

Initial Review Draft
**Environmental Assessment/Regulatory Impact Review/
Initial Regulatory Flexibility Analysis**

for

**A Regulatory Amendment to Modify the Management of
Community Development Quota Groundfish Reserves**

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Executive Summary

Background and purpose of this action

This document provides National Environmental Policy Act (NEPA), Regulatory Impact Review (RIR), and Regulatory Flexibility Act (RFA) analyses for a proposed action to modify the management of Community Development Quota (CDQ) Program groundfish allocations.

This action proposes preliminary alternatives to amend regulations at 50 CFR part 679 governing quota transfers, CDQ cooperatives and quota pooling, and the designation of which CDQ Program allocations (CDQ reserves) should be allocated among CDQ managing organizations (CDQ groups). Such revisions could provide more operational and catch accounting flexibility for CDQ groups to fully harvest their harvest species and reduce the potential for quota overages and subsequent enforcement actions. These revisions also could provide NMFS with the management measures necessary to more effectively manage the overall CDQ catch limits established for the BSAI groundfish fisheries.

The purpose of the CDQ Program is to allocate groundfish, prohibited species, halibut, and crab to eligible western Alaska communities to provide the means for starting and supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy. The CDQ Program receives allocations of the annual catch limits for a variety of Bering Sea and Aleutian Islands (BSAI) target, incidental catch, and prohibited species, which are in turn allocated among six different CDQ groups. CDQ groups derive revenue from such allocations, which is then used for the economic benefit of the 65 communities participating in the program.

The CDQ Program's current fishery management objectives were developed, during a 1998 expansion of the CDQ Program, to strictly limit catch in the CDQ fishery to the CDQ reserve amounts allocated to the program. These objectives include not allowing catch under the program to accrue against non-CDQ portions of the total allowable catch (TAC) limits and prohibited species catch limits, managing target and incidental catch species allocations to the CDQ groups with the same level of strict quota accountability, and holding each CDQ group responsible to not exceed any of its groundfish CDQ allocations or its halibut prohibited species quota (PSQ) allocations. However, the current CDQ allocation regime was not designed to ensure that CDQ groups are provided with the allocations of incidental catch or halibut prohibited species needed to fully harvest target species allocations. The high level of quota accountability creates the potential that the CDQ groups may not be able to fully harvest their target species allocations because they may reach a quota for an incidental catch species or prohibited species first.

Alternatives considered for this action

Alternative 1: Status Quo. Do not amend CDQ fishery management regulations. CDQ and PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages, CDQ groups would not be allowed to form cooperatives and pool their CDQ allocations, each BSAI TAC category allocated to the CDQ Program would be allocated among CDQ groups, all CDQ group allocations would be managed as hard caps, and changes to those TAC categories allocated to CDQ groups would continue to be made through the rulemaking.

Alternative 2: Amend regulations to remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover overages of groundfish CDQ allocations.

Alternative 3: Amend regulations to (1) remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ allocations and (2) allow CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

Alternative 4: Amend regulations to (1) remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover in-season harvest overages of groundfish CDQ allocations, (2) allow CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring, and (3) only allocate target species CDQ reserves among CDQ groups. CDQ target species allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

Option 1: Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups during the annual groundfish harvest specifications process, rather than through rulemaking.

Effects and Impacts of this Action

The environmental assessment (EA) was prepared to address NEPA requirements requiring determination of whether a proposed action will result in significant impacts on the human environment. The alternatives considered by this action would not amend the amount of BSAI TAC limits directly allocated to the CDQ Program, nor would they modify CDQ fishing practices or locations in ways not already considered in prior NEPA analyses. Alternatives 2 and 3 primarily propose administrative changes. Alternative 4 would allow the Council to modify the allocation and management of CDQ reserves by identifying which reserves should be allocated to groups, as well as to specify how non-allocated CDQ reserves would be managed. The preliminary assessment of this action's

effects on the natural, physical, and socioeconomic environments concludes that the action would not result in adverse environmental impacts.

The RIR was prepared to address the requirements of Presidential Executive Order (E.O.) 12866. The RIR finds that the alternatives proposed by this action could, by modifying certain elements of the existing CDQ fishery management regime, provide some additional degree of operational flexibility for the CDQ fishery. This would result in corresponding benefits to CDQ groups if these changes allowed them to catch more of their CDQ target species or to be subject to fewer enforcement actions for exceeding their quotas. Alternative 3 and Alternatives 4 could result in increased management costs for both CDQ groups and NMFS. The RIR does not indicate that this action would have an annual effect on the economy of \$100 million or more, or that it would trigger other threshold criteria associated with “significant regulatory actions” under E.O. 12866.

The Initial Regulatory Flexibility Analysis (IRFA) examines, per RFA requirements, potential impacts on regulated small entities. For this action, those entities are the six CDQ groups that represent 65 western Alaska communities. Each of the proposed alternatives is intended to modify, by some degree, the existing, relatively strict CDQ fishery management regime. Alternatives 3 and 4 could impose new recordkeeping and reporting requirements associated with CDQ cooperatives and quota pooling. The proposed alternatives are intended to provide some degree of benefit to CDQ groups; none of the alternatives appear to have any negative economic impacts on these small entities.

1.0 Purpose and Need

1.1 Introduction

This document is an Environmental Assessment/Regulatory Impact Review Analysis/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for proposed revisions to fisheries management regulations governing the Community Development Quota (CDQ) Program. The CDQ Program receives apportionments of the annual catch limits for a variety of BSAI species, which are in turn allocated among six different CDQ managing organizations (CDQ groups). CDQ groups derive revenue from such allocations, which is then used for the economic benefit of the 65 communities participating in the program.

This action proposes preliminary alternatives that could amend regulations governing quota transfers, quota pooling, and the designation of which CDQ Program allocations to further allocate among the CDQ managing organizations (CDQ groups). Such revisions could provide more operational and catch accounting flexibility for CDQ groups to fully harvest their harvest species and reduce the potential for quota overages and subsequent enforcement actions. These revisions also could provide NMFS with the management measures necessary to more effectively manage the overall CDQ catch limits established for the Bering Sea and Aleutian Island (BSAI) groundfish fisheries.

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

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

Executive Order 12866 (E.O. 12866) requires preparation of a Regulatory Impact Review (RIR) to assess the social and economic costs and benefits of available regulatory alternatives, in order to determine whether a proposed regulatory action is economically “significant” as defined by the order. **Section 5** contains a description and analysis of the economic and social impacts of each of the alternatives.

Section 6 addresses the requirements of other applicable laws, including the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Marine

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

The references cited in this document are listed in **Section 7**, a list of the preparers is provided in **Section 8**, and a list of consulted people is provided in **Section 9**.

1.2 Background and Need for this Action

The purpose of the CDQ Program is to allocate groundfish, prohibited species, halibut, and crab to eligible western Alaska communities to provide the means for starting and supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.¹ The fishery current management objectives for the CDQ Program were developed as part of the expansion of CDQ allocations to all groundfish and prohibited species in 1998.² At that time, NMFS interpreted that it was the objective of the Council that catch of all species allocated to the CDQ Program be strictly limited to the amount of the allocations, with no catch from CDQ fisheries accruing against non-CDQ allocations. The only way to accomplish this objective was to strictly limit the catch and not allow continued fishing for target species after allocations of incidental catch species or halibut prohibited species were reached. Requiring that each CDQ group be held accountable for its catch of the groundfish and halibut prohibited species allocated to it allows each CDQ group to be responsible for its catch and to not be impacted by the catch of other CDQ groups.

Therefore, the fishery management objectives for the multispecies CDQ Program include, with a few exceptions, limiting catch for all species or species groups allocated to the CDQ Program to the amount allocated, not allowing catch under the program to accrue against non-CDQ portions of the total allowable catches and prohibited species catch limits, managing target and incidental catch species allocations to the CDQ groups with the same level of strict quota accountability, and holding each CDQ group responsible to not exceed any of its groundfish CDQ allocations or its halibut prohibited species catch allocations.

The high level of quota accountability for the CDQ groups creates the potential that the CDQ groups may not be able to fully harvest their target species allocations because they

¹ See 50 CFR 679.1(e).

² The “multispecies” CDQ allocations implemented under Amendment 39 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, which also implemented the groundfish and crab license limitation program.

will reach a quota for an incidental catch species or prohibited species first. This is a level of quota accountability that does not exist in other rationalized fisheries, such as the halibut and sablefish individual fishing quota program or the American Fisheries Act (AFA) pollock fisheries. However, these other fisheries also were designed as single target fisheries and not the multiple target allocations that are made to the CDQ Program. Nonetheless, no other rationalized fishery managed by the Council has been developed with the same level of strict quota accountability as the multispecies CDQ Program. This likely is due to concern, at least in part, about the high potential to limit the full harvest of the target species if too many incidental catch and prohibited species catch limits are associated with the target species allocations.

When the multispecies CDQ allocations were implemented, some Council members and the State of Alaska expressed the desire to hold the CDQ groups to a higher level of accountability for “bycatch,” meaning, at that time, both the incidental catch of groundfish species and prohibited species bycatch. The strict quota accountability for all allocations was the means for accomplishing this higher level of accountability. However, the multispecies CDQ allocations implemented in 1998 established the same percentage allocations of the incidental catch species and prohibited species as were made for all of the target species (7.5% of each total allowable catch limit and prohibited species catch limit, except fixed gear sablefish). Allocation percentages at the same level across the board do not provide the kind of match between target species allocations and incidental catch species allocations that is made when allocations are based on catch history (as in the AFA sideboards), or on projected need. The fact that no consideration was made to providing incidental catch and prohibited species catch allocations that were related to the amount reasonably needed to harvest the target species allocations caused the “bycatch accountability” goal to be more difficult to achieve. It also created a conflict between the objectives of maximizing economic benefits of the program with the objective of bycatch accountability. This conflict continues to exist and is one of the reasons for this proposed action.

The complexity of determining the appropriate levels of all incidental catch species and prohibited species that might be needed to fully harvest the target species allocations was beyond the scope of the multispecies CDQ allocation recommendations made by the Council in 1995. In addition, the time that it would have taken to develop such an alternative approach would have delayed implementation of both the multispecies CDQ allocations and the groundfish and crab license limitation program for a year or more. However, these concerns were identified immediately by the CDQ groups and their harvesting partners and the groups have been requesting that the Council and NMFS address these issues since at least 1998. As a result of concerns about the potential for incidental catch species to limit the full harvest of target species, and based on Council recommendations, the allocation of squid was removed from the CDQ Program in 1999 and the management of the “other species” CDQ reserve was modified in 2003. In those cases, the Council recognized that the objective of maximizing economic benefits to the CDQ Program.

This proposed action does not currently include alternatives that would revise the percentage allocations of incidental catch or prohibited species bycatch to the CDQ Program to better match incidental catch needs with target species allocations. Rather, it considers a more limited range of management options that could be used to provide more flexibility to the CDQ groups without changing allocations to the program. Other fishery management actions currently being developed by the Council, including Amendment 80 to the BSAI FMP (rationalization of the non-AFA catcher/processor sector) and the Amendment 85 to the BSAI FMP (Pacific cod sector allocations) provide alternatives to change percentage allocations of target, incidental catch, and prohibited species to the CDQ Program.

1.3 Draft Problem Statement

NMFS proposes the following problem statement for the Council to consider for this action:

The purpose of the CDQ Program is to allocate groundfish, prohibited species, halibut, and crab to eligible western Alaska communities to provide the means for starting and supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy. Fishery management regulations should maximize the potential for the CDQ groups to fully harvest their target species allocations, because it is through these allocations that the benefits of the program are provided to the CDQ communities. However, these fishery management regulations also must meet the overall objectives for conservation and management of the BSAI fishery and should not negatively impact the non-CDQ fishing sectors.

The current groundfish and halibut prohibited species allocations were not designed to provide the CDQ groups with an amount of incidental catch or halibut prohibited species catch allocations needed to fully harvest target species allocations. Some revisions can be made to NMFS regulations governing quota transfers, quota pooling, or the designation of which CDQ allocations to further allocate among the CDQ groups. These revisions could provide more flexibility for the CDQ groups to fully harvest their target species and reduce the potential for quota overages and the resulting enforcement actions, while still providing NMFS with the tools necessary to manage the CDQ catch limits established for the BSAI fisheries as a whole. Such revisions would accomplish the goals of the Council to provide CDQ allocations to benefit the CDQ communities without negatively impacting NMFS's ability to manage other BSAI fisheries or the non-CDQ fishing sectors. In addition, management measures that would reduce the number of quota overages that must be investigated by NMFS Enforcement and prosecuted by NOAA General Counsel would allow these agency resources to be devoted to other enforcement issues.

1.4 Management Authority and Regulatory Background

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 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 FMP approved by the Secretary of Commerce. The *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area* (BSAI FMP) (NPFMC 2005) was developed under the Magnuson-Stevens Act and other applicable statutes to manage groundfish fisheries for optimal yield and to allocate catch limits among different fishery components, while preventing overfishing and conserving marine resources. The BSAI FMP was originally implemented in 1981 and has been amended over 70 times. Implementing regulations for the BSAI groundfish fisheries in general and the groundfish CDQ fisheries in particular, are found in 50 CFR part 679.

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 NEPA, the Endangered Species Act (ESA), the MMPA, Executive Order (E.O.) 12866, and the RFA. Each of these is discussed in subsequent sections of this analysis, as described in Section 1.1.

2.0 Description of Alternatives and Components

2.1 Overview of Components and Alternatives

This section describes each of the alternatives developed for this action. As described in Section 1.2, the primary purpose of this action is to modify the existing CDQ fishery management regime to increase the potential that CDQ groups may harvest more of their annual CDQ target species allocations. The alternatives considered each incorporate, in step-wise fashion, a range of components that were developed to address various fisheries management issues that have been identified by NMFS, CDQ groups, and the Council. The components include: amending inter-group CDQ transfer restrictions; allowing CDQ groups to pool and manage their annual CDQ allocations collectively; and, identifying which species categories are allocated to CDQ groups and managing such allocations with hard caps, while non-allocated CDQ reserves would be managed with soft caps. A summary of the existing CDQ fisheries management regime is discussed in Section 2.2 to provide the context for the alternatives proposed by this action, followed by a discussion of each component.

The following alternatives present a range of alternatives that encompass the status quo (a very restrictive fisheries management structure), and then progress towards an increasingly flexible, less restrictive CDQ fisheries management structure. The alternatives represent a range of possible changes to CDQ fisheries management measures, but are not the only possible alternatives. The Council could segregate or combine the components in another way as part of its selection of a preferred alternative to address CDQ reserve management issues.

2.1.1 Alternative 1. Status Quo. Do not amend CDQ fishery management regulations. CDQ and PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages, CDQ groups would not be allowed to form cooperatives and pool their CDQ allocations, each BSAI total allowable catch (TAC) category allocated to the CDQ Program would be allocated among CDQ groups (except for “other species”³), all CDQ group allocations would be managed as hard caps, and changes to those TAC categories allocated to CDQ groups would continue to be made through the rulemaking.

2.1.2 Alternative 2. Amend regulations to remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover overages of groundfish CDQ allocations.

2.1.3 Alternative 3: Amend regulations to (1) remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ allocations and (2) allow

³ The “other species” CDQ reserve is no longer allocated among CDQ groups based on a regulatory change in 2003. Catch in this CDQ category is managed at the reserve level, rather than at the CDQ group level. Management of “other species” is further discussed in detail in section 5.7.

CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

2.1.4 Alternative 4: Amend regulations to (1) remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover in-season harvest overages of groundfish CDQ allocations, (2) allow CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring, and (3) only allocate target species CDQ reserves among CDQ groups. CDQ target species allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

Option 1: Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups during the annual groundfish harvest specifications process, rather than through rulemaking.

These alternatives are summarized in Table 2.1.

Table 2-1. Summary of Alternatives and Components.

| | <i>Alternative 1 - status quo. Continue strict quota accountability.</i> | <i>Alternative 2 - Some flexibility, less restrictions</i> | <i>Alternative 3 - Additional flexibility</i> | <i>Alternative 4 - Most flexible, least restrictive</i> |
|---|--|--|--|--|
| <i>General description of the alternative</i> | No after-the-fact transfers; no way for groups to form cooperatives and pool quota allocations; no differentiation between quota accountability for target and incidental catch species. | Most frequently requested by CDQ groups. May indicate highest priority to groups. | Provides two options to reduce the potential constraints to harvesting CDQ allocations and to provide more flexibility, while maintaining relatively strict limits on CDQ sector catch. | Lift most potential constraints posed by catch of incidental catch species; allow maximum flexibility for management of target species allocations; continue high level of accountability for target species allocations. |
| <i>Component 1</i> | <i>Status quo</i> No transfers to cover overages. | Allow transfers to cover overages. | Allow transfers to cover overages. | Allow transfers to cover overages. |
| <i>Component 2</i> | <i>Status quo</i> No allowance for cooperatives quota and quota pooling. | <i>Status quo</i> No allowance for cooperatives quota and quota pooling. | Allow CDQ groups to form cooperatives and pool quota. | Allow CDQ groups to form cooperatives and pool quota. |
| <i>Component 3</i> | <i>Status quo</i> Continue to allocate all species except “other species” to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment. | <i>Status quo</i> Continue to allocate all species except “other species” to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment. | <i>Status quo</i> Continue to allocate all species except “other species” to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment. | Allocate only target species to the CDQ groups. Manage incidental catch species at the CDQ sector level with soft caps and no directed fishing. <i>Option:</i> Specify which species categories are allocated to the groups (versus the CDQ sector) through annual specifications process. |

2.2 Current CDQ Fisheries Management

All BSAI FMP groundfish species or species groups are apportioned to the CDQ Program as CDQ reserves, with limited exceptions. CDQ groups periodically apply for a portion of each CDQ reserve. Each CDQ group receives a percentage allocation for each CDQ reserve category established for halibut, groundfish, prohibited species quota (PSQ), and crab. These allocations are based on recommendations made by the State of Alaska and approved by NMFS. NMFS applies these percentage allocations to each applicable annual CDQ reserve, which yields annual CDQ allocations for each CDQ group. The allocation of approximately 36 annual CDQ and PSQ reserves among the six CDQ groups results in about 200 different quotas that have to be managed at the CDQ group level. Some of these individual quotas, particularly for those species categories with very small TACs relative to other BSAI TACs, are very small.

As noted in Section 1.2, the original groundfish CDQ catch accounting regulations were developed by NMFS based on its interpretation of the Council's motion to expand CDQ Program allocations to include all groundfish species and prohibited species. Individual CDQ groups are accountable for each of their quotas. All groundfish species and the halibut PSQ allocated to individual CDQ groups are managed with hard caps, meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If a CDQ group catches more than it has available in a particular allocation, the CDQ group has what is termed an overage. If an overage occurs, NMFS documents it and notifies the NOAA Office for Law Enforcement (OLE), which investigates such incidents. The OLE then refers CDQ overage cases to NOAA General Counsel for prosecution or settlement. There were approximately 23 overages between 1999 and 2004, including 13 target species overages and 10 incidental catch species overages.

Another underlying theme of the current CDQ fisheries management regime is that all BSAI TAC categories, with the exception of, are allocated to the CDQ Program through the BSAI FMP. As part of the development of the multispecies CDQ Program, the Council recommended that the program annually receive 7.5 percent of each TAC category. No distinction was made regarding which species were target species, which species were regarded as incidental catch species, nor the appropriate proportion of incidental catch species TACs that would be necessary to fully account for the catch of incidental catch species in primary target fisheries. Additionally, no provision was made to readily accommodate changes to the species that were allocated to the CDQ Program or changes to the CDQ reserves that are allocated among CDQ groups. In order to remove a species from being allocated to the CDQ Program, the Council must initiate, and NMFS must complete, both a FMP amendment and a regulatory amendment. This occurred with squid in 1999. Discontinuing the allocation of a CDQ reserve among CDQ groups requires a regulatory amendment. This occurred with "other species" in 2003. Both of these actions are described in greater detail in Section 5.7.

The strict quota accountability requirements associated with the CDQ Program have given rise to issues associated with potential constraints on CDQ target fisheries. Completely catching a particular CDQ allocation could impact a CDQ group's ability to

continue participating in some target fisheries, as additional catch of the species for which a group has no remaining quota may be impossible to avoid. This effectively requires a CDQ group to stop fishing for those target species for which it believes it has insufficient amounts of incidental catch species, or for which it is unable to obtain additional amounts of incidental catch species from another CDQ group by transfer. CDQ groups believe that some quotas are insufficient to meet their incidental catch needs in CDQ target fisheries.

Quota transfers are allowed under current regulation. They provide CDQ groups with some in-season management flexibility or the ability to react to unanticipated circumstances. Groups may transfer amounts of CDQ, PSQ, CDQ allocation percentages, or PSQ allocation percentages among themselves. Transfers must be approved by NMFS before they are effective. A transfer of an allocation percentage (of CDQ or PSQ) for a given quota category becomes effective in the year subsequent to the transfer being approved, and is effective for the duration of an allocation cycle. Amending CDQ or PSQ allocation percentage transfer regulations is not considered in this action.

In general, the CDQ groups may transfer annual amounts of groundfish CDQ and PSQ among themselves at any time during the year. A transfer of quota only is effective for the calendar year in which the transfer was requested. Restrictions on quota transfers do exist. Regulations at 50 CFR 679.30(e) currently state that “NMFS will not approve transfers to cover overages of CDQ or PSQ.” **Thus, a CDQ group may not, once it has incurred an overage in a particular quota category, receive an additional amount of CDQ in that quota category by transfer from another group.** This is true regardless of whether other CDQ groups are willing to transfer the needed quota or whether there is still some amount of quota remaining in the applicable CDQ reserve as a whole.

2.3 Components Considered for this Action

2.3.1 Component 1. CDQ Transfers

This component addresses the timing of groundfish CDQ and halibut PSQ transfers and whether to maintain the existing prohibition that does not allow CDQ groups to receive quota transfers after exceeding a particular quota. CDQ groups currently may transfer quota amounts among themselves at any time during the year, subject to quota availability and CDQ groups' willingness to make such transfers. CDQ groups made approximately 102 quota transfers between 2001 and 2004, or about 25 per year. Such transfers are typically bundled, so that a single transfer request encompasses multiple CDQ species categories, including target, incidental catch, and prohibited species. CDQ groups are prohibited from exceeding their allocations of groundfish CDQ or halibut PSQ. NMFS monitors the catch of groundfish CDQ as it occurs throughout the fishing year and documents CDQ overages as soon as they are detected. CDQ groups also self-report such overages to NMFS when they occur.

Component 1 would continue to allow CDQ groups to transfer annual amounts of groundfish CDQ and PSQ among themselves at any time during the year, **but would remove from regulations the prohibition against allowing inter-group transfers to account for a CDQ group's overage of any particular groundfish CDQ allocation or halibut PSQ allocation.** Modifying the timing of NMFS' CDQ catch monitoring and accounting regime could enhance CDQ groups' ability to effectively harvest all or the majority of their revenue generating target species. CDQ groups would not have to cease fishing for some species or in some management areas before the end of the fishing year, should they catch their entire remaining balance of a particular groundfish CDQ species or halibut CDQ. CDQ groups could also avoid facing enforcement actions for target species overages by receiving additional amounts of target species by transfer. CDQ groups would still be prohibited from exceeding their groundfish CDQ or halibut PSQ allocations, including their initial annual allocations and any subsequent amount that they received by transfer. **Compliance with the requirement that a CDQ group not exceed its groundfish CDQ and halibut PSQ allocations would be assessed by NMFS at the end of the year, rather than continuously during the year.** This component could also apply to the CDQ group cooperatives discussed in Section 2.3.2. This would result in a temporal shift in CDQ catch monitoring, as NMFS would assess quota overages at the end of the fishing year (after CDQ groups had opportunity to transfer quota among themselves), rather than on a continuous basis during the course of the fishing year. An expanded description of the CDQ transfer process and proposed changes is in Section 5.7.2.

2.3.2 Component 2. CDQ Cooperatives and Quota Pooling

This component would amend the current CDQ fisheries management structure to allow CDQ groups to form cooperatives and pool their CDQ allocations. The Council requested that NMFS examine allowing such cooperatives at the Council's June 2004 meeting. Such cooperatives would be responsible for managing the harvest of the CDQ allocations of those groups represented by a given cooperative. Cooperatives would be formal organizations comprised of two or more CDQ groups, and established through contractual agreements. Current CDQ catch accounting and reporting requirements would be extended to CDQ cooperatives.

The premise for allowing CDQ cooperatives is that it would allow CDQ groups to aggregate their individual quotas, particularly those allocations that are relatively small. This could allow a CDQ cooperative to have greater harvesting flexibility than individual CDQ groups. A cooperative, with its larger, aggregate allocations, could be less constrained by the likelihood of incurring overages. Some annual CDQ allocations, particularly for some rockfish species categories, can be very small. Having a larger initial allocation of some species could allow a CDQ cooperative to commence and sustain fishing activities to a greater extent than an individual CDQ group with smaller allocations.

Background

CDQ groups currently may transfer any amount of any quota to another CDQ group. These transfers may be associated with private contractual arrangements that specify the financial and quota management arrangements between the groups involved in the transfers. A transfer trend that has become common in recent years is for CDQ groups to collaboratively pool their quota via a series of transfers that aggregate several groups' quotas for a particular target fishery, such as Atka mackerel or pollock, with one CDQ group. Although some target species have been pooled in this fashion, such arrangements have been limited. CDQ groups still act individually (via their respective harvesting partners) in other target fisheries, such as Pacific cod.

Pooling some species has increased efficiencies for harvesting partners and CDQ groups by limiting the number of participants in some CDQ fisheries, which streamlines catch monitoring and reporting activities. This quota pooling process also allows small, individual allocations of incidental species to be combined into larger quota amounts. Pooling small individual quota builds more of a buffer into the CDQ catch accounting process by allowing vessel operators and CDQ groups to better reconcile actual catch against available quota and to alter the pace of fishing as needed to stay within available quota balances.

Formation and Operation of CDQ Cooperatives

This component would allow the Council to recommend to NMFS that regulations be amended to incorporate CDQ cooperatives in the CDQ Program's fishery management structure. Regulations governing CDQ cooperatives under this component would include the following requirements:

- Two or more CDQ groups could form a CDQ cooperative and pool their CDQ allocations.
- CDQ groups must form CDQ cooperatives before the fishing year starts. CDQ groups could not leave a CDQ cooperative or change CDQ cooperatives once the fishing year starts. This requirement is necessary for NMFS to establish quota balances and identify the entity responsible for quota monitoring before CDQ fishing commences each year.
- If a CDQ group joins a CDQ cooperative, then all groundfish and prohibited species allocated to the CDQ group would become part of the cooperative's allocation. NMFS would combine, by species categories, the individual CDQ and PSQ allocations made to each CDQ group into cooperative level CDQ allocations.
- NMFS would not manage some species allocated to a CDQ group through a pool and other species at the CDQ group level. Allowing CDQ groups to fish for some target species while pooling some of their other species with a cooperative could result in increased fishery management complexity for NMFS, CDQ groups, and CDQ cooperatives. The species allocated to CDQ groups may be caught in a many different target fisheries, so increasing the number of parties required to monitor and report CDQ catch probably would not increase CDQ groups' operational efficiencies.

- Halibut CDQ could be an exception to this restriction, as the halibut CDQ fishery is distinct from the groundfish CDQ fishery. CDQ groups currently must report groundfish CDQ caught by vessels greater than or equal to 60 ft. LOA that are halibut CDQ fishing, and this requirement could still be applicable to CDQ groups, rather than the CDQ cooperatives. If this were allowed, CDQ groups and cooperatives would have to coordinate information sharing to ensure that groundfish CDQ catch was being accounted for and managed properly.
- A CDQ cooperative would be prohibited from exceeding its collective allocations. If the CDQ cooperative exceeded any of its CDQ or halibut PSQ allocations, enforcement actions would be initiated against the CDQ cooperatives and its member CDQ groups.
- A CDQ cooperative contract would be required to be submitted to NMFS by November 1 of the year prior to a given fishing year to provide sufficient time to establish quota balances for each CDQ cooperative by January 1.
- A CDQ cooperative contract would be required to contain information about the CDQ groups that are members of the cooperative, the vessels that would be fishing on behalf of the cooperative, and the name of the CDQ cooperative for service of process (person authorized to receive and respond to any legal process issued in the U.S. with respect to all members of the CDQ cooperative).
- CDQ cooperatives would be responsible for the catch monitoring and reporting requirements that CDQ groups are individually responsible for.

A more thorough description of the formation of CDQ fishery cooperatives and their effects on the CDQ fishery is in Section 5.7.3.

2.3.3 Component 3. Allocation of Target and Incidental Catch Species to CDQ Groups

This component would allow the Council to select which species or species groups would be allocated among CDQ groups. The annual CDQ reserves for selected species would be allocated among CDQ groups, and each group's allocations would be managed with hard caps. CDQ groups would continue to be prohibited from exceeding their annual groundfish CDQ. As described in Section 2.2, all groundfish species and halibut PSQ are managed with hard caps, meaning that a CDQ groups is prohibited from exceeding its allocation of a given species. If a CDQ group exceeds the amount available for a particular allocation, the CDQ group has an overage and faces possible enforcement action. If a particular CDQ reserve isn't allocated to CDQ groups, they do not have corresponding allocations to exceed.

NMFS believes the most likely way that the Council could choose which CDQ reserves to allocate among CQQ groups would be to designate CDQ reserves by target and incidental catch species. Those CDQ reserves not selected by the Council to allocate among individual groups could be managed as "soft caps," based on the following restrictions. The concept of soft caps described below is what NMFS also refers to as "management at the CDQ reserve level."

- CDQ groups would be prohibited from directed fishing for species or species groups that are not allocated among the groups.
- For those species or species groups managed at the reserve level, CDQ could retain up to the maximum retainable amounts allowed by regulations, if the amount allocated to the CDQ Program was sufficient to allow retention. Otherwise, retention of the species or species group by any vessel fishing for any CDQ group would be prohibited at the beginning of each year.
- If retention were allowed, when catch of the species or species group not allocated to individual CDQ groups reached the amount of the CDQ allocation, then NMFS in-season managers would evaluate the status of the overall TAC for the species or species group. Continued retention in the CDQ fisheries could be allowed if there was sufficient TAC available to account for the anticipated total catch in the CDQ and non-CDQ fisheries combined for the remainder of the year. This option could limit unnecessary discards in species categories that would have enough remaining TAC to support retention in both CDQ and non-CDQ fisheries.
- Catch by all CDQ groups would accrue against the CDQ reserve until it was reached and then catch would accrue against the overall TAC for the species. No individual CDQ group would face enforcement action if catch by all CDQ groups combined exceeded the CDQ reserve amount allocated to the program.
- The total catch of a species or species group not allocated among CDQ groups could be managed under existing BSAI fishery management measures. If the total catch of a species or species group by all sectors (CDQ and non-CDQ) approaches the overfishing limit, NMFS must limit some directed fishery (ies) in order to prevent overfishing. Which fisheries to close to prevent overfishing is a decision made by the Regional Administrator under in-season management authority at § 679.20.

There are two general categories of species or species groups caught in the CDQ fisheries: target species and incidental catch species. Target species are those species of economic importance that are caught as the primary focus of a given fishery. Incidental catch species are those species caught incidentally, or as bycatch, along with target species. Incidental catch species catch may be either retained or discarded during fishing operations or processing. The terms bycatch and incidental catch are often used interchangeably, although there is a legal distinction between the two terms. Incidental catch is defined in federal regulations and refers to that catch that is taken while targeting some other species but is retained and used (§ 679.2). Bycatch is defined by the MSA as that the portion of the fish harvested in a fishery that is not used and discarded, including regulatory and economic discards (16 U.S.C. 1802). Catch may be discarded because regulations require it to be, no markets exist for it, or it is of an undesirable sex, size, or quality.

For this analysis, CDQ target species are considered those species or species group for which a directed CDQ fishery occurs or for those species which have not been targets yet. Table 2.2 lists each target species, while Table 2.3 displays each incidental catch species.

Table 2.2. Target species categories

| Target species categories (by TAC and CDQ Reserve category) | |
|--|------------------------|
| Area or subarea | Species |
| BS and AI | Pollock |
| BSAI | Pacific cod |
| BS and AI | Sablefish (fixed gear) |
| EAI, CAI, and WAI | Atka mackerel |
| BSAI | Yellowfin sole |
| BSAI | Rock sole |
| BS and AI | Greenland turbot |
| BSAI | Flathead sole |
| EAI/BS, CAI, and WAI | Pacific Ocean perch |

Table 2.3. Incidental catch species categories.

| Incidental catch species (by TAC and CDQ reserve category) | |
|---|--|
| Area or subarea | Species |
| Bogoslof | Pollock |
| BSAI | Alaska plaice |
| BSAI | Arrowtooth flounder |
| BSAI | Northern rockfish |
| BSAI | Other flatfish |
| BSAI | Shortraker rockfish |
| BSAI | Rougheye rockfish |
| BS and AI | Other rockfish |
| BS and AI | Sablefish (not gear specific) |
| Existing exceptions | |
| BSAI | Other species (not allocated among CDQ groups) |
| BSAI | Squid (not allocated to CDQ Program) |

2.3.3.1 Option 1: Modify the means by which changes to those CDQ reserves designated as target species and allocated to CDQ groups is made.

Status Quo

Changing the list of CDQ reserves to annually allocate among CDQ groups currently requires a regulatory amendment. If, under Component 3, the Council selected certain

CDQ reserves that would be designated as target species and be allocated among the CDQ groups and identified CDQ reserves that would be designated as incidental catch species and not be allocated among the CDQ groups, then these designations would be implemented through a regulatory amendment. Any future changes to the list of species or species groups that annually would be allocated among CDQ groups would require additional regulatory amendments.

Option 1

The Council could recommend that modifications to the list of species or species groups allocated to individual CDQ groups be made annually, as part of the groundfish specifications process. This process is described in detail in Section 3.2.5. This option would allow the Council to modify the list of CDQ reserves that are allocated and not allocated to CDQ groups on an annual basis, should it consider such changes appropriate. Otherwise, recommended changes to which of the annual CDQ reserves to not allocate to CDQ groups would have to be made through routine notice-and-comment rulemaking. This was the process used to implement the Council's recommendation to not allocate the "other species" reserve to CDQ groups. Regulations at § 679.31(f) now identify the CDQ reserves that will not be allocated among CDQ groups. "Other species" is the only species category so listed.

Under Option 1, the Council could more readily make changes to which CDQ reserves to allocate to CDQ groups, or not, based on its consideration of management changes in TAC categories, changes to the BSAI groundfish fisheries in general, or the target fisheries in which the CDQ groups wish to engage. This option also could address species categorization issues that have arisen in past years. Changes associated with splitting or joining TAC categories by species or area may yield new CDQ reserves for which there are no applicable CDQ percentage allocations. Absent applicable percentage allocations to divide new CDQ reserve categories among CDQ groups, the Council could recommend that such reserves not be allocated to CDQ groups. This option has the potential to add additional complexity to the annual harvest specifications process.

2.3.4 Squid Option Considered But Not Carried Forward

NMFS also considered whether to incorporate an option under Component 3 that would allow the Council to revisit its past decision to no longer allocate squid to the CDQ Program. Presently, each BSAI TAC category is allocated to the CDQ Program, with the exception of squid. The CDQ Program originally received a squid CDQ reserve, as established by one of the final rules (63 *FR* 8356; February 19, 1998) associated with the implementation of the multispecies CDQ Program. Squid was allocated to CDQ groups in 1998 and 2000. Passage and implementation of the AFA led the Council and NMFS to modify squid management in the CDQ Program temporarily in 1999 and permanently in 2001. The AFA increased the allocation of pollock to the CDQ Program from 7.5 to 10 percent of the annual pollock TAC. Squid is predominantly caught in the pollock fishery, but the contribution from the squid TAC to the squid CDQ reserve did not increase with

implementation of the AFA. This led to squid, an incidental catch species, no longer being allocated to program (66 *FR* 13672; March 7, 2001).

The Council recommended that squid be removed from the CDQ Program after evaluating the potential that the squid CDQ reserve could be caught before the entire pollock CDQ reserve was caught, which would impact the economic success of CDQ groups and their development projects. Squid caught in either the groundfish CDQ or non-CDQ fisheries accrues towards the squid TAC. Squid is managed with the standard fishery management measures available in the BSAI fisheries.

At the time the Council considered alternatives to address how to manage squid CDQ, NMFS was not aware of the range of alternatives developed for this analysis. Specifically, NMFS has not yet thought of the alternative to continue to allocate squid to a CDQ reserve, but to not further allocate the squid CDQ reserve among the CDQ groups. However, the Council's basis for recommending that squid be removed from the CDQ Program still stands: the 7.5 percent allocation of the squid TAC to the CDQ Program could be inadequate to meet the incidental catch needs for the amount of squid that could be caught in the pollock CDQ fishery. Reinstating squid as a species allocated to the CDQ Program and managing the squid CDQ reserve with soft caps would result in the same effect as the status quo management of squid. Therefore, NMFS recommends not including this option in this analysis because it would require both a FMP amendment and a regulatory amendment. Reallocating squid to the CDQ Program would make the management of squid consistent with other species, but probably would result in no appreciable difference from the status quo management of squid.

3.0 Affected Environment

3.1 Natural and Physical Environment

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

The NEPA documents listed below contain extensive information about the fishery management areas, fisheries, marine resources, ecosystem, social, and economic elements of the BSAI groundfish fisheries, including CDQ fisheries. Rather than duplicate an effected environment description here, readers are referred to these documents, which are incorporated by reference into this document. This list is a partial listing of NEPA documents that have been prepared for BSAI fishery management measures. Internet links to these documents, as well as a comprehensive list of NEPA documents that have been prepared by NMFS, Alaska Region and the Council are at <http://www.fakr.noaa.gov/index/analyses/analyses.asp>.

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

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

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

Chapter 3 of the PSEIS establishes an environmental baseline, which is a description of the existing conditions that serve as the starting point for the document's analyses. That description of baseline environmental conditions was developed using the best available scientific information, which at the time that the PSEIS was drafted incorporated data up to 2002. This EA uses the PSEIS baseline as a starting point for the present evaluation of environmental effects and, therefore, incorporates the PSEIS baseline by reference.

Environmental Assessment/Final Regulatory Flexibility Analysis for the Harvest Specifications for the Alaska Groundfish Fisheries, 2005-2006 (NMFS 2005a).

This EA/RIR discusses the groundfish TACs and catch in 2004, along with final 2005-2006 specifications of overfishing levels (OFLs), acceptable biological catches (ABCs), and TACs for the BSAI. The Harvest Specifications EA/RIR tiers off of the PSEIS. It also discusses the economic effects of TAC setting alternatives on CDQ groups. Additionally, the status of each target species category, biomass estimates and acceptable biological catch specifications are presented both in summary and in detail in the annual BSAI stock assessment and fishery evaluation (SAFE) reports. SAFE reports are available at the web site given in this section's introductory paragraph.

EA/RIR/FRFA for a Regulatory Amendment to Modify the Management of "Other Species" Community Development Quota in the BSAI (NMFS 2005b).

This document discusses the CDQ fisheries management regime and alternatives to modify the management of the "other species" CDQ reserve with soft caps, rather than by allocating this reserve among individual CDQ groups and managing allocations with hard caps. This action and the associated Council recommendation are described in Section 5.7.

Steller Sea Lion Protection Measures Supplemental Environmental Impact Statement (NMFS 2001).

This document 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.

Essential Fish Habitat Final Environmental Impact Statement (NMFS 2005b)

This document evaluates alternatives for three separate actions. These actions include: describing EFH, identifying a means to identify Habitat Areas of Particular Concern (HAPC), and minimizing the adverse effects of Council-managed fishing on EFH. The EFH EIS provides a thorough description of EFH in the BSAI, as well as a discussion of the past and present effects of different gear types on EFH.

3.2 Economic and Social Conditions

The NEPA documents referenced in Section 3.1 contain comprehensive information about the CDQ Program, as does the background information in Section 1.2 and Section 5.6.

In brief, the purpose of the Western Alaska CDQ Program is to help western Alaska communities strengthen their local economies by investing in both commercial fisheries and other fisheries-related projects, and to provide residents with education, training, and

job opportunities in the fishing industry. The original CDQ Program regulations went into effect on November 18, 1992, and have been amended numerous times since then. In 1996, the Magnuson-Stevens Act institutionalized the program as part of the BSAI Groundfish FMP.

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

4.0 Environmental Effects of the Actions

This section discusses the potential impacts of each of the proposed alternatives described in Section 2.3. An EA must consider whether an environmental impact is significant. Significance is determined by considering the contexts (geographic, temporal, and societal) in which the action could occur, and the intensity of the action. The alternatives considered by this action would not amend the amount of BSAI TACs directly allocated to the CDQ Program, nor would they modify fishing practices or locations in a way not already considered in prior NEPA analyses. Therefore, the primary emphasis of this section is an examination of the economic and social effects of the alternatives.

4.1 Natural and Physical Environment

4.1.1 Effects on Groundfish Target Species

The BSAI FMP describes target species as: pollock, Pacific cod, sablefish, yellowfin sole, Greenland turbot, arrowtooth flounder, rock sole, flathead sole, Alaska plaice, “other flatfish”, Pacific Ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, “other rockfish”, Atka mackerel, and squid. There also is an “other species” category target fishery that presently is of slight economic value and for which there is insufficient data to manage included species individually. This category includes sculpins, sharks, skates, and octopus (NPFMC 2005, page 10). This discussion will follow that FMP categorization, although practically speaking, the FMP target species do not match what the BSAI fishing industry and fisheries managers commonly refer to as target species, i.e., those species of direct economic importance to the fishery. The discussion of FMP target species in other sections of this analysis makes practical distinction between which species are target species and which are incidental catch species.

The status quo alternative would not amend CDQ fisheries management regulation to: remove prohibitions associated with after-the-fact CDQ transfers; make changes as to when NMFS would assess whether a CDQ group had exceeded a given quota; allow CDQ groups to form cooperatives and pool their individual allocations; make changes to the list of CDQ reserves allocated among CDQ groups; or, make changes to how the Council could proscribe which CDQ reserves to allocate among CDQ groups. Maintaining the status quo would continue to subject CDQ groups to existing catch accounting standards and prohibitions.

Alternatives 2 would modify CDQ regulations associated with quota transfers, while Alternative 3 would modify quota transfer regulations and provide provisions allowing CDQ groups to form fisheries cooperatives, respectively. These alternatives have no direct relationship to actual harvesting activities, but address quota transfer timing and providing the means by which CDQ groups may formally collaborate on their harvesting efforts. Each of these alternatives is intended to provide CDQ groups with increased in-season fisheries management and catch accounting flexibility, which in turn could allow CDQ groups the opportunity to more fully prosecute their target species allocations.

Prohibitions against exceeding either group level or cooperative level CDQ allocations would be maintained for all CDQ species. This would maintain the status quo of annually allocating the CDQ Program fixed amount of BSAI target species and containing CDQ catch to those amounts. NMFS does not anticipate that these alternatives would have any additional adverse effect on BSAI target species because these alternatives primarily consider modifying or augmenting administrative elements associated with the CDQ Program.

Under Alternative 4, which also includes the CDQ transfer and cooperative components included under Alternatives 2 and 3, the Council would be able to proscribe which CDQ reserves to allocate among CDQ groups, thereby differentiating between target and incidental catch species. Allocations made to CDQ groups would be managed with current CDQ accounting standards, in conjunction with allowing amending quota transfer provisions and CDQ cooperatives. CDQ group allocations would be managed as hard caps, while those CDQ reserves not allocated among CDQ groups would be managed by NMFS with soft caps. Soft cap management means that NMFS would apply general fisheries management measures to non-allocated CDQ reserves, including ensuring that the combined catch of a particular species category by both CDQ and non-CDQ fisheries did not exceed the annual TAC or ABC for that species.

As with Alternatives 2 and 3, NMFS does not anticipate that Alternative 4 would have an adverse effect on BSAI target species. The CDQ fisheries would be subject to either existing CDQ management measures or the more general management measures used to control the catch of groundfish in the non-CDQ fisheries. The alternatives considered for this action are not expected to have a significant effect on BSAI groundfish target species, as described by current TAC categories. The catch of CDQ target species would be constrained to that amount annually apportioned to the CDQ Program. NMFS management of species comprising non-allocated CDQ reserves could result in the catch by the CDQ fisheries exceeding annual CDQ Program apportionments, but such catch would still be constrained by both NMFS in-season fishery management measures as well as overall BSAI fishery management practices that attempt to limit catch amounts to TAC and ABC limits.

4.1.2 Effects on Prohibited Species

FMP prohibited species include both finfish and invertebrates. Finfish species include Pacific salmon (Chinook, coho, sockeye, chum, and pink), steelhead trout, Pacific halibut, and Pacific herring (herring is not allocated to the CDQ Program). Invertebrate species include king, Tanner, and snow crab. If Alternative 2, Alternative 3, or Alternative 4 were selected, the catch of CDQ target species could increase. This also could result in a proportional increase in the catch of prohibited species. However, none of the alternatives modify the management of prohibited species in the BSAI or increases the amount of prohibited species allocated to the CDQ Program. CDQ fishery participants would continue to be subject to existing prohibited species catch restrictions and prohibitions, as well as fishing area closures. While Alternatives 2, 3, and 4 all incorporate components that could allow CDQ groups to transfer halibut PSQ among

themselves to account for a group exceeding its halibut PSQ, none of the alternatives propose allowing CDQ groups to exceed their annual halibut PSQ allocations, nor for NMFS to undertake the management of halibut PSQ as is proposed for non-allocated CDQ reserves under Alternative 4. Therefore, NMFS does not anticipate that this action would result in any adverse effects on BSAI prohibited species.

4.1.3 Effects on Forage Fish

Forage fish include those species which are a critical food source for many marine mammal, fish, and seabird species. NMFS does not believe that the alternatives considered under this action would have an adverse effect on forage fish, as it does not expect that the catch of forage fish species will increase should Alternative 2, 3, or 4 be selected and implemented. The catch of non-CDQ and CDQ groundfish would still be constrained by existing management measures applicable to annual TAC and ABC limits, which should limit the catch and impacts on forage fish.

4.1.4 Benthic Habitat and Essential Fish Habitat (EFH)

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

4.1.5 Ecosystem Considerations

Alternatives 2, 3, and 4 primarily address regulatory amendments that could modify CDQ transfer prohibitions, provide ability for CDQ groups to form CDQ cooperatives, and allow the Council to select which CDQ reserves to allocate among CDQ groups, as well as how non-allocated CDQ reserves would be managed. These changes primarily are administrative in nature, and are designed to allow CDQ program participants to fully harvest their allocations. These alternatives are unlikely to produce population-level impacts for marine species, or changes to community-level or ecosystem-level attributes beyond the range of natural variability for the system. Thus, these alternatives are not expected to result in adverse impacts at an ecosystem level.

4.1.6 Marine Mammals

The alternatives considered under this action could allow, by varying degrees, CDQ groups an increased ability to completely harvest their CDQ allocations. NMFS does not expect that the overall harvest of CDQ or non-CDQ groundfish species would increase beyond levels already considered under previous NEPA analyses, or that the number of marine mammal interactions would increase. Therefore, no adverse impacts on marine mammals are expected.

4.1.7 Endangered or Threatened Species

The alternatives considered in this action are intended to increase harvesting opportunities for participants in the CDQ Program by modifying catch accounting standards, as described in previous sections. Those species listed as threatened and endangered are fully described in the previously mentioned NEPA analyses. The western population of Steller sea lions (SSL) is listed as endangered under the ESA, and NMFS has implemented comprehensive SSL protection measures to mitigate the adverse effects of commercial fishing activities on this species.⁴ None of this action's alternatives are expected to modify CDQ fishing practices, seasons, or where groundfish CDQ fishing occurs. Groundfish CDQ fisheries would still be subject to all applicable SSL protection measures, which disperse fishing effort over time and area. Thus, the effects of Alternatives 2, 3, or 4 on threatened or endangered species are not expected to be significant.

4.1.8 Effects on Seabirds

Groundfish fishery interactions with seabirds are discussed in Section 4 of the PSEIS (NMFS 2004). The groundfish CDQ fisheries would continue to be subject to seabird avoidance measures specified in NMFS regulations under any of the alternatives proposed by this action. It is unlikely that selection and implementation of any these alternatives would have a discernible effect on seabird populations, thus, NMFS expects that this action's impact on seabirds would not be significant.

4.2 Socioeconomic Effects

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

4.2.1 Effects of Alternative 1

Alternative 1 would result in no change to the socioeconomic environment. CDQ groups have exclusive harvesting privilege for a portion of the BSAI groundfish species. CDQ fishery management regulations provide a structured means for CDQ groups to harvest their CDQ allocations, but also attempt to limit groups from catching more quota than they are annually allocated. The regulations may, to some extent, limit CDQ groups' operational flexibility or desired fishing activities. However, CDQ groups have, historically, harvested the majority of many of their CDQ target species, particularly the most valuable target species. If the status quo were maintained, CDQ groups believe they periodically could either experience some degree of diminished revenues due to potential difficulties in completely prosecuting each of their target fisheries or face penalties for quota overages.

⁴ See 68 FR 204; January 2, 2003.

4.2.2 Effects of Alternatives 2, 3, 4 and Option 1

Alternatives 2, 3, and 4 contain a range of components that would amend CDQ fishery management regulations to either relax current prohibitions or introduce new management elements that could allow CDQ groups to have more operational flexibility, which in turn could positively affect their ability to catch their CDQ target species. It is difficult to identify why the CDQ groups have not, historically caught all of their CDQ target species or the revenues they have foregone with available information. The RIR presents a largely qualitative assessment of the affects of Alternatives 2, 3, 4 and Option 1, with the conclusion that the adoption of any of these alternatives could have some positive net benefit to CDQ groups.

4.3 Cumulative Effects

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

The potential direct and indirect effects of the BSAI groundfish fisheries on target species are detailed in the Final PSEIS (NMFS 2004, Chapter 4). Groundfish CDQ fisheries are a subcomponent of these fisheries. Direct effects include fishing mortality, changes in biomass, and spatial and temporal concentration of catch that may lead to a change in the population structure. Indirect effects include the changes in prey availability and changes in habitat suitability. Indirect effects are not anticipated to occur with any of the alternatives analyzed because the proposed action does not change overall fishing practices that indirectly affect prey availability and habitat suitability. Significance criteria are explained in Appendix A of the PSEIS. To the extent practicable, this analysis incorporates the cumulative effects analysis of the PSEIS, including the effects of past actions and the effects of reasonable foreseeable future actions.

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

Past and Present Actions

The groundfish PSEIS noted that the availability and consistency of data limits the ability to analyze the effects of past actions on the economic conditions of the Alaska groundfish fishery. The groundfish CDQ sector is an integral part of that larger fishery. Many factors, such as changes in biological conditions, markets, and fishery management regulations can result in changes in the operating costs and revenues of fishery participants, including those in the CDQ fishery. Isolating the effects of single factor is difficult to achieve, but it may be possible to make broad assumptions about the effect of particular actions on certain fisheries or fishery sectors.

The formation, incremental modification, and perpetuation of the CDQ Program by the Council has resulted in CDQ communities benefiting from the BSAI groundfish fisheries by being given dedicated, preferential access to annual allocations of BSAI groundfish species. The CDQ Program has grown from receiving pollock allocations, followed by the addition of sablefish and halibut allocations, and finally, crab and other groundfish species allocations. Each additional allocation has added to CDQ communities' annual revenues and commensurate economic benefits. However, such benefits have been accompanied by relatively stringent administrative oversight of CDQ groups, as well as strict catch reporting and monitoring requirements. These restrictions have meant CDQ fisheries may incur additional costs not borne by non-CDQ fisheries.

Future Actions

BSAI FMP Amendment 80

The Council currently is considering an action (Amendment 80 to the BSAI FMP) that would create sector allocations of five different target species for the non-AFA catcher/processor sector and also would allow this sector to form cooperatives. This particular action includes components that could increase CDQ percentage allocations for Atka mackerel, flathead sole, Pacific Ocean perch, rock sole, yellowfin sole, and prohibited species. Additionally, the action includes elements that would increase the CDQ percentage allocations for prohibited species and incidental catch species.

If the CDQ percentage allocations for primary target and incidental catch species were increased as a result of the Council's action on Amendment 80, some of the catch accounting issues that this CDQ reserve management action attempts to address could be affected. Any increases to CDQ allocation percentage amounts for either target or incidental catch species could result in more quota being available to the groundfish CDQ fishery as a whole. CDQ groups could prioritize the use of such increased allocations to ensure that their most valuable target species were completely harvested. Because the preferred CDQ-related elements contained in Amendment 80 have not been identified, nor their effects fully evaluated, the impacts of Amendment 80 on the human environment are uncertain.

BSAI Pacific cod allocations

The Council is considering, via Amendment 85 to the groundfish FMP, revising the current allocations of BSAI Pacific cod among trawl, jig, and fixed gear sectors that were implemented in 1997. The basis for determining sector allocations will be catch history, as well as considerations of various socioeconomic factors. The Pacific cod action contains a component that could increase the CDQ percentage allocation of this species. This could have a bearing on future benefits accruing to the CDQ Program. However, since the Pacific cod action is still under initial development, its impacts on the CDQ Program are unknown.

4.4 Environmental Assessment Conclusions

A primary purpose of an EA is to provide the evidence and analysis necessary to decide whether an agency must prepare an EIS. A Finding of No Significant Impact is the decision maker's determination that the proposed action will not result in significant impacts to the human environment and, therefore, further analysis in an EIS is not necessary.

NEPA significance is determined by considering the context in which the action will occur and the intensity of the action. The context in which the action will occur includes the specific resources, ecosystem, and the human environment affected. The intensity of the action includes the type of impact (beneficial versus adverse), duration of impact, and other factors (see 40 CFR 1508.27(b)). This regulation contains a listing of considerations to use to determine intensity, as does NOAA Administrative Order 216-6. A complete assessment of context and intensity will be developed once the Council has identified, and NMFS has analyzed, a preferred alternative for this action.

5.0 Regulatory Impact Review

5.1 Introduction

This Regulatory Impact Review (RIR) examines the benefits and costs of alternatives to modify the fisheries management regulations associated with the groundfish Community Development Quota (CDQ) Program. It is intended to address some of the fisheries management issues that have arisen during the tenure of the program, which was implemented in 1998.

5.2 What is a Regulatory Impact Review?

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

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

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

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

5.3 Statutory Authority

The National Marine Fisheries Service (NMFS) manages the groundfish CDQ fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) under the Fishery Management Plan (FMP) for that area. The

North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP are at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

5.4 Purpose and Need

This proposed action contains a range of alternatives that could increase the operational flexibility of CDQ groups, thereby increasing the likelihood that CDQ groups will be able to fully harvest their annual allocations of CDQ target species and obtain the most value for such allocations. This could be done by modifying the existing inter-group quota transfer provisions and prohibitions, by allowing CDQ groups to pool their CDQ allocations, by only allocating target species among CDQ groups, or by some combination of these three components.

The current groundfish and halibut prohibited species allocations were not designed to provide the CDQ groups with an amount of incidental catch or halibut prohibited species catch allocations needed to fully harvest target species allocations. Some revisions can be made to NMFS regulations governing quota transfers, quota pooling, or the designation of which CDQ allocations to further allocate among the CDQ groups. These revisions could provide more flexibility for the CDQ groups to fully harvest their target species and reduce the potential for quota overages and the resulting enforcement actions, while still providing NMFS with the tools necessary to manage the CDQ catch limits established for the BSAI fisheries as a whole. Such revisions would accomplish the goals of the Council to provide CDQ allocations to benefit the CDQ communities without negatively impacting NMFS's ability to manage other BSAI fisheries or the non-CDQ fishing sectors. In addition, management measures that would reduce the number of quota overages that must be investigated by NMFS Enforcement and prosecuted by NOAA General Counsel would allow these agency resources to be devoted to other enforcement issues.

The regulatory revisions proposed by this action are meant to support the overall goals and purposes of the CDQ Program by allowing CDQ groups increased opportunities to completely harvest revenue generating target species. Such revenue is used provide a means to fund economic development projects in CDQ communities. This proposed action also includes an option that could better integrate the annual BSAI groundfish specifications process with the multi-year CDQ allocation and management regime, thereby enhancing the Council and NMFS's ability to effectively manage the CDQ Program.

5.5 Description of Alternatives and Associated Components

This section describes each of the alternatives developed for this action. The alternatives considered each incorporate, in step-wise fashion, a range of components that were developed to address various CDQ fisheries management issues that have been identified

by NMFS, CDQ groups, and the Council. The components include: (1) amending inter-group CDQ transfer restrictions; (2) allowing CDQ groups to pool and manage their annual CDQ allocations collectively; and, (3) identifying which species categories are allocated to CDQ groups and managing such allocations with hard caps, while non-allocated CDQ reserves would be managed with soft caps. A complete description of the current CDQ fisheries management regime is discussed in Section 2.0, as is each separate component.

The following alternatives present a range of choices that encompass the status quo (a very restrictive fisheries management structure), and then progress towards an increasingly flexible, less restrictive CDQ fisheries management structure.

Alternative 1. Status Quo. Do not amend CDQ fishery management regulations. CDQ and PSQ transfers between CDQ groups would not be allowed to account for in-season quota overages, CDQ groups would not be allowed to form cooperatives and pool their CDQ allocations, each BSAI TAC category allocated to the CDQ Program would be allocated among CDQ groups (except for “other species”), all CDQ group allocations would be managed as hard caps, and changes to those TAC categories allocated to CDQ groups would continue to be made through the rulemaking.

Alternative 2. Amend regulations to remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover overages of groundfish CDQ allocations.

Alternative 3: Amend regulations to (1) remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover harvest overages of groundfish CDQ allocations and (2) allow CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring.

Alternative 4: Amend regulations to (1) remove the prohibition disallowing the transfer of CDQ from one CDQ group to another CDQ group to cover in-season harvest overages of groundfish CDQ allocations, (2) allow CDQ groups to form cooperatives and pool their groundfish CDQ allocations for purposes of quota management and monitoring, and (3) only allocate target species CDQ reserves among CDQ groups. Target species CDQ allocations would be managed as hard caps and unallocated CDQ reserves would be managed as soft caps.

Option 1: Amend regulations to allow the Council to make future modifications to the suite of TAC categories allocated among CDQ groups during the annual groundfish harvest specifications process, rather than through rulemaking.

Summary of Components

The management components that are integrated into Alternatives 2, 3, and 4 are summarized below.

Component 1. CDQ Transfers

This component addresses the timing of CDQ and PSQ transfers and whether to maintain the existing prohibition that does not allow CDQ groups to receive quota transfers after exceeding a given allocation. CDQ groups currently may transfer quota amounts among themselves at any time during the year, subject to quota availability and CDQ groups' willingness to make such transfers. CDQ groups are prohibited from exceeding their allocations of groundfish CDQ or halibut PSQ. NMFS monitors the catch of groundfish CDQ as it occurs throughout the fishing year and documents CDQ overages as soon as they are detected. CDQ groups also self-report such overages to NMFS when they occur.

This component would continue to allow CDQ groups to transfer annual amounts of groundfish CDQ and PSQ among themselves at any time during the year, but would remove from regulations the prohibition against allowing inter-group transfers to account for a CDQ group's overage of any particular groundfish CDQ allocation or halibut PSQ allocation. This could allow CDQ groups to, if they incurred a quota overage, receive inter-group quota transfers during the course of the fishing year. This would allow groups to continue fishing for valuable target species, rather than having to stand down from certain fisheries for which they no longer had either target or incidental catch quota available.

Component 2. CDQ Cooperatives and Quota Pooling

This component would amend the current CDQ fisheries management structure to allow CDQ groups to form cooperatives and pool their CDQ allocations. The Council requested that NMFS examine allowing such cooperatives at the Council's June 2004 meeting. Such cooperatives would be responsible for managing the harvest of the CDQ allocations belonging to those groups represented by a given cooperative. Cooperatives would be formal organizations comprised of two or more CDQ groups, and established via contract and/or other written agreements. Current CDQ catch accounting and reporting requirements would be applicable to CDQ cooperatives.

The premise for allowing CDQ cooperatives is that it would allow CDQ groups to aggregate their individual quotas, particularly those incidental catch species allocations that are relatively small. This could allow a CDQ cooperative to have greater harvesting flexibility than individual CDQ groups. A cooperative, with its larger, aggregated CDQ allocations, may be less constrained by the likelihood of incurring overages. Some annual CDQ allocations, particularly for various rockfish species categories, can be very small. Having a larger initial allocation of some species could allow a CDQ cooperative to commence and sustain fishing activities to a greater degree than an individual CDQ

group with smaller allocations, particularly if all CDQ reserves were allocated among CDQ groups and groups were prohibited from exceeding each individual allocation..

Component 3. Allocation of Target and Incidental Catch Species to CDQ Groups

This component would allow the Council to select which species or species groups would be allocated among CDQ groups. The annual CDQ and PSQ reserves for selected species would be allocated among CDQ groups, and each group's allocations would be managed with hard caps. CDQ groups would continue to be prohibited from exceeding their annual groundfish CDQ allocations. As described in Section 2.2, all groundfish CDQ species and halibut PSQ are managed with hard caps, meaning that a CDQ groups is prohibited from exceeding its allocation of a given species. If a CDQ group exceeds the amount available for a particular allocation, the CDQ group has an overage and faces possible enforcement action. Additionally, since a group is unable to receive additional amounts of overage species by transfer, it may not be able to continue participating in those fisheries in which additional amounts of the overage species may be caught.

NMFS believes the most likely way that the Council could choose which CDQ reserves to allocate among CQQ groups would be to segregate CDQ reserves by target and incidental catch species. Those CDQ reserves not selected by the Council to allocate among individual groups could be managed as "soft caps," based on the following restrictions. The concept of soft caps described below is what NMFS also refers to as "management at the CDQ reserve level."

- CDQ groups would be prohibited from directed fishing for species or species groups that are not allocated among the groups.
- For those species or species groups managed at the reserve level, CDQ could retain up to the maximum retainable amounts allowed by regulations, if the amount allocated to the CDQ Program was sufficient to allow retention. Otherwise, retention of the species or species group by any vessel fishing for any CDQ group would be prohibited at the beginning of each year.
- If retention were allowed, when catch of the species or species group not allocated to individual CDQ groups reached the amount of the CDQ allocation, then NMFS in-season managers would evaluate the status of the overall TAC for the species or species group and allow continued retention in the CDQ fisheries if it determined that the overall TAC was sufficient to accommodate that total catch in the CDQ and non-CDQ fisheries combined for the remainder of the year. This option could limit unnecessary discards in species categories that would have, in NMFS' estimation, enough remaining TAC to support retention in both CDQ and non-CDQ fisheries.
- Catch by all CDQ groups would accrue against the CDQ reserve until it was reached and then catch would accrue against the overall TAC for the species. No individual CDQ group would face enforcement action if catch by all CDQ groups combined exceeded the CDQ reserve amount allocated to the program.
- The total catch of a species or species group not allocated among CDQ groups could be managed under existing BSAI fishery management measures. If the total catch of a species or species group by all sectors (CDQ and non-CDQ) approaches the

overfishing limit, NMFS must limit some directed fisheries in order to prevent overfishing. Which fisheries to close is a decision made by the Regional Administrator under in-season management authority at § 679.20.

Option 1. Modify the means by which changes to those CDQ reserves allocated to CDQ groups are made.

If, under Component 3, the Council selected certain CDQ reserves that would be allocated among the CDQ groups and other reserves that would not be allocated among the CDQ groups, then these designations would be implemented through a regulatory amendment. Any future changes to the list of species or species groups that annually would be allocated among CDQ groups would require additional regulatory amendments.

The Council could recommend that modifications to the list of species or species groups allocated to individual CDQ groups be made annually, as part of the groundfish specifications process. This process is described in detail in Section 3.2.5. This option would allow the Council to modify the list of CDQ reserves that are allocated and not allocated to CDQ groups on an annual basis, should it consider such changes appropriate. Otherwise, recommended changes to which of the annual CDQ reserves to not allocate to CDQ groups would have to be made through routine notice-and-comment rulemaking. This was the process used to implement the Council's recommendation to not allocate the "other species" reserve to CDQ groups. Regulations at § 679.31(f) now identify the CDQ reserves that will not be allocated among CDQ groups. "Other species" is the only species category so listed.

Under Option 1, the Council could more readily make changes to which CDQ reserves to allocate to CDQ groups, or not, based on its consideration of management changes in TAC categories, changes to the BSAI groundfish fisheries in general, or the target fisheries in which the CDQ groups wish to engage. This option also could address species categorization issues that have arisen in past years. Changes associated with splitting or joining TAC categories by species or area may yield new CDQ reserves for which there are no applicable CDQ percentage allocations. Absent applicable percentage allocations to divide new CDQ reserve categories among CDQ groups, the Council could recommend that such reserves not be allocated to CDQ groups. This option has the potential to add additional complexity to the annual harvest specifications process.

5.6 CDQ Program Description and Background

5.6.1 CDQ Program Background

As described in Section 5.4, the purpose of the CDQ Program is to help western Alaska communities strengthen their local economies by investing in both commercial fisheries and other fisheries-related projects, and to provide residents with education, training, and job opportunities in the fishing industry. The original CDQ Program regulations went into effect on November 18, 1992 and have been amended numerous times since then. In

1996, the Magnuson-Stevens Act institutionalized the program as part of the BSAI Groundfish FMP.

The fishery resources allocated under the CDQ Program are under federal jurisdiction, but the program is jointly managed by NMFS and the State of Alaska (State). The State is primarily responsible for the day-to-day administration and oversight of the economic development aspects of the program and for recommending quota allocations for each CDQ group. NMFS is primarily responsible for fisheries management aspects of the groundfish and halibut CDQ fisheries and broad program oversight. The specific criteria used to evaluate applications and make CDQ allocation recommendations are implemented in State regulations. The Alaska Regional Administrator, NMFS, acting on behalf of the U.S. Secretary of Commerce, and the Council review the State's recommendations and NMFS makes the final decision about allocations among the CDQ groups.

5.6.2 Communities and Groups

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

While the CDQ communities border very productive fishing grounds, they were unable to exploit this proximity as the domestic BSAI groundfish fisheries developed between 1976 and 1990. However, the very high capital investment required to compete in these fisheries precluded small communities from participating in them. The CDQ Program serves to ameliorate some of these circumstances by extending an opportunity to qualifying communities to directly benefit from the productive harvest and use of these publicly owned resources.

The CDQ Program, through its allocation of valuable BSAI fishery resources, provides a means for western Alaska communities to directly benefit from the productive harvest and use of these publicly owned resources. Currently, 65 communities participate in the CDQ Program, based on eligibility criteria listed in both the Magnuson-Stevens Act and federal regulation. The eligible communities have formed six non-profit corporations (the CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. Each CDQ group and its affiliated communities is listed in Appendix A.

5.6.3 Groundfish Harvest Specifications and Creation of CDQ Reserves

Since 1992, the CDQ Program has expanded several times and now includes allocations of pollock, halibut, sablefish, crab, all of the remaining groundfish species (cod, Atka

mackerel, flatfish, and rockfish), and prohibited species catch (i.e., as bycatch allowances for salmon, halibut, and crab). CDQ Program allocations vary by species. While originally set at 7.5 percent, Congress increased the pollock CDQ allocation to 10 percent in 1998 as part of the American Fisheries Act. The percentage of other catch limits allocated to the CDQ Program (as CDQ reserves) is determined by: the BSAI Crab Rationalization Program (10 percent of crab species, except for Norton Sound red king crab, which is 7.5 percent; the BSAI FMP for all other groundfish and prohibited species (7.5 percent, except 20 percent for fixed gear sablefish); and, 50 CFR part 679 for halibut (20 percent to 100 percent, depending on management area).

Harvest specifications for the federal groundfish fisheries in the BSAI are set annually. These TAC specifications define upper catch limits for each subject calendar year. Recent scientific research and stock assessment information are included in annual Stock Assessment and Fishery Evaluation (SAFE) reports. The setting of harvest specifications includes a review of the most recent BSAI SAFE report by the Council and its advising committees, as well as recommendations from the public. The process involves considerations of biological, economic, and social factors associated with the BSAI groundfish fisheries. The total BSAI TAC is limited to an optimum yield (OY) ranging from 1.4 to 2 million metric tons, as described in the BSAI FMP (NPFMC 2005, Chapter 10), but the aggregate acceptable biological catch (ABC) of all species categories is usually much greater than the upper OY threshold. The Council makes harvest specifications recommendations for the forthcoming year, which NMFS then reviews and makes a determination about whether to submit to the Secretary of Commerce for approval and subsequent publication in the Federal Register. Harvest specifications are made for each managed species or species groups, which may be further apportioned by various combinations of management areas, management programs (such as the CDQ Program), processing components, seasons, vessel categories, and gear types.

Establishment of the annual groundfish CDQ reserves is an extension of the groundfish harvest specifications process. Once annual BSAI species categories and TAC amounts are established, an initial TAC amount of 85 percent of the aggregated BSAI TACs is calculated for all species, except pollock and fixed gear sablefish. The remaining 15 percent of annual TAC is equally split between the CDQ Program and a non-specified groundfish reserve. This is the basis for the annual 7.5 percent groundfish CDQ reserve, which is then apportioned back among the TAC categories in place for a given year, based on the proportion each TAC category contributes to the aggregate BSAI TAC limit. A parallel process is used to allocate 7.5 percent of each BSAI prohibited species catch limits to the CDQ Program as prohibited species quota (PSQ). Annual groundfish CDQ and PSQ reserves and allocations for 1998 to 2005 are available at the NMFS web site at <http://www.fakr.noaa.gov/cdq/default.htm>. Figure 5.1 illustrates the process involved in establishing the annual CDQ reserves. The process establishing PSQ reserves is similar.

5.6.4 CDQ Harvest and Value

The 2004 CDQ allocations included approximately 187,000 metric tons of groundfish, over 2 million pounds of halibut, and approximately 3 million pounds of crab. Table 5.1

portrays the amount of each groundfish CDQ reserve that was caught each year from 1999 to 2004. Note that species categories have changed over time, hence the variance in displayed CDQ species categories.

Figure 5.1 Establishment of CDQ reserves.

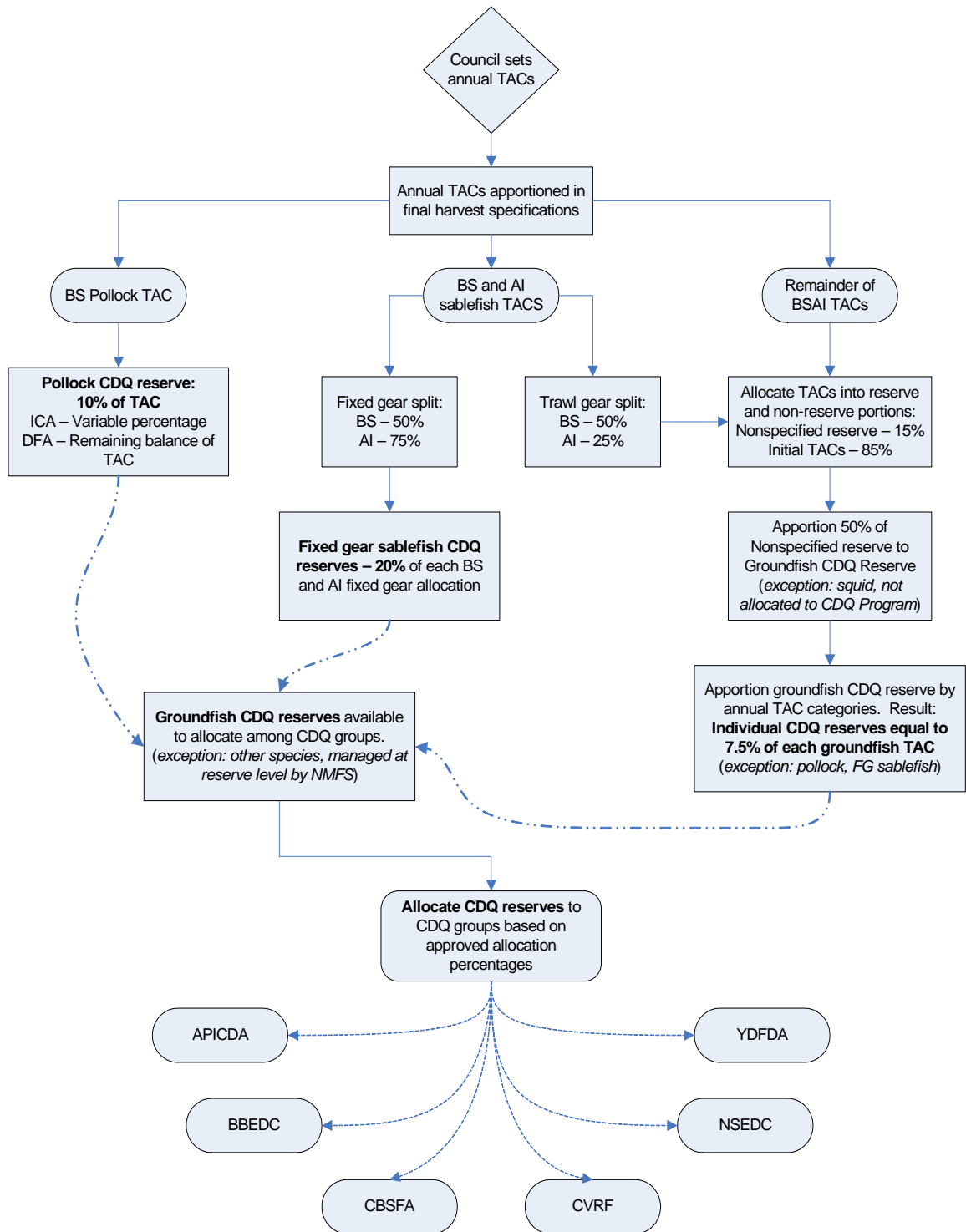


Table 5.1 Groundfish CDQ and PSQ catch, 1999-2004.

| CDQ species | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
|---------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| BS Pollock | 99,113 | 113,554 | 138,883 | 148,427 | 149,121 | 149,169 |
| AI Pollock | 16 | 0 | 0 | 0 | 0 | 0 |
| Bogoslof Pollock | 0 | 0 | 0 | 0 | 0 | 0 |
| Pacific Cod | 12,495 | 13,527 | 12,363 | 14,128 | 14,465 | 16,009 |
| BS FG Sablefish | 18 | 66 | 40 | 150 | 66 | 143 |
| AI FG Sablefish | 103 | 120 | 87 | 129 | 103 | 14 |
| BS Sablefish | 14 | 6 | 4 | 27 | 6 | 21 |
| AI Sablefish | 3 | 1 | 0 | 6 | 7 | 0 |
| WAI Atka Mackerel | 601 | 1,788 | 1,991 | 1,341 | 1,203 | 1,476 |
| CAI Atka Mackerel | 822 | 1,807 | 2,467 | 1,591 | 2,129 | 2,248 |
| EAI/BS Atka Mackerel | 1,166 | 1,192 | 519 | 320 | 696 | 771 |
| Yellowfin Sole | 1,968 | 219 | 182 | 1,972 | 5,564 | 6,321 |
| Rock Sole | 575 | 401 | 221 | 553 | 641 | 892 |
| BS Greenland Turbot | 196 | 244 | 26 | 53 | 48 | 31 |
| AI Greenland Turbot | 37 | 65 | 35 | 46 | 33 | 29 |
| Arrowtooth Flounder | 787 | 286 | 139 | 302 | 437 | 432 |
| Flathead Sole | 724 | 439 | 223 | 464 | 392 | 545 |
| Other Flatfish | 283 | 80 | 35 | 56 | 89 | 72 |
| Alaska Plaice | n/a | n/a | n/a | 137 | 184 | 302 |
| BS Pacific Ocean Perch | 35 | 1 | 8 | 9 | 15 | 2 |
| WAI Pacific Ocean Perch | 317 | 372 | 318 | 355 | 404 | 336 |
| CAI Pacific Ocean Perch | 129 | 216 | 152 | 155 | 185 | 170 |
| EAI Pacific Ocean Perch | 159 | 167 | 162 | 167 | 249 | 165 |
| BS Other Red Rockfish | 10 | 7 | 3 | 2 | n/a | n/a |
| BS Northern | n/a | n/a | n/a | n/a | 2 | n/a |
| AI Sharpchin/Northern | 247 | 346 | 328 | n/a | n/a | n/a |
| AI Northern Rockfish | n/a | n/a | n/a | 342 | 276 | n/a |
| BS Shortraker/rougheye | n/a | n/a | n/a | n/a | 8 | n/a |
| Northern (BSAI) | n/a | n/a | n/a | n/a | n/a | 403 |
| Shortraker (BSAI) | n/a | n/a | n/a | n/a | n/a | 29 |
| Rougheye (BSAI) | n/a | n/a | n/a | n/a | n/a | 3 |
| AI Shortraker/Rougheye | 28 | 35 | 17 | 14 | 25 | n/a |
| BS Other Rockfish | 6 | 6 | 2 | 2 | 4 | 4 |
| AI Other Rockfish | 27 | 36 | 18 | 32 | 10 | 17 |
| Other Species | 1,908 | 2,060 | 1,650 | 2,311 | 2,330 | 3,294 |
| Squid | n/a | 51 | n/a | n/a | n/a | n/a |
| PSQ species | | | | | | |
| Zone 1 Red King Crab | 172 | 0 | 0 | 431 | 1,883 | 175 |
| Zone 1 Bairdi Tanner Crab | 2,998 | 17 | 690 | 4,074 | 9,119 | 1,679 |
| Zone 2 Bairdi Tanner Crab | 18,531 | 1,593 | 436 | 3,695 | 2,736 | 13,483 |
| Opilio Tanner Crab | 53,199 | 4,338 | 624 | 25,568 | 4,927 | 29,860 |
| Pacific Halibut (mt) | 217 | 103 | 86 | 149 | 175 | 153 |
| Chinook Salmon | 584 | 430 | 2,507 | 2,093 | 2,565 | 2,966 |
| Non-Chinook Salmon | 243 | 1 | 2,427 | 1,993 | 5,292 | 960 |

Source: NMFS CDQ catch data, 2005. All amounts in metric tons, with the exception of crab and salmon PSQ, which are in numbers of animals. Species are displayed in the same approximate order used for the annual groundfish harvest specifications.

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. 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 groundfish resources, a means to expand operations, and a way to make more efficient use of capacity. Between 41 and 59 vessels participated in groundfish CDQ fisheries each year between 1999 and 2004, as portrayed in Table 5-2. Vessel types include: catcher vessels, catcher/processors, and one mothership. These vessels and processors are a subset of those entities already participating in BSAI groundfish fisheries.

Table 5-2. Vessel and processor participation in the groundfish CDQ fishery, 1999-2004.

| Category | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 |
|------------|------|------|------|------|------|------|
| Processors | 5 | 5 | 5 | 3 | 4 | 2 |
| Vessels | 56 | 59 | 47 | 47 | 41 | 41 |

Source: NMFS CDQ catch report data.

CDQ groups have demonstrated the ability to successfully harvest many of their groundfish CDQ target allocations, most notably pollock, Pacific cod, and Atka mackerel. On average, over 99 percent of the BS pollock CDQ reserve has been caught, and approximately 94 percent of the Pacific cod CDQ reserve. Catch of the Atka mackerel CDQ reserves has averaged from 79 percent to 89 percent of annual apportionments, depending on management area. These statistics reflect aggregate catch by all CDQ groups combined.

For the most part, annual CDQ reserves have not been exceeded, except for “other species” and BSAI northern rockfish in 2004. Between 1999 and 2004, CDQ groups exceeded their individual allocations of both target and incidental catch species approximately 24 times. Since such overages have a bearing on groups’ fishing operations and also may result in monetary fines or other enforcement action. Table 5.3 displays the percent of each CDQ reserve caught between 1999 and 2004. CDQ reserves are segregated by target and incidental catch species.

Table 5.3 Percent of each CDQ reserve caught, 1999-2004.

| Target species | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | Average |
|---------------------------------|------|------|------|-------|-------|-------|---------|
| BS Pollock | 99.1 | 99.7 | 99.2 | 100.0 | 100.0 | 100.0 | 99.6% |
| Pacific Cod | 94.2 | 93.5 | 87.7 | 94.2 | 93.0 | 99.1 | 93.6% |
| EAI/BS Atka Mackerel | 91.4 | 96.9 | 88.8 | 77.5 | 87.2 | 91.4 | 88.9% |
| CAI Atka Mackerel | 48.9 | 97.6 | 97.9 | 89.1 | 96.7 | 96.4 | 87.8% |
| WAI Pacific Ocean Perch | 68.1 | 87.5 | 89.4 | 83.5 | 92.1 | 86.5 | 84.5% |
| WAI Atka Mackerel | 29.7 | 80.3 | 95.2 | 90.7 | 80.3 | 95.2 | 78.6% |
| EAI Pacific Ocean Perch | 62.1 | 71.6 | 74.3 | 64.3 | 94.5 | 72.2 | 73.2% |
| CAI Pacific Ocean Perch | 44.9 | 82.0 | 79.3 | 67.4 | 73.6 | 77.8 | 70.8% |
| Yellowfin Sole | 12.6 | 2.4 | 2.2 | 30.6 | 88.6 | 97.9 | 39.0% |
| BS FG ¹ Sablefish | 13.2 | 44.8 | 25.6 | 77.6 | 22.8 | 49.4 | 38.9% |
| AI Greenland Turbot | 16.9 | 28.4 | 16.6 | 23.5 | 33.1 | 48.5 | 27.8% |
| AI FG Sablefish | 49.9 | 33.0 | 23.3 | 33.7 | 22.2 | 3.0 | 27.5% |
| BS Greenland Turbot | 41.7 | 52.3 | 6.3 | 13.1 | 23.8 | 15.2 | 25.4% |
| Flathead Sole | 12.5 | 11.1 | 7.4 | 24.8 | 26.2 | 38.3 | 20.0% |
| Rock Sole | 6.4 | 4.0 | 3.9 | 13.7 | 19.4 | 29.0 | 12.7% |
| Incidental catch species | | | | | | | |
| BSAI Northern rockfish | n/a | n/a | n/a | n/a | n/a | 107.5 | 107.5% |
| BSAI Other Species | 91.1 | 69.3 | 65.3 | 80.2 | 96.2 | 161.5 | 93.9% |
| BS Shortraker/rougheye | n/a | n/a | n/a | n/a | 81.1 | | 81.1% |
| AI Sharpchin/Northern | 78.0 | 89.9 | 64.9 | n/a | n/a | | 77.6% |
| BSAI shortraker | n/a | n/a | n/a | n/a | n/a | 73.6 | 73.6% |
| AI Northern Rockfish | n/a | n/a | n/a | 67.6 | 62.6 | | 65.1% |
| AI Other Rockfish | 53.1 | 70.5 | 34.7 | 62.6 | 21.8 | 36.3 | 46.5% |
| BS Other Red Rockfish | 47.9 | 50.9 | 29.7 | 19.0 | n/a | | 36.9% |
| AI Shortraker/Rougheye | 38.6 | 53.5 | 25.2 | 20.6 | 40.5 | | 35.7% |
| BSAI Arrowtooth Flounder | 9.1 | 3.4 | 16.9 | 49.2 | 48.5 | 48.0 | 29.2% |
| Alaska Plaice | n/a | n/a | n/a | 15.2 | 24.6 | 40.2 | 26.6% |
| BS Northern | n/a | n/a | n/a | n/a | 25.2 | | 25.2% |
| BSAI rougheye | n/a | n/a | n/a | n/a | n/a | 23.1 | 23.1% |
| BS Sablefish | 26.8 | 11.1 | 6.3 | 38.0 | 5.7 | 19.1 | 17.9% |
| Other Flatfish | 3.8 | 1.3 | 1.7 | 24.9 | 39.4 | 32.2 | 17.2% |
| BS Other Rockfish | 23.5 | 24.0 | 7.0 | 7.4 | 5.5 | 10.7 | 13.0% |
| BS Pacific Ocean Perch | 32.9 | 0.5 | 6.3 | 4.6 | 14.2 | 1.5 | 10.0% |
| AI Sablefish | 11.4 | 1.4 | 0.5 | 11.8 | 11.4 | 0.3 | 6.1% |
| AI Pollock | 7.8 | 0.0 | 0.0 | 0.0 | 0.0 | | 1.6% |
| Bogoslof Pollock | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | | 0.0% |
| PSQ (not ranked) | | | | | | | |
| Zone 1 Red King Crab | 1.2 | 0.0 | 0.0 | 5.9 | 25.9 | 1.2 | 5.7% |
| Zone 1 Bairdi Tanner Crab | 5.3 | 0.0 | 1.3 | 5.5 | 12.4 | 2.3 | 4.5% |
| Zone 2 Bairdi Tanner Crab | 13.2 | 0.8 | 0.3 | 1.7 | 1.2 | 6.1 | 3.9% |
| Opilio Tanner Crab | 15.8 | 1.3 | 0.2 | 7.8 | 2.1 | 9.2 | 6.1% |
| Pacific Halibut | 61.8 | 30.0 | 25.0 | 43.5 | 50.9 | 44.6 | 42.6% |
| Chinook Salmon | 16.2 | 11.9 | 81.5 | 75.4 | 103.6 | 136.2 | 70.8% |
| Non-Chinook Salmon | 7.7 | 0.0 | 77.0 | 63.2 | 168.0 | 30.5 | 57.7% |

Source: NMFS CDQ catch data, 2005.

¹ FG means fixed gear.

Annual CDQ allocations and catch provides a revenue stream for CDQ groups through various channels, including the direct catch and sale of some species, leasing quota to various harvesting partners, and income from a variety of investments. The six CDQ groups had total revenues in 2004 of approximately \$134 million. Harvesting royalties, described below, accounted for \$56 million (42 percent) of these revenues, while income from investments and distributions accounted for remaining revenue. Since 1992, the CDQ groups have accumulated assets worth approximately \$350 million (as of 2004), including ownership of small local processing plants, catcher vessels, and catcher/processors that participate in the groundfish, crab, salmon, and halibut fisheries. (State of Alaska, DCEED 2005).

CDQ groups establish harvesting contracts, along with other business arrangements, with a variety of seafood harvesters and processors operating in the BSAI groundfish fisheries. Access to amounts of CDQ is given in exchange for a negotiated percentage of the ex-vessel value of a particular species. Most royalty agreements are specific to a particular target species, such as pollock or Atka mackerel. Pollock CDQ royalties historically have accounted for the largest proportion of annual CDQ royalties. The combined value of CDQ royalties in 2003, the most recent year that complete CDQ royalty information is available, was approximately \$53.4 million. Pollock CDQ royalties accounted for \$42.8 million of this amount, or 80 percent of total royalties (State of Alaska, DCEED 2005). Harvests of other groundfish, crab, and halibut CDQ yielded the remainder of CDQ royalties. Table 5.4 illustrates the proportions that major species groups contributed to overall CDQ royalties in 2001-2003.

Table 5.4 CDQ royalties by major species groups, 2001-2003.

| Species | Total all groups 2001 | Total all groups 2002 | Total all groups 2003 |
|----------------------------|-----------------------|-----------------------|-----------------------|
| Pollock | \$36,721,924 | \$39,609,795 | \$42,779,382 |
| Pacific Cod | \$2,733,315 | \$2,743,795 | \$3,365,920 |
| Crab | \$2,492,197 | \$3,448,377 | \$4,612,294 |
| Halibut | \$202,822 | \$214,872 | \$1,922,821 |
| Other species ¹ | \$408,683 | \$350,346 | \$767,846 |
| Total CDQ royalties | \$42,558,941 | \$46,367,185 | \$53,448,263 |

¹Includes: Atka mackerel, flatfish, Greenland turbot, sablefish, and some other species categories.
Source: NMFS. Royalties compiled from aggregated CDQ royalty information from audited financial statements submitted by the CDQ groups.

5.6.5 Employment, Income, and Training

One of the most tangible direct benefits of the CDQ Program has been employment opportunities for western Alaska village residents. CDQ groups have had some successes in securing career track employment for many residents of qualifying communities, and have opened opportunities for non-CDQ Alaskan residents, as well. Jobs generated by the CDQ program included work aboard a wide range of fishing vessels, internships with the business partners or government agencies, employment at processing plants, and administrative positions. Between 2000 and 2004, for example, CDQ related

employment ranged from 1,720 to 2,080 individuals. Annual CDQ wages in those same years has ranged from \$11.8 million to \$12.5 million. CDQ groups continue to explore the means to provide both continuing and additional employment opportunities for local residents. CDQ training expenditures between 2000 and 2004 averaged \$1.9 million per year. These monies provided some form of training to approximately 1,300 persons per year. There are approximately 27,000 people in CDQ communities (State of Alaska, DCEED 2005).

5.6.6 CDQ Fisheries Management

CDQ catch accounting regulations were developed by NMFS based on its interpretations of the Council's motion to expand CDQ Program allocations to all BSAI groundfish species. Individual CDQ groups are accountable for the quotas allocated to them. NMFS monitors CDQ catch throughout the course of a given year through both catch reports submitted by CDQ groups, delivery reports from processors, and observer data. All groundfish species and the halibut PSQ allocated to individual CDQ groups are managed with hard caps, meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If a CDQ group catches more than it has available in a particular allocation, the CDQ group has what is termed an overage. NMFS documents the overage and notifies the NOAA Office for Law Enforcement (OLE), which investigates such incidents. The OLE then refers CDQ overage cases to NOAA General Counsel for prosecution or settlement.

The strict quota accountability requirements associated with the CDQ Program have given rise to issues associated with potential constraints on CDQ target fisheries due to the percentage allocations of target species and incidental catch species. There is no direct relationship between the amount of target species allocated to the CDQ Program and the corresponding amount of incidental catch species allocated to the program. Completely catching a given incidental catch species allocation could impact a CDQ group's ability to continue participating in some target fisheries, as additional catch of the species for which a group has no remaining quota may be impossible to avoid. This effectively requires CDQ groups to stop fishing for those target species for which it believes it has insufficient amounts of incidental catch species, or for which it is unable to obtain additional amounts of incidental catch species from another CDQ group by transfer. Additional information about the CDQ fisheries management regime is in Sections 1.2 and 2.2.

For the most part, NMFS does not issue in-season closures or otherwise proscribe what actions must be taken to prevent exceeding individual groups' CDQ and PSQ allocations. CDQ groups are expected to monitor and control their own fisheries, and thus the catch of their annual CDQ allocations. However, NMFS manages non-allocated CDQ reserves, such as "other species," at the program level based on the aggregate catch of that particular species category in the combined groundfish CDQ fisheries. NMFS will issue directed fishery closures specific to non-allocated CDQ reserves and take appropriate in-season management measures to limit the catch of such reserves, as necessary.

Management of the “other species” CDQ reserve is described in additional detail in the next section.

5.7 Expected Effects of the Alternatives

5.7.1 Effects of Alternative 1

The status quo alternative would not amend CDQ fisheries management regulation to: remove prohibitions associated with after-the-fact CDQ transfers; make changes as to when NMFS would assess whether a CDQ group had exceeded a given quota; allow CDQ groups to form cooperatives and pool their individual allocations; make changes to the list of CDQ reserves allocated among CDQ groups; or, make changes to how the Council could proscribe which CDQ reserves to allocate among CDQ groups. Maintaining the status quo would continue to subject CDQ groups to existing catch accounting standards and prohibitions. This could adversely affect the financial performance of CDQ groups if existing regulations had a significant bearing on whether a CDQ group was unable to catch all of its target species allocation in a given year, or if a group was assessed monetary penalties as a result of exceeding a particular allocation. However, CDQ groups have, in recent years, harvested the majority of many of their CDQ target species, particularly the most valuable target species.

5.7.2 Effects of Alternative 2

Changes to Existing CDQ Transfer Regulations

Both CDQ groups and the Council have requested that after-the-fact CDQ transfers be considered as a management option, most recently at the June 2004 Council meeting. **This alternative would amend regulations to allow CDQ groups to make “after-the-fact” transfers and to specify that NMFS will assess whether a CDQ group has exceeded any groundfish CDQ or halibut PSQ allocation at year’s end.** Allowing a CDQ group to receive quota by transfer after it had exceeded its available balance of a particular quota category could allow the group additional opportunities to continue fishing for its other, remaining annual CDQ allocations. This provision also could allow groups to negotiate quota transfers among themselves to avoid being subject to subsequent enforcement actions. CDQ groups would still be prohibited from exceeding any of their annual CDQ or halibut PSQ allocations (whether initial allocations or as amended by transfers). NMFS would not initiate any enforcement actions for CDQ overages until CDQ fishing has ceased for a given year.

These changes also could apply to CDQ groups’ salmon and crab PSQ allocations, but these quota categories are managed differently from the groundfish CDQ and halibut PSQ categories. Exceeding a given salmon or crab PSQ triggers time and area closures, but there isn’t an explicit regulatory prohibition against exceeding these particular PSQ categories. For example, if a CDQ group catches all of its annual Chinook salmon PSQ, it must cease directed fishing for pollock in the Chinook Salmon Savings Areas. However, the group may still continue fishing for pollock in other areas of the BSAI.

NMFS does not believe that the management of salmon and crab PSQ would need to be changed if Alternative 2 were to be selected.

CDQ transfers occur throughout the year in response to: changes in, or the non-availability of, CDQ groups' harvesting partners; non-CDQ fishery season lengths; a surplus or deficit of certain CDQ species; and, a variety of operational factors. For example, groups may have the opportunity to catch more of a particular target species than it was initially allocated or has available. A group will then negotiate with other CDQ groups to obtain additional amounts of a target species, such as Pacific cod, by transfer. CDQ groups also may believe that they did not receive adequate amounts of incidental catch species to support their fishing activities during a given year. They also may experience higher than anticipated catch rates for incidental species, thereby using their quotas for such species at a faster rate than expected, to the jeopardy of completely harvesting all or some of their remaining target species. CDQ groups may seek to obtain additional amounts of incidental catch species from other CDQ groups in order to have adequate amounts of such species available during the course of fishing for a particular target species.

Between 2001 and 2004, CDQ groups made approximately 102 quota transfers. Quota transfers are typically bundled, so that a single transfer request encompasses multiple species categories. Each transfer request usually includes one or more target species and an associated amount of incidental catch species in proportion to the amount of the target species being transferred.

Were Alternative 2 to be implemented, existing CDQ catch monitoring and reporting requirements would not change. CDQ groups would still be required to adhere to existing CDQ catch accounting requirements so that both the CDQ groups and NMFS are aware of the status of each CDQ groups' fishing activities during the course of the year. CDQ groups would be held accountable for any overage of a CDQ or halibut PSQ at the end of the year, but not during the year. Post-overage quota transfers during the fishing year would be permissible. Since the multispecies CDQ fisheries began in 1998, the CDQ groups have demonstrated that they are proficient at both managing their individual CDQ allocations and working together to arrange transfers among themselves as needed. NMFS does not believe that this pattern would change should Alternative 2 be implemented.

However, if multiple CDQ groups exceed their allocations of the same quota, this could give rise to the possibility that CDQ groups collectively would exceed the annual CDQ reserve for the species in question. NMFS believes it could use existing fishery management measures, such as placing the species on prohibited species status or CDQ-specific directed fishery closures to control the CDQ sectors catch of a given species. This process is both the same currently used to manage the catch of the "other species" CDQ reserve and the same as what is being proposed under Alternative 4. Management of non-allocated CDQ reserves is further discussed in Section 5.7.4.

Effects on CDQ Groups

Modifying the timing of NMFS' CDQ catch monitoring and accounting regime could enhance CDQ groups' ability to effectively harvest all or the majority of their revenue generating target species. CDQ groups would not have to cease fishing for some species or in some management areas before the end of the fishing year, should they catch their entire remaining balance of a particular groundfish CDQ species or halibut CDQ. CDQ groups would still be prohibited from exceeding their groundfish CDQ or halibut PSQ allocations, including their initial annual allocations and any subsequent amount that they received by transfer. Compliance with the requirement that a CDQ group not exceed its groundfish CDQ and halibut PSQ allocations would be assessed by NMFS at the end of the year, rather than continuously during the year. This component could also apply to the CDQ group cooperatives discussed under Alternative 3.

Alternative 2 would amend CDQ transfer regulations and prohibitions. The prohibition against allowing CDQ or halibut PSQ transfers to occur after a CDQ group had exceeded its available quota balance in such allocations would be removed. Quota transfers currently are allowed to afford CDQ groups some degree of in-season fisheries management flexibility among themselves. To cooperatively increase fishing opportunities among CDQ groups, a CDQ group may transfer all or part of an annual CDQ allocation to another group by submitting a transfer request to NMFS. Approved transfers are effective for the remainder of the calendar year in which a transfer occurs. In general, a transfer of quota involves the following steps:

1. Each CDQ group requesting a transfer must notify NMFS in writing that they wish to make a transfer, and identify the species and amounts associated with the transfer.
2. The quota transfer request becomes effective when NMFS notifies each CDQ group involved in a transfer that the transfer has been reviewed and approved. Approval usually is contingent on the transferring group having adequate quota available to transfer.
3. NMFS updates its CDQ catch accounting information system to either credit or debit each applicable CDQ or PSQ account.

If Alternative 2 were implemented, CDQ groups could be subject to fewer overage actions by being allowed to negotiate inter-group transfers to cover overages that occurred in-season. Fewer overages would mean a given CDQ group would have fewer administrative costs associated with responding to NOAA OLE investigations of overage events, as well as fewer penalties to pay should NOAA General Counsel levy a penalty for the overage. Additionally, CDQ groups could gain the ability to continue to fish for valuable target species after an overage had occurred, if it had incurred an overage of an incidental catch species that probably would be caught along with its remaining target species. Thus, CDQ groups may avoid having to forego fishing for such target species (with associated loss of royalties) or negotiating with other CDQ groups to fish for them, (after transferring quota). These are positive benefits.

However, CDQ groups could be at risk that they would not be able to receive quota by transfer at the end of the year. Some CDQ reserves could be fully caught by the end of the year, which means no additional quota would be available to transfer. Alternatively, some CDQ groups could choose to not transfer quota to other groups. CDQ groups would still be subject to enforcement actions for groundfish CDQ and halibut PSQ overages (as they are under the status quo) if they were unable to secure adequate amounts of quota from other CDDQ groups prior to the end of the fishing year or annual CDQ accounting period. CDQ groups also could be subject to increased administrative costs to negotiate and formalize “after-the-fact” transfer agreements. However, groups already face such costs for the in-season transfers that they do, so this alternative could temporally shift when such costs are incurred.

Effects on Non-CDQ Industry Components

The changes considered under Alternative 2 are associated with transfer regulations that are specific to the CDQ Program, but not to other components of the BSAI groundfish fisheries. The changes considered would not modify existing CDQ catch accounting elements associated with constraining CDQ catch to that amount of the BSAI groundfish CDQ and halibut PSQ apportioned to the program. Thus, this alternative probably does not affect the non-CDQ industry component.

Effects on Management Costs

NMFS does not anticipate that Alternative 2 would result in additional management costs in the context of CDQ fisheries management as a whole. NMFS would have to modify how it monitored the groundfish CDQ fisheries and the timing of when it documented and pursued enforcement actions for quota overages, but such changes are expected to be minor. If after-the-fact transfers were allowed, the number of overage actions per year could decrease, which would decrease the amount of administrative effort that NMFS, OLE, and NOAA GC spent addressing CDQ overages. This would be a positive benefit.

5.7.3 Effects of Alternative 3

Changes to Existing CDQ Fisheries Management

Alternative 3 would amend regulations to allow CDQ groups to form CDQ cooperatives, as well as eliminating the prohibition against after-the-fact quota transfers. This section primarily addresses the costs and benefits of CDQ cooperatives. Background information about quota transfers and the effects of allowing after-the-fact transfers were discussed in the preceding section and are not repeated here.

Allowance of CDQ fishery cooperatives would provide a formal means for CDQ groups to pool their individual allocations, should two or more groups wish to do so. CDQ groups currently may transfer amounts of any quota to other CDQ groups, as described in the preceding section. These transfers may be associated with private contractual arrangements that specify the financial and quota management arrangements between the groups involved in the transfers.

This alternative could be considered an extension of the informal quota pooling arrangements that CDQ groups have developed in recent years. A trend that has become common is for some CDQ groups to collaboratively pool their quota with one CDQ group via a series of transfers that aggregate several groups' quotas for a particular target fishery, such as Atka mackerel or pollock. The receiving group is responsible for managing and monitoring the pooled quota, as well as ensuring that participating groups' receive their proportionate share of royalties received due to the harvested of the pooled species. Although some target species have been pooled in this fashion, CDQ groups still conduct other target fisheries, such as Pacific cod, on an individual basis.

Pooling some species has increased efficiencies for harvesting partners and CDQ groups by limiting the number of active participants (both CDQ groups and vessels) in some CDQ fisheries, which streamlines catch monitoring and reporting activities. Perhaps more importantly, this quota pooling process also allows small, individual allocations of incidental species to be combined into larger quota amounts. Pooling small individual quota builds more of a buffer into the CDQ catch accounting process by allowing vessel operators and CDQ groups to better reconcile actual catch against available quota and to alter the pace of fishing as needed to stay within available quota balances.

Formation and Operation of CDQ Cooperatives

Fisheries cooperatives currently are used in two BSAI fisheries administered by NMFS, including the AFA pollock fishery and the crab fisheries conducted under the Crab Rationalization Program (additional information about these two programs if available at the NMFS, Alaska Region web site at www.fakr.noaa.gov). The Council requested the provision to allow CDQ cooperatives be modeled on the cooperatives that have developed under the AFA. AFA cooperatives have formed to represent and manage various components of the BSAI pollock fishery, including catcher/processors and catcher vessels. The owners and operators of vessels that are members of an AFA cooperative are responsible for ensuring that the cooperative complies with the directed fishing, sideboard closures, PSC limits and other applicable allocations and restrictions. NMFS believes that CDQ cooperatives primary focus would be monitoring and managing the CDQ allocations of affiliated CDQ groups, rather than the suite of requirements for which AFA cooperatives are responsible.

This component would allow the Council to recommend to NMFS that regulations be amended to incorporate CDQ cooperatives in the CDQ Program's fishery management structure. NMFS recommends that, under Alternative 3, regulations governing CDQ cooperatives include the following requirements:

- Two or more CDQ groups could form a CDQ cooperative and pool their CDQ allocations.
- CDQ groups must form CDQ cooperatives before the fishing year starts. CDQ groups could not leave a CDQ cooperative or change CDQ cooperatives once the fishing year starts. This requirement is necessary for NMFS to establish quota

balances and identify the entity responsible for quota monitoring before CDQ fishing commences each year.

- If a CDQ group joins a CDQ cooperative, then all groundfish and prohibited species allocated to the CDQ group would become part of the cooperative's allocation. NMFS would combine, by species categories, the individual CDQ and PSQ allocations made to each CDQ group into cooperative level CDQ allocations.
- NMFS would not manage some species allocated to a CDQ group through a pool and other species at the CDQ group level. Allowing CDQ groups to fish for some target species while pooling some of their other species with a cooperative could result in increased fishery management complexity for NMFS, CDQ groups, and CDQ cooperatives. The species allocated to CDQ groups may be caught in a many different target fisheries, so increasing the number of parties required to monitor and report CDQ catch probably would not increase CDQ groups' operational efficiencies. If allowed, CDQ groups and cooperatives would have to coordinate information sharing to ensure that adequate quota was available for each fishery they were respectively participating in.
- Halibut CDQ could be an exception to this restriction, as the halibut CDQ fishery is distinct from the groundfish CDQ fishery. CDQ groups currently must report groundfish CDQ caught by vessels greater than or equal to 60 ft. LOA that are halibut CDQ fishing, and this requirement could still be applicable to CDQ groups, rather than the CDQ cooperatives.
- A CDQ cooperative would be prohibited from exceeding its collective allocations. If the CDQ cooperative exceeded any of its CDQ or halibut PSQ allocations, enforcement actions would be initiated against the CDQ cooperatives and its member CDQ groups.
- A CDQ cooperative contract would be required to be submitted to NMFS by November 1 of the year prior to a given fishing year to provide sufficient time to establish quota balances for each CDQ cooperative by January 1.
- A CDQ cooperative contract would be required to contain information about the CDQ groups that are members of the cooperative, the party responsible for violations made by a cooperative or cooperative member, the vessels that would be fishing on behalf of the cooperative, and the name of the CDQ cooperative for service of process (person authorized to receive and respond to any legal process issued in the U.S. with respect to all members of the CDQ cooperative). These requirements are similar to those required of AFA cooperatives.
- CDQ cooperatives would be responsible for the catch monitoring and reporting requirements that CDQ groups are individually responsible for.

Effects on CDQ Groups

Amending regulations to allow the formation and operation of CDQ cooperatives for the purposes of quota pooling could offer a means for CDQ groups to benefit from greater operational efficiencies, as well as decreasing the possibility that some portion of CDQ target species allocations are not harvested. These are positive benefits.

Requiring CDQ groups to, should they wish to pool their CDQ allocations, formally enter into contractual agreements and submit such contracts to NMFS could increase the administrative expenses of participating groups. Groups would have to monitor the actions of the cooperative to which they belonged, and ensure that the cooperative was conducting fishing operations properly, reporting groups' CDQ and PSQ catch properly, and distributing revenues correctly. This could result in additional costs to the CDQ groups' administrative expense associated with fisheries and quota management. NMFS does not have sufficient information to quantify these potential costs. Note that CDQ groups would not have to join cooperatives, as this would be a voluntary provision available to groups. A CDQ group could choose not to join a cooperative if it felt that the costs of doing so outweighed the benefits.

Effects on Non-CDQ Industry Components

Alternative 3 includes two components, one associated with CDQ transfers and another associated with permitting CDQ groups to form fisheries cooperatives. Both of these components are specific to management of CDQ Program, but not to other components of the BSAI groundfish fisheries. The changes considered would not change CDQ groups' accountability to stay within allocated CDQ amounts, and such accountability would be extended to CDQ cooperatives, were this alternative to be selected. As with Alternative 2, this alternative probably would have no effect on the non-CDQ industry component. One exception to this would be if CDQ fishery cooperatives used fewer vessels to prosecute groundfish CDQ target fisheries. Fishing companies that were displaced from participating in the groundfish CDQ fisheries could incur adverse economic affects, since they would no longer have access to revenue-generating CDQ allocations. This would be a cost associated with the component to allow CDQ fishery cooperatives. NMFS does not have sufficient information about the CDQ-related revenues accruing to vessel companies participating in the groundfish CDQ fisheries to estimate such costs.

Effects on Management and Enforcement Costs

As with Alternative 2, modifying CDQ transfers prohibitions under Alternative 3 is not expected to appreciably increase NMFS's management costs. However, the CDQ cooperative component of Alternative 3 could increase NMFS's management costs. NMFS would have to undertake the following responsibilities associated with CDQ cooperatives: monitor the formation of cooperatives; ensure that cooperative contracts were submitted to NMFS and met applicable requirements; update existing catch accounting infrastructure; create quota allocations for each applicable cooperative, in addition to allocations for each CDQ group; and, ensure that cooperatives complied with applicable CDQ catch reporting and accounting requirements, as well as with any other annual or management reporting requirements. NMFS would have to revise its catch accounting and monitoring structure to prepare for the possibility that some CDQ groups might form cooperatives, regardless of whether any CDQ cooperatives actually formed. Some CDQ groups could choose to not participate in a cooperative, while others could. This means that NMFS could be monitoring both individual CDQ groups and CDQ cooperatives, which could add to the complexity of CDQ fisheries management. This

would be an additional management cost. As CDQ cooperatives would be distinct entities subject to CDQ catch monitoring and reporting requirements, any violations made by cooperatives would be subject to enforcement actions. This could result in increased enforcement costs.

5.7.4 Effects of Alternative 4

Changes to Existing CDQ Fisheries Regulations

Alternative 4 would allow the Council to recommend that regulations be amended to: (1) remove the current prohibition against allowing after-the-fact quota transfers; (2) allow CDQ groups to form fishery cooperatives for the purpose of pooling quota allocations; and, (3) identify which annual CDQ reserves are to be allocated among CDQ groups. This section addresses the costs and benefits of allowing the Council to select which CDQ reserves should be allocated to CDQ groups. Such allocations would be managed with hard caps, while those CDQ reserves not allocated among CDQ groups would be managed with soft caps, as described in Sections 2.3 and 5.5. The effects of changing regulations to allow after-the-fact quota transfers and to allow CDQ groups to form fishery cooperatives were discussed in the preceding sections addressing the effects of Alternatives 2 and 3 and are not repeated here.

The component to only allocate target species among CDQ groups is described in Section 5.5. Essentially, this component would allow the Council to select which CDQ reserves to allocate to CDQ groups. The Council could choose any or all of the current CDQ reserves categories to allocate to groups, but NMFS anticipates that the Council could choose to allocate the commercially valuable CDQ target species identified in Table 2.1 and Table 5.2. Directed fisheries exist, both historically and presently, for each of the listed target species. Species allocated to CDQ groups would be managed with the current strict of accountability in place for the groundfish CDQ fisheries. This could ensure that the CDQ fisheries did not spill over into the parallel target fisheries prosecuted by the non-CDQ sector. The suite of CDQ reserves chosen to not be allocated to CDQ groups would be listed in regulation through rulemaking. NMFS would undertake management of these non-allocated CDQ reserves, as described in Section 5.5. This change in the management of CDQ reserves could afford additional operational flexibility for CDQ groups, since they could concentrate on completely harvesting their CDQ target allocations.

The underlying rationale for making a distinction between target and incidental catch CDQ reserves may be associated with the existing CDQ percentage allocations for target and incidental catch species. The current CDQ reserve apportionment process specifies that, with limited exceptions, the CDQ Program receives 7.5 percent of each TAC category. The Council, when recommending the amount of each TAC category to apportion to the multispecies CDQ Program in 1995, did not make a distinction between which species were target species, which species were regarded to be incidental catch species, nor the appropriate proportion of incidental catch species that would be necessary to fully account for the catch of incidental catch species in primary target

fisheries. Estimating the appropriate amount of each incidental catch species to allocate to the CDQ Program is a complex exercise that has never been undertaken at a comprehensive level by the Council or NMFS, although the State of Alaska has done some bycatch modeling as part of its periodic CDQ allocation recommendation process.⁵

Thus, the current allocation structure does not guarantee that adequate amounts of incidental catch species are made available to account for the catch of these species in the CDQ target fisheries. However, CDQ groups have the discretion to determine which species they consider primary species. They also have the flexibility to choose which vessel and gear types to use for the prosecution of primary target fisheries, as well as when and where fishing activities occur. This offers CDQ groups the means to tailor their fishing activities to maximize the benefits from any given CDQ allocation to the extent afforded by fixed CDQ percentage allocations of both target and incidental catch species.

This CDQ reserve and allocation regime has been modified since the initial implementation of the CDQ Program. Squid was removed as a species allocated to the CDQ Program in 1999, and the “other species” CDQ reserve currently is allocated to the CDQ Program, but not to CDQ groups. Each of these actions is discussed below.

The Council recommended that squid (an incidental catch species) be removed from the CDQ Program through amendment 66 to the BSAI FMP. This followed an analysis of the potential that the squid CDQ reserve could be caught before the entire pollock CDQ reserve was caught, which would impact the economic success of CDQ groups and their development projects. This occurred shortly after the passage and implementation of the AFA. The AFA increased the allocation of pollock to the CDQ Program from 7.5 to 10 percent of the annual pollock TAC. Squid is predominantly caught in the pollock fishery, but the contribution from the squid TAC to the squid CDQ reserve did not increase with implementation of the AFA. Per the Council’s recommendation, squid was removed from the CDQ Program (66 *FR* 13672, March 7, 2001). Presently, squid is managed with the standard fishery management measures available in the BSAI fisheries. Squid caught in either the groundfish CDQ or non-CDQ fisheries accrues towards the annual squid TAC.

The management of the “other species” CDQ reserve also has changed since the implementation of the CDQ Program. In 2003, the Council recommended that the “other species” CDQ reserve not be allocated among CDQ groups, due to concerns that there was inadequate “other species” available to account for the catch of this species complex if all CDQ target species were fully prosecuted. CDQ groups believed that there was a

⁵ There is a separate Council action under consideration, BSAI FMP Amendment 80, which contains a component that would increase the CDQ percentage allocations for certain target species. An associated suboption would allocate incidental catch species to the CDQ Program based on estimates of how much of such species would be caught in CDQ target fisheries, based on historical catch rates of incidental species. This process would be specific to the incidental catch species caught with the target species considered under Amendment 80, but not all CDQ target species. Amendment 80 was discussed previously in Section 4.3 under *Future Actions*.

potential that they would catch their individual allocations of “other species” before completely catching their target species allocations.

NMFS implemented this recommendation in late 2003 (68 *FR* 69974, December 16, 2003). The “other species” CDQ reserve is now managed by NMFS fisheries managers in conjunction with the catch of “other species” in the non-CDQ fisheries. “Other species” CDQ is closed to directed fishing at the beginning of each year. CDQ groups are subject to having this species category place on prohibited species status (no retention allowed) or other management measures if they catch in excess of their annual “other species” CDQ reserve. NMFS monitors the combined catch “other species” in the CDQ fisheries and is prepared to implement additional measures to contain the catch of this species category, although has not yet been necessary. A status report detailing the management and catch of “other species” CDQ in 2004 is in Appendix B. To summarize, the 2004 catch of “other species” in the CDQ fisheries was 3,294 mt, which exceeded the initial CDQ reserve of 2,040 mt by 1,254 mt. This is approximately 62 percent more than the amount initially allocated to the CDQ Program. The non-CDQ fishery component caught approximately 3,000 mt more than its initial apportionment of 23,124 mt. The 2004 “other species” TAC was 27,205 mt and aggregate catch was approximately 29,400 mt. This catch amount is about 17,400 mt below the ABC amount of 46,810 mt.

Effects on CDQ Fisheries

The component to allow the Council to select which CDQ reserves to allocate among CDQ groups could reduce or eliminate the possibility that the catch of incidental catch species in the CDQ fisheries could constrain the catch of CDQ target species for one or more CDQ groups by elevating the accounting of non-allocated CDQ reserves to the CDQ reserve level. It potentially could even out disparities between CDQ groups anticipated needs, annual allocations, and actual catch for incidental catch species. The primary management of non-allocated species would be at the CDQ reserve level and secondary management of non-allocated species would be at the combined CDQ and non-CDQ aggregate catch level. The overall catch of non-allocated CDQ reserves would still be subject to existing controls associated with TAC, ABC, and OFL levels. Under such a management regime, CDQ groups would not be individually constrained by the incidental catch of non-allocated species, a positive benefit.

However, each group’s target fisheries could be impacted by the performance of other CDQ groups and the non-CDQ fisheries. If the amount available in a particular non-allocated CDQ reserve was reached due to the incidental catch amounts in CDQ fisheries conducted by a few CDQ groups, NMFS could put species in the reserve on “prohibited species” catch status. If catch in the CDQ fisheries, in combination with non-CDQ catch, resulted in the OFL being approached, NMFS could close select CDQ fisheries to minimize any further catch of the species of concern. All CDQ groups would be subject to the closure, regardless of whether they had actually caught all of their allocated target species affected by the closure. Thus, moving away from a regime of allocating all CDQ reserves to groups and moving towards one of managing some reserves at the CDQ

reserve level could subject each CDQ group to the actions of other CDQ groups or non-CDQ fisheries components. This could result in adverse effects on CDQ groups if they were unable to catch all of their annual target species allocations.

Effects on Non-CDQ Fisheries

Alternative 4 could affect non-CDQ BSAI fisheries components. If NMFS managed the non-allocated CDQ reserves to try to contain the annual catch in each reserve to the amount allocated to the reserve, the catch of non-allocated CDQ species would not necessarily be limited to the amounts apportioned to each such reserve. For TAC categories with a substantial buffer between TAC and ABC, such as arrowtooth flounder, NMFS would be less likely to impose strict management measures on CDQ directed fisheries, even if the associated CDQ reserve was reached. In such situations, NMFS could manage the catch of a particular species to the overall TAC and ABC limits, rather than the apportionments between CDQ and non-CDQ fishery components. The management of “other species” CDQ illustrates this approach, as detailed in Appendix B.

For TAC categories with a small range between TAC and ABC, or if TAC was equal to ABC, fisheries management measures would have to be more stringent. Examples of such species include shorttraker and rougheye rockfish. If NMFS estimated that the non-CDQ fisheries would catch all of a particular TAC in a given year, NMFS could prohibit directed fishing or impose prohibited species catch limits to minimize the impact that catch by CDQ fisheries would have on non-CDQ fisheries. Thus, NMFS would manage the CDQ fisheries to try and contain its catch to the amount apportioned to annual CDQ reserve established for the more sensitive TAC categories. However, if such measures were ineffective at containing the CDQ fisheries catch, NMFS might also have to impose additional, restrictive management measure on non-CDQ fishery components to manage overall catch to annual ABC limits. This could result in adverse effects on non-CDQ fishery participants if they had to forego catching some amounts of target species.

Effects on Management and Enforcement Costs

As with Alternative 3, modifying CDQ transfers prohibitions under Alternative 4 is not expected to appreciably increase NMFS’s management costs. However, the CDQ cooperative component of Alternative 3 could increase NMFS’s management costs. NMFS would have to undertake the following responsibilities associated with CDQ cooperatives: monitor the formation of cooperatives; ensure that cooperative contracts were submitted to NMFS and met applicable requirements; update existing catch accounting infrastructure; create quota allocations for each applicable cooperative, in addition to allocations for each CDQ group; and, ensure that cooperatives complied with applicable CDQ catch reporting and accounting requirements, as well as with any other annual or management reporting requirements. Some CDQ groups may choose not to participate in a cooperative, which means that NMFS could be monitoring both individual CDQ groups and CDQ cooperatives, which could add to the complexity of CDQ fisheries management. This would be an additional management cost.

The expected management costs associated with the after-the-fact transfer component and CDQ fishery cooperative components of Alternative 4 are discussed in the prior two sections and are not repeated here. The component associated with allocating some CDQ reserve to CDQ groups and managing groups' allocations with hard caps, while managing non-allocated reserves with soft caps, is not expected to significantly affect NMFS's management costs. Both NMFS and CDQ groups would have fewer individual quotas to monitor. Additionally, the State of Alaska would have fewer quotas to allocate to CDQ groups, which could decrease the costs associated with the CDQ allocation process.

However, NMFS could have additional CDQ reserves to manage. This would result in some additional costs associated with CDQ fisheries management and monitoring. NMFS probably would close some non-allocated CDQ reserves to directed fishing in the annual harvest specifications for BSAI groundfish, as is now done with "other species" CDQ. NMFS would also have to issue additional in-season management actions to put CDQ reserves that were closed to directed fishing on prohibited species status once the annual CDQ reserve was caught. In the context of the overall management of the BSAI groundfish fisheries, these costs are anticipated to be minor.

5.7.4.1 Effects of Alternative 4, Option 1

Changes to CDQ Fisheries Management Regulations

Alternative 4 contains a component to allow the Council to recommend which CDQ reserves to allocate among CDQ groups and which reserves to not allocate to CDQ groups. **Should the Council identify certain CDQ reserves to not annually allocate to CDQ groups, these designations would be made in regulation (as was done with the "other species" CDQ reserve category) through rulemaking. Option 1 would allow the Council to recommend that future changes to the list of non-allocated CDQ reserves be made as part of the annual specifications process, rather than through rulemaking. This would apply to future designations of which CDQ reserves to not allocate to CDQ groups, rather than those identified under this action.** Regulations governing the creation and apportionment of CDQ reserves would be amended to reflect the Council's discretion to identify changes to the suite of CDQ reserves to not allocate to CDQ groups. As described in the previous section, NMFS would then manage such reserves with soft caps.

This would enable the Council to respond to: (1) future situations in which the Council wished to change which CDQ reserves were allocated to CDQ groups due to biological or socioeconomic factors, or (2) situations in which revisions to TAC categories meant that the multi-year CDQ percentage allocations established for CDQ groups could not be applied to the CDQ reserves apportioned from the new TAC categories. For example, in 2004, the Council recommended that three rockfish species (northern, shortraker, and rougheye) be managed as a combined BSAI level, rather than at separate BS and AI management subareas. There were no applicable, approved CDQ percentage allocations in place to apply to these new species categories. Absent the applicable percentage

allocations necessary to distribute these rockfish CDQ reserves to CDQ groups, NMFS chose to not allocate them to CDQ groups and, instead, to manage these species at the reserve level.

Effects on CDQ Fisheries

This option primarily is administrative in nature and would allow the Council to respond to future situations in which it chose or needed change the list of non-allocated CDQ reserves. The CDQ groups could benefit from this option if it led to more expeditious implementation of changes to which CDQ reserves are allocated or not allocated among CDQ groups. If this option were not adopted and implemented, future changes to which CDQ reserves to allocate to CDQ groups would be implemented through the rulemaking process.

Effects on Non-CDQ Fisheries

NMFS anticipates that this option would neither benefit nor adversely impact the non-CDQ fisheries.

Effects on Management and Enforcement Costs

Adoption and implementation of Option 1 could decrease the number of future rulemakings that NMFS would have to complete to implement additional Council recommendations about which CDQ reserves to allocate or not allocate to CDQ groups. While this might result in decreased administrative costs associated with rulemaking, NMFS does not have enough information about how many rulemakings could be foregone in the future to quantify any potential decrease in such costs. The provision to incorporate future changes in which CDQ reserves were allocated to CDQ groups into the harvest specifications process could increase management costs associated with the development and implementation of the harvest specifications.

5.8 E.O. 12866 Conclusions

5.8.1 Summary of costs and benefits

The benefits and costs of the alternatives are summarized below. It has not been possible to monetize these benefits and costs. In the absence of collateral or external costs imposed on other parties, it is reasonable to project a positive net social benefit from this action.

Table 5.4 Summary of costs and benefits.

| | Alternative 1 | Alternative 2 | Alternative 3 | Alternative 4 |
|-----------------------|-----------------------------------|---|--|---|
| | Status Quo | Allow after-the-fact CDQ transfers to cover overages | Allow after-the-fact transfers and formation of CDQ cooperatives | Allow after-the-fact transfers, CDQ cooperatives, and identification of which CDQ reserves to allocate to CDQ groups |
| Benefits | Baseline, no change in benefits | CDQ groups and their associated communities could face reduced chance of losing royalties due to quota overage situations. Groups may have to do fewer transfers, but probably a minor benefit. Some savings in management costs. | Same benefits discussed in Alt. 2. Additionally, cooperatives could offer groups greater operational efficiencies and opportunities to fully harvest target species. | Same benefits discussed under Alt. 2 and 3. Only allocating CDQ reserve for target species to CDQ groups could decrease chance incidental catch species allocations would constrain CDQ groups. CDQ groups would have fewer quotas to monitor and manage. NMFS would have fewer quotas to monitor. |
| Costs | Baseline, no change in costs | CDQ groups could incur additional costs negotiating and implementing transfers to cover overages. Minor cost. | Same costs discussed in Alt. 2. Additionally, CDQ groups could incur additional costs negotiating, creating, and monitoring performance of cooperatives. Management costs could increase to integrate cooperatives into CDQ fishery management regime. | Same costs as discussed in Alt. 2 and 3. CDQ groups could be affected by catch of incidental species by other CDQ groups or industry sectors, if such catch resulted in fishery closures (as well as the reverse of this scenario). NMFS would have additional CDQ reserves to manage in conjunction with non-CDQ fisheries. |
| Net Benefits | Baseline, no change in net costs. | It has not been possible to monetize the benefits or costs of this alternative. Qualitative analysis suggests net benefits would be positive. | It has not been possible to monetize the benefits or costs of this alternative. Qualitative analysis suggests net benefits would be positive. | It has not been possible to monetize the benefits or costs of this alternative. Qualitative analysis suggests net benefits would be positive. |
| EO 12866 significance | Does not appear significant. | Does not appear to be significant. | Does not appear to be significant. | Does not appear to be significant. |

5.8.2 Summary of E.O. 12866 Significance criteria

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

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

The combined value of CDQ royalties in 2003, the most recent year that complete CDQ royalty information is available, was approximately \$53.4 million. As noted in Section 5.6.4, pollock CDQ royalties accounted for \$42.8 million of this amount, or 80 percent of total royalties. Catch 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 incidental catch species and would probably not be impacted by the alternatives considered in this action. Implementation of the alternatives considered under this action could positively impact the groundfish CDQ fishery by decreasing certain management restrictions and increasing operational flexibility, but the additional amount of CDQ royalties or other benefits that CDQ groups might receive under these alternatives is unknown. Regulatory changes associated with this action do not appear to have the potential to result in “. . . an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs the environment, public health or safety, or State, local, or tribal governments or communities . . .”

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

6.0 Consistency with Other Applicable Laws

6.1 Regulatory Flexibility Act (RFA)

6.1.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) evaluates a proposed regulatory amendment to modify the management of the Bering Sea and Aleutian Islands (BSAI) groundfish reserves apportioned to the Western Alaska Community Development Quota (CDQ) Program. The proposed alternatives encompass a range of alternatives that could amend or add regulations to: relax prohibitions against allowing CDQ managing organizations (CDQ groups) to make “after-the-fact” transfers; allow CDQ groups to form fishery cooperatives; and, identify which CDQ reserves were or were not to be annually allocated to CDQ groups. The purpose of this proposed action is both to increase the operational flexibility of CDQ groups and to ensure that CDQ fisheries management measures reflect the Council’s current intent for such measures. Increasing operational flexibility could increase the likelihood that CDQ groups would be able to fully harvest their annual allocations of CDQ target species and obtain the most value for such allocations, which in turn could benefit CDQ communities.

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

6.1.2 The purpose of an IRFA

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 to: (1) increase agency awareness and understanding of the impact of their regulations on small businesses, (2) require that agencies communicate and explain their findings to the public, and (3) encourage agencies to use flexibility and to provide regulatory relief to small entities. The 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 has taken to minimize significant economic impacts on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency’s alleged violation of the RFA.

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

Data on cost and operational in the CDQ fishing sector subject to the proposed regulatory action are insufficient, at present, to permit preparation of a “factual basis” upon which to certify that the proposed alternatives do not have the potential to result in “significant economic impacts on a substantial number of small entities” (as those terms are defined under RFA). Because, based on all available information, it is not possible to ‘certify’ this outcome, should one of the proposed alternatives be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

6.1.3 What is required in an IRFA?

Under sections 603(b) and (c) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes, and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 3. The use of performance rather than design standards;
 4. An exemption from coverage of the rule, or any part thereof, for such small entities.

6.1.4 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) and 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 U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$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 or subcontractor is treated as a participant in a joint venture if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such 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 less than 50,000.

6.1.5 Reasons for considering the proposed action

The purpose of the CDQ Program is to provide a means, via allocations of CDQ, for western Alaska communities to undertake commercial fishing-related business activities and enhance this region’s economy. The catch and sale of CDQ allocations provide revenues which CDQ groups use to fund projects benefiting the communities each group represents. Any annual amounts of CDQ target species allocations that are not harvested represent foregone revenues. The original CDQ transfer, catch accounting, and monitoring requirements developed for the CDQ Program are very stringent. Amending CDQ regulations to incorporate some or all of the components considered under this action could increase the operational flexibility of CDQ groups, thereby increasing their opportunities to maximize the benefits of their CDQ allocations. This would support the goals and purpose of the CDQ Program.

6.1.6 Objectives of, and legal basis for, this action

The objective of this action is to consider a means to modify the management of groundfish CDQ reserves to both increase the operational flexibility of CDQ groups and to ensure that CDQ fisheries management measures reflect the Council's current intent for such measures. Such measures are an integral part of the current BSAI fisheries management measures.

The legal basis for this action is the Magnuson-Stevens Act and the BSAI Groundfish FMP. The Magnuson-Stevens Act vests management of marine resources in the Exclusive Economic Zone (an area extending from three to 200 miles off the U.S. coast) with the Secretary of Commerce and in regional fishery management councils. In Alaska, the North Pacific Fishery Management Council is responsible for preparing management plans for marine fishery resources. NMFS is charged with carrying out the federal mandates, with regard to marine resources.

6.1.7 Number and Description of Small Entities

The entities that would be directly regulated by this proposed action are the six non-profit CDQ groups that currently participate in the CDQ Program. The CDQ groups include: Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. As noted, each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a "small entity" under the RFA.

All six CDQ groups have received allocations of groundfish CDQ for the period from 2003 through 2005. Each has received periodic CDQ allocations since 1992. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. Commercially valuable allocations include (among others): Alaska pollock, Pacific cod, sablefish, Greenland turbot, Atka mackerel, and a variety of flatfish species. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities' residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. In 2003, the CDQ groups received a \$53.4 million in royalties from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 5.6 of the RIR associated with this action.

6.1.8 Impacts on regulated small entities

The general economic impacts on regulated small entities are addressed in detail in Section 5. Those effects are summarized here.

Alternative 1, the status quo management of the groundfish CDQ reserves could have some impact on CDQ groups if it resulted in some CDQ target species not being caught each year. Any foregone harvest of target species probably would be accompanied by foregone royalties or other benefits. NMFS does not have adequate information to estimate the monetary value of such potential losses. CDQ groups have been very successful at completely harvesting their annual allocations of their most valuable target species allocations over time.

Alternatives 2, 3, and 4 provide a range of possible ways that the management of groundfish CDQ reserves and CDQ allocations could be managed. Alternative 2 would amend regulations to relax prohibitions against inter-group quota transfers to account for any quota overages a CDQ group may make. CDQ groups currently are prohibited from exceeding their CDQ allocations and from transferring quota between themselves to cover overages. Alternative 3 incorporates this amendment to transfer regulation, as well as a provision to allow CDQ groups to form fishery cooperatives and pool their quotas. Allowance of CDQ cooperatives could allow participating CDQ groups with additional in-season fishery management and operational flexibility. This could result in some degree of cost savings by groups, and the ability to better manage small allocations of incidental catch species. Alternative 4 incorporates components associated with CDQ transfers and CDQ cooperatives, and alter the suite of CDQ reserves allocated to CDQ groups. Under this alternative, the Council could recommend which CDQ reserves (likely target species) to allocate to CDQ groups. The current quota management regime would then apply to those species allocated among CDQ groups, while NMFS would assume management of non-allocated CDQ reserves. This could provide more flexibility to the overall CDQ fisheries management regime, although it could decrease CDQ group's accountability for minimizing their catch of incidental species, to some degree.

Each of these alternatives is intended to either modify existing CDQ fishery management regulations or provide an additional means for CDQ groups to manage their fisheries. NMFS does not have the data needed to analyze the specific impacts of each of these alternatives, absent information about the degree to which CDQ groups would take advantage of each of the components considered under each alternative. However, since such regulatory changes have been initiated at the request of the Council and CDQ groups, NMFS does not foresee that such changes would result in negative economic impacts to CDQ groups, the regulated small entities affected by this action.

6.1.9 Recordkeeping and reporting requirements

The proposed action could have the potential to change some aspects of the current recordkeeping and reporting requirements of CDQ Program participants. This is particularly true of Alternatives 3 and 4, each of which includes a component that would allow CDQ groups to form fishery cooperative and pool their CDQ allocations. The allowance for, and implementation of, this component would entail the need for CDQ groups and any cooperatives they may form to prepare and submit contracts governing the structure and role of each cooperative. Additionally, CDQ cooperatives probably

would be subject to the same catch monitoring and reporting requirements currently required of individual CDQ groups.

6.1.10 Relevant Federal rules that may duplicate, overlap, or conflict with the proposed action

No duplication, overlap or conflict between this proposed action and existing Federal rules has been identified.

6.1.11 Description of significant alternatives

The four alternatives under consideration for this action are described in Section 2, and the reasons for proposing this action is presented in Section 1.2. These alternatives are summarized in the table below.

Table 6.1. Summary of CDQ Reserve Management Alternatives

| <i>Alternative 1 - status quo. Continue strict quota accountability.</i> | <i>Alternative 2 - Some flexibility, less restrictions</i> | <i>Alternative 3 - Additional flexibility</i> | <i>Alternative 4 - Most flexible, least restrictive</i> |
|--|--|--|---|
| No after-the-fact transfers; no way for groups to form cooperatives and pool quota allocations; no differentiation between quota accountability for target and incidental catch species. | Most frequently requested by CDQ groups. May indicate highest priority to groups. | Provides two options to reduce the potential constraints to harvesting CDQ allocations and to provide more flexibility, while maintaining relatively strict limits on CDQ sector catch. | Lift most potential constraints posed by catch of incidental catch species; allow maximum flexibility for management of target species allocations; continue high level of accountability for target species allocations. |
| <i>Status quo</i> No transfers to cover overages. | Allow transfers to cover overages. | Allow transfers to cover overages. | Allow transfers to cover overages. |
| <i>Status quo</i> No allowance for cooperatives quota and quota pooling. | <i>Status quo</i> No allowance for cooperatives quota and quota pooling. | Allow CDQ groups to form cooperatives and pool quota. | Allow CDQ groups to form cooperatives and pool quota. |
| <i>Status quo</i> Continue to allocate all species except “other species” to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment. | <i>Status quo</i> Continue to allocate all species except “other species” to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment. | <i>Status quo</i> Continue to allocate all species except “other species” to the CDQ groups; manage all allocations with hard caps; specify quota categories not allocated to groups by regulatory amendment. | Allocate only target species to the CDQ groups. Manage incidental catch species at the CDQ sector level with soft caps and no directed fishing. <i>Option:</i> Specify which species categories are allocated to the groups (versus the CDQ sector) through annual specifications process. |

Except for Alternative 1 (status quo), each subsequent alternative offers incremental modifications to the current CDQ fishery management structure. Such modifications are intended to offer CDQ groups additional degrees of operational flexibility in their pursuit of the complete harvest of annual allocations of CDQ target species.

6.1.12 Impacts on regulated small entities

The alternatives considered under this proposed action do not appear likely to have negative economic impacts on CDQ groups. These groups are the directed regulated small entities affected by this action.

6.2 Marine Mammal Protection Act (MMPA)

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

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

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

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

6.3 Coastal Zone Management Act (CZMA)

Implementation of any of the alternatives considered under this action would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

7.0 References

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- NMFS 2005b. *Final Environmental Impact Statement for Essential Fish Habitat Identification and Conservation in Alaska*. April 2005. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2005c. *Regulatory Impact Review/Final Regulatory Flexibility Analysis to Simplify Administrative Requirements of the CDQ Program Related to Quota Transfers, Eligible vessels, and Alternative Fishing Plans*. February 2005. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NMFS 2004. *Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement*. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
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- NMFS 2001. *Final Supplemental Environmental Impact Statement for Steller Sea Lion Protection Measures*. DOC, NOAA, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802.
- NPFMC 2005. *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area*. NPFMC, 605 W. 4th, Anchorage, AK 99501.
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Appendix A. CDQ Groups and Communities

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

Appendix B. Status report: 2004 catch and management of the “other species” CDQ reserve.

In 2004, NMFS began managing the “other species” CDQ reserve, rather than allocating this reserve among CDQ groups and requiring each group to manage its own allocation of “other species.” This was based on the Council’s April 2003 recommendation to manage this species category differently from other TAC categories allocated to the CDQ Program. This change was intended to relieve a potential constraint that could have been imposed on CDQ groups should their individual allocations of “other species” be insufficient to account for the amount of “other species” that they might catch while completely harvesting their allocations of CDQ target species. Otherwise, CDQ fishery management regulations effectively require that a CDQ group, once it has caught its allocation of a given incidental catch species, cease fishing for any target species in which additional amounts of that particular incidental catch species may be caught.

- The final rule implementing this change was effective December 15, 2003.
- NMFS closed the 2004 “other species” CDQ reserve to directed fishing on December 24, 2003, with a January 1, 2004 effective date.
- The 2004 “other species” CDQ reserve of 2,040 metric tons (mt) was reached in July 2004.
- NMFS prohibited retention of “other species” in the groundfish CDQ fisheries on July 28, 2004, effective July 31, 2004.
- An additional 1,254 mt of “other species” was caught in the groundfish CDQ fisheries after the initial “other species” CDQ reserve was reached.
- The longline catcher/processor Pacific cod CDQ fishery accounted for over 90 percent of the “other species” CDQ caught in 2004.

The following tables summarize the 2004 BSAI “other species” apportionments and catch (all amounts in metric tons).

Table 1. 2004 BSAI harvest specifications for the “other species” category.

| Overfishing Level | Allowable Biological Catch | Total Allowable Catch | Initial TAC | CDQ Reserve |
|-------------------|----------------------------|-----------------------|-------------|-------------|
| 81,150 | 46,810 | 27,205 | 23,124 | 2,040 |

Table 2. 2004 “other species” catch by CDQ and non-CDQ fishery components.

| Component | Apportionment | Catch | Remaining |
|-----------|---------------|--------|-----------|
| non-CDQ | 23,124 | 26,098 | (2,974) |
| CDQ | 2,040 | 3,294 | (1,254) |
| total | 25,164 | 29,392 | (4,228) |