



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

March 15, 2007

Morgan Crow, Executive Director
Western Alaska Community Development Association
711 H Street, Suite 200
Anchorage, Alaska 99501

Dear Mr. Crow:

This letter responds to requests from the Community Development Quota (CDQ) groups for clarification about the observer coverage requirements that apply in the CDQ fisheries in light of recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act now requires the following:

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

The Bering Sea and Aleutian Islands (BSAI) fisheries that are managed with individual fishing quotas (IFQs) are halibut, fixed gear sablefish, and crab. The only BSAI fishery in which fishing cooperatives are authorized is the Bering Sea pollock fishery under the American Fisheries Act (AFA). We identified no differences in the regulation of the harvest of crab IFQ and crab CDQ. However, observer coverage requirements for the halibut, fixed gear sablefish, and pollock CDQ fisheries are more restrictive, in some cases, than requirements that apply in the comparable IFQ or pollock AFA fisheries. These regulations are now inconsistent with section 305(i)(1)(B)(iv) of the Magnuson-Stevens Act. We are preparing an analysis and proposed rulemaking to revise regulations at 50 CFR part 679 to be consistent with the Magnuson-Stevens Act. However, this process will take some time to complete. NOAA General Counsel (GC) has advised us that we cannot enforce any requirements on the harvesting of halibut, fixed gear sablefish, crab, or pollock CDQ that are more restrictive than regulations governing the harvesting of the IFQ or cooperative allocations for these species. A copy of NOAA GC's memorandum on this issue is attached to this letter.

Below we identify regulations governing observer coverage requirements in the CDQ fisheries that are more restrictive than regulations governing the comparable IFQ or cooperative fishery. In addition, we provide guidelines that reference regulations currently in effect for the IFQ or cooperative fisheries that should be followed by vessels and processors participating in the halibut, fixed gear sablefish, and pollock CDQ fisheries until NMFS is able to revise its regulations to be consistent with the Magnuson-Stevens Act:

1. Halibut CDQ: Observers are not required for vessels that are fishing for halibut IFQ, if they are not also directed fishing for groundfish. Directed fishing for a particular groundfish



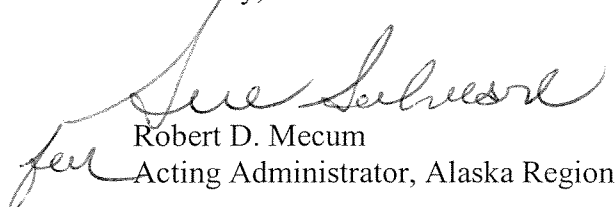
species is defined as retaining in excess of the maximum retainable amounts (MRA) of that species (see §679.2 and §679.20(e) and (f)). Processors taking deliveries from vessels fishing for halibut IFQ are not required to have observers specifically to monitor these IFQ deliveries. Therefore, NMFS can no longer enforce requirements for observers on vessels fishing for halibut CDQ or for observers in processing plants to monitor deliveries from these vessels.

2. Fixed Gear Sablefish CDQ: Observer coverage requirements for vessels fishing for sablefish IFQ are less restrictive than regulations that apply for vessels fishing for sablefish CDQ. Therefore, until NMFS can revise its regulations, vessels directed fishing for sablefish CDQ with fixed gear and not also directed fishing for some other groundfish CDQ species should comply with the observer coverage requirements for vessels fishing for sablefish IFQ. These observer coverage requirements are at §679.50(c)(1)-(3). Processors taking deliveries from vessels directed fishing for sablefish CDQ with fixed gear and not also directed fishing for any other groundfish CDQ species should comply with the observer coverage requirements that apply for processors taking deliveries of any non-CDQ groundfish, including sablefish IFQ. These regulations are at §679.50(d)(1)-(3). If the vessel is retaining in excess of the maximum retainable amounts for any other groundfish CDQ species, then the CDQ observer coverage requirements at §679.50(c)(4) and §679.50(d)(4) continue to apply.

3. Pollock CDQ: Catcher vessels directed fishing for pollock CDQ and not retaining in excess of the maximum retainable amounts of any other groundfish CDQ species should comply with the observer coverage requirements that apply to catcher vessels fishing for AFA pollock. These observer coverage requirements are at §679.50(c)(1)-(3). If the vessel is retaining in excess of the maximum retainable amounts of any other groundfish CDQ species, then the CDQ observer coverage requirements at §679.50(c)(4) continue to apply to this vessel. Observer coverage requirements for catcher/processors directed fishing for pollock CDQ and for shoreside processors or stationary floating processors taking deliveries from vessels pollock CDQ fishing are not more restrictive than regulations that apply in the AFA pollock fishery. Therefore, the CDQ observer coverage requirements at §679.50(c)(4) and (d)(5) are not inconsistent with the Magnuson-Stevens Act and will continue to apply.

Attached is a table that compares current regulations for CDQ observer coverage requirements with coverage requirements that are consistent with the Magnuson-Stevens Act. Application of these new observer coverage requirements to the CDQ halibut, sablefish, and pollock fisheries are effective immediately. If you have any additional questions about this issue or future regulatory changes, please contact Obren Davis of the Sustainable Fisheries Division at 907-586-7241. If you have any questions about enforcement of current regulations, please contact Mike Gonzales, NMFS Enforcement, at 907-271-3026.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

Attachment
cc: CDQ groups
NMFS Enforcement

2007 Observer requirements for the CDQ fisheries.

Vessel or Processor Category	Existing requirements	Interim Requirements for 2007			
		Halibut	Fixed gear sablefish (requires certified observer)	Pollock (endorsement type varies)	
Catcher, < 60', any gear	none		none	none	
Catcher, ≥60', trawl gear	1 Level 2 observer		n/a	60' to < 125': 30% coverage ≥125': 100% observer (certified observer)	
Catcher, ≥60 ft, nontrawl gear, Option 1 ^{1/}	1 Level 2 observer		60' to < 125': 30% coverage ≥125': 100% observer. Pot gear any length: 30%	n/a	
Catcher/processor, trawl and motherships- <i>directed fishing for pollock</i>	1 lead Level 2 observer and 1 certified observer		n/a	1 lead Level 2 observer and 1 certified observer	
Catcher/processor, trawl and motherships- <i>not directed fishing for pollock</i>	1 lead Level 2 and 1 Level 2 observer		n/a	n/a	
Catcher/processor, longline gear	1 lead Level 2 and 1 Level 2 observer 1 lead Level 2 with Alt Fish Plan	No observer required unless also directed fishing for groundfish CDQ	60' to < 125': 30% coverage ≥125': 100% observer	n/a	
Catcher/processor, pot gear	1 lead Level 2 observer		30% coverage	n/a	
Shoreside processor ^{2/} , deliveries from vessels using trawl gear	1 Level 2 obs for each CDQ delivery		n/a	100%	
Shoreside processor, deliveries from vessels <60' using nontrawl gear and <i>groundfish</i> CDQ fishing	1 Level 2 obs for each CDQ delivery			0%, 30% or 100% Coverage volume dependent	n/a
Shoreside processor, deliveries from vessels <60' using nontrawl gear and <i>halibut</i> CDQ fishing	no observer required for delivery			n/a	n/a
Shoreside processor, deliveries from vessels using nontrawl gear, Option 1 ^{1/}	1 Level 2 observer per CDQ delivery. May use vessel observer under certain conditions. ^{3/}			0%, 30% or 100% Coverage volume dependent	n/a

1/ Option 1 refers to the CDQ catch accounting option that requires the vessel operator to retain all groundfish CDQ and salmon PSQ and deliver it to a processor where it is sorted by species, weighed, and reported to NIMFS. Option 2 refers to the CDQ catch accounting option under which the CDQ group chooses to use data collected by the vessel Level 2 observer to estimate the catch of all groundfish CDQ and PSQ. This option has never been used and is not portrayed in this table.

2/ Includes stationary floating processors.


3/ Instead of having a separate observer for the shoreplant, the vessel observer may monitor sorting and weighing of CDQ delivery as long as working hour limitations for the vessel observer are not exceeded.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
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DATE: October 12, 2006

MEMORANDUM TO: Jeff Passer, Special Agent-in-Charge, Alaska Enforcement Division

FROM: 
Garland Walker, Attorney, General Counsel for Enforcement and Litigation, Alaska Region

SUBJECT: Impact of Amendments in 2006 Coast Guard Act on Enforcement of CDQ Regulations

On July 11, 2006, the President signed the Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act). Section 416(a) of the Coast Guard Act revises section 305(i)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) by replacing all of the existing language in this section with new language. The MSA amendments address all aspects of management and oversight of the CDQ Program, including the purpose of the CDQ Program. The MSA amendments address all aspects of management and oversight of the CDQ Program, including the purpose of the CDQ Program; allocations of groundfish, halibut, and crab to the CDQ Program; allocations of quota among the CDQ groups; management of the CDQ fisheries; eligible communities; eligibility criteria for participation in the CDQ Program, limits on allowable investments; the creation of a CDQ administrative panel; compliance with State of Alaska (State) reporting requirements; a decennial review and allocation adjustment process; and other aspects of program administration and oversight by the State and NMFS, on behalf of the Secretary of Commerce. Most of these MSA amendments will require revisions to Federal regulations that will be implemented through proposed and final rulemaking.

The purpose of this memo is to state the legal impact of these legislative amendments on enforcement actions involving CDQ regulations. Section 305(i)(1)(B)(iv) of the MSA now requires the following:

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

Succinctly stated, these MSA amendments mandate that regulations governing the harvesting of CDQ allocations for halibut, fixed gear sablefish, crab, and pollock can be no more restrictive than regulations that govern the harvesting of halibut, fixed gear sablefish, or crab IFQ or the allocations of pollock to cooperatives under the American



Fisheries Act (AFA). With the passage of this legislation on July 11, 2006, NOAA can not enforce any requirement on the harvesting of halibut, fixed gear sablefish, crab, or pollock CDQ that is more restrictive than regulations governing the harvesting of the IFQ or cooperative allocations for these species.

This legislation will necessitate changes to some of the regulations that had previously governed CDQ fishing operations. In many cases, the legislation requires previously implemented CDQ regulations for halibut, fixed gear sablefish, and pollock to be relaxed to the level of the regulations that govern the harvesting of non-CDQ allocations. An initial review of regulations has not identified any circumstances under which the harvest of crab CDQ is regulated more restrictively than the harvest of crab CDQ.

As noted above, any revisions to the regulations necessitated by this legislation must ultimately be implemented through proposed and final rulemaking. Unfortunately, the rulemaking process can be a rather lengthy process. In the interim prior to formal completion of any rulemaking process, Alaska Enforcement Division (AED) will need to address this situation through appropriate enforcement policy to ensure that regulations governing the harvesting of halibut, fixed gear sablefish, crab, or pollock CDQ allocations are enforced no more restrictively than regulations governing the harvest of these species in the comparable IFQ or AFA cooperative fisheries.

For the purposes of addressing this situation and working with AED to implement the changes required by this legislation, the Sustainable Fisheries Division (SF) has prepared a preliminary table of some of the CDQ regulations affected by this legislative amendment. The table is attached to this memo. It sets out some of the areas in which regulations governing the harvest of halibut, fixed gear sablefish, and pollock are more restrictive than the regulations governing the harvest of halibut IFQ, fixed gear sablefish IFQ, or pollock under the American Fisheries Act. This table is an appropriate starting point for ensuring that regulations governing the harvesting of CDQ allocations are enforced no more restrictively than regulations governing the harvesting of non-CDQ allocations in the same fisheries.

As always in regard to enforcement matters, AED is the lead for addressing how the changes necessitated by this legislation will be implemented in the enforcement area. However, please do not hesitate to contact GC and/or SF if either can be of assistance to AED in this process.

Comparison of regulation of harvest regulations for the halibut, sablefish, pollock, and crab Community Development Quota (CDQ) fisheries compared with regulations governing the Individual Fishing Quota (IFQ) or American Fisheries Act (AFA) fisheries for these species

Fishery and Vessel or Processor Category	Observer Coverage Requirements in the Non-CDQ fisheries	Observer Coverage Requirements in the CDQ fisheries	CDQ more restrictive?
Halibut (compare with IFQ)			
Catcher vessel <60' LOA	None	None	No
Catcher vessel ≥ 60' LOA	None	1 observer	Yes
Catcher/processor (HAL gear)	None	2 observers, unless 1 obs. is approved under an alternative fishing plan	Yes
Shoreside processor	None	Each landing by CDQ vessels =>60' LOA must be observed, may use observer from vessel (§679.50(d)(5))	Yes
Sablefish (compare with IFQ)			
Catcher vessel <60' LOA	None	None	No
Catcher vessel ≥ 60' LOA	30% or 100% depending on LOA	1 observer	Yes
Catcher/processor (HAL gear)	0%, 30%, or 100% depending on LOA	2 observers, unless 1 obs. is approved under an alternative fishing plan	Yes
Catcher/processor (pot gear)	0% or 30% depending on LOA	1 observer	Yes
Shoreside processor	0%, 30%, 100% observer coverage based on processor's monthly production (§679.50(d)(1)-(3))	Each landing by CDQ vessels =>60' LOA must be observed, may use observer from vessel (§679.50(d)(5))	Yes
Pollock (compare with AFA)			
Catcher vessel <60' LOA	None	None	No
Catcher vessel 60' to 124' LOA	30% observer coverage	1 observer	Yes
Catcher vessel ≥ 125' LOA	100% observer coverage	1 observer	No
Catcher vessel, unsorted codends	None	None	No
Catcher/processor (trawl gear)	2 observers	2 observers, all hauls must be observed	No
Mothership	2 observers, all hauls must be observed	2 observers, all hauls must be observed	No
Shoreside processor	Each landing must be observed (§679.50(d)(6))	Each landing must be observed (§679.50(d)(5))	No
Crab (compare with IFQ)			
	Observer coverage requirements for the crab fisheries are established by the State of Alaska. Requirements do not differ for the IFQ and CDQ crab fisheries.		No

Fishery and Vessel or Processor Category	Requirements for vessels and processors in non-CDQ fisheries	Requirements for vessels and processors in CDQ fisheries	CDQ more restrictive?
Retention Requirements			
Catcher vessel <60' LOA, halibut	Halibut if available IFQ, rockfish and cod ¹ (§679.7(f)(8)(ii))	(§679.32(f)(3))	No
Catcher vessel <60' LOA, sablefish	Sablefish if available IFQ, rockfish and cod ¹ (§679.7(f)(8)(ii))	All groundfish CDQ species if using CDQ catch accounting option 1 ² (§679.32(d))	Yes
Catcher vessel ≥ 60' LOA, halibut or sablefish	Halibut or sablefish if available IFQ, rockfish and cod ¹ (§679.7(f)(8)(ii))	All groundfish CDQ species if using CDQ catch accounting option 1 ² (§679.32(d) and (f)(3))	Yes
Catcher/processor, halibut or sablefish	Halibut or sablefish if available IFQ, rockfish and cod ¹ (§679.7(f)(8)(ii))		No
Catcher vessels, any length, pollock	Pollock and cod under IR/IU at §679.27	Pollock and cod under IR/IU at §679.27, all groundfish CDQ species (§679.32(d))	Yes
Catcher/processors or motherships, pollock	Pollock and cod under IR/IU at §679.27	Pollock and cod under IR/IU at §679.27	No
LLP Requirements			
Halibut	Vessels fishing only for halibut IFQ are not required to have an LLP.	Vessels fishing only for halibut IFQ are not required to have an LLP.	No
Sablefish	Vessels directed fishing for sablefish IFQ are exempt from LLP requirements. (<i>definition of license limitation groundfish at §679.2</i>)	Sablefish CDQ is not included in the LLP exemption for sablefish IFQ	Yes
Pollock	LLP is required (§679.4(k))	LLP is required (§679.4(k))	No

¹ Vessels fishing for halibut and sablefish IFQ, or halibut CDQ must retain all rockfish and Pacific cod, unless discard is required under 50 CFR part 679, subpart B, or by the State of Alaska.

² Retention is not required if the vessel is using catch accounting option 2, which relies on observer's species composition sampling for catch estimates.