

Draft for Secretarial Review

**Regulatory Impact Review/Initial Regulatory Flexibility Analysis
for a Regulatory Amendment to Simplify Administrative Requirements
Related to Quota Transfers, Eligible Vessels, and Alternative Fishing Plans
Under the Western Alaska Community Development Quota Program**

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Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) evaluates the economic costs and benefits, as well as the impacts on regulated small entities, of a proposed regulatory amendment to streamline the review and approval processes of quota transfers, eligible vessels, and alternative fishing plans for the Western Alaska Community Development Quota Program. This RIR/IRFA addresses the requirements of Presidential Executive Order (E.O.) 12866 and the Regulatory Flexibility Act.

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EXECUTIVE SUMMARY

This Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) evaluate two alternatives for regulations governing the Western Alaska Community Development Quota (CDQ) Program. An RIR is prepared to address the requirements of Presidential Executive Order (E.O.) 12866. That order requires an evaluation of the costs and benefits, and of the significance, of regulatory actions. An IRFA is prepared to address the requirements of the Regulatory Flexibility Act (RFA). The RFA requires an evaluation of the impacts of certain federal actions on small businesses, small government jurisdictions, and small non-profit organizations. The analysis also addresses consistency with the Magnuson-Stevens Fishery Management and Conservation Act, and E.O. 12898 related to Environmental Justice.

Alternative 1 is the status quo (no action alternative) and would not revise the CDQ regulations. Alternative 2, the preferred alternative, would revise CDQ regulations regarding quota transfers, authorization for vessels eligible to participate in the CDQ fisheries, and alternative fishing plans. The proposed revisions would streamline current processes by removing some information requirements and by removing the requirement that applications for these actions be reviewed by the State of Alaska, before submission to NMFS for action.

The preferred alternative also would reduce restrictions on the transfer of prohibited species quota (PSQ) among the CDQ groups to allow the CDQ groups to transfer PSQ at any time during the year, instead of, as currently required, just during the month of January. The CDQ groups also would be allowed to transfer PSQ alone, rather than being required to transfer PSQ together with other groundfish CDQ. Although the CDQ groups' fishing has not yet been significantly restricted by limits on PSQ transfers, it is possible that in the future the reduction of these requirements may allow the CDQ groups the added flexibility that might be needed to more fully harvest target species allocations.

Finally, the preferred alternative would add three new requirements: A CDQ group would be required to provide the NMFS-approved eligible vessel request, and alternative fishing plan if applicable, to the vessel operator. The vessel operator would be required to maintain the NMFS-approved request, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or offloading CDQ. A CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. These three additional requirements are proposed at the recommendation of NOAA General Counsel (GC), NMFS Enforcement, and the U.S. Coast Guard, to provide the necessary authorization for vessels to participate in the CDQ fisheries.

For Alternative 2, the preferred alternative, cost savings would occur from (1) streamlining the administrative process by removing the requirement that transfer requests, eligible vessels forms, and alternative fishing plans be submitted to the State of Alaska before being submitted to NMFS; and (2) removing information requirements on the eligible vessel form. Cost savings or increased profitability could occur in the future as a result of allowing PSQ to be transferred at

any time during the year and without being associated with a transfer of groundfish CDQ. Cost increases would be incurred by adding three new requirements for the eligible vessels. NMFS expects that the cost savings from Alternative 2 would exceed the cost increases. That is, the overall impact of the preferred alternative would be a net reduction in reporting requirements for the CDQ groups and a net reduction in administrative costs for the State of Alaska and NMFS.

The small entities that would be directly regulated by this proposed action are the 6 CDQ groups, representing the 65 Western Alaska communities that currently participate in the CDQ Program, and the owners and operators of the vessels participating in the CDQ fisheries. 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. Many of the 83 vessels and at least 3 of the 10 shoreside processors participating in the CDQ fisheries are small entities. Overall, the proposed action would reduce and simplify information and administrative process requirements for the CDQ groups. It would have no known adverse impacts on the profitability or competitiveness of small directly regulated entities.

1.0 REGULATORY IMPACT REVIEW

1.1 Introduction

This Regulatory Impact Review (RIR) evaluates two alternatives for regulations governing the Western Alaska Community Development Quota (CDQ) Program. The proposed revisions would simplify the processes for making quota transfers, identifying eligible vessels, and obtaining approval of alternative fishing plans by removing some information requirements and by removing the requirement that applications for these actions be reviewed by the State of Alaska (State) before being submitted to NMFS. In addition, three new requirements are proposed for eligible vessels participating in the CDQ fisheries.

1.2 What is a Regulatory Impact Review?

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

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

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

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

1.3 Statutory authority

The National Marine Fisheries Service (NMFS) manages the groundfish CDQ fisheries of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implement the FMP at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

1.4 Description of the CDQ Program

The CDQ Program was created by the Council in 1991, as part of the inshore/offshore allocations of pollock in the BSAI. A final rule implementing the administrative regulations for the CDQ Program was published on November 23, 1992 (57 FR 54936). By design of the Council, the CDQ Program is jointly managed by the Secretary of Commerce and the State of Alaska. The program was established to provide Western Alaska fishing communities the opportunity to participate in the BSAI fisheries that had been effectively foreclosed to them because of the high capital investment needed to enter the fishery. 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), as well as allowances for bycatch of prohibited species (salmon, halibut, and crab) while prosecuting CDQ target fisheries.

Through the CDQ Program, a portion of the BSAI catch limits for crab, halibut, groundfish, and prohibited species are allocated to eligible Western Alaska communities. 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 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%). These allocations to the CDQ Program are called “CDQ reserves.” The CDQ reserves are further allocated among the six CDQ groups, based on percentage allocations recommended by the State and approved by NMFS every three years.

The purpose of the CDQ Program is to provide resources for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of eligible communities. Currently, 65 communities participate in the CDQ Program, representing about 27,000 people in Western Alaska. These communities have formed six non-profit corporations (CDQ groups) to manage and administer the CDQ allocations, investments, and economic development projects. The CDQ groups use the proceeds derived from the harvest of CDQ allocations to fund a variety of fisheries-related projects and provide employment, training, and educational opportunities to residents of eligible communities. The CDQ groups prepare Community Development Plans (CDPs) that describe how CDQ allocations will be used to benefit the participating communities. The CDPs are

submitted to the State and NMFS as part of the process for allocating quota among the CDQ groups.

1.5 Purpose and need for the action

The objective of the recordkeeping and reporting requirements for the CDQ Program is to appropriately balance the requirements for conservation and management of the groundfish CDQ fisheries under the Magnuson-Stevens Act, with the requirements to minimize economic burdens under both the Magnuson-Stevens Act National Standard 7 (to minimize costs and avoid unnecessary duplication) and the Paperwork Reduction Act (to minimize the economic burden of recordkeeping and reporting requirements).

The current recordkeeping and reporting requirements related to quota transfers, eligible vessels, and alternative fishing plans were recommended by the State and supported by the Council and NMFS when the multispecies CDQ Program was implemented in 1998. At that time, the State, Council, and NMFS believed that a process involving the State and NMFS in the review of these actions was necessary to provide the State with information about how the CDQ groups were conducting their CDQ fisheries. Recently, the Council, NMFS, and the State evaluated these current recordkeeping and reporting requirements and identified several areas where the requirements could be reduced and three areas where additional requirements are needed. Over time, the State and NMFS have found that the State's involvement in prior approval of these actions is no longer necessary as information about quota availability on a day-to-day basis and the feasibility of alternative fishing plans is available only to NMFS. The requirements to submit these actions through the CDP process that involves both the State and NMFS are burdensome to the CDQ groups and both agencies.

The revisions to NMFS regulations proposed in Alternative 2 would benefit the CDQ groups by reducing the time, expense, and administrative effort associated with submitting to NMFS alternative fishing plans and requests for approval of eligible vessels and of quota transfers, and would require proposed and final rulemaking to implement.

1.6 Alternatives considered

1.6.1 Summary of alternatives considered

Alternative 1: No Action. Do not revise regulations for CDQ transfers, eligible vessels and processors, and alternative fishing plans

Alternative 2: Revise regulations for CDQ transfers, eligible vessels and processors, and alternative fishing plans. (The preferred alternative)

Alternative 2 is comprised of the following revisions to the CDQ regulations:

1. Allow CDQ groups to transfer groundfish CDQ and halibut CDQ by submitting a transfer request directly to NMFS and remove the requirement that these transfers be made as amendments to the CDP and that they be submitted to the State of Alaska for review before being submitted to NMFS.
2. Allow CDQ groups to transfer PSQ by submitting a transfer request directly to NMFS and remove the requirement that these transfers be made as amendments to the CDP and that they be submitted to the State of Alaska for review before being submitted to NMFS. In addition, allow the transfer of PSQ during any month of the year, and allow PSQ transfer without an associated transfer of CDQ.
3. Remove the requirement that “fishing plan” forms be a part of a group’s CDP and continue to require that CDQ groups obtain approval from NMFS for all vessels groundfish CDQ fishing, and for vessels equal to or greater than 60 feet (18.3 meters) length overall (LOA) that are halibut CDQ fishing, before these vessels participate in any CDQ fisheries. Add three new requirements 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.
4. Remove the requirement that a CDQ group obtain prior approval by the State and NMFS for all processors taking deliveries of groundfish CDQ.
5. Allow CDQ groups to submit alternative fishing plans directly to NMFS rather than as amendments to the CDP.

1.6.2 Detailed discussion of alternatives considered

Alternative 1: No Action

CDQ Transfers

To cooperatively increase fishing opportunities, a CDQ group may transfer all or part of its annual CDQ to another group by having amendments to their respective CDPs reviewed by the State and forwarded to NMFS for action. Amounts that are ten percent or less of a group’s annual CDQ may be transferred through the technical amendment process as described in 50 CFR 679.30(g)(5). Amounts in excess of ten percent may be transferred through the substantial amendment process as described in § 679.30(g)(4). 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 the State in writing that they wish to make a transfer.
2. The State must forward the proposed transfer to NMFS with its recommendations for approval or disapproval.
3. The transfer becomes effective when NMFS notifies the State in writing that the transfer has been reviewed and approved.

Because of the coordination required between the State and NMFS, this process can be time consuming, especially for transfers requiring a substantial amendment. If a substantial amendment is required, six copies of the amendment must be delivered to the State, and the members of its “CDQ team” must review the amendment before the State sends its recommendation to NMFS. As members of the CDQ team often travel, the substantial amendment process is particularly time consuming if team members must be contacted away from their offices and have copies of the amendments faxed to them. CDQ groups often wish to transfer quota on fairly short notice during the fishing season. The time necessary for the current review process is frequently at odds with the fast-paced nature of some groundfish fisheries or the availability of a CDQ harvesting partner.

Between 2001 and 2003, the CDP amendment process was used to transfer CDQ 72 times, requiring 144 CDP plan modifications (two for each transfer, one for the group transferring the quota and one for the group receiving the quota).¹ CDQ transfers occur throughout the year in response to: changes in, or the non-availability of, a group’s harvesting partner; the length of a particular non-CDQ fishery season; availability of a given target species; and, weather or seasonal conditions impacting smaller vessels. Typically, quota transfers are bundled, so that a single transfer amendment encompasses multiple species categories. Each amendment usually includes one or more target species and an associated amount of bycatch species in proportion to the amount of the target species being transferred. Slightly less than half the transfers represented more than 10 percent of a group’s quota and thus required substantial amendments to the CDPs.

PSQ Transfers

In addition to being allocated a portion of each CDQ reserve, each CDQ group is allocated a portion of each Prohibited Species Catch (PSC) limit for crab, salmon, and halibut as a PSQ. Crab and salmon PSQ rarely restrict the groundfish CDQ fisheries, and generally only prevent CDQ fishing in certain areas under specific circumstances. For example, if a group caught all of its chinook salmon PSQ, it would be prohibited from trawling in the Chinook Salmon Savings Area of the Bering Sea during certain times of the year. If, on the other hand, a group caught all

¹ To show the effect of only these proposed regulations, this calculation excludes crab transfers, because the State handles these, and also excludes non-specific reserve and “other species” transfers, as these are no longer being submitted due to a change in regulations in December 2003.

of its halibut PSQ prior to fully harvesting its groundfish, it would have to cease its fishing activities or risk exceeding its halibut PSQ. Thus, only halibut PSQ has the potential to prevent a group from fully harvesting its groundfish CDQ target species.

Based on the recommendations of the State and the Council, NMFS implemented strict regulations for the transfer of PSQ between groups. The State and Council recommended these regulations as necessary to hold the groups strictly accountable to their allocations to minimize bycatch, and to prevent CDQ groups from circumventing the allocation process by transferring so much PSQ that the basis for the allocations was undermined. Specifically, CDQ groups that wish to transfer PSQ must make the request for transfer during the month of January. The request to transfer PSQ also must be part of a request to transfer CDQ and represent an amount of PSQ reasonably required as bycatch for the associated CDQ transfer. A PSQ transfer of any amount requires a substantial amendment to a group's CDP. This effectively eliminates the possibility that CDQ groups can transfer PSQ among themselves during the course of the fishing year in response to needs arising from their actual harvesting performance or planned inter-group transfers of other groundfish CDQ species. Thus, other than in January, PSQ cannot be bundled along with other bycatch CDQ species for a given transfer of a target species from one CDQ group to another.

Halibut PSQ is intended to provide for the bycatch needs of directed groundfish fisheries and is allocated and accounted for separately from halibut CDQ. Most halibut bycatch occurs in the Pacific cod and flatfish fisheries and secondarily in the pollock, Atka mackerel, and Greenland turbot fisheries. Because none of the CDQ groups have harvested significant amounts of their flatfish quotas, they have needed only a portion of their halibut PSQ. Since the inception of the multispecies CDQ Program, 38 to 75 percent of halibut PSQ has remained unharvested each year and there have been no transfers of PSQ between groups. In general, flatfish prices have been low and the non-CDQ flatfish seasons have been open through much or all of the fishing year. Thus, the CDQ groups have probably been unable to develop their flatfish fisheries primarily due to factors external to the CDQ Program. Nonetheless, an inability to transfer PSQ between groups during the season may constrain CDQ fisheries in the future, especially to the extent that the CDQ groups are able to more fully harvest their flatfish quotas.

Fishing Plans - Eligible Vessels and Processors

CDQ allocations are made to the CDQ groups and not to individual vessels participating in the CDQ fisheries. To harvest CDQ quota, a vessel must have authorization from a CDQ group, the State, and NMFS. Before the operator of a vessel catches groundfish or halibut on behalf of a CDQ group, NMFS currently requires that each vessel (of any length) that will be fishing for groundfish CDQ, and each vessel equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing, be listed as an eligible vessel in the group's CDP by the group submitting a proposed fishing plan. In addition, NMFS requires that all shoreside processing plants or floating processors that will take delivery of groundfish CDQ be listed in a group's CDP on a proposed fishing plan. There are six different forms to choose from depending on the type of

vessel or processor, adding complexity to the process. NMFS currently does not require that a copy of the approved fishing plan form be maintained onboard a vessel fishing for CDQ or in a processing plant taking deliveries of CDQ groundfish.

These requirements, which are codified at § 679.30(a)(5), were implemented to provide very specific information about a CDQ group's fishing plans in its CDP and to provide NMFS information to better manage the CDQ fisheries. In the first few years of the multispecies groundfish CDQ fisheries (1998 through 2000), NMFS used some of the more detailed information on the fishing plan forms to determine if the vessel or processor participating in the CDQ fisheries was complying with new observer coverage and catch reporting requirements.

Changes to the lists of eligible vessels and eligible processors may be made only by substantial or technical amendments to the CDP. These amendments must first be submitted to the State which reviews and submits them to NMFS for action. Between 2001 and 2003, 6 substantial and 54 technical amendments to CDPs were submitted requesting changes to the lists of eligible vessels and eligible processors.

Alternative Fishing Plans

Accurate catch accounting is important to NMFS and the CDQ groups, because each CDQ group is allocated a specific quota for each TAC and PSC species category. This need for accurate accounting led NMFS and the Council to develop specific regulations for the CDQ Program concerning observer coverage, equipment requirements, and the standard sources of data that would be used to determine how much of a given quota has been harvested. However, NMFS and the Council wished to ensure that alternative methods of catch accounting could be proposed by CDQ groups and considered by NMFS. In order to allow this flexibility, a CDQ group is allowed to propose an alternative fishing plan for a given vessel as part of its CDP. A group may suggest the use of non-standard sources of data for catch accounting purposes, if these data provide equivalent or better estimates of CDQ harvest. A group may also propose the use of a single "level 2" observer on a catcher/processor using non-trawl gear, rather than the standard two observers, provided such an alternative fishing plan can demonstrate that a single observer will be able to sample all CDQ sets within the constraints on an observer's duty schedule.

Alternative fishing plans are proposed in the initial CDPs or as subsequent substantial amendments to the CDPs. Since the beginning of 2003 (the current CDP cycle), 13 alternative fishing plans have been approved. All plans have proposed the use of a single level 2 observer for non-trawl catcher/processors that wish to engage in limited CDQ fishing before or after non-CDQ fisheries. This has enabled those vessels to fish for CDQ without having to return to port just to pick up a second observer or to incur the expense of having a second, non-mandatory observer aboard during non-CDQ fishing. Each alternative fishing plan has been reviewed by the State as well as reviewed and approved by NMFS.

Alternative 2: Revise regulations for CDQ and PSQ transfers, eligible vessels and processors, and alternative fishing plans. (The preferred alternative)

Alternative 2, the preferred alternative, is comprised of the several actions listed in Section 1.6.1 and described in more detail below. NMFS initially proposed reducing requirements for quota transfers and alternative fishing plans as part of Amendment 71 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 71). Amendment 71 addressed eight issues related to 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 Council adopted NMFS's recommendations for regulatory amendments related to quota transfers and alternative fishing plans in its final action on Amendment 71, in June 2002.

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 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 which would allow 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 discussed with the Council at a future Council meeting. Alternative 2 in this analysis includes the Council's preferred alternative for Issue 8 in Amendment 71.

The preferred alternative also includes additional revisions to the process through which vessels eligible to participate in the CDQ fisheries are approved by NMFS. Revisions to the regulations governing vessel eligibility were not directly considered by the Council as part of Amendment 71. However, these revisions are being proposed by NMFS as part of the preferred alternative because they are related in nature and scope to the streamlining recommendations the Council made under Issue 8 of Amendment 71.

CDQ Transfers

Allow CDQ groups to transfer groundfish CDQ by submitting a transfer request form directly to NMFS. Remove the requirement that these transfers be made as amendments to the CDP and that they be submitted to the State of Alaska for review before being submitted to NMFS.

This measure would allow CDQ groups to submit CDQ transfer requests directly to NMFS without going through the technical or substantial amendment process. NMFS would review each request to ensure that the group providing CDQ had adequate quota available to transfer.

As the State is not involved in the day-to-day fishery management aspects of the CDQ fisheries, it does not have the information necessary to know whether to approve or disapprove a CDQ transfer request. This measure would remove the need for that review from State oversight. Following the approval or disapproval of a CDQ transfer request, NMFS would inform the State of the outcome of a given transfer request. The transfer process would become an in-season management function of NMFS, rather than a joint State-NMFS CDP-modification approval process. Transfers would still be effective only for the remainder of the calendar year in which a transfer occurs.

Because the CDQ groups would make their quota transfer requests directly to NMFS, the time required for the approval or disapproval of a transfer request could be reduced substantially. The transfer of small amounts of quota could potentially be approved in as little as one business day. NMFS would provide the State a record of quota transfers at the end of the year, so that the State could use this information to evaluate the annual performance of each CDQ group. To make a transfer request, each group could fax a form to NMFS, rather than the more complex and detailed submission required for a substantial or technical amendment to a CDP. This form is a revision of the current quota transfer form. By reducing the time and administrative workload required for the approval or disapproval of a CDQ transfer request, this measure would be expected to reduce operational costs for the CDQ groups and relieve a portion of the information reporting and application burden associated with the transfer process.

The Council recommended these regulatory revisions as part of its preferred alternative on Issue 8 of Amendment 71.

PSQ Transfers

Allow CDQ groups to transfer PSQ by submitting a transfer request form directly to NMFS. Remove the requirement that these transfers be made as amendments to the CDP and that they be submitted to the State of Alaska for review before being submitted to NMFS. In addition, allow the transfer of PSQ during any month of the year, and allow PSQ transfer without an associated transfer of CDQ.

This measure would allow CDQ groups to submit PSQ transfer requests directly to NMFS, as described above for CDQ transfers. It would allow PSQ transfer requests to occur at any time during a given year. Additionally, it would allow a group to request the transfer of PSQ without an associated transfer of CDQ. As the State is not involved in the day to day fishery management aspects of the CDQ fisheries, it does not have the information necessary to determine whether to approve or disapprove a PSQ transfer request. This measure would remove that review from State oversight. NMFS would review and take action on each PSQ transfer request. Transfers would still be effective only for the remainder of the calendar year in which a transfer occurs. This measure would reduce the time and administrative effort required for the approval or disapproval of a PSQ transfer request, and, thus, the cost to the CDQ groups, the State, and NMFS.

Allowing the transfer of PSQ during months other than January and not in association with a transfer of CDQ would not be expected to allow the CDQ groups to circumvent the allocation process. There would be no reason to transfer significant amounts of PSQ other than to meet the bycatch needs associated with a CDQ transfer or the in-season requirements of a particular CDQ fishery. Rather, additional collaborative CDQ fisheries could be developed by the CDQ groups in a manner similar to the Atka mackerel and Pacific ocean perch CDQ fisheries. In these, target species CDQ and associated bycatch CDQ are consolidated by transfers to one or two CDQ groups that have partners interested in harvesting the target species.

Without allowing a less restricted transfer of PSQ, additional fisheries in underutilized groundfish CDQ species could still develop. However, instead of quota being consolidated to one or two groups, a harvesting partner might have to partner with multiple groups if PSQ bycatch concerns were a significant factor in the development of a fishery, and PSQ was unable to be transferred and consolidated along with other groundfish species. This would have the same net effect (i.e. allowing the quota to be harvested) but would result in a much greater administrative workload for the harvesting partner, the CDQ groups, the State, and NMFS. A harvesting entity would have to develop partnerships and contractual arrangements with each group it wanted to fish for, each group would have to incorporate that harvester into its CDP and fishing plan, and, finally, both the State and NMFS would have to duplicate their review of the same harvester across multiple groups. These administrative and transaction costs diminish the overall “net” value derived from the CDQ allocations.

The Council recommended these regulatory revisions as part of its preferred alternative on Issue 8 of Amendment 71.

Fishing Plans - Eligible Vessels and Processors

Remove the requirement that “fishing plan” forms be a part of a group’s CDP. Continue to require that CDQ groups obtain approval from NMFS for all vessels groundfish CDQ fishing, and for vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing before these vessels participate in any CDQ fisheries. Three new requirements would be added: a CDQ group would be required to provide the NMFS-approved eligible vessel request, and alternative fishing plan if applicable, to the vessel operator; the vessel operator would be required to maintain the NMFS-approved request, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or offloading CDQ; and a CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ.

Remove the requirement that a CDQ group obtain prior review by the State and approval by NMFS of all processors taking deliveries of groundfish CDQ.

Alternative 2 would maintain the requirement that all vessels groundfish CDQ fishing and vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing be authorized by the CDQ group and approved by NMFS prior to participating in CDQ fisheries. In addition, it

would add three new requirements: a CDQ group would be required to provide the NMFS-approved eligible vessel request, and alternative fishing plan if applicable, to the vessel operator; the vessel operator would be required to maintain the NMFS-approved request, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or offloading CDQ; and a CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. NOAA GC, NMFS Enforcement, and the U.S. Coast Guard recommended the addition of these requirements for the CDQ fisheries and for vessels that will be fishing in the future under the allocation of Aleutian Islands pollock to the Aleut Corporation. This documentation would provide the U.S. Coast Guard and NMFS Enforcement with verification that a vessel that claimed to be CDQ fishing was in fact authorized to do so by the CDQ group (the quota holder) and NMFS. CDQ fisheries often occur at times when other fisheries are closed, so it is important that a vessel operator CDQ fishing can document his or her status when other vessels are prohibited from fishing.

Under Alternative 2, vessels participating in the CDQ fisheries would no longer be required to be listed in the CDPs. Also, changes to this list of eligible vessels would no longer be made by amendment to the CDPs. Instead, requests for approval of eligible vessels would be submitted by the CDQ groups directly to NMFS and used to generate a list of eligible vessels for each CDQ group. Information requirements for the approval request would be codified at § 679.32(n)(4) and are based on current information requirements for the fishing plans in the CDP.

Requirements would include a description of the vessel; contact information for the vessel; the type of fishing gear the vessel would use; and the method to be used to determine CDQ or PSQ catch.

A request for approval would be required for each vessel a CDQ group intends to use. Each group could remove a vessel at any time by notifying NMFS by letter of its intent to do so. Each CDQ group would be responsible for providing a copy of NMFS's approval to the operator of the approved vessels. Each vessel operator would be required to maintain a copy of NMFS's approval onboard the vessel when harvesting, transporting, or offloading CDQ.

The following information would no longer be required: information about processors that would be taking deliveries of CDQ; information about the expected target fisheries, average and maximum number of hauls or sets expected, average and maximum weight of hauls, average number of hooks expected per set, time expected to set and retrieve the gear; the number of observers that will be onboard the vessels; name and location of the processor that the catcher vessel will be delivering to; vessel type (e.g. catcher vessel, catcher/processor, or mothership); and whether the vessel operator also will be halibut CDQ or halibut IFQ fishing while groundfish CDQ fishing. Removing these requirements would reduce the information required to be collected and submitted for each vessel and processor, and, thus, would reduce the associated costs to the CDQ groups, vessel owners, and processors.

The CDQ groups would continue to be required to provide information in their CDPs about their general plans for harvesting the CDQ allocations. They would be required to provide a narrative

description of how the CDQ group intends to harvest and process its CDQ allocations, including a description of the target fisheries, the types of vessels and processors that would be used, the locations and methods of processing, and the CDQ group's proposed partners. The CDQ groups also would continue to be required to provide in their CDPs a description of all business relationships, which would include contracts with vessel owners and processors for harvesting and processing CDQ. New contracts or changes in existing contracts also would continue to be required to be submitted as amendments to the CDP.

Alternative 2 also would remove the requirement for prior approval of processors taking delivery of groundfish CDQ. This requirement was intended to provide the State and NMFS information about the processors that would be participating in the CDQ fisheries to ensure that they complied with observer coverage, and catch accounting and reporting requirements. However, NMFS has found that information provided through the CDPs about the eligible shoreside processors is no longer necessary because this information exists from reports collected from observers and directly from the shoreside processors (e.g. the shoreside processor's logbook and CDQ delivery reports). NMFS would continue to provide the State with information about processors which take CDQ deliveries through summary reports created from observer data, shoreside logbooks, and CDQ delivery reports.

Alternative Fishing Plans

Allow CDQ groups to submit alternative fishing plans directly to NMFS, rather than as amendments to the CDP.

Under this element of the preferred alternative, CDQ groups would no longer be required to have alternative fishing plans reviewed by the State and approved by NMFS via the amendment process. Similar to what is described for CDQ transfers, this measure would reduce the time required for the approval or disapproval of an alternative fishing plan, and, thus, the associated economic and operational costs to the CDQ groups. CDQ groups would submit alternative fishing plans directly to NMFS. NMFS would review them, take action, and inform the State of the outcome of each request. The content of alternative fishing plans relates to catch accounting and observer coverage requirements, which are items directly under NMFS's purview. However, the State has virtually no involvement in the catch accounting or observer coverage aspects of the CDQ Program. Because NMFS is responsible for the fishery management aspects covered by alternative fishing plans, the agency reviews the plans thoroughly. Thus, the requirement that the State review alternative fishing plans adds complexity, administrative cost, and time to the overall CDP and amendment review process. This measure would remove the necessity of that review from State oversight. Alternative fishing plans would be valid through the end of the year in which they were approved.

The Council recommended this regulatory revision as part of its preferred alternative on Issue 8 of Amendment 71.

1.7 Summary of the benefits and costs

A qualitative discussion of the benefits and costs of the alternatives are summarized in Table 1 below. For Alternative 2, the preferred alternative, cost savings would occur from (1) streamlining the administrative process by removing the requirement that transfer requests, eligible vessel forms, and alternative fishing plans be submitted to the State before being submitted to NMFS; and (2) removing information requirements on the eligible vessel form. Cost savings or increased profitability, associated with enhanced operational flexibility and responsiveness, could occur in the future as a result of allowing PSQ to be transferred at any time during the year and without being associated with a transfer of associated groundfish CDQ. Cost increases would be incurred by adding the three new requirements 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. These cost increases would be expected to be minor. NMFS expects that the cost savings to the CDQ groups from Alternative 2 would exceed any potential cost increases. The overall impact of the preferred alternative on CDQ groups would be a net reduction in reporting requirements, increased operational flexibility, enhanced potential for collaboration and coordination among CDQ groups, and an augmented ability to respond in a timely way to market changes. Administrative costs for the State and NMFS would also be reduced, with no appreciable loss of necessary data or management capabilities.

Table 1. Qualitative summary of benefits and costs associated with the alternatives.

	Alternative 1	Alternative 2 (the preferred alternative)
	<i>No action. Continue the current review and approval processes for quota transfers, fishing plans, and alternative fishing plans.</i>	<i>Streamline the review and approval process for quota transfers, eligible vessels and processors, and alternative fishing plans. Add three new requirements for eligible vessels.</i>

	Alternative 1	Alternative 2 (the preferred alternative)
Benefits	Baseline, no change in benefits.	<p>Streamlining these processes, by removing the requirement that the State review the requests before they are submitted to NMFS for action, would save time and money for the CDQ groups, the State, and NMFS. Streamlining should, nonetheless, enhance operational flexibility and responsiveness to changing conditions, improving the profitability of the CDQ group(s). Since the groups still have other administrative functions, this is likely to be a modest benefit.</p> <p>Cost savings or increased profitability could occur in the future as a result of allowing PSQ to be transferred at any time during the year and without being associated with a transfer of associated groundfish CDQ. The added flexibility provided by this action could allow coordination between CDQ groups in optimizing the use of available PSQ and CDQ allocations. This should benefit all parties (e.g., fishermen, processors, CDQ groups, and consumers).</p> <p>Removing fishing plans and alternative fishing plans from the CDPs would slightly simplify the submission of a new proposed CDP. This is likely a minor benefit.</p> <p>Removing the need for the State to review quota transfers, fishing plans, and alternative fishing plans would relieve some of the administrative cost of its responsibilities for oversight of the CDQ Program. This is likely a minor benefit.</p> <p>Reducing the amount of information submitted by the groups when they request these administrative procedures would reduce NMFS's administrative recordkeeping costs, as well as diminish the reporting burden on the CDQ groups. This is likely a minor benefit.</p>

	Alternative 1	Alternative 2 (the preferred alternative)
Costs	Baseline, no change in costs.	Three additional requirements would be added for eligible vessels. The CDQ groups would be required to provide a copy of the approved eligible vessel form, and alternative fishing plan if applicable, to each vessel operator. The vessel operator would be required to maintain a copy of the approved eligible vessel form, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or delivering CDQ. A CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ. These three additional requirements would increase costs to the CDQ group and the vessel operators. This increase in costs is expected to be negligible.
Net benefits	Baseline, no change in net benefits.	A monetary value of the benefits or costs of this action has not been estimated. However, the qualitative analysis strongly suggests the net benefits of this action are likely to be positive. NMFS expects that the cost savings, resulting from streamlining the administrative process and reducing information requirements, would be greater than any cost increase that might be associated with the three additional requirements proposed for the eligible vessels.
Action objectives	Does not meet the objective of this action.	This alternative meets the objective of streamlining various review and approval processes and removing unnecessary information collection requirements in current regulations.
E.O. 12866 significance	Does not appear to have the potential to meet the threshold for a “significant” action, as defined under E.O. 12866.	Does not appear to have the potential to meet the threshold for a “significant” action, as defined under E.O. 12866.
Note: Alternative 1 is the no action alternative and provides the baseline against which the costs and benefits for the action alternative have been estimated.		

1.8 Summary of the significance criteria

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

- 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.
- 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 2002, the most recent year for which complete, audited CDQ royalty information is available, was approximately \$46.4 million. Pollock CDQ royalties accounted for \$39.6 million of this amount, or 85 percent of total royalties. Harvests of other groundfish, crab, and halibut CDQ yielded the remainder of CDQ royalties. Historically, pollock CDQ has been by far the highest royalty generator for CDQ groups. Implementation of this action could positively impact the groundfish CDQ fishery in that it could increase cooperative fishing opportunities, but the additional amount of CDQ royalties that CDQ groups might receive under this alternative is unknown. Therefore, proposed regulatory changes associated with this action do not appear to have the potential to result in “. . . an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs the environment, public health or safety, or State, local, or tribal governments or communities...”

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

2.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

2.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) evaluates a proposed regulatory amendment to streamline the procedures regarding the review of requests for approval of quota transfers, eligible vessels and processors, and alternative fishing plans for the Western Alaska Community Development Quota (CDQ) Program. These requests are currently approved through the Community Development Plan (CDP) review process, or following review of amendments to the

CDP. Both processes involve review by the State of Alaska (State) before the information is submitted to NMFS. Decreasing the reporting burden imposed upon CDQ groups, associated with current information collection requirements cited above, and reducing the time necessary to prepare submissions would be expected to result in increased economic benefits accruing to the CDQ communities. The proposed amendment is the preferred alternative.

2.2 The purpose of an IRFA

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are 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 structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in "significant economic impacts on a substantial number of small entities" (as those terms are defined under RFA). Because, based on all available information, it is not possible to 'certify' this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

2.3 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;
- A description 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.

2.4 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.

2.5 What is this action?

Alternative 2, the preferred alternative, would make the following revisions to the existing (Alternative 1 *status quo*) CDQ regulations:

1. Allow CDQ groups to transfer groundfish CDQ and halibut CDQ by submitting a transfer request directly to NMFS and remove the requirement that these transfers be made as amendments to the CDP and that they be submitted to the State of Alaska for review before being submitted to NMFS.
2. Allow CDQ groups to transfer PSQ by submitting a transfer request directly to NMFS and remove the requirement that these transfers be made as amendments to the CDP and that they be submitted to the State of Alaska for review before being submitted to NMFS. In addition, allow the transfer of PSQ during any month of the year, and allow PSQ transfer without an associated transfer of CDQ.
3. Remove the requirement that “fishing plan” forms be a part of a group’s CDP and continue to require that CDQ groups obtain approval from NMFS for all vessels groundfish CDQ fishing, and for vessels equal to or greater than 60 feet (18.3 meters) length overall that are halibut CDQ fishing, before these vessels participate in any CDQ fisheries. Add three new requirements 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.
4. Remove the requirement that a CDQ group obtain prior review by the State and approval by NMFS of all processors taking deliveries of groundfish CDQ.

5. Allow CDQ groups to submit alternative fishing plans directly to NMFS, rather than as amendments to the CDP.

2.6 Reasons for considering the proposed action

A complete description of the purposes of this action can be found in Section 1.5 of the RIR, and is briefly summarized here. Under the current regulations governing the CDQ Program, CDQ groups must submit requests for approval of quota transfers, eligible vessels and processors, and alternative fishing plans to the State, before the information is submitted to NMFS. This affects the amount of documentation the groups must submit and the amount of time it takes for review of the groups' requests. The preferred alternative would reduce both the amount of documentation submitted by the groups and the amount of time needed to review their requests, by removing some information requirements and by removing the requirement that applications for these actions be reviewed by the State before being submitted to NMFS for approval or disapproval. The proposed addition of three new requirements for eligible vessels was recommended by NOAA GC, NMFS Enforcement, and the U.S. Coast Guard.

2.7 Objectives of, and legal basis for, the proposed action

The objectives of this action are:

1. Maintain recordkeeping and reporting requirements for the CDQ Program that provide the information necessary to manage the CDQ fisheries and to enforce NMFS regulations applicable to the CDQ Program.
2. Reduce the time, effort, and documentation involved in the process of making quota transfers, identifying eligible vessels, and obtaining approval of alternative fishing plans.
3. Maintain the overall economic and social goals and purpose of the CDQ Program as jointly managed by NMFS and the State under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

The legal basis for the proposed action was discussed in Section 1.3 of the RIR that accompanies this IRFA.

2.8 Number and description of small entities directly regulated by the proposed action

The entities that would be directly regulated by this proposed action are the 6 non-profit CDQ groups that currently participate in the CDQ Program and the owners and operators of vessels harvesting CDQ on behalf of the CDQ groups. 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 2002, the CDQ groups received a total of \$46.4 million from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 1.4 of the RIR associated with this action.

Many of the vessels and at least three of the shoreside processors participating in the CDQ fisheries are believed to be small entities, under the SBA criteria. As of June 8, 2004, the processors and vessels that were approved by NMFS as eligible to participate in the CDQ fisheries included:

- 10 shoreside processing plants
 - 1 mothership
- 28 trawl catcher/processors
- 20 longline catcher/processors
 - 6 trawl catcher vessels
- 18 longline catcher vessels
- 10 pot catcher vessels

Total number of vessels: 83

2.9 Impacts on regulated small entities

The preferred alternative would revise CDQ regulations regarding quota transfers, eligible vessels, and alternative fishing plans. These processes would be streamlined by removing some information requirements and the requirement that applications for these actions be reviewed by the State before submission to NMFS for action. These revisions would reduce the reporting burden on the CDQ groups, processors, and vessel owners and expedite the administrative approval process.

The preferred alternative also would reduce restrictions on the transfer of PSQ among the CDQ groups. These revisions would allow the CDQ groups to transfer PSQ at any time during the year, instead of just during the month of January. They also would be allowed to transfer PSQ alone, rather than being required to transfer PSQ together with other groundfish CDQ. Although CDQ groups have not yet been significantly restricted by either of these requirements, it is

possible that in the future the reduction of these requirements may allow the CDQ groups the added flexibility to more fully and efficiently harvest target species allocations.

The preferred alternative would add three new requirements. A CDQ group would be required to provide the NMFS-approved eligible vessel request, and alternative fishing plan if applicable, to the vessel operator. The vessel operator would be required to maintain the NMFS-approved request, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or offloading CDQ. A CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ.

Overall, the preferred alternative would have no known adverse impacts on the profitability or competitiveness of small regulated entities.

2.10 Recordkeeping and reporting requirements

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

All of the proposed revisions in the preferred alternative, which are described in Sections 2.5 and 2.9, are related to recordkeeping and reporting requirements. These requirements apply primarily to the CDQ groups, because it is the groups which submit the CDQ and PSQ transfer request forms, the request for approval of eligible vessel forms, and the alternative fishing plans. The CDQ groups also would be required to provide a copy of the approved eligible vessel form, and alternative fishing plan if applicable, to each vessel operator. The vessel operator would be responsible for maintaining a copy of the signed eligible vessel form, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or delivering CDQ. The professional skills that are necessary to prepare and submit the forms required from a CDQ group and to provide a copy of the signed form to vessel operators include (1) the ability to read, write, and speak in English, (2) the ability to use computer and communications equipment, (3) knowledge of the CDQ group’s fishing activities, including quota balances and contractual arrangements with vessel operators and processing plants, and (4) the authority to sign and submit documents to NMFS on behalf of the CDQ group. These responsibilities generally are fulfilled by a member of the CDQ group’s professional staff. The professional skills necessary for a vessel operator to maintain a copy of the signed authorization form onboard the vessel include (1) the ability to read or understand verbal instructions in English, (2) the organizational skills necessary to receive a document from the CDQ group or the vessel owner and maintain it in good, readable condition in a place on the vessel where it can be retrieved if requested by the U.S. Coast Guard or NMFS Enforcement.

2.11 Federal rules that may duplicate, overlap, or conflict with proposed action

An IRFA should include “An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule...”

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

2.12 Description of significant alternatives

An IRFA must include a description 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.

The objective of the recordkeeping and reporting requirements for the CDQ Program is to appropriately balance the requirements for conservation and management of the groundfish CDQ fisheries under the Magnuson-Stevens Act, with the requirements to minimize economic burdens under both the Magnuson-Stevens Act National Standard 7 (to minimize costs and avoid unnecessary duplication) and the Paperwork Reduction Act (to minimize the economic burden of recordkeeping and reporting requirements). The Council, NMFS, and the State evaluated these current recordkeeping and reporting requirements and identified several areas where the requirements could be reduced and three areas where additional requirements are needed. These revisions were incorporated as elements in a single preferred alternative which is summarized in section 1.6.1 of this analysis.

NMFS considered but did not identify any alternative to the preferred alternative (the proposed rule) that would meet both elements of the RFA’s definition of a significant alternative, that is, an alternative that both accomplishes the stated objectives of applicable statutes and minimizes any significant economic impact on small entities. For example, NMFS could have proposed an alternative to remove all recordkeeping and reporting requirements related to quota transfers, eligible vessels, and alternative fishing plans. Removing reporting requirements theoretically could reduce reporting costs, but the lack of standardized reporting requirements to affect quota transfers, to identify vessels fishing in the CDQ fisheries, and to provide information to NMFS about proposed alternative fishing plans would not be consistent with NMFS’s interpretation of its fishery conservation and management responsibilities under the Magnuson-Stevens Act.

For example, under an alternative removing reporting requirements, NMFS would have regulations that authorize quota transfers, but no regulations defining what information must be submitted to NMFS to make the necessary changes to the CDQ groups’ quota accounts. Quota transfer requests could come in by telephone or in writing and might not include all the information that NMFS would need to make the revisions to computer programs establishing quota account balances. NMFS could not make the quota transfers that the groups want without this information. Without information about the vessels that the CDQ groups authorize to fish on their behalf (the eligible vessels), NMFS would not have the information it needs to ensure that

catch made on behalf of a CDQ group was properly accounted for against the group's allocation. This situation could undermine NMFS's ability to manage CDQ catch within CDQ allocations, which would be in conflict with NMFS's conservation and management responsibilities under the Magnuson-Stevens Act. Without regulations defining the information NMFS needs in an alternative fishing plan, NMFS would have regulations authorizing the group to submit an alternative fishing plan for NMFS's review and approval, but no guidelines about what information must be submitted in order for NMFS to approve an alternative fishing plan. This situation would create confusion and reduce the CDQ group's ability to effectively apply for a cost-saving benefit available under NMFS's regulations.

NMFS could have also proposed only the elements of the preferred alternative (the proposed rule) rule that reduce reporting requirements without proposing the three additional requirements that were recommended by NOAA GC, NMFS Enforcement, and the U.S. Coast Guard. While this alternative might reduce the recordkeeping and reporting costs for the CDQ groups more than the preferred alternative, it would not include important elements needed for enforcement of the CDQ Program regulations, which would be inconsistent with NMFS's conservation and management responsibilities under the Magnuson-Stevens Act.

3.0 OTHER CONSIDERATIONS

3.1 Magnuson-Stevens Act - National Standards

Below are the ten National Standards as contained in the Magnuson-Stevens Act, and a brief discussion of the interaction of the alternatives with each of those National Standards.

National Standard 1 - Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery

Neither of the alternatives would change the process through which overfishing limits, total allowable catch limits (TACs), or optimum yields are established for the BSAI fisheries in general, including the CDQ fisheries. In addition, neither of the alternatives would change the way the CDQ fisheries are conducted. Therefore, the alternatives would have no effect on overfishing or optimum yield from the fisheries.

National Standard 2 - Conservation and management measures shall be based upon the best scientific information available.

Neither of the alternatives considered in this analysis would change conservation or management measures that apply to the BSAI groundfish, crab, or halibut fisheries, including the CDQ harvests in these fisheries. Therefore, this action does not affect the scientific information used to manage the fisheries or the use of that information in conservation and management.

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

This action does not affect the fishery management aspects of the BSAI groundfish, crab, or halibut fisheries, including the CDQ fisheries. Therefore, the action would not affect the method for determining the TACs or the distribution of the TAC among geographic management areas.

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

The CDQ Program allocates quota to eligible Western Alaska communities, as required by Section 305(i) of the Magnuson-Stevens Act. By design, this program provides direct benefits, through allocation of fishing quota, only to CDQ groups representing residents of certain rural Alaska communities that meet eligibility criteria first developed by the Council and implemented by NMFS in 1992, and then implemented through amendments to the Magnuson-Stevens Act in 1996. The CDQ allocations are not made to individuals and regulations prevent any one CDQ group from being allocated an excessive share of the CDQ reserve.

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

The amount of groundfish, prohibited species, halibut, and crab allocated annually to the CDQ Program is established in the Magnuson-Stevens Act, the AFA, and the FMPs. Further allocations of these species are made to each CDQ group, based on their application through a Community Development Plan (CDP). Under the current regulations, these allocations are made based on evaluation criteria developed by the State of Alaska, which include population, need, consistency of the CDP with the goals and purpose of the CDQ Program, past performance of the group in implementing its CDQ projects and providing benefits to the communities, and the potential for proposed CDQ projects to provide benefits to the communities. Economic efficiency, in terms of economic performance of the CDQ groups, is one of several evaluation criteria considered for making CDQ allocations among the CDQ groups. However, no changes to the annual amount allocated to the program or the process used to make the annual allocations to each group, is being considered in this action.

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

Neither of the alternatives considered in this analysis would change conservation or management measures that apply to the BSAI groundfish, crab, or halibut fisheries, including the CDQ harvests in these fisheries.

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

The preferred alternative would streamline current administrative processes by removing some information requirements and by removing the requirement that applications for these requests be reviewed by the State before submission to NMFS for action. The proposed regulations also would reduce restrictions on the transfer of PSQ among the CDQ groups. These regulatory amendments would reduce duplication by removing the requirement that forms and requests be submitted to both the State and NMFS. Overall, the revisions proposed would minimize the administrative costs of the CDQ Program to the CDQ groups, the State, and NMFS.

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

The CDQ Program was developed to benefit Western Alaska communities by allocating quota to CDQ groups representing eligible communities. The allocations were intended to provide the means for starting or supporting commercial fisheries business activities that would result in ongoing, regionally-based, fisheries-related economies. The alternatives addressed in this analysis will directly affect the 6 CDQ groups, representing the 65 Western Alaska communities that currently participate in the CDQ Program, by streamlining administrative processes and removing unnecessary reporting requirements. The only additional requirements proposed are those recommended as necessary by NOAA GC, NMFS Enforcement, and the U.S. Coast Guard. Specifically, the CDQ groups would be required to provide the approved eligible vessel form, and alternative fishing plan if applicable, to the vessel operator, who would then be required to maintain the approved form, and alternative fishing plan if applicable, onboard the vessel at all times while harvesting, transporting, or offloading CDQ. Additionally, a CDQ group would be required to notify the vessel operator if the vessel is removed from eligibility to fish for CDQ.

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

The preferred alternative proposes revisions to regulations governing the transfer of prohibited species “quota” among the CDQ groups. Pacific halibut, salmon, and crab are bycatch species in the CDQ groundfish fisheries and are designated as “prohibited species.”

The CDQ Program is allocated 7.5 percent of the BSAI prohibited species catch limits for halibut, salmon, and crab. These prohibited species allocations are further allocated among the six CDQ groups, based on percentage allocations recommended by the State of Alaska and approved by NMFS. Annual allocations of prohibited species to individual CDQ groups are called “prohibited species quota” or PSQ. The restrictions facing a CDQ group when it reaches a PSQ are similar to those that apply in the non-CDQ fisheries. Each CDQ group is prohibited from exceeding its halibut PSQ on penalty of closure of its directed groundfish fisheries. Specific time and/or area closures apply when a CDQ group reaches its salmon or crab PSQs.

CDQ groups are allowed, under current regulations, to transfer PSQ only during the month of January, and then only as part of a request to transfer CDQ. The amount of PSQ transferred must be an amount reasonably required as bycatch for the associated CDQ transfer.

The preferred alternative would reduce restrictions on the transfer of PSQ among the CDQ groups to allow the CDQ groups to transfer PSQ at any time during the year, instead of just during the month of January. The CDQ groups also would be allowed to transfer PSQ alone, rather than being required to transfer PSQ together with other groundfish CDQ. Although the CDQ groups’ fishing has not yet been significantly restricted by limits on PSQ transfers, it is possible that in the future the reduction of these requirements may allow the CDQ groups the added flexibility that might be needed to more fully harvest target species allocations.

While the preferred alternative may result in an increase in the total amount of prohibited species caught in the CDQ fisheries, the CDQ groups would continue to be restricted to the total annual amount of halibut PSQ allocated to them and the same time and area closures would occur once the PSQ for salmon and crab was reached. Therefore, the preferred alternative would not result in the CDQ groups increasing their bycatch amounts of prohibited species over the total amount allocated to them.

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

The alternatives do not affect the total catch in the CDQ fisheries, the type of gear, location, or seasons in which CDQ fisheries may occur. Therefore, the alternatives under consideration are not expected to have an impact on the safety of human life at sea.

3.2 Executive Order 12898 - Environmental Justice

E. O. 12898 focuses on environmental justice in relation to minority populations and low-income populations. The EPA defines environmental justice (EJ) as the: "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies." This executive order was spurred by the growing need to address the impacts of environmental pollution on particular segments of our society. E.O. 12898 requires each Federal agency to achieve environmental justice by addressing "disproportionately high and adverse human health and environmental effects on minority and low-income populations." The EPA responded by developing an Environmental Justice Strategy which focuses the agency's efforts in addressing these concerns.

In order to determine whether environmental justice concerns exist, the demographics of the affected area should be examined to determine whether minority populations and/or low-income populations are present, and if so, a determination must be made as to whether implementation of the alternatives may cause disproportionately high and adverse human health or environmental effects on these populations. Environmental justice concerns typically embody pollution and other environmental health issues, but the EPA has stated that addressing environmental justice concerns is consistent with NEPA and thus all Federal agencies are required to identify and address these issues.

The 65 participating Western Alaska CDQ communities comprise one of the most economically depressed areas of the nation, and thus a major goal of the CDQ Program is to allow these communities to accumulate sufficient capital from fishing activities in the BSAI to generate sustainable, fisheries-related, local economies. In addition, by definition, an eligible community must be certified by the Secretary of Interior as a Native village under the Alaska Native Claims Settlement Act. In total, about 84% of the population in these communities is comprised of Alaska Native residents (U.S. Census, 2000). Because the CDQ Program was specifically designed to foster fishery participation among, and direct fishery benefits toward, minority populations and low-income populations in the economically underdeveloped communities in Western Alaska, all of the directly affected entities (CDQ communities) would be considered both low-income and comprised of minority populations under E.O. 12898.

To the extent that any Federal action negatively impacts the CDQ program and communities, these may be considered environmental justice impacts. The existing conditions of the CDQ region are presented in the Steller Sea Lion Final Supplemental Environmental Impact Statement in Appendix F(4), and additional information relating to environmental justice issues specific to Alaska Native populations is in Section 3.12.2.9 and 2.5.1.4 (November 2001). However, the action proposed in this amendment is specific to the administration and policy aspects of the CDQ Program; thus, there are no environmental impacts from the preferred alternative. Additionally, because all of the directly affected entities are of similar demographics, there would not be disproportionate impacts to a specific minority or low-income population.

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