



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service


P.O. Box 21668

Juneau, Alaska 99802-1668

November 4, 2004

MEMORANDUM FOR: The Record

FROM:


James W. Balsiger
Administrator, Alaska Region

SUBJECT:

Categorical Exclusion from Requirements to Prepare an Environmental Assessment for a Proposed Rule to Simplify Administrative Requirements Related to Quota Transfers, Eligible Vessels, and Alternative Fishing Plans Under the Western Alaska Community Development Quota Program

The subject proposed rule would revise regulations regarding quota transfers, eligible vessels, and alternative fishing plans for the Western Alaska Community Development Quota (CDQ) Program. These processes would be streamlined by removing some information requirements and the requirement that applications for these actions be reviewed by the State of Alaska (State) before submission to NMFS for action. The proposed changes also would remove some obsolete regulatory text. Three new requirements would be added which are that CDQ groups provide a copy of the approved eligible vessel form, and alternative fishing plan if applicable, to each approved eligible vessel; that the vessel operator maintain a copy of the approved form, and alternative fishing plan if applicable, onboard the vessel; and that a CDQ group notify the vessel operator if the vessel is removed from eligibility to fish for CDQ.

The regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1500-1508 and NOAA Administrative Order (NAO) 216-6 allow some actions to be categorically excluded from both further environmental review and the requirement to prepare an environmental review document if the action individually or cumulatively does not have the potential to pose significant impacts on the quality of the human environment. Section 6.03d.4 of NAO 216-6 specifically addresses the requirements for categorical exclusions for actions taken under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In addition, NAO 216-6 allows a categorical exclusion (CE) if a prior NEPA analysis was prepared for the same action and that analysis demonstrated that the action would not have a significant impact on the quality of the human environment (NAO-216-6, Section 5.05b).

For the reasons described below, I have determined that the proposed regulatory revisions, if implemented, would not individually or cumulatively have a significant effect on the human



environment. Therefore, this action is categorically excluded under NAO 216-6 and NEPA from both further environmental review and the requirement to prepare an environmental review document.

Description of the CDQ Program

The CDQ Program affects the human environment through the fisheries conducted by the CDQ groups to harvest CDQ allocations. The amount available for harvest by each of the six CDQ groups is determined by (1) the amount available for catch in the CDQ Program as a whole (the "CDQ reserves"), and (2) the percentage allocation of each CDQ reserve to individual CDQ groups. The alternatives under consideration would not change the process through which the CDQ reserves are established. The amount of CDQ catch available annually to each CDQ group is determined through a periodic, competitive allocation process. The proposed rule would not change this allocation process.

The annual CDQ reserves for groundfish, prohibited species, halibut, and crab are determined by the total annual catch limit for each species and the percentage of each catch limit allocated to the CDQ Program. The total annual catch limits are established by NMFS for groundfish and prohibited species, by the International Pacific Halibut Commission for halibut, and by the State of Alaska for crab. The percentage of each catch limit allocated to the CDQ Program is determined by the American Fisheries Act (AFA) for pollock (10%), the Magnuson-Stevens Act for crab (7.5%), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) for all other groundfish and prohibited species (7.5%, except 20% for fixed gear sablefish), and 50 CFR 679 for halibut (20% to 100%). The environmental impacts of the annual allocations of groundfish and prohibited species to the CDQ Program are addressed by NMFS in the NEPA documents supporting the annual groundfish specifications process. NMFS is not required by NEPA to prepare environmental review documents associated with halibut and crab because these catch limits are not established by Federal actions.

Previous NEPA Analyses

The CDQ Program began in 1992 with an allocation of 7.5 percent of the Bering Sea and Aleutian Islands Area (BSAI) pollock total allowable catch. This allocation was made as part of Amendment 18 to the BSAI FMP and Amendment 23 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). Amendments 18/23 implemented the initial "inshore/offshore" allocations of pollock in the BSAI and pollock and Pacific cod in the Gulf of Alaska. In March 1992, NMFS issued a supplemental environmental impact statement (SEIS) for Amendments 18/23 that analyzed the impact on the human environment of the pollock and Pacific cod allocations, including the pollock CDQ allocation. This SEIS provided a description of the physical, biological, economic, and social environments and analysis of the alternatives' impacts on groundfish stocks, bycatch, marine mammals, seabirds, coastal and marine habitat, the fishing industry, and fishing communities.

The administrative regulations governing the CDQ allocation process and oversight of the economic development aspects of the CDQ Program were implemented in 1992 (57 FR 54936; November 23, 1992). The proposed rule would revise several of these administrative regulations. An Environmental Assessment (EA) was prepared for the 1992 implementation of the administrative regulations (final EA dated December 7, 1992). In the EA, NMFS determined that "the CDQ program redistributes the harvest of fisheries resources but will not change the total amount landed" and that "[p]hysical impacts on the environment associated with any of these alternatives are not expected to differ significantly from the current fishery. Physical impacts are associated with differences in fishing gear used, locations where fishing occurs, processing locations, etc."

The administrative regulations for the CDQ Program were revised in 1998 when NMFS implemented Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (63 FR 30381, June 4, 1998). Amendments 39/41/5 implemented the groundfish and crab license limitation program and expanded CDQ allocations to include 7.5 percent of all BSAI groundfish, prohibited species, and crab. These additional CDQ allocations created the "multispecies" CDQ Program. The North Pacific Fishery Management Council prepared an EA for Amendments 39/41/5 (final EA dated September 9, 1997). Based on the EA, NMFS concluded that the license limitation program and the expanded CDQ allocations would not have a significant impact on the environment. With respect to the CDQ Program, the EA concluded "[T]he benefits of this type of fishery have been exhibited in the current pollock CDQ program where the result has been a slower paced fishery, higher value fisheries relative to the open access fishery, generally lower bycatch rates of PSC species, lower discard rates, and a more stable planning environment for the participants." Additionally, the CDQ Program as a whole was examined in the Programmatic SEIS for the Alaska Groundfish Fisheries (June 2004). The Programmatic SEIS analyzed the impacts of groundfish fishing, including fishing that occurs under the CDQ Program, that would result from a broad array of policy-level programmatic fisheries management alternatives on the biological and economic environments of the BSAI and GOA.

Environmental Impacts of the Proposed Action

The proposed action related to quota transfers and alternative fishing plans was originally analyzed and considered by the Council as an element of the regulatory amendments associated with Amendment 71 to the BSAI FMP. Amendment 71 addresses eight issues related to the administration and oversight of the economic development aspects of the CDQ Program and the process through which allocations to CDQ groups are made. Streamlining the reporting requirements for quota transfers and alternative fishing plans were considered under Issue 8 in the Amendment 71 analysis. The proposed rule's revisions to the process through which vessels and processors eligible to participate in the CDQ fisheries are approved by NMFS were not considered by the Council as part of Amendment 71. However, these revisions also are

administrative in nature and similar in impact and scope to the revisions proposed under Issue 8 of Amendment 71.

Prior to Council final action on Amendment 71 in June 2002, a CE was prepared (dated February 13, 2002) which examined the issues and alternatives presented in the Amendment 71 analysis, including those that are proposed in this action. The CE concluded that:

"The alternatives under consideration by the Council address the role of government in administration and oversight of the economic development aspects of the CDQ Program. They are administrative and procedural in nature and they would not change the impact of the harvest of CDQ allocations on the environment. Although some aspects of the alternatives are controversial, the controversy relates to administrative and policy issues associated with the role of government in oversight of the CDQ Program and the process through which CDQ allocations are made. These controversial issues are not associated with the potential environmental consequences of the alternatives."

After the Council's final action on Amendment 71 and while preparing the proposed rule for the regulatory amendments associated with Amendment 71, NMFS recommended to the Council that the eight issues in Amendment 71 be divided into separate regulatory and FMP amendment packages. Outstanding legal and policy questions related to the role of government in the oversight of the CDQ Program require further analysis and Council consultation on several issues in Amendment 71. Therefore, at its April 2004 meeting, the Council adopted NMFS's recommendation to move forward with two separate regulatory amendments for (1) the administrative issues considered under Issue 8 in Amendment 71, and (2) the FMP and regulatory amendments associated with allowing the CDQ groups to invest in non-fisheries related economic development projects (Issue 7). The remaining six issues under Amendment 71 will be further analyzed by NMFS and reconsidered by the Council at a future Council meeting. Because the issues associated with Amendment 71 were separated for proposed and final rulemaking, documenting the CE associated with this proposed action in a separate and updated memorandum is appropriate.

The regulatory revisions under consideration in the proposed action would revise and reduce reporting requirements for the CDQ groups for (1) transfer of annual quotas among the CDQ groups, (2) approval of alternative fishing plans by NMFS, and (3) registration of vessels eligible to participate in the groundfish CDQ fisheries. These proposed regulatory amendments are administrative and procedural in nature, they would not change the overall harvest authorized for the CDQ fisheries, and they would not change the impact of the harvest of CDQ allocations on the environment.

Conclusions

In assessing the potential significance of the impacts of an action on the human environment, NAO-216-6 (section 5.05c) requires a determination that the proposed action does not involve a geographic area with unique characteristics, is not the subject of public controversy based on

potential environmental consequences, does not have uncertain environmental impacts or unique or unknown risks, does not establish a precedent or decision in principle about future proposals, does not result in cumulatively significant impacts, and does not have any adverse effects upon endangered or threatened species or their habitats.

Because the proposed action is administrative and procedural in nature as described above, I have determined that the proposed regulatory revisions do not involve a geographic area with unique characteristics, are not the subject of public controversy based on potential environmental consequences, are not likely to have uncertain environmental impacts or unique or unknown risks, and would not have any adverse effects upon endangered or threatened species or their habitats. In addition, because the proposed regulations would not result in impacts on the environment, they would not establish a precedent or decision in principle about future proposals that would affect the human environment. Based on the information described in this memorandum, I have determined that the regulatory revisions under consideration in the proposed rule do not individually or cumulatively have any impact on the human environment.

E. O. 12898 addresses "environmental justice," and instructs each Federal agency to identify and address disproportionately high and adverse human health and environmental effects on minority and low-income populations. As environmental justice concerns affect the human environment, considering them in environmental review documents prepared under NEPA is appropriate. The proposed action is administrative and procedural in nature and, because it does not have any impacts on the human environment, it also would not cause disproportionately high and adverse human health or environmental effects on minority or low-income populations.

Attachment (February 13, 2002 CE)

cc: AKR NEPA Coordinator
NOAA NEPA Coordinator