setting of this action is the groundfish CDQ fishery of the BSAI. Any effects of the action are limited to these areas. The effect of the alternatives on society within these areas is limited to the participants in the groundfish CDQ Program. CDQ groups harvest a variety of groundfish CDQ species throughout the course of a given calendar year, either directly with their own vessels or indirectly via fishing industry partners.

*Intensity*: A listing of considerations to determine intensity of the impacts are in 50 CFR § 1508.27(b) and in the NAO 216-6. Each consideration is addressed below.

Adverse or beneficial impact determinations are required to be considered in this action. This is a relatively minor action within the comprehensive context of groundfish fishery management in the BSAI. Impacts associated with the preferred alternative are limited to CDQ groups participating in the groundfish CDQ fishery.

The action analyzed in this EA is limited in scope. Minimal or no risk to the human environment will occur if this action is implemented. Direct impacts on the environment from this action are expected to be minimal, because the management of the "other species" catch in the CDQ fisheries will continue to be managed under the BSAI groundfish specifications and fishery management regulations that apply to the catch of all groundfish and prohibited species in the BSAI. CDQ fishery participants will continue to be required to adhere to applicable regulations associated with the conservation of listed species. This action may slightly increase the amount of "other species" that are allowed to be caught in the CDQ fisheries, but the total catch of "other species" in the CDQ and non-CDQ fisheries combined will continue to be managed to be less that or equal to the overall quota for this species group. NMFS does not expect any significant changes in the total catch in the CDQ fisheries, or in the seasons, areas, or gear types used to catch groundfish in the CDQ fisheries.

For these reasons, this action is not reasonably expected to:

(1) significantly affect the quality of the human environment;

(2) jeopardize the sustainability of any target or non-target species;

(3) adversely affect endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973;

(4) adversely affect marine mammals or seabirds;

(5) cause substantial damage to the ocean and coastal habitats or Essential Fish Habitat; or

(6) have a substantial impact on biodiversty or ecosystem function within the affected area; or

(7) violate a Federal, state, or local law for environmental protection.

The fisheries associated with this action take place in the geographic area of the BSAI, typically in the Exclusive Economic Zone (3-200 miles offshore). Cultural resources and ecologically critical areas occur on land adjacent to these areas. The marine waters where CDQ fisheries occur contain ecologically critical areas. Adverse effects on the characteristics of these areas are not anticipated to occur with this action.

Public health and safety issues have not been associated with this action. This action deals with allocative and catch accounting issues. Considerations for public health and safety issues are not applicable to this action.

This action is not considered to be controversial. Modification of "other species" CDQ management will further the overall goals of the CDQ Program.

Future actions related to this particular action may result in impacts. Changes may occur in the environment or fishing practices that may result in significant impacts, as well as additional information regarding the "other species" resource. Additional environmental analysis

documents would then be prepared to inform decision makers of potential impacts to the human environment and the means to minimize or mitigate such impacts.

No additional past, present, or reasonably foreseeable cumulative impact issues have been identified for this action beyond those considered in the Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement (NMFS Alaska Region 2003).

This action will have no effect on districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places, nor cause loss or destruction of significant scientific, cultural, or historical resources. This consideration is not applicable to this action.

This action poses no known violation of Federal, State or local laws or requirements for the protection of the environment. Additionally, it poses no known possibility for the introduction of non-indigenous species because it does not affect the activities of vessels that may introduce such organisms into the marine environment.

*Comparison of Alternatives and Selection of a Preferred Alternative*

The preferred alternative (Alternative 2) will modify the management of "other species" CDQ so that it occurs at the reserve level. Currently, each CDQ group receives an annual allocation of "other species" CDQ that it is prohibited from exceeding. CDQ groups' efforts to minimize their catch of "other species" has resulted in some CDQ allocations not being fully harvested, with corresponding impacts on the amount of fishery royalties that they receive. The no action alternative (Alternative 1) would not address the current "other species" allocation and accounting situation, which in turn does not fully support the overall goals and purpose of the CDQ Program. The preferred alternative will modify NMFS' management of "other species" CDQ in a way that could assist CDQ groups in harvesting their CDQ target allocations more completely, thus increasing program royalties and associated community benefits. Three additional alternatives also were identified for this action, but were not carried forward for further analysis. Two of the rejected alternatives encompassed allocative changes to the "other species" category that would have been difficult to accurately calculate or that might have been controversial to different BSAI fishery components. A third rejected alternative would have been contrary to statutory provisions of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on the information contained in the *EA/RIR/FRFA for a Regulatory Amendment to Modify the Management of "Other Species" CDQ* and summarized here, I have determined that the

proposed alternative will not significantly affect the quality of the human environment, and therefore, preparation of an environmental impact statement is not required under section 102(2)(c) of the National Environmental Policy Act or its implementing regulations. Therefore, a FONSI is appropriate.

William T. Hogarth
Assistant Administrator
for Fisheries, NOAA

Date

**Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a Regulatory Amendment to Modify the Management of "Other Species" Community Development Quota in the Bering Sea and Aleutian Islands Area**

**Date:** November 17, 2003

**Lead Agency:** National Marine Fisheries Service
Alaska Regional Office
PO Box 21668
Juneau, Alaska 99802

**Responsible Official:** James Balsiger, Alaska Regional Administrator

**Prepared by:** Obren Davis, Sustainable Fisheries Division
(907) 586-7228

**Abstract:** This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) evaluates the environmental impacts, the costs and benefits, and the impacts on regulated small entities of a regulatory amendment to modify the management of "other species" community development quota (CDQ) in the BSAI. This change will improve the possibility that annual groundfish CDQ allocations will be completely harvested, which in turn will generate additional royalties that fund community development projects in western Alaska. This EA/RIR/FRFA addresses the requirements of the National Environmental Policy Act (NEPA), Presidential Executive Order (E.O.) 12866, Section 604 of the Regulatory Flexibility Act, and other relevant statutes.

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**Executive Summary**

This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) evaluates the impacts on the human environment, benefits and costs, and impacts on regulated small entities of a regulatory amendment to alter regulations governing the "other species" Community Development Quota (CDQ) reserve. The "other species" complex is one of the groundfish Total Allowable Catch (TAC) categories allocated to the CDQ Program. It consists of sharks, skates, sculpins, and octopi. These species are caught incidentally with CDQ target species such as pollock, Pacific cod, sablefish, and Atka mackerel. CDQ managing organizations (CDQ groups) have identified the "other species" CDQ allocation as being insufficient to support the incidental catch needs of CDQ target fisheries, particularly at the individual CDQ group level. CDQ groups are prohibited from exceeding a given CDQ allocation. Failure to harvest all of its target allocations due to inadequate "other species" CDQ for incidental catch needs could diminish a CDQ group's royalty income. This could in turn impact the accomplishment of projects intended to foster economic development in western Alaska communities.

At the February 2003 North Pacific Fishery Management Council (Council) meeting, CDQ Program participants requested that the Council take action to discontinue allocating the "other species" CDQ reserve to individual CDQ groups and, instead, manage this species category at the reserve level, via in-season management measures available to NMFS. In turn, the Council requested that NMFS develop an analysis specific to this issue for action at the April 2003 Council meeting. NMFS prepared a draft EA/RIR to examine alternatives associated with this issue. A preliminary version of this analysis was presented to the Council at its April 2003 meeting. The Council considered the alternatives in the analysis, public testimony, and the recommendations of the Council's Advisory Panel. It subsequently recommended Alternative 2 and Option 1. Alternatives 1 and 2 are listed below. Three other alternatives were considered by NMFS but not carried forward for detailed analysis.

<u>Alternatives considered:</u>

Alternative 1. No action: continue to allocate the "other species" CDQ reserve among each of the six CDQ groups.

Under Alternative 1, no action, continuing to allocate the "other species" CDQ reserve to individual groups could constrain some directed fisheries if the amount of "other species" CDQ available to a group is less than the amount needed for "other species" incidental catch amounts in its directed fisheries.

Alternative 2. (The preferred alternative)
Allow the "other species" CDQ reserve to be managed as a single reserve rather than as separate allocations to each CDQ group.

Option 1. Eliminate the CDQ non-specific reserve.

Under Alternative 2, the "other species" CDQ reserve will not be allocated among CDQ groups. Instead, it will be managed at the CDQ reserve level and in conjunction with non-CDQ fisheries. All "other species" catch in groundfish CDQ fisheries will accrue towards the "other species" CDQ reserve, rather than towards specific CDQ group allocations. NMFS will monitor the aggregate catch of "other species" in both the CDQ and non-CDQ fisheries and take appropriate management measures to control the catch of "other species." The overall catch of "other species" will still be subject to existing controls associated with "other species" TAC and OFL. If the OFL was approached, both CDQ and non-CDQ fisheries will be subject to specified directed fishing closures to minimize further catch of "other species."

Option 1 under Alternative 2 will eliminate the CDQ non-specific reserve. If management of "other species" CDQ is shifted to the sector level, this reserve will effectively be obsolete, as only a single species category will continue to contribute to and benefit from the reserve, instead of multiple species categories. CDQ groups will not be accountable for their catch of "other species" to the degree that they will need the flexibility to increase their initial "other species" allocations via the CDQ non-specific reserve. The only other groundfish species contributing to the CDQ non-specific reserve is arrowtooth flounder.

*Effects and impacts of this action*

This rule will amend 50 CFR 679. It will remove the paragraph in § 679.31(f) that describes the non-specific CDQ reserve and replace it with a description of how NMFS will manage both CDQ reserves allocated to CDQ groups and CDQ reserves that are not allocated to CDQ groups. This change will specify that the "other species" CDQ reserve is not allocated to CDQ groups and that it will instead be managed with existing management measures used in the non-CDQ fishery. Such measures include a range of limitations and prohibitions that constrain or prohibit the catch of a particular species. Additionally, CDQ-related definitions in § 679.2 will be revised so that they are more accurate and consistent in the context of both the administration of the CDQ Program and CDQ fishery management.

An Environmental Assessment (EA) was prepared for this action to address the requirements of the National Environmental Policy Act (NEPA). The EA evaluates the two alternatives associated with this regulatory amendment and finds no significant effects on the human environment.

A Regulatory Impact Review (RIR) was prepared for this action to address the requirements of Presidential Executive Order (E.O.) 12866. The RIR finds that the action will make it less likely that CDQ groups will be prevented from harvesting their target species because of "other species" constraints, and finds benefits from reductions in management related costs. No costs were identified. CDQ communities should be beneficiaries from this action. The RIR does not indicate that this rule will have an annual effect on the economy of $100 million or more, or that it will trigger other threshold criteria associated with "significant regulatory actions" under E.O. 12866.

A Final Regulatory Flexibility Analysis (FRFA) was prepared to address the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The FRFA evaluates the impacts of this action on directly regulated small entities. For this action, those entities are the six CDQ groups representing 65 western Alaska communities. The preferred alternative benefits the directly regulated small entities, and does not appear to have any adverse impacts on them. It benefits them because under the preferred alternative their target species harvests are less likely to be constrained by limits on their "other species" allocations. The preferred alternative does not impose any new reporting, recordkeeping, or other compliance requirements on these entities. No duplication, overlap, or conflict with other relevant Federal rules has been identified. The status quo was evaluated as an alternative to the preferred alternative. The status quo is more burdensome to the directly regulated small entities than the preferred alternative; under the status quo there is a greater likelihood that the harvest of CDQ target species will be constrained by CDQ groups' "other species" allocations.

# 1.0 PURPOSE AND NEED FOR THE ACTION

## 1.1 Introduction

This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) analyzes alternatives for amending the management of the Bering Sea and Aleutian Islands Area (BSAI) "other species" complex in the Community Development Quota (CDQ) fisheries. Current regulations specify that 7.5 percent of the annual "other species" Total Allowable Catch (TAC) be apportioned to a CDQ reserve. These reserves are then allocated between six different CDQ managing organizations (CDQ groups). The species in the "other species" complex include sharks, skates, sculpins, and octopi. These species are taken incidentally in directed CDQ fisheries, such as pollock, Pacific cod, Greenland turbot, and sablefish.

Individual CDQ groups may catch their entire annual allocation of "other species" before they fully harvest all of their available target species. Because CDQ groups are prohibited from exceeding a quota amount, they may have to modify their fishing operations or stop participating in some target fisheries to avoid facing enforcement actions if they catch most or all of their "other species" allocation. This in turn could have an economic impact on CDQ groups and the CDQ communities if royalties are foregone due to lost fishing opportunities. The objective of this action is to consider ways to manage the "other species" CDQ reserve in a manner that will allow CDQ groups to more fully utilize their CDQ target species allocations without having them constrained by individual allocations of "other species."

## 1.2 Management Authority

The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed by the National Marine Fisheries Service (NMFS) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (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 (FMP) approved by the Secretary of Commerce. The *Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area* (NPFMC, 2002a) was developed under the Magnuson-Stevens Act and other applicable authority to manage groundfish fisheries for optimal yield and to allocate harvest among different fishery components, while preventing overfishing and conserving marine resources. The BSAI FMP was originally implemented in 1981 and has been amended over 65 times.

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 the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

NEPA and E.O. 12866 require a description of the purpose and need for the action as well as a description of alternative actions which may address the problem. This information is included in Sections 1 and 2 of this document, along with an overview of "other species" management. Section 3 contains information on the affected environment and the expected direct or indirect effects of the alternatives on the environment, including potential impacts on fish habitat, marine mammals, and endangered species, as required by NEPA. It also includes a section analyzing the distinctions between the direct, indirect and cumulative effects of this action; and a conclusion analyzing the potential significance of the effects identified. Section 4 includes a Regulatory Impact Review, which considers the economic impacts of the alternatives, as required by E.O. 12866. Section 5 contains a Final Regulatory Flexibility Analysis, which addresses the RFA's requirement that the agency consider potential impacts on directly regulated small entities. The remaining sections include information about references, authors, contributors and consultants, as well as two appendices.

### 1.3 Background on the CDQ Program and "other species" management

The CDQ program was established to provide fisheries-related economic development opportunities to eligible western Alaska coastal communities. It began in 1992 with the allocation of 7.5 percent of the annual BSAI pollock TAC to the pollock CDQ reserve. Pacific halibut and fixed gear sablefish CDQ allocations began in 1995, as part of the halibut and sablefish Individual Fishing Quota (IFQ) program. In 1998, annual allocations of all groundfish TACs, prohibited species catch limits, and guideline harvest levels of several crab species were added to the CDQ Program. As part of the 1998 implementation process, NMFS combined regulations that dealt with existing groundfish CDQ (pollock and fixed gear sablefish) allocations and the new allocations of other groundfish species. The final rule implementing these regulations was published in the Federal Register on June 4, 1998 (63 *FR* 30381). The first complete year of multispecies CDQ allocations and fisheries was 1999. Additionally, the pollock CDQ allocation was increased to ten percent of the BS and AI pollock TACs beginning in 1999, based on requirements stipulated in the American Fisheries Act (AFA) of 1998 (Pub. L. 105-277).

One of the groundfish species categories allocated to the CDQ Program is "other species." This species category is usually used to support the incidental catch needs of directed CDQ fisheries. Most "other species" catch is discarded, although there is limited retention of skates in the Pacific cod CDQ fishery.

During the development of the groundfish CDQ Program, NMFS recognized that catches of "other species" and other non-target species such as arrowtooth flounder could prevent CDQ

fishery participants from fully harvesting their allocations of target species. To address this issue, NMFS created the CDQ non-specific reserve. This reserve is essentially an in-season management tool that CDQ groups may use to augment the initial arrowtooth flounder or "other species" CDQ allocations that they receive each year. It allows a group to convert part of its arrowtooth flounder allocation into "other species" or vice versa. This ability to modestly increase their initial allocations of these species categories, particularly "other species," was designed to offer groups a means to avoid having their target fisheries constrained by the incidental catch of those species categories.

Species or species groups that contribute to the CDQ non-specific reserve are low-valued species for which no target fishery typically exists. These species were considered abundant at the time the CDQ non-specific reserve was created and implemented. They continue to have an adequate buffer between their TAC and the OFL that accommodates limited amounts of additional catch accruing above their initial annual TAC amount. The CDQ non-specific reserve was originally comprised of a portion of the CDQ reserves of squid, arrowtooth flounder and "other species." In 2001, squid was removed as a species allocated to the CDQ Program, leaving arrowtooth flounder and "other species" as the sole contributors to the CDQ non-specific reserve (66 *FR* 13672, March 7, 2001). Each year during the annual CDQ allocation process, NMFS apportions 15 percent of each CDQ group's arrowtooth flounder and "other species" allocations into a CDQ non-specific reserve. Each CDQ group's reserve is solely for its own use.

A CDQ group may request that any or all of the amount in its CDQ non-specific reserve be transferred back into either of the species categories that contributed to it. CDQ groups have exercised the option to release amounts from the CDQ non-specific reserve to their "other species" species category every year since 1999, transferring much or all of the amount available in their annual CDQ non-specific reserve into the "other species" CDQ species category. CDQ groups do this to reduce the possibility that the catch of "other species" might limit the group's catch of CDQ target fisheries. From an operational perspective, what occurs in these situations is that an amount of a group's arrowtooth flounder allocation is being converted to "other species" by an administrative process. If the entire "other species" CDQ reserve is harvested and groups convert arrowtooth flounder to "other species" to account for their additional catch of "other species," then CDQ groups can legitimately exceed their initial annual allocation of "other species."

Notwithstanding the management flexibility afforded by the CDQ non-specific reserve, concern exists that "other species," or the lack thereof, will constrain CDQ target fisheries. These concerns have been expressed in public comments on the multispecies groundfish CDQ Program, periodic discussions between CDQ groups and NMFS, and testimony to the Council at its April and December 2001 meetings. CDQ group representatives also requested relief from the current "other species" CDQ management regime from the Council at its February 2003 meeting. In turn, the Council requested that NMFS:

> *". . .prepare an analysis. . .for action in April (2003) which would manage 'other species' CDQ allocations similar to BSAI shortraker, rougheye, and northern rockfish,*

*i.e., 'other species' CDQ would be allocated to the CDQ reserve, rather than the individual CDQ groups, maximum retainable bycatch levels would be established for the CDQ fisheries, and that once aggregate CDQ harvests of 'other species' reaches 7.5 percent of the TAC, 'other species' would be treated as a PSC species."*

This request encompasses several fishery management measures used in the non-CDQ groundfish fisheries, such as sector level allocation management, maximum retainable amounts, and prohibited species catch (PSC). The in-season management of groundfish and PSC catch in the non-CDQ groundfish fisheries differs from the management protocols used in the CDQ fishery, which are based on the specific quota allocations to CDQ groups. In-season management measures are further discussed in Section 2.2.

## 1.4 Purpose and need

Current regulations associated with the management of "other species" CDQ may constrain CDQ groups from completely harvesting the full suite of target groundfish species that they are allocated. Each annual groundfish TAC amount contributes a specified percentage to a CDQ reserve category. For most TAC categories, this percentage is 7.5 percent. Each CDQ reserve is then allocated to six different CDQ groups as a specific quota amount, based on allocations approved by NMFS. CDQ groups are prohibited from exceeding a CDQ allocation. They may have to stop participating in CDQ target fisheries in which "other species" is incidentally caught if they catch most or all of their "other species" allocation. If they continue fishing and exceed their "other species" allocation, they may face enforcement actions. If NMFS determines that a CDQ group had apparently exceeded its available "other species" CDQ, it reports this information to NOAA's Office for Law Enforcement for additional investigation and referral to NOAA General Counsel. Disposition of such cases may include monetary or other penalties.

The Council and NMFS previously recognized the potential problem that "other species" may pose to the full harvest of target CDQ species and attempted to address it with the CDQ non-specific reserve. However, this reserve isn't functioning as originally envisioned by NMFS. Increases in the annual 2003 TACs for species such as pollock and Pacific cod have meant that CDQ groups received larger allocations of those target species. Proportionately, the need for "other species" CDQ to account for the incidental catch of sharks, skates, sculpins and octopus has increased as well. Conversely, the arrowtooth flounder TAC has decreased significantly since 1999, with corresponding decreases in arrowtooth CDQ allocations (see Appendix 2). The effectiveness of the CDQ non-specific reserve diminishes as annual allocations of its contributing species categories, such as arrowtooth flounder, decline.

The purpose of the CDQ Program is discussed in both the BSAI FMP and in corresponding NMFS regulations. Regulations at 50 CFR 679.1(e) state the goals of the program as follows:

*The goals and purpose of the CDQ Program are to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting*

*commercial fisheries business activities that will result in an ongoing, regionally-based, fisheries related economy*.

The current management of "other species" CDQ may limit the harvest of royalty generating CDQ allocations. Leaving a portion of CDQ target fishery allocations unharvested could have a detrimental impact on the successful completion of a variety of economic development projects that are funded via such royalties. As this is contrary to the overall goals and purpose of the CDQ Program, modifying the management of "other species" CDQ may facilitate fostering a greater degree of success in harvesting target groundfish CDQ species and attainment of program goals, while still maintaining BSAI fishery management objectives. The Council's intent for recommending this action was to provide a means to alleviate the possibility that annual allocations of "other species" CDQ could constrain the complete harvest of groundfish CDQ target species by individual CDQ groups. The Council has recognized that strict accountability standards for all allocated groundfish CDQ species may not be as appropriate as it thought during the design of the multispecies CDQ Program, as discussed in Section 2.2.

## 2.0 DESCRIPTION OF THE ALTERNATIVES

### 2.1 Alternative 1. No action: continue to allocate the "other species" CDQ reserve among each of the six CDQ groups.

This alternative would maintain the current regulatory structure that allocates specific amounts of the "other species" CDQ reserve to individual CDQ groups. The amounts of "other species" quota allocated to each group would continue to be established by a periodic, competitive allocation process. In this process, each CDQ group submits a Community Development Plan (CDP) and request for allocations of CDQ and Prohibited Species Quota (PSQ) species to the State of Alaska. Typically, a CDQ group will calculate the amount of "other species" it thinks would be required to support the "other species" catch in a given target fishery, based on the amount of target species being requested. The sum of each of these "other species" amounts constitutes the overall "other species" allocation amount the group will request.

The State of Alaska reviews the CDQ and PSQ allocation requests from all of the CDQ groups and develops allocation recommendations that it forwards to NMFS for review and approval. The most recent CDQ allocation recommendations were approved in January 2003 and are effective from 2003 through 2005. As part of its allocation review and recommendation process, the State usually modifies each group's target species allocation requests. The State must then adjust each group's requested non-target species allocation amounts to comport to its target species allocation recommendations. The State's methodology for determining what percentage of non-target species allocations each group will receive may not match how each group calculated the proportion of "other species" CDQ that would be needed to support its target species allocations. Public testimony from CDQ groups at the April 2003 Council meeting indicated that some CDQ groups believe that, on a proportional basis, they did not receive an adequate percentage allocation of "other species" to cover the amount of "other species" that they project they are likely to catch while harvesting their recommended target species allocations.

Once CDQ allocations are approved and fishing for groundfish CDQ commences, each CDQ group has to abide by regulations prohibiting catching more than an allocated CDQ or PSQ amount, including the "other species" category. If a group exceeds its annual allocation in a given species category, it is subject to an enforcement action. Since 1999, there have been several CDQ overages each year. These overages occurred in both target and non-target species categories during the course of CDQ harvesting efforts. Such infractions have resulted in CDQ groups being assessed monetary penalties by NOAA General Counsel. There have been no "other species" overages by individual CDQ groups or at the CDQ reserve level as a whole in the four complete years of groundfish CDQ fishing.

CDQ groups are aware of the possibility that exceeding their individual allocations of non-target species may have an impact on the complete prosecution of their key target species, since lack of adequate incidental catch species may curtail directed fishing for other CDQ species. Each year, a group internally allocates amounts of groundfish target species to its various harvesting

partners, along with the amounts of non-target species (such as "other species") that it calculates are needed to support the amount of target species being apportioned to a harvester. CDQ groups may respond to actual incidental catch rates by making in-season adjustments to their partners and fisheries. For example, if the "other species" catch rate in a particular fishery appears to be high, a group may request that vessels fishing for it in that fishery relocate to another area where the catch of "other species" may be lower. Groups may also adjust the amount of non-target species made available to their harvesters or obtain transfers of additional amounts of non-target CDQ amounts from other CDQ groups. Additionally, each CDQ group has it's own CDQ non-specific reserve. This reserve may be used to augment a group's initial allocation of "other species" CDQ. It is discussed in greater detail in Section 1.3.

Under Alternative 1, no action, continuing to allocate the "other species" CDQ reserve to individual groups could constrain some directed fisheries if the amount of "other species" CDQ available to a group is less than the amount needed for "other species" incidental catch in its directed fisheries. Determining the exact amount of "other species" CDQ that would be needed to support the full utilization of each target CDQ fishery is difficult. There are a variety of factors that affect the quantity of "other species" that would be needed to support each annual CDQ target fishery, including, but not limited to: the abundance of each individual species in the "other species" complex; the amount of each target species allocated to the CDQ reserves; the gear type used to prosecute a given fishery; harvest timing and location; and, CDQ harvesters' proficiency in avoiding the catch of "other species."

Table 1-1 portrays the "other species" CDQ allocations from 1999 through 2002, as well as the corresponding total catch of "other species" CDQ catch in each of those years. The amount of "other species" available to the CDQ fisheries has not been exceeded in any of these four years. During the April 2003 Council meeting, CDQ groups testified that they have managed their fisheries to stay within their "other species" allocations, but that this was accomplished at the expense of not harvesting their Pacific cod allocations as completely as they wished to do.

Table 1-1. BSAI "Other species" TAC, CDQ reserves, and CDQ catch in 1999-2002.

| | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|
| TAC | 32,860 | 31,360 | 26,500 | 30,825 |
| CDQ Reserve | 2,464 | 2,352 | 1,988 | 2,312 |
| Catch | 1,908 | 2,060 | 1,663 | 2,311 |

Note: NSR releases to "other species" not included. All amounts in metric tons.
Source: NMFS

One metric to consider when attempting to determine how much "other species" the CDQ sector would require to successfully prosecute its directed fisheries is the "other species" CDQ catch rate in prior years. Catch data for select CDQ target fisheries from 1999 through 2002 was examined to determine how much "other species" was caught in a given target fishery. The ratio of "other species" to designated target species in each target fishery was then calculated for each

of these four years. These annual catch rates were then combined to find a historical "other species" CDQ catch rate. Appendix 1 portrays the 1999-2002 groundfish CDQ catch for each of these target combinations, associated "other species" CDQ catch, and calculated "other species" catch rates for each target.

Finally, this historical catch rate of "other species" was applied to the amounts established for the 2003 CDQ reserves for the same targets. This yielded an approximate amount that could be needed to account for the catch of "other species" in each target species group, as well as an aggregate amount of "other species" required to support groundfish CDQ target fisheries in 2003. The target fisheries used for this projection include: walleye pollock; hook and line Pacific cod; combined fixed gear sablefish and Greenland turbot; combined Atka mackerel and Pacific ocean perch; and, a combined flatfish target that includes yellowfin sole, rock sole, flathead sole, other flatfish, and Alaska plaice. Table 1-2 portrays these calculations.

Table 1-2. Estimated "other species" demand in 2003 CDQ target fisheries, based on the complete harvest of each CDQ target reserve.

| Target species or species group | CDQ reserve amount(s) (mt) | Estimated "other species" catch rate | Projected "other species" catch (mt) |
|---|---|---|---|
| Pollock | 149,176 | 0.08% | 121 |
| Pacific cod | 15,563 | 14.17% | 2,206 |
| Fixed gear sablefish and turbot | 1,055 | 3.35% | 35 |
| Atka mackerel and Pacific ocean perch | 5,453 | 1.13% | 62 |
| Combined Flatfish | 12,056 | 6.40% | 771 |
| Total estimated "other species" required in 2003. | | | 3,196 |
| 2003 allocated "other species" CDQ and amount in non-specific reserve. | | | 2,558 |
| Difference | | | (638) |

Based on these results, it appears that there could be insufficient "other species" CDQ available to meet the potential catch of "other species" in all of the CDQ target fisheries combined in 2003. The "other species" demand is estimated to be approximately 3,196 mt. The potential total amount of "other species" CDQ available from both the initial "other species" allocations and the CDQ non-specific reserve is 2,558 mt. This is a shortfall of approximately 638 mt. However, describing this as a deficit assumes that all CDQ groups will fully prosecute each of their allocated groundfish target categories. CDQ groups have not, with the exception of pollock and to a limited extent Pacific cod, successfully harvested their complete target species allocations since the inception of the groundfish CDQ Program in 1998.

If each CDQ group were to attempt to fully harvest each of its target species allocations in 2003, and the estimated "other species" CDQ demand calculated in this analysis is reasonably accurate, then one or more CDQ groups might have to forgo some fishing opportunities for lack of "other species" incidental catch amounts. In such a scenario it is likely that each group would prioritize its fishing efforts based on the value of each target fishery and choose to concentrate its harvesting efforts and available "other species" quota on fisheries that return the most royalties to them.

Besides calculating the "other species" demand based on an assumed full harvest of CDQ target species quotas in 2003, it is possible to estimate this demand based on the actual historical harvest of such target species. Table 1-3 shows the historic harvest level of five CDQ target species or species groupings.

Table 1-3. CDQ Program target species harvests as a percentage of target species CDQs, 1999-2002.

| | Pollock | Pacific cod | Fixed gear sablefish and turbot | Atka mackerel and Pacific ocean perch | Flatfish |
|---|---|---|---|---|---|
| Average annual harvest | 99.82% | 85.16% | 21.89% | 79.89% | 6.51% |

Source: NMFS CDQ catch data

Applying these historical harvest levels to the 2003 CDQ target reserves yields an estimated level of harvest for each of these target species in 2003. Then, the historical "other species" CDQ catch rate is applied to the estimated catch levels to estimate the amount of "other species" CDQ required to support the incidental catch needs of each CDQ target fishery. By this method, 2,107 mt of "other species" CDQ would be required to account for the catch of this species complex in the CDQ fisheries in 2003. The total amount of "other species" available (including the CDQ reserve and that available from the CDQ non-specific reserve) in 2003 is 2,558 mt. This exceeds the estimated "other species" requirement by 451 mt. These calculations are shown in Table 1-4. Thus, if past performance is an appropriate indicator of "other species" demand, there is adequate "other species" CDQ to support CDQ target fisheries in 2003. However, increases in harvest performance could invalidate this estimate.

During public testimony about this action at the April 2003 Council meeting, both of the preceding examples were discounted as being inaccurate portrayals of the demand for "other species" in CDQ fisheries (the first example) and the degree to which CDQ target allocations will be successfully prosecuted in the future (the second example). Representatives of CDQ groups and their harvesting partners testified that the actual catch rates of "other species" in both the Pacific cod and various flatfish fisheries is often higher than NMFS' estimates. Their projection of "other species" CDQ requirements for the 2003 groundfish CDQ fisheries was over 3,900 mt. That amount includes a 50 mt reserve for each group to allow for the in-season management needs faced by each group during the course of balancing the needs of various harvesting partners. CDQ group representatives also testified that past performance should not be considered indicative of their future harvesting performance. They stated that their Pacific

cod CDQ fishery had been constrained by inadequate amounts of "other species" CDQ in the last several years. CDQ groups also said that their performance in this fishery and others would improve if "other species" CDQ was no longer a "limiting" factor. Moreover, the sub-allocation among groups means an individual group might unexpectedly face constraints, even if the CDQ program as a whole did not.

Table 1-4. Estimated "other species" demand in 2003 CDQ target fisheries, based on historic performance in CDQ target fisheries.

| Target species or species group | CDQ reserve amount(s) | Historic catch rate | Estimated catch | Estimated "other species" catch rate | Projected "other species" catch (mt) |
|---|---|---|---|---|---|
| Pollock | 149,176 | 99.82% | 148,902 | 0.08% | 121 |
| Pacific cod | 15,563 | 85.16% | 13,253 | 14.17% | 1,878 |
| Fixed gear sablefish and turbot | 1,055 | 21.89% | 231 | 3.35% | 8 |
| Atka mackerel and Pac. ocean perch | 5,453 | 79.89% | 4,357 | 1.13% | 49 |
| Combined Flatfish | 12,056 | 6.51% | 785 | 6.40% | 50 |
| Total estimated "other species" required in 2003. | | | | | 2,107 |
| Sum of 2003 allocated "other species" CDQ and amount available from the CDQ non-specific reserve. | | | | | 2,558 |
| Difference | | | | | 451 |
| Note: Numbers may not sum because of minor rounding errors. | | | | | |

## 2.2 Alternative 2 (the preferred alternative). Allow the "other species" CDQ reserve to be managed as a single reserve rather than as separate allocations to each CDQ group.

### Option 1. Eliminate the CDQ non-specific reserve.

CDQ groups are responsible for managing all of their fisheries so that they do not exceed any of their individual CDQ or PSQ allocations. NMFS does not open or close CDQ fisheries since they are governed by fixed quotas and strict catch accounting standards. However, NMFS routinely closes directed fishing for specified groundfish species in the non-CDQ fishery component. These closures may be due to a directed fishing allowance for a particular species being reached, a fishery reaching a prohibited species bycatch allowance, or because of overfishing concerns for another groundfish species taken as incidental catch in a particular target fishery. When directed fishing for a species is closed, "maximum retainable amounts" of that species may still be retained onboard a vessel up to a specified percentage of other retained groundfish.

When the harvest of a species approaches its TAC, NMFS may place the species on "prohibited" status. Any subsequent catch of that species must be discarded. If the harvest amount approaches the overfishing level (OFL), then NMFS may close those directed fisheries which harvest that species incidentally, in order to prevent overfishing. More detailed information about catch monitoring and in-season fishery management is available in Section 2.5 of the Draft Programmatic Supplemental Environmental Impact Statement (Draft PSEIS) (NMFS 2003a).

Under Alternative 2, the "other species" CDQ reserve will not be allocated among CDQ groups. Instead, it will be managed at the CDQ reserve level and in conjunction with non-CDQ fisheries. This approach will be a hybrid of current NMFS management practices in the Alaska groundfish fishery. All "other species" catch in groundfish CDQ fisheries will accrue towards the "other species" CDQ reserve, rather than towards a specific group's allocation. At the beginning of each year, "other species" CDQ will be closed to directed fishing. This will minimize the likelihood that the available amount of "other species" CDQ will be reached during the prosecution of directed CDQ fisheries, since CDQ groups will not be able to target on species such as skate (a species in the "other species" complex). There is a market for skate products, and CDQ groups occasionally retain skates during their Pacific cod harvesting operations.

Prohibiting directed fishing for "other species" in the CDQ fisheries will mean that any retained amounts of "other species" CDQ could not exceed a certain proportion of the amount of other retained CDQ species on board a vessel. The CDQ fishery will use the same maximum retainable percentage amounts for "other species" that are specified in current regulations for the BSAI groundfish fishery. If the entire "other species" CDQ reserve were caught, NMFS will monitor the aggregate catch of "other species" in both the CDQ and non-CDQ fisheries. Further fishery restrictions will not occur unless the OFL for this species complex is approached by the combined catch of both of these fishery components. If this did occur, both CDQ and non-CDQ fisheries will be subject to specified directed fishing closures to minimize further catch of "other species." For example, NMFS could close the directed fishery for Pacific cod in the BS subarea if that particular fishery was exhibiting the highest catch of "other species," relative to other BS groundfish fisheries.

This alternative will reduce the possibility that "other species" catch in the CDQ fisheries could constrain the CDQ target species harvest of one or more groups, by elevating the accounting of "other species" CDQ catch to the CDQ reserve level. Primary management of "other species" catch will be at this level and secondary management of "other species" will be at the combined CDQ and non-CDQ aggregate catch level. The overall catch of "other species" will still be subject to existing controls associated with "other species" TAC, ABC, and OFL levels.

Beginning in 2003, this management protocol was implemented for two CDQ species categories, BS northern rockfish and BS shortraker/rougheye rockfish. NMFS did not allocate these two species categories to individual CDQ groups, as discussed in its decision to approve the 2003-2005 CDQ allocation decision (NMFS 2003a). Instead, these two CDQ species categories are managed at the reserve level. NMFS will monitor the total catch of BS northern rockfish and BS shortraker/rougheye rockfish by the CDQ sector, along with the non-CDQ fisheries catch of

these species during 2003. If the total overall catch in one of these categories approaches the OFL, NMFS will determine which directed fisheries, including CDQ fisheries, will need to be closed to prevent overfishing these species.

An examination of the non-CDQ and CDQ "other species" allocation and catch levels from 1999-2002 illustrates that the combined catch in both of these fisheries components is still within the bounds for the "other species" ABC and OFL in these years. This is illustrated in Table 1-5. Additionally, the combined catch of "other species" in both the CDQ and non-CDQ fisheries was less than the annual TAC for each of those years.

Table 1-5. 1999-2002 "other species" TAC and catch (metric tons).

| | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|
| Overfishing limit (OFL) | 129,000 | 71,500 | 69,000 | 78,900 |
| Acceptable Biological Catch (ABC) | 32,860 | 31,360 | 33,600 | 39,100 |
| Total Allowable Catch (TAC) | 32,860 | 31,360 | 26,500 | 30,825 |
| Actual catch | | | | |
| CDQ component | 1,908 | 2,060 | 1,663 | 2,311 |
| Non-CDQ component | 18,677 | 24,030 | 24,239 | 26,287 |
| Total 'other species' catch | 20,585 | 26,090 | 25,902 | 28,598 |
| Remaining TAC | 12,275 | 5,270 | 598 | 2,227 |
| Percent of TAC remaining | 37% | 17% | 2% | 7% |
| TAC exceeded? | No | No | No | No |
| OFL approached? | No | No | No | No |
| Directed fishery closures necessary to minimize the catch of "other species?" | No | No | No | No |

Source: NMFS catch data and annual groundfish specifications.

Alternative 2 will continue the allocation of the "other species" CDQ reserve to the CDQ Program, discontinue allocating amounts of the "other species" reserve to individual CDQ groups, and shift the management of "other species" CDQ catch to the reserve level. NMFS considers it desirable to continue to allocate "other species" to the CDQ Program, rather than eliminate this allocation (as is discussed in Section 2.3.2) in order to continue to account for the catch of "other species" by CDQ fishery participants separately from the catch of "other species" in the non-CDQ fishery component. Additionally, this alternative will comply with the Magnuson-Stevens Act directive for NMFS to allocate a portion of each BSAI groundfish TAC to the CDQ Program.

The original intent of the groundfish CDQ Program was to allocate amounts of all BSAI groundfish, Pacific halibut, and crab catch limits to the CDQ Program. Concurrent with the development of this allocative regime, higher level catch monitoring and accounting protocols were developed than are typically found in open access or non-quota fisheries. Catch in excess of an allocated groundfish CDQ amount was prohibited. Additionally, each specific CDQ allocation and catch thereof became subject to scrutiny during actual fishing operations and during periodic CDQ allocation cycles. The State of Alaska also assesses whether CDQ groups have promoted conservation-based fisheries by ". . . taking actions that will minimize bycatch. . ." as part of the State's suite of CDQ program standards (6 AAC 93.017). Alternative 2 will support the Council's quota accountability objectives, particularly for CDQ target species, while reducing the possibility that individual allocations of "other species" will hamper groups from successfully harvesting their revenue-generating allocations and achieving CDQ Program objectives.

Option 1 under Alternative 2 will eliminate the CDQ non-specific reserve. If management of "other species" CDQ was shifted to the sector level, this reserve will be unnecessary. CDQ groups will not be accountable for their catch of "other species" to the degree that they will need the flexibility to increase their initial "other species" allocations via the CDQ non-specific reserve. The only other groundfish species contributing to the CDQ non-specific reserve is arrowtooth flounder. This has not been identified as a species that poses a potential risk to constraining CDQ fisheries nor a species that will need to be augmented from the CDQ non-specific reserve. There was a single release of quota from the CDQ non-specific reserve back into a group's arrowtooth flounder CDQ allocation in the four years between 1999 and 2002. Appendix 2 portrays the allocation and catch information for arrowtooth flounder.

NMFS presented a draft of this analysis to the Council in April 2003. The Council considered the alternatives presented in the analysis, public testimony, and the recommendation's of the Council's Advisory Panel. Its deliberation about this action included discussion of original program intent, the unanticipated consequences of small allocations "distorting" CDQ fishery operations, and how to best attain the highest social benefit from resources allocated to the CDQ Program. The Council then selected Alternative 2 as its preferred alternative, along with Option 1. NMFS considers this recommendation to be a recent change in the Council's philosophy associated with quota accountability in the groundfish CDQ fishery. However, the Council determined that the social, economic, and conservation benefits associated with this action provide justification to alter the original design requiring strict quota accountability for each CDQ reserve category.

## 2.3 Alternatives considered but rejected

NMFS considered several additional alternatives, but rejected them for detailed analysis for the reasons discussed below.

**2.3.1 Rejected Alternative 3**. Continue to allocate "other species" CDQ to each CDQ group and increase the amount of arrowtooth flounder CDQ reserve that is apportioned to the CDQ non-specific reserve.

This alternative would indirectly increase the amount of "other species" CDQ available to each CDQ group by increasing the amount of arrowtooth flounder that is apportioned to the CDQ non-specific reserve. This would be similar to prior measures taken in 2001 and 2002, when CDQ groups identified "other species" as potentially problematic to their fisheries. The Council requested that NMFS increase the amount of arrowtooth flounder apportioned to the CDQ non-specific reserve from 15 to 50 percent. This had the practical effect of increasing the amount of "other species" that each CDQ group was could harvest in both of the years. Appendix 2 depicts information related to the 1999 through 2002 arrowtooth flounder and "other species" TAC amounts, CDQ non-specific reserve amounts, and the degree to which CDQ groups utilized their CDQ non-specific reserves. For purposes of this analysis, squid was omitted from CDQ non-specific reserve calculations, as it only contributed a negligible amount (22 mt) to the CDQ non-specific reserve in the year 2000.

NMFS increased the arrowtooth flounder's apportionment to the CDQ non-specific reserve in 2001 and 2002 based on Council recommendation. The Council was responding to requests from CDQ groups that they be offered some form of relief from the possibility that a shortfall of "other species" might constrain CDQ target fisheries. NMFS implemented this change to arrowtooth flounder's apportionment to the CDQ non-specific reserve via emergency interim rules. Further explanation about the need and rationale for these actions are contained in these rules, which were published July 17, 2001 (66 FR 37167 ) and January 8, 2002 (67 FR 956). In 2003, the amount of arrowtooth flounder allocated to each CDQ group's non-specific reserve reverted to the 15 percent contribution specified in regulations.

It is difficult to determine if the increased apportionment of arrowtooth flounder to the CDQ non-specific reserve in 2001 and 2002 was adequate to address the perceived shortfall of "other species," since CDQ groups did not harvest the full amount of each of their target allocations in those years. Based on actual CDQ harvesting performance in each of those years, there would have been enough "other species" CDQ to account for the catch of "other species" without increasing the amount the apportionment of arrowtooth flounder to the CDQ non-specific reserve. The percent of available CDQ target allocations harvested in 2001 ranged from 99 percent of pollock to 1 percent of flatfish. In 2002, that range went from 99 percent of pollock to 17 percent of flatfish. Table 1-1 and Table 1-5 shows that the amount of "other species" CDQ caught in 2001 and 2002 was less than the "other species" CDQ reserve in those two years. Additional "other species" was available via transfers from the CDQ non-specific reserve.

At the April 2003 Council meeting, representatives of CDQ groups testified that they have been taking measures to avoid catching "other species" to the point that the harvest of their target allocations has been impacted. Thus, they did not feel that using past performance to predict the future demand for "other species" in the CDQ fisheries was appropriate, as the available amount

of “other species” CDQ has been a contributing factor to the underutilization of some allocations.

While increasing the apportionment of arrowtooth flounder CDQ to the CDQ non-specific reserve offers additional flexibility to try to ensure that CDQ groups have adequate “other species” CDQ available for their fishing needs, determining the appropriate proportion is difficult. Besides trying to calculate the “other species” needs of future CDQ fisheries and then calculating the appropriate amount of arrowtooth flounder to apportion to the CDQ non-specific reserve, the projected demand for arrowtooth flounder in the CDQ fisheries has to be considered. Adequate information is not available to accurately forecast the future CDQ catch needs in both of these species categories to the degree that a permanent selection of an appropriate contribution rate from arrowtooth flounder to the CDQ non-specific reserve is possible. Additionally, consideration of impacts to the CDQ non-specific reserve should not have to be major factor when the Council makes recommendations for groundfish TAC levels. Therefore, NMFS does not endorse an alternative that would modify the contribution rate of arrowtooth flounder to the CDQ non-specific reserve.

### 2.3.2 Rejected Alternative 4. Do not allocate “other species” to the CDQ program.

Under this alternative, “other species” would not be allocated to the CDQ program. NMFS would no longer allocate 7.5 percent of the “other species” TAC to an “other species” CDQ reserve nor allocate “other species” to individual CDQ groups. Any catch of “other species” in the CDQ fisheries would be subtracted from the general “other species” TAC. The CDQ groups would have to comply with general management measures associated with “other species,” such as if this complex were closed to directed fishing or placed on prohibited species catch status. However, this alternative would be contrary to the Magnuson-Stevens Act, which requires the Council and NMFS to allocate a percentage of the TAC of any Bering Sea fishery to the CDQ Program.

Squid is the only BSAI groundfish species category not allocated to the CDQ Program. It was removed from the CDQ Program by Amendment 66 to the BSAI FMP in 2001. The AFA increased the pollock allocation to the CDQ Program from 7.5 to 10 percent of the pollock TAC. Squid is predominantly caught in the pollock fishery, but its allocation to the CDQ Program remained at 7.5 percent following implementation of the AFA. In recommending the action associated with Amendment 66, the Council re-evaluated the impact of strict quota accountability on the CDQ Program and the potential impacts to the pollock CDQ fishery if the annual squid CDQ allocation were caught before the pollock CDQ fishery was complete. It opted to remove squid as an allocated CDQ species. In February 2003, the Council did not explicitly request that NMFS analyze removing the “other species” category from the CDQ Program, nor did it deliberate on such an option when considering final action for this “other species” CDQ action. It has instead focused on alternative methods to manage the annual “other species” CDQ reserve.

Table 1-5 shows the overall catch of "other species" in both the CDQ and non-CDQ fisheries from 1999 through 2002. It does not appear that the overall catch of "other species" would have triggered changes to the status of this species complex or directed fishery closures. While this alternative would alleviate the possibility that the catch of "other species" could constrain CDQ target fisheries, it also reduces "other species" catch accountability to a coarser level. The current regime of strict quota accountability is a means to ensure that CDQ groups keep their catch within the bounds of their allocations, including the catch of incidental species such as sharks, skates, sculpins, and octopus. Not allocating "other species" to the CDQ Program will disassociate the catch of "other species" in CDQ fisheries from the higher level of scrutiny it is currently given. This could lead to CDQ groups decreasing their focus on attempting to minimize "other species" catch.

NMFS feels it is important to maintain at least program level accountability for the harvest of incidentally caught species and that CDQ groups should continue to strive to minimize the catch of "other species." The sector level management proposed under Alternative 2 will accomplish this objective. NMFS does not recommend further analysis of Alternative 4 because Alternative 2 will address the issue but would continue to separate accounting of "other species" catch by the CDQ and non-CDQ fishery components. With separate accounting at the CDQ reserve level (Alternative 2), CDQ groups may attempt to minimize their incidental catch of "other species" to a greater degree than they would if catch by both components was combined.

### 2.3.3 Rejected Alternative 5. Increase the amount of the "other species" TAC that is apportioned to the "other species" CDQ reserve.

This alternative would increase the amount of "other species" allocated to the CDQ Program from the BSAI "other species" TAC from 7.5 percent to some greater percentage. "Other species" CDQ would be allocated to each CDQ group and group level accountability for the catch of "other species" would be retained. Increasing the amount of "other species" allocated to the CDQ Program would require a decrease in the amount of "other species" apportioned to the non-CDQ fisheries. NMFS does not recommend further analysis of Alternative 5 because Alternative 2 will address the "other species" CDQ issue without reducing the proportion of "other species" allocated to the non-CDQ fishery component or requiring a determination of the appropriate apportionment of the "other species" TAC between fishery components.

## 3.0 ENVIRONMENTAL CONSEQUENCES OF THE ALTERNATIVES

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

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the action and the alternatives, and list of document preparers. The purpose was discussed in Section 1, along with background information about the CDQ Program and its allocation of "other species." Alternatives were presented in Section 2. The economic impacts of the alternatives are discussed in Section 4. This section discusses the environmental impacts of the alternatives, including impacts on essential fish habitat, threatened and endangered species, and marine mammals.

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

### 3.1 Description of fisheries

Detailed descriptions of the BSAI groundfish fishery many be found in a variety of public documents. These contain discussions or specific information pertaining to the groundfish CDQ fishery. Each of these are readily available in printed form or via the Internet at links given in the Section 9. These reports include:

*Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement* (NMFS 2003a). This document contains detailed fishery descriptions and statistics in Section 3.9, "Social and Economic Conditions."

*Economic Status of the Groundfish Fisheries off Alaska, 2001* (Hiatt *et al.* 2002), which is an appendix of the annual *Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the BSAI*. The former document is produced by NMFS and updated annually. It summarizes a wide range of fishery information through the year 2001.

*Steller Sea Lion Protection Measures Supplemental Environmental Impact Statement* (NMFS 2001c. This contains several sections with useful background information on the groundfish fishery (although the majority of information provided is focused on three important species -

pollock, Pacific cod, and Atka mackerel). Section 3.12.2 provides extensive background information on existing social institutions, patterns, and conditions in these fisheries and associated communities, Appendix C provides extensive information on fishery economics, and Appendix D provides extensive background information on groundfish markets.

*Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the BSAI* (NPFMC, 2002b). This report is published in three sections: Stock Assessment, Fishery Evaluation, and Ecosystems Considerations. It is produced by the BSAI Groundfish Plan Team on behalf of the Council.

## 3.2 Location of groundfish fisheries

The non-CDQ and CDQ groundfish fisheries occur in the north Pacific Ocean and Bering Sea within the U.S. EEZ, ranging from 50° N. to 65° N. The alternatives considered in this EA would affect groundfish fishing conducted under the CDQ Program. Detailed descriptions of all aspects of the BSAI groundfish fisheries are given in the Draft PSEIS for the Alaska Groundfish Fisheries (NMFS 2003a, Chapter 3). Groundfish CDQ fisheries are conducted by a subset of the vessels that currently conduct non-CDQ fishing operations in the various federal management areas in the Bering Sea and Aleutian Islands.

## 3.3 The "other species" complex

The BSAI FMP describes five categories of species or species groups that are likely to be taken in the groundfish fishery, including prohibited species, target species, "other species," forage fish species, and non-specified species. The species in the "other species" group are currently of slight economic value and are not generally targeted upon, even though this category contains species with economic potential. This category also contains species which are important ecosystem components (NPFMC 2002a, p. 286). These include three species of shark, approximately 15 skate species, approximately 58 sculpin species, and three octopus species. The specific species contained in this category has been compiled from Bering Sea and Aleutian Islands fishery survey data. Both the ABC and OFL for the "other species" complex are calculated based on the average catch of these species from 1978 to 1995 (NPFMC 2002b, p. 669). The "other species" OFL, ABC, TAC, and CDQ reserve for 1999 through 2002 are shown in Table 1-5 .

## 3.4 Environmental impacts of the alternatives

The two alternatives considered by this action include Alternative 1 (no action) and Alternative 2 (the preferred alternative), which would allow the "other species" CDQ reserve to be managed at the CDQ reserve level rather than allocating it among individual CDQ groups. Neither alternative would significantly change the total amount of groundfish harvested in the Alaska groundfish fishery. Under Alternative 1, some Pacific cod CDQ fishing effort could shift out of typical Pacific cod fishing grounds to other locations as CDQ groups attempt to minimize their catch of "other species." Additionally, CDQ groups could change from fixed gear to trawl gear

in their Pacific cod fishery to attempt to decrease their catch of "other species." Neither alternative is likely to change the timing of CDQ fishing activities. Alternative 2 would modify the existing "other species" CDQ management regime from occurring at the CDQ group level to occurring at the CDQ reserve level.

### 3.5 Effects on target species

Neither alternative would have an adverse effect on groundfish CDQ target species. Alternative 1 would continue to allocate "other species" CDQ to each CDQ group. CDQ groups could forego the catch of some allocated target species if they catch their entire "other species" CDQ allocations before they catch all of their target species. Alternative 2 would allow CDQ groups to more fully utilize their allocated target species if NMFS shifted to "other species" reserve level CDQ allocation and accounting. Groups would no longer be subject to a prohibition against exceeding their "other species" allocations. CDQ groups would still be prohibited from exceeding their remaining groundfish CDQ allocations.

### 3.6 Effects on the 'other species' complex

"Other species" is generally considered a non-target species in both the CDQ and non-CDQ fishery. Alternative 1 would allocate the annual "other species" CDQ reserve to individual groups, and each CDQ group would be prohibited from exceeding its "other species" allocation. Under Alternative 2, "other species" would be allocated to the "other species" CDQ reserve, but would no longer be allocated to each CDQ group. The catch of "other species" CDQ in the groundfish fishery would be primarily managed at the CDQ reserve level, with secondary management at the combined CDQ and non-CDQ fishery component level. NMFS does not anticipate any adverse impact on "other species" if Alternative 2 was adopted, as the overall catch of "other species" would still be subject to existing controls associated with annual "other species" TAC, ABC, and OFL levels. If the combined catch of "other species" by both of these fishery components approaches the OFL, NMFS would determine which directed fisheries in the Bering Sea or Aleutian Islands, including CDQ fisheries, would need to be closed to prevent overfishing "other species."

### 3.7 Effects on prohibited species

Alternative 1 could result in less prohibited species being caught in CDQ fisheries than are allocated to the annual PSQ reserves. This would occur if some CDQ target fisheries were under-harvested because CDQ groups had inadequate "other species" CDQ to account for their anticipated catch of "other species." However, a shift from using fixed gear to trawl gear in the Pacific cod CDQ fishery could increase the annual mortality of prohibited species such as Pacific halibut. The trawl Pacific cod fishery usually results in substantially higher halibut mortality per ton of cod caught than does the fixed gear Pacific cod fishery. Alternative 2 would decrease the likelihood that CDQ target fisheries would be under-harvested, thus increasing the possibility that a majority, or the full amount, of prohibited species allocated to each CDQ group would be

caught. CDQ fishery participants would continue to be subject to existing prohibited species catch restrictions, prohibitions, and area closures.

### 3.8 Effects on threatened or endangered species

The Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq*; ESA), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by NMFS for most marine mammal species, marine and anadromous fish species, and marine plant species and by the U.S. Fish & Wildlife Service (USFWS) for bird species, and terrestrial and freshwater wildlife and plant species.

The designation of an ESA-listed species is based on the biological health of that species. The status determination is either threatened or endangered. Threatened species are those likely to become endangered in the foreseeable future [16 U.S.C. § 1532(20)]. Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range [16 U.S.C. § 1532(20)]. Species can be listed as endangered without first being listed as threatened. The Secretary of Commerce, acting through NMFS, is authorized to list marine fish, plants, and mammals (except for walrus and sea otter) and anadromous fish species. The Secretary of the Interior, acting through the USFWS, is authorized to list walrus and sea otter, seabirds, terrestrial plants and wildlife, and freshwater fish and plant species.

In addition to listing species under the ESA, the critical habitat of a newly listed species must be designated concurrent with its listing to the "maximum extent prudent and determinable" [16 U.S.C. § 1533(b)(1)(A)]. The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. Federal agencies are prohibited from undertaking actions that destroy or adversely modify designated critical habitat. Some species, primarily the cetaceans, which were listed in 1969 under the Endangered Species Conservation Act and carried forward as endangered under the ESA, have not received critical habitat designations.

Federal agencies have an affirmative mandate to conserve listed species (Rohlf 1989). One assurance of this is that Federal actions, activities or authorizations (hereafter referred to as Federal actions) must be in compliance with the provisions of the ESA. Section 7 of the Act provides a mechanism for consultation by the Federal action agency with the appropriate expert agency (NMFS or USFWS). Informal consultations, resulting in letters of concurrence, are conducted for Federal actions that have no adverse effects on the listed species. Formal consultations, resulting in biological opinions, are conducted for Federal actions that may have an adverse effect on the listed species. Through the biological opinion, a determination is made as to whether the proposed action poses "jeopardy" or "no jeopardy" of extinction to the listed species. If the determination is that the action proposed (or ongoing) will cause jeopardy, reasonable and prudent alternatives may be suggested which, if implemented, would modify the action to no longer pose the jeopardy of extinction to the listed species. These reasonable and prudent alternatives must be incorporated into the Federal action if it is to proceed. A biological opinion with the conclusion of no jeopardy may contain a series of management measures

intended to further reduce the negative impacts to the listed species. These management alternatives are advisory to the action agency [50 CFR 402.24(j)]. If a likelihood exists of any taking occurring during promulgation of the action, an incidental take statement may be appended to a biological opinion to provide for the amount of take that is expected to occur from normal promulgation of the action. An incidental take statement is not the equivalent of a permit to take.

Twenty-three species occurring in the GOA and/or BSAI groundfish management areas are currently listed as endangered or threatened under the ESA. These are listed in Table 3-1. The group includes great whales, pinnipeds, Pacific salmon and steelhead, two types of eiders, and an albatross.

Table 3-1. Species currently listed as endangered or threatened under the ESA and occurring in the BSAI groundfish management areas.

| **Common Name** | **Scientific Name** | **ESA Status** |
|---|---|---|
| Northern Right Whale | *Balaena glacialis* | Endangered |
| Sei Whale | *Balaenoptera borealis* | Endangered |
| Blue Whale | *Balaenoptera musculus* | Endangered |
| Fin Whale | *Balaenoptera physalus* | Endangered |
| Humpback Whale | *Megaptera novaeangliae* | Endangered |
| Sperm Whale | *Physeter macrocephalus* | Endangered |
| Snake River Sockeye Salmon | *Onchorynchus nerka* | Endangered |
| Short-tailed Albatross | *Phoebaotria albatrus* | Endangered |
| Steller Sea Lion | *Eumetopias jubatus* | Endangered and Threatened [1] |
| Snake River Fall Chinook Salmon | *Onchorynchus tshawytscha* | Threatened |
| Snake River Spring/Summer Chinook Salmon | *Onchorynchus tshawytscha* | Threatened |
| Puget Sound Chinook Salmon | *Onchorynchus tshawytscha* | Threatened |
| Lower Columbia River Chinook Salmon | *Onchorynchus tshawytscha* | Threatened |
| Upper Willamette River Chinook Salmon | *Onchorynchus tshawytscha* | Threatened |
| Upper Columbia River Spring Chinook Salmon | *Onchorynchus tshawytscha* | Endangered |
| Upper Columbia River Steelhead | *Onchorynchus mykiss* | Endangered |
| Snake River Basin Steelhead | *Onchorynchus mykiss* | Threatened |
| Lower Columbia River Steelhead | *Onchorynchus mykiss* | Threatened |
| Upper Willamette River Steelhead | *Onchorynchus mykiss* | Threatened |
| Middle Columbia River Steelhead | *Onchorynchus mykiss* | Threatened |
| Spectacled Eider | *Somateria fishcheri* | Threatened |
| Steller Eider | *Polysticta stelleri* | Threatened |
| Northern Sea Otter | *Enhydra lutris* | Candidate |

[1] Steller sea lions are listed as endangered west of Cape Suckling and threatened east of Cape Suckling.

### 3.8.1 Section 7 consultations

Because groundfish and crab fisheries are Federally regulated activities, any negative effects of the fisheries on listed species or critical habitat and any takings that may occur are subject to ESA Section 7 consultations. NMFS initiates the consultation and the resulting biological opinions are issued to NMFS. The Council may be invited to participate in the compilation, review, and analysis of data used in the consultations. The determination of whether the action "is likely to jeopardize the continued existence of" endangered or threatened species or to result in the destruction or modification of critical habitat, however, is the responsibility of the appropriate agency (NMFS or USFWS). If the action is determined to result in jeopardy, the opinion includes reasonable and prudent measures that are necessary to alter the action so that jeopardy is avoided. Section 7 consultations have been done for all the species listed in Table 3-1, some individually and some as groups.

***Steller sea lions***

In 1990, NMFS designated the Steller sea lion as a threatened species under the ESA. NMFS designated critical habitat in 1993 (58 *FR* 45278) for the Steller sea lion based on the Recovery Team's determination of habitat sites essential to reproduction, rest, refuge, and feeding. Listed critical habitats in Alaska include all rookeries, major haulouts, and specific aquatic foraging habitats. In 1997, based on biological information collected since the species was listed as threatened in 1990 (60 *FR* 51968), NMFS reclassified Steller sea lions as two distinct population segments under the ESA (62 *FR* 24345). The Steller sea lion population segment west of 144° longitude (a line near Cape Suckling, Alaska) is listed as endangered; the remainder of the U.S. Steller sea lion population maintains the threatened listing. The Final Supplemental Environmental Impact Statement for Steller Sea Lion Protection Measures (NMFS 2001b, Section II, Appendix A), contains the most recent Biological Opinion on Steller Sea Lions, completed in October 2001. A final rule promulgating Steller sea lion protection measures in the Bering Sea and Aleutian Islands was published January 2, 2003 (68 *FR* 204). The groundfish CDQ fisheries that incidentally catch "other species" must comply with these measures, which disperse fishing effort over time and area.

Neither of the alternatives considered under this action would change fishing activities in a manner that would have effects on Steller sea lions that have not already been considered in previous consultations.

***Seabirds***

Breeding and non-breeding seabird populations ranging into the BSAI include: northern fulmars, storm petrels, albatrosses, shearwaters, cormorants, gulls, kittiwakes, auklets, murrelets, puffins, eiders, and others. Three listed seabirds occur in the BSAI. Two are threatened: the Steller's eider and the spectacled eider. The short-tailed albatross is an endangered species. The current populations status, history of section 7 consultations, and NMFS action undertaken as a result of those consultations are described in section 3.7.1 of the Draft PSEIS (NMFS 2003a). The Draft

PSEIS also contains information about the population biology and foraging ecology of these three listed species in sections 3.7.2 through 3.7.19.

The USFWS issued two biological opinions on the effects of the groundfish fisheries off Alaska on threatened and endangered seabird species discussed above in September 2003. Both opinions conclude that BSAI fishery actions are not likely to jeopardize the continued existence of these seabird species or result in the adverse modification of Steller's eider critical habitat. The USFWS also issued an incidental take statement for short-tailed albatross and Steller's eider. This statement describes the anticipated take of short-tailed albatross as a result of groundfish fishing activities regulated by NMFS. It also proscribes reasonable and prudent measures designed to minimize the incidental take of these species.

None of the alternatives considered for this rule are expected to have an impact on the short-tailed albatross in any manner not previously considered. This analysis considers either retaining or modifying the current "other species" CDQ management regime, including managing the catch of "other species" CDQ at the sector level in lieu of CDQ group level management. The "other species" TAC would not change under any of the alternatives, and no changes are anticipated in the types of gear used in the groundfish CDQ fisheries in which "other species" are caught. No additional impacts on short-tailed albatross, Steller's eider, or spectacled eider are expected if Alternative 2 is implemented.

***Impacts of the alternatives on endangered or threatened species***

None of the alternatives under consideration would affect the fisheries in a way not previously considered in the above consultations. Alternative 1 would continue the status quo. Alternative 2 would modify how NMFS allocates and manages the "other species" CDQ complex. Neither of the alternatives should affect takes of listed species. Therefore, none of the alternatives are expected to have a significant impact on endangered or threatened species, or their critical habitat.

## 3.9 Effects on Marine Benthic Habitat and Essential Fish Habitat

Inclusively, all the marine waters and benthic substrates in the BSAI management areas comprise the habitat of all marine species. Additionally the adjacent marine waters outside the EEZ, adjacent State waters inside the EEZ, shoreline, freshwater inflows, and atmosphere above the waters, constitutes habitat for prey species, other life stages, and species that move in and out of, or interact with, the fisheries' target species, marine mammals, seabirds, and the ESA listed species. The Draft PSEIS assesses the impacts of the groundfish fisheries in the BSAI on such habitat, including a detailed discussion of gear impacts in section 3.6 (NMFS 2003a). CDQ groups use a variety of gear types to catch their CDQ allocations.

Alternative 1, no action, could result in CDQ groups changing gear types to avoid the catch of "other species," particularly in their Pacific cod fishery. This fishery is presently prosecuted with fixed gear, but groups could prosecute it with trawl gear. Trawl gear typically catches less

"other species" than does fixed gear, however, trawl gear is more likely to have increased impacts on benthic habitat than fixed gear. Alternative 2 could allow CDQ fishery participants to more fully harvest the of annual CDQ reserves allotted to them using the gear type usually used in a particular fishery, rather than changing gear types.

### 3.10 Effects on the ecosystem

The most recent SAFE report (NPFMC 2002b) completed for the BSAI groundfish fishery contains an *Ecosystems Considerations* section. This reviews the most recent information available on various components of the BSAI ecosystem, such indicators relating to physical oceanography, habitat, target groundfish, forage species, marine mammals, seabirds, and other aggregate indicators which relate to trophic levels of catch in the BSAI fishery management areas. NMFS does not expect either Alternative 1 or Alternative 2 to have additional effects on the BSAI ecosystem beyond those already discussed in the 2002 SAFE or the Environmental Assessment prepared for the 2003 BSAI Total Allowable Catch Specifications (NMFS 2003b).

### 3.11 Social and economic consequences

The social and economic consequences of the alternatives considered for this action are described in Section 4, including a description of the fishery. Section 4.6 provides detailed descriptions of the fishing operations and communities that could be affected by this action. Section 4.9 summarizes the impacts of this action on fishing operations and communities.

Alternative 2 would give NMFS additional flexibility in managing the catch of "other species" by relaxing CDQ group specific "other species" allocation and catch accounting requirements. Reserve level "other species" management would increase the likelihood that CDQ groups would harvest their complete CDQ target allocations, and thus maximize the economic benefits that they gain from such allocations.

### 3.12 Cumulative effects

The Draft PSEIS (NMFS, 2003a) presents a comprehensive assessment of the cumulative effects of the environmental factors, including external factors and consequences, associated with alternatives considered for the management of the BSAI groundfish fishery. Alternative 2 under this action would modify NMFS' allocation and in-season management of the "other species" CDQ complex. It will not alter or modify the established BSAI groundfish specifications or harvest controls associated with the "other species" complex. No additional past, present, or reasonably foreseeable cumulative impact issues have been identified beyond those considered in the Draft PSEIS.

### 3.13 Conclusions

To determine the significance of impacts of the action analyzed in this EA, NMFS is required by NEPA, 50 CFR § 1508.27, and NOAA Administrative Order 216-6 to consider the following:

*Context*: The setting of Alternative 2 (the preferred alternative) as considered for this action is the groundfish CDQ fishery of the Bering Sea and Aleutian Islands. Any effects of the action are limited to these areas. The effect of the alternatives on society within these areas is limited to the participants in the groundfish CDQ Program. CDQ groups harvest a variety of groundfish CDQ
species throughout the course of a given calendar year, either directly with their own vessels or indirectly via fishing industry partners.

*Intensity*: A listing of considerations to determine intensity of the impacts are in 50 CFR § 1508.27(b) and in the NAO 216-6. Each consideration is addressed below.

Adverse or beneficial impact determinations are required to be considered in this action. This is a relatively minor action within the comprehensive context of groundfish fishery management in the BSAI. Impacts associated with the preferred alternative are limited to CDQ groups participating in the groundfish CDQ fishery.

The action analyzed in this EA is limited in scope. Minimal or no risk to the human environment will occur if this action is implemented. Direct impacts on the environment from this action are expected to be minimal, because the management of the "other species" catch in the CDQ fisheries will continue to be managed under the BSAI groundfish specifications and fishery management regulations that apply to the catch of all groundfish and prohibited species in the BSAI. CDQ fishery participants will continue to be required to adhere to applicable regulations associated with the conservation of listed species. This action may slightly increase the amount of "other species" that are allowed to be caught in the CDQ fisheries, but the total catch of "other species" in the CDQ and non-CDQ fisheries combined will continue to be managed to be less that or equal to the overall quota for this species group. NMFS does not expect any significant changes in the total catch in the CDQ fisheries, or in the seasons, areas, or gear types used to catch groundfish in the CDQ fisheries.

For these reasons, this action is not reasonably expected to:

(1) significantly affect the quality of the human environment;

(2) jeopardize the sustainability of any target or non-target species;

(3) adversely affect endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973;

(4) adversely affect marine mammals or seabirds;

(5) cause substantial damage to the ocean and coastal habitats or Essential Fish Habitat; or

(6) have a substantial impact on biodiversty or ecosystem function within the affected area; or

(7) violate a Federal, state, or local law for environmental protection.

The fisheries associated with this action take place in the geographic area of the BSAI, typically in the Exclusive Economic Zone (3-200 miles offshore). Cultural resources and ecologically critical areas occur on land adjacent to these areas. The marine waters where CDQ fisheries occur contain ecologically critical areas. Adverse effects on the characteristics of these areas are not anticipated to occur with this action.

Public health and safety issues have not been associated with this action. This action deals with allocative and catch accounting issues. Considerations for public health and safety issues are not applicable to this action.

This action is not considered to be controversial. Modification of "other species" CDQ management will further the overall goals of the CDQ Program.

Future actions related to this particular action may result in impacts. Changes may occur in the environment or fishing practices that may result in significant impacts, as well as additional information regarding the "other species" resource. Additional environmental analysis documents would then be prepared to inform decision makers of potential impacts to the human environment and the means to minimize or mitigate such impacts.

No additional past, present, or reasonably foreseeable cumulative impact issues have been identified for this action beyond those considered in the Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement (NMFS Alaska Region 2003).

This action will have no effect on districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places, nor cause loss or destruction of significant scientific, cultural, or historical resources. This consideration is not applicable to this action.

This action poses no known violation of Federal, State or local laws or requirements for the protection of the environment. Additionally, it poses no known possibility for the introduction of non-indigenous species because it does not affect the activities of vessels that may introduce such organisms into the marine environment.

## 4.0 REGULATORY IMPACT REVIEW

### 4.1 Introduction

This Regulatory Impact Review (RIR) evaluates a regulatory amendment to alter the management of the "other species" CDQ reserve in the groundfish CDQ fishery conducted in the Bering Sea and Aleutian Islands. The "other species" complex contains numerous species of sharks, skates, sculpin, and octopus. Such species are usually caught incidentally with targeted species such as Pacific cod, walleye pollock, and Atka mackerel.

### 4.2 What is a Regulatory Impact Review?

This RIR is required under 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.

### 4.3 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 implement the FMP at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

## 4.4 Purpose and need for action

The "other species" complex is one of approximately three dozen groundfish and prohibited species categories that are annually apportioned to the CDQ Program. As originally designed by the Council and implemented by NMFS, a percentage of each target, non-target, and prohibited species TAC managed under the BSAI FMP is allocated to the program as a CDQ reserve. The program also receives allocations of various crab species and Pacific halibut. These reserves are further divided between six CDQ groups, each of which represents a portion of 65 CDQ-eligible communities in western Alaska. Groundfish CDQ catch retention, reporting, and accounting requirements were structured to hold CDQ fishery participants responsible for adhering to specific catch limits for all allocated CDQ species.

It is possible that individual CDQ groups could catch all of their annual allocation of "other species" before they fully harvest all of their available target species. Since CDQ groups are prohibited from exceeding a CDQ allocation, they will have to cease directed fishing activities for CDQ target species once they had caught all of their available annual "other species," as it is unlikely that they could avoid the further catch of such species. Not harvesting all allocated target species could have an economic impact on CDQ groups and CDQ communities if royalties are foregone due to lost fishing opportunities. Such a situation could in turn impact economic development in western Alaska communities.

The objective of this action is to consider ways to manage "other species" CDQ in a manner that will allow CDQ Program participants to completely utilize their target species allocations without being constrained by individual "other species" allocations.

## 4.5 Alternatives considered

The two alternatives considered for this action have been described in detail in Sections 2.1 and 2.2 of this analysis. This section summarizes those alternatives. Three other alternatives were also considered for this action, but were rejected without detailed analysis. Those alternatives are discussed in Section 2.3.

**Alternative 1. Status quo: continue to allocate the "other species" CDQ reserve among each of the six CDQ groups.**

This alternative would maintain the current regulatory structure that allocates specific amounts of the "other species" CDQ reserve to individual CDQ groups. The amounts of "other species" quota allocated to each group would continue to be established by a periodic, competitive allocation process. Once CDQ allocations are approved and fishing for groundfish CDQ commences, each CDQ group has to abide by regulations prohibiting catching more than an allocated CDQ or PSQ amount, including the "other species" category. Under Alternative 1, continuing to allocate the "other species" CDQ reserve to individual groups could constrain some CDQ fisheries if the amount of "other species" CDQ available to a group is less than the amount actually needed for "other species" incidental catch amounts in its annual directed fisheries.

**Alternative 2 (the preferred alternative). Allow the "other species" CDQ reserve to be managed as a single reserve rather than as separate allocations to each CDQ group.**

This action will amend the current regulation at 50 CFR part 679.31(f) and describe how NMFS will manage CDQ reserves that are not allocated to CDQ groups, including the "other species" CDQ reserve. NMFS will use existing management measures to manage the catch of "other species" CDQ. All "other species" catch in groundfish CDQ fisheries will accrue towards the "other species" CDQ reserve, rather than towards specific CDQ group allocations. NMFS will monitor the aggregate catch of "other species" in both the CDQ and non-CDQ fisheries and take appropriate management measures to control the catch of "other species." The overall catch of "other species" will still be subject to existing controls associated with "other species" TAC and OFL. If the OFL was approached, both CDQ and non-CDQ fisheries will be subject to specified directed fishing closures to minimize further catch of "other species." These closures will be determined in-season by NMFS fisheries management staff.

Option 1 associated with Alternative 2 will eliminate the CDQ non-specific reserve. This reserve offers CDQ groups in-season flexibility to adjust their arrowtooth flounder and "other species" CDQ allocations. Discontinuing the allocation of "other species" to individual CDQ groups will essentially render the reserve ineffective, as discussed in Section 1.3.

### 4.6 Description of fishery

General descriptions of the BSAI groundfish fishery, including social and economic components, may be found in the reports referenced in Section 3.1. Additional reports that provide more comprehensive information about the socioeconomic and programmatic impacts of the CDQ Program include:

*An Assessment of the Socioeconomic Impacts of the Western Alaska Community Development Quota Program* (Northern Economics 2002).

*Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Amendment 71 to the FMP for BSAI Groundfish* (NMFS 2002b).

The groundfish CDQ fishery is a component of the BSAI groundfish fishery. Since 1992, CDQ groups have entered into a variety of business relationships with established groundfish harvesting and processing companies. These agreements usually involve a fishing or processing company paying royalties for access to a group's quota. Such royalties are usually based on a fixed dollar rate per weight of quota harvested or a percentage of the sales price for the harvested fish or its derivative products. Additionally, CDQ groups often negotiate agreements that specify that a given partner will provide employment, training opportunities, access to business expertise, and other benefits. Royalties gained harvesting CDQ allocations have provided an income stream that has allowed CDQ groups to invest in a variety of fishery related businesses and assets. Direct investment in harvesting and processing companies has offered the CDQ groups additional leverage and opportunities in businesses directly involved with the BSAI groundfish fisheries. Royalties, as well as revenues subsequently derived from investments of royalties, provide the financial means to develop local coastal fisheries and affiliated operations.

CDQ harvesting operations encompass a cross-section of the various target and gear specific fisheries in the BSAI and are woven into the larger fabric of the BSAI groundfish fishery. Between 47 and 59 vessels participated in groundfish CDQ fisheries each year between 1999 and 2002, as portrayed in Table 4-1. This includes catcher vessels, catcher-processors, and motherships using a variety of gear types. This does not include the numerous small vessels (less than 32 foot LOA) that operate in the halibut CDQ fisheries and a limited set of vessels that participate in crab CDQ fisheries. CDQ fishing may occur concurrently with the prosecution of a particular non-CDQ target fishery, as happens in the BS pollock fishery. It may also take place prior to or after a non-CDQ season, as occurs with the Pacific cod fishery. CDQ fisheries are not restricted to the full suite of seasons, gear apportionments, area closures, or seasonal prohibited species catch allowances as are non-CDQ fisheries. Hence, access to CDQ offers harvesters and processors preferred access to a groundfish resource, a means to expand operations, and a way to make more efficient use of capacity.

Table 4-1. Vessel and processor participation in the groundfish CDQ fishery, 1999-2002.

| | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|
| Processors | 5 | 5 | 5 | 3 |
| Vessels | 56 | 59 | 47 | 47 |

Source: NMFS CDQ catch report data.

Annual CDQ harvesting performance varies substantially, depending on target species. Species value is an important determinant of the CDQ allocation harvest performance. However, there are other factors that impact the prosecution of CDQ fisheries. The closure status of non-CDQ fisheries may affect performance. For example, if the non-CDQ yellowfin sole fishery is open throughout a given year, vessel operators have little incentive to fish for yellowfin sole CDQ, since they would have to pay a royalty for such catch. Operational difficulties also impact CDQ fisheries, such as mechanical or fishing gear problems on vessels. The predation of sablefish caught on longline gear by killer whales in the Bering Sea may at times preclude the prosecution

of that fishery. Finally, the lack of availability of harvesting partners may contribute to the less than full harvest of some CDQ allocations.

The CDQ sector displays a range of success in fully harvesting its allocated CDQ target species. Pollock and Pacific cod, two of the highest valued CDQ species, have shown a high average harvest rate during the years 1999 through 2002. Harvest of other primary targets has fared less well. Table 1-3 displays the average harvest level for five different allocated CDQ target species or target species groupings.

Royalties accruing from the harvest of CDQ allocations are substantial. The initial pollock CDQ allocation in 1992 yielded $13.2 million in royalties. In 2001, total CDQ royalties exceeded $42.5 million, of which $36.7 million were pollock royalties. Royalties have steadily increased over the last decade. This increase in royalties over time stems from a variety of factors. The original pollock CDQ Program has evolved into a multispecies CDQ Program encompassing a full suite of groundfish, halibut, and crab species. Higher pollock and cod TACs in recent years have meant correspondingly higher CDQ allocations. Investment in fishing vessels and companies have given CDQ groups leverage to negotiate higher royalty rates and access to additional dividends. Table 4-2 shows aggregate CDQ royalties from 1999 to 2001.

Table 4-2. Annual CDQ royalties, 1999-2001.

| | 1999 | 2000 | 2001 |
|---|---|---|---|
| Pollock | $25,918,992 | $32,996,456 | $36,721,924 |
| All species | $35,595,802 | $40,402,155 | $42,558,941 |

Source: State of Alaska, DCED 2002

The two groundfish species that yield the most royalty income to the CDQ Program are pollock and Pacific cod. In 2001, these two species accounted for 93 percent of total CDQ royalties. Two crab species, which are not associated with this “other species” CDQ action, accounted for 6 percent of total CDQ royalties. Royalties from the CDQ targets of sablefish and turbot, Atka mackerel and Pacific ocean perch, combined flatfish, and Pacific halibut accounted for 1 percent of CDQ royalties, or approximately $425,000.

## 4.7 Benefits

The primary benefit associated with the harvest of groundfish CDQ allocations is the payment of harvest royalties to CDQ groups. The more groundfish CDQ that is harvested, the more royalties that accrue to CDQ groups. Alternative 2 will manage the catch of “other species” at the CDQ sector level and could alleviate the possibility that one or more CDQ groups will have to forego harvesting some of their target species for lack of “other species” quota. This could benefit all six CDQ groups by helping them maximize their potential annual royalties, and, by extension, the benefits that such royalties bestow on the 65 eligible communities. These benefits include investment in fisheries development projects at the local or regional level, vocational training, and educational funding. However, modifying the management of “other species” CDQ does not

in and of itself address a variety of other factors that affect whether each CDQ target species is fully prosecuted each year.

Vessel operators and processors that partner with CDQ groups to harvest and process groundfish CDQ also benefit from CDQ allocations via their access to additional resource. Both alternatives considered by this action would continue to extend such access to these entities. Alternative 2 will assist in ensuring that "other species" did not become a limiting factor in whether CDQ target allocations were completely harvested. This will be advantageous to the CDQ groups' harvesting partners as well, as they could enjoy additional profits if they have access to full amounts of annual CDQ target allocations.

As most CDQ royalties are derived from the pollock CDQ fishery, a species that has a low incidental catch of "other species," constraints imposed by "other species" limits are unlikely to have a significant impact on royalties.

Alternative 2 should reduce management costs as well as reduce the potential for CDQ groups to fail to fully harvest target species. The annual CDQ allocation process will be simplified by elimination of individual allocations of "other species." In-season monitoring of "other species" CDQ will be easier, as NMFS managers will have fewer allocations to monitor. These are both minor benefits.

### 4.8 Costs

There do not appear to be any adverse biological impacts of this action. NMFS does not anticipate that managing the "other species" CDQ reserve at the sector level will impact the species comprising the "other species" complex or the non-CDQ fisheries. The overall catch of "other species" will still be subject to current management restrictions associated with the "other species" TAC, ABC, and OFL levels. If the combined catch of "other species" by both of these fishery components approaches the ABC level, NMFS will determine which directed fisheries in the Bering Sea or Aleutian Islands, including CDQ fisheries, will need to be closed to prevent overfishing "other species." If the large buffer between the "other species" TAC and OFL continues as it has in recent years (see Appendix 2), NMFS does not anticipate that any such closures will be necessary.

The revised management of the "other species" CDQ reserve will limit the ability of CDQ groups to participate in directed fisheries that might develop for any of the individual species comprising the "other species" complex. If this action is implemented, the "other species" CDQ reserve will be managed with the management measures used in the non-CDQ groundfish fishery. NMFS will issue a direct fishery closure applicable to "other species" CDQ at the beginning of each year. This will limit the retention of "other species" in the groundfish CDQ fisheries to specified maximum retainable amounts established in regulation. This will minimize the amount of "other species" that could be caught in the groundfish CDQ fisheries and help contain the CDQ fisheries to the amount allocated to the annual "other species" CDQ reserve. This action would constrain the expansion of the groundfish CDQ fishery into new target

fisheries that might arise from the BSAI "other species" complex in the future. However, if interest in such fisheries does arise, Council action could make directed fishing possible for any of the species comprising the "other species" category. No public testimony was given by CDQ group representatives concerning the development of such new target fisheries during the discussion and development of this action[1].

### 4.9 Impacts on fishing communities

There are currently 65 communities participating in the program. The total population of these communities is approximately 27,000 people. These communities have aggregated into six different CDQ groups to administer their CDQ allocations and economic development projects. The six groups are: Aleutian Pribilof Island Development Corporation, 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. The Council and NMFS allocate a portion of the BSAI groundfish, prohibited species, halibut, and crab catch limits to these communities. The communities must use the proceeds derived from the harvest of CDQ allocations to start or support commercial fishery activities that will result in ongoing, regionally-based commercial fishery or related businesses, as well as fostering training and educational opportunities for local residents.

Alternative 1 would continue to allocate "other species" to individual groups. CDQ groups prepare Community Development Plans that detail the projects and investments that they plan on undertaking on behalf of their communities. Each group prepares annual budgets and revenue forecasts based on a variety of income sources, including fishery royalties. Incomplete harvest of a group's target species allocations due to constraints imposed by the current management protocol for "other species" could decrease a group's budgeted royalties, with resulting impacts on investment in and implementation of CDQ projects.

[1] There is some evidence of recent directed fishing for skates in the Gulf of Alaska, but none thus far for directed fishing for skates in the BSAI.

### 4.10 Summary of the benefits and costs

The benefits and cost of the alternatives are summarized below. It has not been possible to monetize these benefits and costs. Public testimony by CDQ group representatives favored this change. In the absence of collateral or external costs imposed on other parties, its reasonable to project a positive net social benefit from this action.

| | **Alternative 1** | **Alternative 2** |
|---|---|---|
| | *No action. Continue to allocate the "other species" CDQ reserve among each of the six CDQ groups.* | *Manage the "other species" CDQ reserve as a single reserve rather than as separate CDQ group allocations.* |
| Benefits | Baseline, no change in benefits. | Individual CDQ groups, and their associated communities, face reduced probability of losing royalties due to "other species" induced closures. CDQ partners also face reduced probability of foregone profits. Since most royalties are generated in the pollock fishery, which has low other species bycatch, this is likely to be a modest benefit.<br><br>Annual CDQ allocation simplified by elimination of individual allocations of "other species." This is a minor benefit.<br><br>In-season monitoring of "other species" CDQ will be easier, as CDQ groups harvest managers will have fewer allocations to monitor. This is a minor benefit. |
| Costs | Baseline, no change in costs. | There is little risk that "other species" the CDQ reserve will be exceeded.<br><br>Should new directed fisheries for species comprising the "other species" complex develop, CDQ groups will be constrained from directed fishing for them. |

| | | |
|---|---|---|
| Net benefits | Baseline, no change in net benefits. | It has not been possible to monetize the benefits or costs of this action. However, the qualitative analysis suggests the net benefits of this action will be positive. |
| E.O. 12866 significance | Does not appear to be significant. | Does not appear to be significant. |
| Notes: Alternative 1 (no action) is the no action alternative and provides the baseline against which the costs and benefits for the action alternative have been estimated. | | |

### 4.11 Summary of the 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 2001, the most recent year that complete CDQ royalty information in available, was approximately $42.5 million. As noted in Section 4.6, pollock CDQ royalties accounted for $36.7 million of this amount, or 86 percent of total royalties. Harvests of other groundfish, crab, and halibut CDQ yielded the remainder of CDQ royalties. Historically, pollock CDQ has by far been the highest royalty generator for CDQ groups. The pollock CDQ fishery catches very small amounts of "other species" and will probably not be impacted by either alternative considered in this action. Implementation of this action could positively impact the groundfish CDQ fishery, but the additional amount of CDQ royalties that CDQ groups might receive under this alternative is unknown. However, 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 will (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."

## 5.0 CONSISTENCY WITH OTHER APPLICABLE LAWS

### 5.1 Regulatory Flexibility Act

#### 5.1.1 Introduction

The Regulatory Flexibility Act (RFA) requires preparation of a Final Regulatory Flexibility Analysis (FRFA) unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities. This FRFA evaluates the adverse impacts on small entities of the final rule to amend regulations governing the management of the "other species" Community Development Quota (CDQ ) reserve in the Bering Sea and Aleutian Islands. This FRFA meets the statutory requirements of the RFA of 1980, as amended by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 601-612). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action in conjunction with an Environmental Assessment (EA) and a Regulatory Impact Review (RIR). Contact NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802 for a copy of that combined analysis.

A proposed rule to revise the management of the "other species" CDQ reserve was published in the *Federal Register* on October 22, 2003 (68 FR 60327). The comment period on the proposed rule and the IRFA ended on November 6, 2003. NMFS did not receive any comments on the IRFA.

#### 5.1.2 What is the purpose of a FRFA

The RFA 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 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) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting 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.

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 economic impact 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 entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment 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 that focus is reflected 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 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 adverse impacts on a substantial number of small entities" (as those terms are defined under the RFA). Because, based on all available information, it is not possible to 'certify' this outcome, should the action be adopted, a formal FRFA has been prepared and is included in this package for Secretarial review.

### 5.1.3 What is required in an FRFA?

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

- A succinct statement of the need for, and objectives of, the rule;
- a summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments;
- a description of, and an estimate of, the number of small entities to which the final rule will apply or an explanation of why no such estimate is available;
- a description of the projected reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- 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 of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

### 5.1.4 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) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern,' which is defined under Section 3 of the Small Business Act. A '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 United States, 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 $3.5 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 is a small business if it meets the $3.5 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 may be based on stock ownership under the following conditions: (1) If a 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, that person is considered an affiliate of the concern; 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 controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers 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 a relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The 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. The 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.

### 5.1.5 What is this action

The alternatives considered for this action are fully described in Section 2.0 of the EA, and are summarized again in Section 4.5 of the RIR. Alternative 1, no action, allocates "other species" CDQ to individual CDQ groups and holds each group accountable for not exceeding their "other species" allocation. Alternative 2, which is implemented by this action, will amend regulations at 50 CFR part 679. Once implemented, NMFS will continue to establish an "other species" CDQ reserve, but will not allocate it to individual CDQ groups. The management and catch accounting of "other species" CDQ will occur at the CDQ reserve level using the management measures used in the non-CDQ fishery. Additionally, the CDQ non-specific reserve will be eliminated from regulation and no longer be available for CDQ groups to use to augment the "other species" or arrowtooth flounder CDQ allocations.

### 5.1.6 Need for, and objective of, the rule

The objective of this action is to facilitate greater success in harvesting royalty-generating CDQ target species. This change in the management of this reserve is intended to relieve a constraint against the CDQ groups being able to fully harvest their groundfish CDQ allocations. Royalties from such catch provides income to fund development projects. The current "other species" CDQ management regime could potentially constrain the complete harvest of CDQ target allocations. This has an effect on the amount of royalties that CDQ groups collect, which in turn could affect the success of economic development projects in CDQ communities. This rule will decrease the possibility that CDQ groups will be unable to fully harvest their target allocations for lack of supporting amounts of "other species." A complete description of the purposes of this

action can be found in Section 1.0 of the EA. Section 4.4 of the RIR also discusses the purpose and need for this action.

### 5.1.7 Public comments received on the IRFA

A proposed rule to revise the management of the "other species" CDQ reserve was published in the *Federal Register* on October 22, 2003 (68 FR 60327). The comment period on the proposed rule and the IRFA ended on November 6, 2003. NMFS did not receive any comments on the IRFA.

### 5.1.8 Number and description of small entities directly regulated by the action

The entities that will be directly regulated by this action are the six CDQ groups that represent the 65 western Alaska communities that currently participate in the CDQ Program. These groups include: Aleutian Pribilof Island Development Corporation, 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. Each of these groups is organized as a not-for-profit entity; consequently, each of these is a small entity under the RFA.

All six CDQ groups have received allocations of groundfish CDQ for the period from 2003 through 2005. Each of them has received periodic CDQ allocations since 1992. These groups directly or indirectly commercially harvest these allocations. Commercially valuable allocations include Alaska pollock, Pacific cod, sablefish, Greenland turbot, Atka mackerel, and a variety of flatfish species. Most of these allocations are harvested by other fishing companies on behalf of the CDQ groups. CDQ groups receive royalties from the successful harvest of CDQ from these 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 2001, the CDQ groups received a total of $42.5 million from the harvest of CDQ allocations. CDQ Program activities and royalties are discussed in Section 4.6 of the RIR associated with this action.

The six CDQ groups associated with this action are considered small organizations under the RFA, both because they are not-for-profit corporations and because they represent 65 communities, which are considered small governmental jurisdictions because each community has a population of fewer than 50,000.

### 5.1.9 Recordkeeping and reporting requirements

The FRFA should include "a description of the projected reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record . . ."

This action will not impose new recordkeeping or reporting requirements on the regulated small entities.

### 5.1.10 Description of significant alternatives

A FRFA should 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 the impact on small entities was rejected."

Alternative 2, the preferred alternative, will modify the management of "other species" CDQ so that it occurs at the reserve level. Currently, each CDQ group receives an annual allocation of "other species" CDQ that it is prohibited from exceeding. CDQ groups efforts to minimize their catch of "other species" have resulted in some CDQ allocations not being fully harvested, with corresponding impacts on the amount of fishery royalties that they receive. The preferred alternative will modify NMFS' management of "other species" CDQ in a way that would assist CDQ groups in harvesting their CDQ target allocations more completely, thus increasing fisheries royalties and associated community benefits. Alternative 1, no action, would not address the adverse impact the current "other species" allocation and catch accounting regime has on program revenues, and therefore does not fully support the overall goals and purpose of the CDQ Program. A continuation of the status quo potentially could be more burdensome on small entities. CDQ groups would continue to have to modify their fishing practices to stay within their "other species" CDQ allocations at the cost of not harvesting a greater portion of their revenue generating CDQ allocations. Detailed descriptions of Alternatives 1 and 2 are found in Sections 2.1 and 2.2 of the EA.

Three additional alternatives also were identified for this action, but were not carried forward for further analysis. The Council chose to focus its deliberations on Alternatives 1 and 2 as they were presented in the preliminary analysis. Two of the rejected alternatives encompassed allocative changes to the "other species" category that would have been difficult to accurately calculate or that might have been controversial to different BSAI fishery components. A third rejected alternative would have been contrary to statutory provisions of the Magnuson-Stevens Act. These rejected alternatives are discussed in section 2.3.

## 5.2 Marine Mammal Protection Act

Under the Marine Mammal Protection Act (MMPA), NMFS categorizes all U.S. commercial fisheries (State and Federal) into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery determines whether participants in that fishery are subject to certain requirements of the MMPA, such as registration, and observer coverage.

Species listed under the ESA that are present in the BSAI were listed in the previous section. 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*).

Take of the above listed 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 Alternative 2 will not appreciably affect the size of the CDQ groundfish fishery or the gear types used in it, no additional effects on marine mammals are anticipated under this action.

### 5.3 Coastal Zone Management Act

Implementation of this action will be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of section 307(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

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Appendix 1. 1999-2002 “other species” and groundfish CDQ catch by target and calculated “other species” catch rates.

| Target | Species | Year and Catch (metric tons) | | | |
|---|---|---|---|---|---|
| | | 1999 | 2000 | 2001 | 2002 |
| Pollock | ‘other species’ | 53.520 | 81.526 | 104.886 | 184.701 |
| | pollock | 98,869.751 | 113,543.422 | 139,946.096 | 148,426.997 |
| | percent o. species | 0.05% | 0.07% | 0.07% | 0.12% |
| | average rate, all years combined | | 0.08% | | |
| Hook and Line Pacific Cod | ‘other species’ | 1,640.757 | 1,843.780 | 1,443.036 | 1,956.301 |
| | Pacific cod | 11,263.015 | 12,610.000 | 11,282.016 | 13,298.975 |
| | percent o. species | 14.57% | 14.62% | 12.79% | 14.71% |
| | average rate, all years combined | | 14.17% | | |
| Fixed gear Sablefish and Greenland turbot | ‘other species’ | 14.715 | 15.064 | 1.522 | 4.010 |
| | Sablefish and turbot | 243.512 | 305.586 | 132.298 | 315.961 |
| | percent o. species | 6.04% | 4.93% | 1.15% | 1.27% |
| | average rate, all years combined | | 3.35% | | |
| Atka mackerel and Pacific ocean perch | ‘other species’ | 26.312 | 40.262 | 80.668 | 59.465 |
| | mackerel and POP | 3,102.118 | 5,516.497 | 5,594.408 | 3,923.403 |
| | percent o. species | 0.85% | 0.73% | 1.44% | 1.52% |
| | average rate, all years combined | | 1.13% | | |
| Flatfish | ‘other species’ | 123.779 | 47.957 | 7.816 | 100.719 |
| | flatfish | 2,899.509 | 343.863 | 272.548 | 2,232.704 |
| | percent o. species | 4.27% | 13.95% | 2.87% | 4.51% |
| | average rate, all years combined | | 6.40% | | |

Source: NMFS CDQ catch data

Appendix 2. 1999-2003 arrowtooth flounder and "other species" TACs, CDQ reserves, catch, and CDQ non-specific reserve use.

| | 1999 | | 2000 | | 2001 | | 2002 | | 2003 | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Allocation Information** | Arrow-tooth | other species | Arrow-tooth | other species | Arrow-tooth | other species | Arrow-tooth | other species | Arrow-tooth | other species |
| TAC (metric tons) | 134,354 | 32,860 | 131,000 | 31,360 | 22,011 | 26,500 | 16,000 | 30,825 | 12,000 | 32,309 |
| CDQ reserve | 10,076 | 2,464 | 9,825 | 2,352 | 1,651 | 1,988 | 1,200 | 2,312 | 900 | 2,423 |
| Contribution Rate | 15% | 15% | 15% | 15% | 50% | 15% | 50% | 15% | 15% | 15% |
| Contribution to CDQ NSR | 1,511 | 370 | 1,474 | 353 | 826 | 298 | 600 | 347 | 135 | 363 |
| Total NSR available | 1,881 | | 1827 | | 1124 | | 947 | | 498 | |
| **CDQ Performance** | Arrow-tooth | other species | Arrow-tooth | other species | Arrow-tooth | other species | Arrow-tooth | other species | Arrow-tooth | other species |
| Balance after contribution to NSR | 8,565 | 2,094 | 8,351 | 1,999 | 826 | 1,690 | 600 | 1,965 | 765 | 2,060 |
| Amount received from NSR releases | 0 | 1,120 | 0 | 975 | 0 | 839 | 15 | 917 | n/a | n/a |
| Total CDQ available | 8,565 | 3,214 | 8,351 | 2,974 | 826 | 2,529 | 615 | 2,882 | n/a | n/a |
| CDQ catch | 787 | 1,908 | 286 | 2,060 | 146 | 1,663 | 302 | 2,311 | n/a | n/a |
| Pct of available CDQ harvested | 9% | 59% | 3% | 69% | 18% | 66% | 49% | 80% | n/a | n/a |
| Percent of total NSR used | 60% | | 53% | | 75% | | 98% | | n/a | |