

and depressed exvessel prices that characterized the fishery in 1992, when the quota was taken in just 53 days. The increased commercial quota, combined with commercial vessel trip limits, would maintain the existing structure of the directed fishery for red snapper and the associated secondary industries in coastal communities. The increased TAC is at the upper limit but within the range of acceptable biological catch established by the Council's Stock Assessment Panel, and the revised target date for rebuilding the red snapper resource is within the target period specified in the FMP. The Council will continue to monitor the status of the resource through review of annual stock assessments and trends in the red snapper recruitment index to ensure that the goal of a 20 percent spawning potential ratio is achieved by the revised target date.

Accordingly, NMFS proposes to increase the annual commercial quota for red snapper to 3.06 million pounds (1.39 million kg) and to approve the increased TAC and revised target date, as authorized by 50 CFR 641.28.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of \$100 million used as a guideline for a "major rule."

The Council prepared a regulatory impact review (RIR) on this action. The conclusions of the RIR are summarized as follows: Theoretically, this action should result in an increase in the short-term benefits to both commercial and recreational sectors of the red snapper fishery. However, when compared with the projected harvest for 1992, the increased TAC would not substantially affect the amount of harvest from either sector, although the distribution of benefits and costs may change. The long-term impacts are positive. A copy of the RIR is available (see ADDRESSES).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because, as noted above in the summary of regulatory impacts, the 1993 harvest would not differ substantially from the 1992 harvest. Accordingly, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 27, 1992.

William W. Fox, Jr.,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.25, paragraph (a) is revised to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(a) Red snapper—3.06 million pounds (1.39 million kg).

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50 CFR Parts 672, 675, and 676

[Docket No. 921114-2314]

RIN 0648-AD19

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands; Limited Access Management of Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would allocate fishing privileges for Pacific halibut in and off of Alaska, and would implement proposed Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) area and proposed Amendment 20 to the FMP for Groundfish of the Gulf of Alaska (GOA). Final action on this proposed rule and the FMP amendments will be decided by the Secretary of Commerce (Secretary) after review and consideration of public comments.

These regulations are proposed to allocate future total catch quotas of Pacific halibut and sablefish among individual fishermen. Each quota share (QS) would represent a transferable harvest privilege, within specified limitations, and could be converted annually into an individual fishing quota (IFQ). Only fishermen granted IFQs would be authorized to harvest, within specified limitations, halibut or sablefish whenever and however such

harvests would be most beneficial to their commercial fishing operation.

These actions are intended by the Council to promote the conservation and management of halibut and sablefish resources, and to further the objectives of the Halibut Act and the Magnuson Act that provide authority for governing these fisheries.

DATES: Comments must be received at the following address no later than January 11, 1993.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 9109 Mendenhall Road, suite 6, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of proposed Amendments 15 and 20, and the final environmental impact statement/supplemental environmental impact statement (FEIS/SEIS) for halibut and sablefish IFQ programs, respectively, may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION: The proposed halibut regulatory action and Amendments 15 and 20 to the respective FMPs were prepared by the North Pacific Fishery Management Council (Council) and have been submitted to the Secretary for review under provisions of the Northern Pacific Halibut Act (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

These regulations are proposed to allocate future total catch quotas of Pacific halibut and sablefish among individual fishermen. Each quota share (QS) would represent a transferable harvest privilege, within specified limitations, and could be converted annually into an individual fishing quota (IFQ). Fishermen granted IFQs would be authorized to harvest, within specified limitations, halibut or sablefish whenever and however such harvests would be most beneficial to their commercial fishing operation. The proposed IFQ program would limit the entry of future fishermen into the affected fisheries to those persons willing to purchase the harvest privilege from a person who already possesses the privilege. The IFQ program is intended to resolve various conservation and management problems that stem from the current "open access" regulatory regime, which allows free access to the common property fishery resources and has resulted in excess capital

investment in the fisheries. If implemented, the proposed IFQ program would apply only to the fixed gear fisheries for halibut in and off of Alaska and sablefish off Alaska.

In addition, a Western Alaska Community Development Quota (CDQ) is proposed to help develop commercial fisheries in communities on the Bering Sea coast by allowing them exclusive access to specified amounts of halibut and sablefish in the BSAI area.

The Alaskan fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) and the affected human environment are described in the FEIS/SEIS and in the FMPs. Draft Regulatory impact reviews, initial regulatory flexibility analyses, and fishery impact statements that assess the potential economic and social effects of the proposed actions are incorporated in the FEIS/SEIS document.

Management Authority

The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington on March 29, 1979, and the Northern Pacific Halibut Act of 1982. While the IPHC has primary authority for managing the halibut resource for biological conservation purposes, the Halibut Act authorizes the appropriate Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary, limited access policies for the Pacific halibut fishery in Convention waters in and off of the State of Alaska that are consistent with criteria set forth in section 303(b)(6) of the Magnuson Act. "Convention waters" means the maritime areas off the west coast of the United States and Canada (Pub. L. 97-176). Therefore, the Council has authority to recommend policies affecting halibut resource allocation among U.S. fishermen in the maritime internal and coastal waters of Alaska and in the ocean waters over which the United States exercises fishery management jurisdiction. The Council does not have an FMP for halibut.

Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed in accordance with the BSAI and GOA

FMPs. Both FMPs were prepared by the Council under authority of the Magnuson Act. The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to the U.S. groundfish fisheries appear at 50 CFR part 620.

The Council is authorized by the Magnuson Act to establish a system for limiting access to a fishery in order to achieve optimum yield if, in developing such a system, the Council and Secretary take into account: (1) Present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels used in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations (16 U.S.C. 1853(b)). The Council's and the Secretary's authority to allocate fishing privileges also is governed by national standard 4 of the Magnuson Act (16 U.S.C. 1851). This standard stipulates that if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Background

On December 8, 1991, the Council recommended an IFQ program for management of the fixed gear sablefish and halibut fisheries in and off of Alaska. The Council's recommendation was the product of more than 3 years of analysis of the IFQ form of management as an alternative to the current open access system. Discussion of this form of management had been ongoing since the early 1980s. The decision to recommend an IFQ management alternative was based, in part, on a series of analyses of this and other management alternatives prepared by the Council. These analyses include: (1) An SEIS, dated November 16, 1989, which analyzed three alternatives to continued open access in the fixed gear sablefish fishery off Alaska (license limitation, annual fishing allotments, and IFQs); (2) a supplement to the SEIS, dated May 23, 1990, which analyzed more specific IFQ alternatives for the sablefish fishery; (3) a revised supplement to the SEIS, dated

May 13, 1991, which replaced the May 23, 1990, supplement and further analyzed specific IFQ alternatives for the sablefish fishery; and (4) an EIS, dated July 19, 1991, which analyzed various IFQ alternatives for management of the halibut fishery in and off of Alaska.

Although the Council decided on its preferred IFQ alternative at its meeting in December 1991, it decided not to submit the proposed amendments for Secretarial review until an additional analysis was completed and made available to the public and the Council prior to its April 1992 meeting. This additional analysis, which examined the potential impacts of the specific provisions of the combined sablefish/halibut IFQ program, was made available to the public and Council on March 27, 1992, 3 weeks prior to the Council's April meeting. At that meeting, the Council received additional public testimony on the analysis and on the IFQ proposal in general. A motion to rescind the December 1991 action to recommend the IFQ program failed. The March 27, 1992, analysis was published, following the April meeting, for an additional 45-day public comment period under the National Environmental Policy Act (NEPA) (57 FR 20826, May 15, 1992). This public review period ended on June 29, 1992, and comments received on the document are addressed in the FEIS/SEIS that has been submitted to the Secretary for review. The entire FEIS/SEIS is comprised of the original November 16, 1989, analysis as supplemented by the May 13, 1991, July 19, 1991, and March 27, 1992 analyses. Any part or all of the FEIS/SEIS is available from the Council (see ADDRESSES).

The Council has discussed limited entry options for various fisheries under its purview since the late 1970s. For example, a moratorium on entry into the Alaska halibut fishery was recommended to the Secretary by the Council in 1983. The halibut moratorium was recommended in response to progressively shorter seasons and other management problems associated with fishermen racing to harvest as much fish as possible before the catch limit is reached and the fishery closed. Such fishing behavior is symptomatic of excessive fishing effort and capital in a fishery. The 1983 halibut moratorium was disapproved by the Secretary, however, because it would not have substantially resolved the basic problem of overcapitalization in the halibut fishery.

Council consideration of limited access management for the sablefish fishery began in 1985. Driven by the increased market value of sablefish, this fishery was rapidly evolving into a race for fish similar to the halibut fishery. As a result of gear conflicts in the GOA sablefish fishery, the Council decided to recommend Amendment 14 to the GOA FMP, which allocated sablefish among gear types. In approving Amendment 14 in 1985, the Director, Alaska Region, NMFS (Regional Director), noted that NMFS was convinced that the rapid increase in fishing effort in the sablefish fishery was likely to continue. The Regional Director recommended that the Council begin immediately to address the problem by developing additional controls on fishing effort, including those that limit access to the sablefish resource. The Council responded by requesting the Secretary to publish a notice announcing a control date, after which anyone entering the sablefish fishery would not be assured of future participation if a limited access program were implemented. The published control date was September 26, 1985 (51 FR 5393, February 13, 1986).

The Council began exploring alternatives to open access by soliciting the views of the fishing industry. At its meeting in September 1987, the Council adopted a statement of intent that committed the Council to "develop strategies for license limitation or the use of individual transferable quotas in the sablefish fixed gear fishery." Public workshops were sponsored by the Council in early 1988 to gather public comments and to develop further feasible options to the current management regime. In December 1988, the Council decided that the status quo (open access) was unacceptable for the fixed gear sablefish fishery and expressed a desire to explore the options of license limitation and IFQs. In January 1989, the Council expanded its consideration of limited access alternatives to include all gear types fishing for all groundfish, crabs in the BSAI, and halibut in and off of Alaska. The public was notified of the Council's intent to prepare an SEIS for this purpose, and scoping comments were invited through April 30, 1989 (54 FR 7814, February 23, 1989; 54 FR 8230, February 27, 1989).

In November 1989, the Council prepared a draft SEIS that analyzed four options for future management of the sablefish fisheries off Alaska: (1) Continued open access, (2) license limitation, (3) IFQs, and (4) a combination system called annual fishing allotments (AFAs). The Council also identified 10 problems in the

sablefish fishery that the management alternatives were expected to address. These included allocation conflicts, gear conflict, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and fishing communities, and rural coastal community development of a small boat fleet.

Based on this draft SEIS, the Council decided that license limitation and AFAs were not viable alternatives to solve the problems facing the sablefish fixed gear fisheries. The Council discussed AFAs but determined that, because this alternative combined open access and a form of IFQs, it would result in a more complicated management program than either program alone and would not eliminate the problems associated with open access management. The Council discussion on license limitation concluded that a reduction in fleet size would be necessary to alleviate temporarily the problems in the sablefish fishery. It was apparent to the Council that such a reduction might not be achievable in an equitable manner. Moreover, the Council understood that a reduction in the number of vessels could be offset by an increase in the fishing power of each vessel, which would not substantially change the race for fish as the mechanism for allocating the total allowable catch (TAC) for the fixed gear sablefish fishery among competing fishermen. It is this race for fish that gives rise to many other problems in the fishery as discussed in the November 16, 1989, draft SEIS. Therefore, at its meeting in January 1990, the Council proceeded to refine its consideration of IFQ alternatives and conduct a more thorough analysis of these alternatives.

In April 1990, the Council reviewed a supplement to the draft SEIS, which compared specific IFQ programs to the open access alternative, and released the May 23, 1990, supplement to the SEIS for public review and comment. The Council discussed the IFQ alternatives at its meeting in August 1990, without reaching a consensus, and the IFQ issue was tabled until January 1991.

At its meeting in January 1991, the Council decided to consider two new IFQ alternatives. The resulting analysis revised and replaced the May 23, 1990, supplement and was made available for public comment on May 13, 1991. The four IFQ systems assessed in this analysis included a range of alternatives in terms of qualification periods, transferability restrictions, ownership limits, community development quotas,

and other features. In addition, the Council decided to consider similar alternative IFQ systems for the halibut fishery in and off of Alaska with the intent that a single IFQ program would apply to both fisheries. Hence, the Council also prepared an EIS for a halibut IFQ program in early 1991. The EIS for halibut IFQs was dated July 19, 1991, and released for a 45-day NEPA public review and comment period on August 2, 1991 (56 FR 37094).

At its meeting in September 1991, the Council provisionally recommended an IFQ management alternative for both fisheries. The Council recognized that differences existed between the two IFQ systems for halibut and sablefish fisheries and intended for them to be integrated. The Council also established an IFQ Implementation Team (Team) comprised of staff from State and Federal agencies and representatives from affected industry groups. The Team reviewed the Council's preferred IFQ for practical implementation difficulties, and prepared a draft implementation plan for Council and public review prior to final Council action at its meeting in December 1991. The draft implementation plan included descriptions of initial and annual allocation systems, enforcement and monitoring programs, and an estimated implementation budget. The plan was made available for public review, and a public hearing was held prior to the start of the December Council meeting. After receiving additional public comment and recommendations of the Implementation Team, the Council, on December 8, 1991, approved the halibut and sablefish fixed gear fishery IFQ alternative, which is the subject of this proposed rule.

Council staff prepared an additional supplement to the draft EIS/SEIS after the Council, at its meeting in January 1992, requested additional analysis of the potential effects of the preferred IFQ alternative for the halibut and sablefish fixed gear fisheries. This additional supplemental analysis was made available to the public on March 27, 1992. At its meeting in April 1992, the Council received additional public comment on the proposed IFQ program and the March 27, 1992, analysis, and reconfirmed its original decision to recommend the halibut and sablefish IFQ program to the Secretary. A 45-day NEPA public comment period on the draft EIS/SEIS was announced on May 15, 1992 (57 FR 20826).

The Regional Director made a preliminary evaluation of all documents relevant to the Council's IFQ recommendation and determined that they were sufficient in scope and

substance to warrant public and Secretarial review. The official "receipt date" of the Council's IFQ program recommendation is October 26, 1992. A notice of availability of the FMP amendment was published on November 3, 1992 (57 FR 49676).

Description of Proposed Management Measures

If approved by the Secretary, the proposed IFQ program for Alaskan halibut and sablefish fisheries would be implemented by changes in existing parts 672 and 675, and by a new part 676 in Title 50 of the Code of Federal Regulations (CFR). The new part to the CFR is proposed to simplify the potential implementation of limited access management regulations that would otherwise effect repetitive changes in two or more existing parts. Subpart A of proposed part 676 is reserved for regulations that would implement a moratorium on the entry of new fishing vessels into all of the fisheries under the Council's purview (except salmon). The Council approved this moratorium for Secretarial review on June 24, 1992. Proposed implementing regulations for the moratorium will be forthcoming. A description of the basic IFQ management measures being proposed, and their rationale, follows:

Definitions of Terms Specific to the IFQ Program

The proposed IFQ program would introduce several new terms defined at § 676.11. Some of these terms are similar to, but not exactly the same as, those used in 50 CFR parts 672 and 675. For example, the proposed term "catcher vessel" is identical to the existing term in parts 672 and 675 except that "fish" is substituted for "groundfish" in the proposed term. This is necessary to include halibut, which is not a "groundfish" as defined in existing regulations. Also, the proposed term "freezer vessel" is similar to the existing definition for "processor vessel." The key difference is that the proposed definition is based on the performance of a vessel during any fishing year while the existing definition is based on the capability of a vessel during the year for which it has been issued a Federal groundfish permit. This distinction was important to the Council because it wanted to allow a vessel that has the capability to freeze fish to land its catch of halibut or sablefish using catcher vessel IFQ (i.e., vessel categories B, C, or D as defined at proposed § 676.10(a)(2)).

One feature of the proposed IFQ program is that fishing privileges would

be allocated based on a person's catch history and characteristics of the harvesting vessel. The proposed term "person" is defined as either an individual or a corporation, partnership, association, or other entity. Any "individual" person must be a citizen of the United States and not a corporation, partnership, association, or other entity. A corporate "person" may be any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any state) that is a U.S. citizen. The proposed definition would serve the Council's intention of minimizing the accumulation of fishing privileges by foreign entities.

The proposed allocations would apply only to the fixed gear fisheries for sablefish and halibut. The term "fixed" gear" would include all pot gear and all hook-and-line gear including longline, handline, jig, or troll gear. Use of IFQs would still be subject to restrictions on gear types specified in parts 301, 672, and 675. For example, sablefish IFQ could not be used for sablefish caught with pot gear in the GOA because this gear type currently is prohibited in this area for catching sablefish. Likewise, halibut IFQ could not be used for halibut caught in pot gear anywhere because current IPHC regulations prohibit using any gear other than hook-and-line gear (50 CFR 301.16). The other most common type of fishing gear used in the groundfish fisheries, trawl gear, was explicitly excluded from the IFQ program for simplicity.

The essence of the proposed management program is the distribution of a share of the total catch quota of halibut and sablefish to qualified persons. This QS or "quota share" would be a person's total fixed gear landings (in pounds, by species, vessel category, and area) of halibut in the best 5 out of 7 years (1984-1990), and of sablefish in the best 5 out of 6 years (1985-1990). This qualifying poundage of halibut or sablefish would be calculated for each of these species which that person harvested during the qualifying period 1988-1990. The purpose of the QS is to serve as the basis for calculating each qualified person's IFQ for any one year; and the term "quota share" is defined as such in the proposed rule. This definition would implement the intended policy of the Council to consider past participation in the award of future harvest privileges. In short, fishermen with relatively high catch histories would receive a larger QS than fishermen with relatively low catch histories.

An IFQ or "individual fishing quota" is defined in the proposed rule as the

annual catch limit of halibut or sablefish that may be harvested by a person who is lawfully allocated as harvest privilege for those species. In practice, it would be calculated annually based on the QS. The principal distinction between a QS and an IFQ is that the QS would be a fixed number that represents a person's qualifying pounds, while the IFQ would vary from year to year depending on the total amount of QSs held by all persons and the TAC. A QS would represent a perennial harvest privilege based on past participation in the fisheries, and an IFQ would represent the amount of fish that the IFQ holder is authorized to harvest in any one fishing year, based (in part) on the QS.

The proposed term "IFQ crew member" would include any individual who has at least 5 months' experience working as part of the harvesting crew in any U.S. commercial fishery, and any individual who receives an initial allocation of QS. This definition is pertinent to the transfer constraints at § 676.21. The Council's intention is to require any person who wishes to enter the halibut or sablefish fixed gear fishery in the catcher vessel fleet to be an "individual" and to have commercial fishing experience. The rationale for this measure is to assure that IFQs remain in the hands of fishermen who have a history of past participation and current dependence on the fishery. The Council also intends to use the IFQ program to foster professionalism in the affected fisheries, which would generally improve safety at sea. The Council considered this measure to be unnecessary for the freezer vessel fleet. The Council reasoned that most vessels in the freezer vessel fleet are corporate operations, unlike the more common owner/operator vessels in the catcher vessel fleet. Requiring new entrants to the freezer vessel fleet to be individuals would be excessively burdensome to the companies that own and operate freezer vessels and would ultimately change the character of the freezer vessel fleet. The Council has no intent to change the current character of either fleet.

Initial Allocation of QS

Basic QS Qualifications

The initial allocation of QS under the proposed IFQ program would be to persons who either owned or leased a fishing vessel that made legal landings of halibut or sablefish in any QS qualifying year. The QS qualifying years are proposed to be 1988, 1989, or 1990. Hence, the determination of whether a person is eligible for an initial allocation of QS would depend on passing three tests: (a) does the person satisfy the

definition of "person" in § 676.11; (b) did the person own or lease a vessel at any time during the QS qualifying years; and (c) did the vessel make legal landings of halibut or sablefish harvested with fixed gear at any time during the QS qualifying years while the vessel was owned or leased by the person? Any person that can document an affirmative response to each question would be qualified for an initial allocation of halibut or sablefish QS under the proposed management program.

The Council established the criterion of vessel ownership or lease for an initial allocation of QS because it determined that vessel owners or leaseholders were principally responsible for the financial risk in undertaking a commercial fishing venture.

The Council recognized that hired masters of fishing vessels and other crew members also are instrumental in the success of failure of a fishing venture, and that they do so at considerable personal and financial risk. However, hired masters and crew have substantially less capital investment in the fishery than vessel owners and leaseholders. One of the objectives of the proposed IFQ program is to reduce excess capitalization in the halibut and sablefish fixed gear fishery. Hence, allocation of QS only to vessel owners and leaseholders is reasonable because it is their decision whether to reduce or increase capital investment in harvesting capacity.

Legal landings of halibut or sablefish harvested with fixed gear had to occur at any time during the period of 1988 through 1990 to qualify for an initial allocation. For purposes of this program, a "legal landing" would mean the harvesting of these species with fixed gear in compliance with State and Federal regulations, including IPHC regulations, at the time of the landing. The Council's rationale for using these 3 years for qualification purposes is to allocate harvesting privileges to present participants in the fisheries. The Magnuson Act, at section 303(b)(6), requires the Council and the Secretary to take into account present participation in the fishery that is under consideration for limited access management. The Council reasoned that if a fixed gear vessel owner or leaseholder had not made legal landings of halibut or sablefish since the end of 1987, then that person is not likely to be currently active in these fisheries as a vessel owner or leaseholder. Additionally, NMFS notes that several years could elapse between 1990 and the first year of implementing the

proposed IFQ program, if it is approved by the Secretary. The Council did not include 1991 or 1992 for qualification because it did not want to encourage speculative entry into these already overcrowded fisheries. Therefore, persons who entered the fixed gear fisheries for halibut and sablefish during these intervening years would not receive an initial allocation of QS.

Calculating Initial QS

If qualified for an initial allocation, the calculation of a person's initial QS would be based on that person's landing history over a broader range of years than the qualifying period. The initial QS of halibut would be based on a person's highest total landing of halibut for any 5 years of the 7-year base period 1984 through 1990. For sablefish, an initial QS would be based on the highest total landing of sablefish for any 5 years of the 6-year period 1985 through 1990. Each initial QS calculation would be specific to a regulatory area for which a catch limit of halibut or fixed gear sablefish is specified. The sum of all persons' halibut QSs and sablefish QSs for any regulatory area would be the respective halibut and sablefish QS pools for that area.

In developing this formula for determining initial QS, the Council intended to acknowledge long-term and consistent participation in the fisheries. Fishermen who produced relatively large catches consistently over the 6- or 7-years QS base period were intended to receive relatively large initial QSs; those whose catch histories showed less dependence on and participation in the fisheries were intended to receive relatively small QSs. However, this formula provides for discounting 1 (for sablefish) or 2 (for halibut) years of the lowest landings during the base period. The Council believes that this provision is necessary to discount the effects on a person's catch history of 1 or 2 years of relatively poor performance due to poor weather, injury, illness, the Exxon Valdez oil spill, or other unfortunate circumstance beyond the control of fishermen. The 2 years of lowest halibut catches would be discounted because the prevalence of small vessels in this fishery and extremely short fishing seasons subject halibut fishery participants to a greater risk of low catch history due to misfortune.

Vessel Categories

Each person eligible to receive QS would have it assigned to one of four vessel categories. The vessel categories would be based on the length of the vessel in which that person made fixed gear landings of groundfish or halibut in

the most recent calendar year during the period 1985 through September 25, 1991, and the fish product type landed. The four vessel categories would be as follows:

Category "A"—freezer vessels of any length;

Category "B"—catcher vessels greater than 60 feet (18.3 meters) in length overall (LOA);

Category "C"—catcher vessels less than or equal to 60 feet (18.3 meters) LOA for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) for Pacific halibut; and

Category "D"—catcher vessels that are less than or equal to 35 feet (10.7 meters) LOA for Pacific halibut.

Initial QS would be assigned to vessel category "A," freezer vessels, if a person's most recent fixed gear landings of groundfish or halibut were caught by that vessel and processed on board. QS for groundfish or halibut caught by a catcher vessel and processed by a freezer vessel would be assigned to the owner or leaseholder of the catcher vessel. The term "processing" is defined in existing regulations at 50 CFR 672.2 and 675.2 to include (among other things) freezing, but does not include merely heading and gutting fish or holding them on ice. If no groundfish or halibut were processed on board a vessel during its most recent year of participation, then the QS would be assigned to one of the catcher vessel categories.

Initial halibut QS would be assigned to vessel category "D" if a person's most recent halibut landings were harvested in a catcher vessel that was less than or equal to 35 feet LOA. If sablefish also were harvested in the same vessel category, however, then that person's sablefish QS would be assigned to vessel category "C."

If a fisherman simultaneously owned (or leased) vessels in more than one vessel category that made fixed gear landings of halibut or sablefish during their most recent year of participation, then his QS of halibut or sablefish would be assigned to each category in proportion to the harvests of these species made in each category. Persons who qualify for halibut or sablefish QS in more than one vessel category but did not make any fixed gear landings of one or the other species in their most recent year of participation would be assigned QS for both species to each vessel category in proportion to harvests of groundfish made in each category. The assignment of QS among vessel

categories is illustrated in Figures 2a and 2b in section 5.0 of the FEIS/SEIS.

The purpose of these vessel categories is to ensure that the fixed gear fishing fleet under the IFQ program remains relatively diversified and similar to the current fleet structure. This purpose is fulfilled by prohibiting the transfer of QS between vessel categories. The Council, in recommending this measure, responded to substantial public concern that harvesting privileges without such restrictions would be transferred to owners of large vessels. Public concern was expressed that consolidation of QS in the hands of large vessel owners would potentially disenfranchise the small vessel fleet and cause social and economic damage to coastal communities in Alaska that rely, in part, on that fleet as a source of local revenues. Maintaining the social and cultural framework relevant to the fisheries, in large part represented by the small boat fisheries, was a primary goal of the Council from the beginning of IFQ discussions.

NMFS notes that vessel category restrictions could diminish theoretical gains in fleet efficiency and could limit the flexibility of vessel owners in the commercial fishing business. Such potential economic losses should be offset by social or other benefits. Public comment is invited on the efficacy of the proposed vessel categories, whether there should be fewer or more, and on the method of assigning QS to vessel categories.

Initial Allocation Procedure

If the IFQ program is approved by the Secretary, NMFS will begin the administrative work necessary to make initial allocations of QS and carry out the IFQ program. An IFQ implementation plan was requested by the Council and developed by an agency-industry work group (IFQ work group). This plan is included in the FEIS/SEIS as section 5.0. Figure 1 in the plan illustrates the initial allocation process as envisioned by the IFQ work group. A brief summary of this process follows.

1. A unified database of halibut and sablefish fixed gear landings and vessel ownership would be developed by NMFS based on a variety of State and Federal data files.

2. A QS application period of no less than 180 days would be announced by notice in the *Federal Register* and other appropriate information sources. The Regional Director would send a QS application form to any person requesting one during the application period. The IFQ work group estimated about 12,000 potential QS applicants.

3. If a QS application request is received from a person with vessel ownership and catch history in the NMFS unified database, then the application form sent to that person would be partially completed with those data to the extent confidentiality rules allow. For example, landings of halibut or sablefish made by someone on behalf of a vessel owner could not be revealed to the vessel owner unless the individual who made those landings signed a waiver that released those data to the vessel owner. In addition, persons who have leased vessels would have to supply the required evidence of such a lease (§ 676.20(a)(1)) before the catch history of the leaseholder could be accurately determined.

4. Completed QS applications received by the Regional Director before the end of the application period would be acknowledged. If an application is insufficiently documented, the applicant would be notified and have 90 days to submit corroborating documents. All applicants would have only one opportunity to revise, correct, or submit corroborating data in response to a notice from the Regional Director of insufficient documentation.

5. Applications with data uncontested by the Regional Director or another applicant would be approved by the Regional Director. The Regional Director would then calculate each applicant's halibut and sablefish QS for each relevant area and vessel category based only on data that are uncontested by the Regional Director or another applicant. Any data that are contested would not be used for calculating initial QS until discrepancies are resolved to the satisfaction of the Regional Director.

6. Each applicant would be informed of the initial QS calculated by the Regional Director, and the sum of all initial QS for any area would become the QS pool for that area. Applicants who wish to contest their initial QS or disapproval of their QS application must appeal the decision of the Regional Director within 90 days of the date of issuing the initial QS or of the date of denial of a resubmitted application.

This initial allocation process is designed to resolve data discrepancies involving catch and vessel ownership or lease history efficiently. The Secretary understands that all relevant data may not be in the NMFS unified database. Official landings data records may be in error. Information on vessel lease contracts would not normally be part of any State or Federal database. Applicants for QS would have to provide copies of the necessary documents to demonstrate such errors and lease contracts. After acceptance by

the Regional Director of such documents, the NMFS database would be amended accordingly. In some cases, vessel owners would have to seek waivers to release catch data from fishermen who landed halibut or sablefish on behalf of, or while employed by, the vessel owner. Such fishermen could otherwise claim that they had a lease agreement with the vessel owner during the time they made the landings in question. However, if this were true, a would-be leaseholder also would have to produce acceptable documentation to support the claim. Arguments over catch history and vessel ownership or lease could continue for many years after the initiation of this process. Only uncontested data will be used to calculate each applicant's QS and the QS pool. The Secretary is particularly interested in public comment on this process and whether the proposed application time period is reasonable for completing the QS application and collecting any required documents to support the application.

Appeal of Initial Allocation

Details of the appeals process have not been fully developed. The Council intended limiting appeals to the issue of initial allocation of QS. For example, questions about the accuracy of catch data in the NMFS unified database or questions about vessel ownership or the existence of a vessel lease during the QS qualifying years could be appealed. The Council did not intend to involve the appeals process with, for example, questions about whether the IFQ program or the transferability of QS is good fishery management policy, or about enforcement and monitoring. However, the proposed limitations on use and transferability of QS and IFQ would require an ongoing administrative appeals process separate from that used to resolve enforcement cases.

Successful appeals of initial allocations would add QS to the QS pool of an area. An allocation of IFQ based on the revised QS of an appellant would be made only at the beginning of a fishing year when IFQ based on the QS pool is calculated.

Annual Allocation of IFQ

The maximum amount of halibut or sablefish that persons holding QS could harvest with fixed gear in any particular year, area, and vessel category (i.e., their IFQ) would be allocated annually to them by the Regional Director. The size of an IFQ for any area would depend on the amount of a person's QS, the size of the QS pool for that area, the size of the fixed gear TAC for that area, the amount

subtracted from the TAC for purposes of the CDQ program, and the amount of harvest over or under the IFQ allocated to the person in the previous year (see the proposed rule at § 676.20(f)). The annual IFQ allocation resulting from this calculation would be issued to each QS holder in the form of an IFQ permit after January 1 but prior to the start of the IFQ fishing season each year. Each IFQ permit would be specific for a year, area, and vessel category in addition to the maximum amount of either halibut or sablefish that may be harvested. The harvest limit specified on each IFQ permit would not change during the year for which it is issued except by approved transfer or by an emergency inseason adjustment of the fixed gear TAC, for example, to prevent overfishing as required by the Magnuson Act.

For purposes of annually calculating IFQ, the amount of any person's QS would be the amount held by that person as of noon, Alaska local time, on December 31 of the previous calendar year. Hence, the increase or decrease of a QS through approved transfers in 1995, for example, would not affect the IFQ based on that QS until 1996. Likewise, the QS pool for an area may increase or decrease during a year due to successful appeals or enforcement cases. However, the effect of any change in the QS pool on the amount of any person's IFQ would not be known until the following year.

The size of the fixed gear TAC will vary from year to year based on estimates of the halibut and sablefish biomass performed annually by IPHC and NMFS fishery biologists. The TAC of sablefish is apportioned between fixed gear and trawl gear in the BSAI and GOA management areas pursuant to §§ 672.24 and 675.24. Only the fixed gear portion of the TAC in both areas would be used for determining annual allocations of IFQs. The CDQ reserve proposed at § 676.25 also would be subtracted from the fixed gear TAC of halibut and sablefish in the annual calculation of IFQs.

Harvests of IFQ halibut or sablefish that exceed a person's IFQ would be considered an "IFQ overage." In addition to any penalties that may be assessed to QS holders for exceeding their IFQ, the Regional Director would deduct an amount equal to the overage from their IFQ in the year following determination of the overage. Likewise, unharvested amounts of IFQ that are less than 5 percent of the IFQ would be added to the allocation for the following year. This overage and underage provision is designed to address the difficulty of harvesting exactly the

amount of fish listed on an IFQ permit. The IFQ work group expressed concern that fishermen would resolve overages by discarding some of their catch and highgrading before making an IFQ landing. The IFQ work group recommended that subtracting small amounts of overage (i.e., up to 5 percent of the IFQ) from future IFQ allocations would reduce the incentive to highgrade the catch because it would provide fishermen with more flexibility in harvesting the precise amount of their IFQ. The Secretary anticipates that small amounts of IFQ overage would not result in significant penalties beyond the loss of an equivalent amount of IFQ in future years and would not biologically harm the resource. However, the value of landed overages of 5 percent or more would be forfeited and penalties could be substantial. The allowance of adding underages to a following year's IFQ allocation is intended to provide equitable treatment to QS holders who do not harvest their full IFQ by amounts less than 5 percent of their IFQ.

Transfer Provisions

The ability to transfer harvesting privileges among fishermen is a critical element in any individual quota program. Transferability can provide a means of reducing overcapitalization in a fishing fleet with minimal government intervention, and also provide a means of entry into the fishery. Unconstrained transferability could lead to an excessive share of harvesting privileges being held by a single individual or corporation. Also, it could lead to localized overfishing and other biological conservation problems.

In developing the proposed IFQ program, the Council heard substantial public concern expressed about the potential for transferable QS to cause social and economic disruption in Alaskan coastal communities. However, other concerns were expressed that constrained transferability would hinder the flexibility and choices of fishermen, and prevent achievement of many of the Council's objectives. The Council's proposed program attempts to balance these concerns partly through restrictions on transferability and partly through QS ownership limits. The Secretary especially invites public comment on whether the proposed transfer provisions are appropriate to meet the Council's objectives or are too restrictive.

Basically, the proposed IFQ program would allow QS and accompanying IFQ to be transferred consistent with the following four constraints:

1. The person that would receive transferred QS must be a U.S. citizen and, if receiving catcher vessel QS, also must be an IFQ crew member;

2. QS and accompanying IFQ cannot be transferred between regulatory areas;

3. QS and accompanying IFQ cannot be transferred between any catcher vessel categories; and

4. The transfer of catcher vessel QS is not a lease in excess of 10 percent of a QS.

These transfer constraints would be implemented through a requirement for the Regional Director to approve all transfers before they are effective, except transfers due to operation of law. This requirement also would provide the Regional Director with a means of tracking QS holdings for purposes of annually allocating IFQ.

The citizenship requirement is intended to prevent the consolidation of QS by foreign entities. Foreign interests are provided for under the Magnuson Act and the two FMPs by apportioning the TAC of all species first to domestic annual processing (DAP), then to joint venture processing (JVP), and finally to direct fishing by foreign vessels. Hence, JVP and foreign apportionments of the TAC would be available only if amounts of the TAC are surplus to DAP. No amounts of sablefish TAC have been surplus to DAP since 1988 in the BSAI area and since the early 1980s in the GOA. In recent years, the TACs of all species have been apportioned to DAP. Foreign or JVP fishing for halibut has never been allowed since this fishery has been managed by the IPHC.

The Council's rationale for requiring persons who receive QS by transfer to be "IFQ crew members" is given above under the definition of terms.

The restriction on transferring QS or IFQ between areas is for biological conservation purposes. Stock assessments of halibut and sablefish are developed on an area-specific basis. Although fishery scientists currently understand that there is one stock of sablefish and one of halibut throughout their range off Alaska, excessive harvesting in any one area could cause localized depletion or overfishing. Defining management areas for such wide ranging species is a common tool used to distribute evenly the effects of fishing mortality and prevent localized depletion. Preventing the transfer of QS between areas would assure that this management measure remains effective.

The restriction on transferring QS or IFQ among vessel categories is explained above under the discussion of initial allocation of QS to vessel categories.

Considerable public concern was expressed in opposition to leasing QS, although some public comments voiced concern that restrictions on leasing would be impracticable. Those opposed to any provision for leasing prefer to have QS remain in the hands of practicing fishermen. Leasing opponents argue that fishing privileges may otherwise be purchased by absentee owners who would use the IFQ program only for investment purposes. Opposition also was expressed to the possibility of retired fishermen leasing all of their QS to receive "mail box" income. The view was expressed that such fishermen should sell their QS to entering fishermen or those who are willing and able to use the QS themselves. On the other hand, opponents to restrictions on leasing claimed that leasing would give QS holders more flexibility in conducting their fishing business and would reduce the cost of entering the fishery. Moreover, they claim that leasing prohibitions would be difficult or impossible to enforce.

The Council recommended a temporary trail period of 3 years during which catcher vessel QS holders may lease up to 10 percent of their QS. In addition, no leasing restrictions were recommended for freezer vessel QS. The Council reasoned that allowing a small portion of a QS to be leased would not lead to the problems that concern leasing opponents but would provide a moderate increase in flexibility for QS holders. The freezer vessel fleet is a newer fleet with less catch history relative to the catcher vessel fleet. Hence, the freezer vessel fleet is likely to receive a smaller proportion of the total amount of QS available for any area. Therefore, the amount of QS available for transfer among freezer vessels is likely to be constrained. The additional flexibility that leasing would provide freezer vessel owners is justified under these circumstances. Moreover, the potential for absentee QS holders in this category was of less concern than in the catcher vessel categories.

The transfer of QS by lease would be administered in the same manner as a permanent transfer. An approved QS lease would temporarily increase the amount of QS and IFQ held by the person receiving the leased QS. All leased QS would cease to have effect on December 31 of the year in which the lease transfer was approved. Therefore, leased QS would have no effect on the calculation of IFQ for the following year.

Limitations on Use of QS and IFQ

The principal constraints on the use of QS and IFQ are intended by the Council primarily to limit consolidation of QS and to assure that practicing fishermen, and not investment speculators, remain as the "stock holders" of the fishery resource under limited access management. This purpose is perceived as important to maintain the current social and economic character of the fixed gear fishery, especially in the catcher vessel fleet in southeast Alaska. The principal management measures proposed to carry out this purpose, with certain exceptions, would: (a) limit the amount of QS that could be used by any person, (b) limit the amount of IFQ halibut or sablefish that could be harvested on any vessel, and (c) for catcher vessels, require the QS holder to be on board during fishing operations.

Limits on QS Use

No person, individually or collectively, would be able to use an amount of sablefish QS greater than 1 percent of the combined total fixed gear TAC or sablefish in the GOA and BSAI regulatory areas. In the area east of 140° west longitude, no person, individually or collectively, would be able to use more than 1 percent of the total amount of QS for this reporting area. In both cases, an exception would be provided for persons who received amounts in excess of 1 percent in the initial allocation of QS. For halibut, the comparable use limits would be 1 percent of the total amount of halibut QS for regulatory area 2C, one-half of one percent of the total for areas 2C, 3A, and 3B combined (roughly comparable to the GOA), and one-half of one percent of the total for all of area 4 (roughly comparable to the BSAI).

In its proposed FMP amendment, the Council states that no person may "own, hold, or otherwise control" QS or IFQ in excess of the specified limits. The proposed rule prescribes a limit on use of QS. The reason for this difference between the FMP and proposed rule language is that the Secretary would not be able to impose a limit on the amount of QS owned, held or controlled by an entity, but could impose a limit on how much of its QS is used. For example, a person may acquire QS through an inheritance or by court order (operation of law). Such a transfer would be beyond the Regional Director's authority to approve or disapprove. In this event, the person receiving QS would be required to notify the Regional Director of such a transfer pursuant to § 676.21(c). If the person is otherwise

eligible to use QS, then subsequent issuance of IFQ based on that QS would be subject to the specified use limits. The IFQ permit issued to this person, therefore, may not include all the IFQ that would be derived from the QS if there were no use limits. The only way to use QS is through an IFQ permit issued by the Regional Director.

The term "individually and collectively" was deliberately used by the Council to encompass the possibility of a person holding QS as an individual and having a proprietary interest in a corporation (or partnership) that also may hold QS. In this event, the person's proportionate interest in the corporation would be considered equal to the interest that person has in the corporation's QS, and that amount would be added to the QS that the person holds as an individual. The Regional Director would take the total, "individual and collective," QS into account when calculating the amount of IFQ that could be allocated to the individual (or the corporation) in any year. The Council believes that such QS use limits, implemented on an individual and collective basis, would prevent the aggregation of control over IFQ fisheries in the hands of a few operators. The Secretary invites public comment on the efficacy of this particular proposed measure.

Limits on IFQ Harvests by Vessels

No vessel would be allowed to harvest more than a specified proportion of the total catch limits for halibut and sablefish during any fishing year. An exception to this restriction is provided to persons who receive an IFQ allocation in excess of the prescribed vessel-harvest limits. Such persons would be allowed to harvest their IFQ on a single vessel during a fishing year.

For halibut harvests outside of regulatory area 2C, this restriction would limit any vessel from harvesting more than one-half of one percent of the combined total catch limits of halibut in all regulatory areas off Alaska during any fishing year. In regulatory area 2C, the vessel restriction would limit harvests to no more than one-half of one percent of the halibut catch limit for this area. In 1992, the total halibut catch limit for all regulatory areas off Alaska was 51,730,000 pounds (23,464 metric tons (mt)). If the proposed IFQ program were in effect in 1992, the maximum amount of halibut that could be harvested with a single vessel outside of area 2C would have been one-half of one percent of the total halibut catch limit, or 258,650 pounds (117 mt). The catch limit of halibut in area 2C for 1992 is 10,000,000 pounds (4,536 mt).

Therefore, the vessel catch limit under the proposed rule would have been 50,000 pounds (23 mt).

For sablefish outside of the regulatory area east of 140° west longitude, this restriction would limit any vessel from harvesting more than 1 percent of the combined fixed gear TAC of sablefish for all GOA and BSAI reporting areas during any fishing year. In the area east of 140° west longitude, the vessel restriction would limit harvests to no more than 1 percent of the sablefish fixed gear TAC for this area. In 1992, the total fixed gear TAC of sablefish for all GOA and BSAI reporting areas was 20,899 mt. If the IFQ program were in effect in 1992, the maximum amount of IFQ sablefish any person could harvest with a single vessel outside of the area east of 140° west longitude would have been 1 percent of 20,899 mt or 209 mt. The catch limit of sablefish on fixed gear in the area east of 140° west longitude for 1992 is 4,740 mt. Therefore, the vessel catch limit in this area under the proposed rule would have been 47 mt in 1992.

This proposed restriction is intended to supplement restrictions on the transfer of QS or IFQs between vessel categories. It would prevent the possibility of the IFQ fishery being conducted from a small number of large vessels. Again, this proposed restriction is in response to public concern expressed about too much consolidation of the current fishing fleet under the IFQ program and its socio-economic consequences. Despite the exception for using a single vessel to harvest IFQ allocations that exceed these limits, this restriction could prevent significant pooling of IFQ held by a vessel owner and crew members. In addition, a vessel that has reached its vessel harvest limits would not be allowed to retain halibut or sablefish caught incidental to a fixed gear fishery for Pacific cod, for example, even if the vessel operator and crew had sufficient unharvested IFQ and would otherwise be required to retain such catches. Also, a vessel that had reached its vessel harvest limit would not be allowed to harvest additional IFQ species if the vessel were sold to a new IFQ holder. NMFS requests public comment on the efficacy of this proposed measure.

QS Holder on Board

Except for initial recipients of QS, a key element of the proposed IFQ program is the requirement for catcher vessel QS holders to be on board the vessel during fishing operations and to sign the required landing report. The Council intended this measure to assure that catcher vessel QS would continue

to be held by professional fishermen after the initial allocation process instead of being acquired by investment speculators, and to assure that the catcher vessel fleet remained primarily an owner-operator fleet. The concern about investors is based on frequently expressed fears that the IFQ program could profoundly change the current socio-economic character of the fixed gear fishing fleet and the coastal communities in Alaska where this fleet is based. The Council did not extend this measure to holders of freezer vessel QS because this vessel category is a relatively small proportion of the overall fixed gear fleet and does not have the same socio-economic significance to Alaskan coastal communities.

This requirement would be implemented by requiring all individuals who harvest halibut or sablefish with fixed gear to have a valid IFQ card, to be on board the vessel at all times during fishing operations, and to sign the required IFQ landing report. An IFQ card identifies an IFQ permit holder to land halibut or sablefish for debit against the permit holder's IFQ. To use catcher vessel IFQ, the IFQ card holder must be the same individual who also holds the IFQ permit and the QS from which the associated IFQ is derived. NMFS expressly requests comment upon the appropriateness of this requirement, including impacts on potential crew members, when the holder of the QS and the IFQ permit is ill, or otherwise unable to be onboard (i.e., during jury duty). These requirements may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. Comments are requested on whether and how a procedure for designating a substitute should be implemented.

Sole proprietor commercial fishing businesses are not likely to have difficulty complying with this restriction because the vessel owner who receives the initial allocation of QS is likely to be the same individual who would be on board using the IFQ derived from that allocation. However, the Council recognized that many of these fishing firms may use hired masters to operate their vessel. The Council did not wish to constrain this option for these small businesses. Therefore, the Council recommends an exception to the QS-holder-on-board requirement if the individual who receives an initial allocation of catcher vessel QS: (a) owns the vessel on which the IFQ halibut or sablefish are harvested, and (b) is represented on the vessel by a master employed by the individual. The exception would not

apply to individuals who receive initial allocations of catcher vessel QS for halibut in regulatory area 2C or sablefish in the regulatory area east of 140° west longitude. Based on public testimony from residents of southeast Alaska adjacent to these areas, the Council perceived no need to extend the exception to these areas.

A similar exception is provided to corporations and partnerships that operate catcher vessels. A corporate holder of a QS could not be on board as an "individual" unless that individual were an employee of the corporation or partnership. Therefore, the Council recommends the same exception to the QS-holder-on-board requirement for such firms or "persons" as is applied to "individuals" (i.e., the person that receives an initial allocation of catcher vessel QS must: (a) Own the vessel on which the IFQ halibut or sablefish are harvested, and (b) be represented on the vessel by a master employed by the person).

Both exceptions would not be transferrable to subsequent buyers of the catcher vessel QS. However, persons to whom the exceptions apply could acquire more QS and use it, up to the use limitations described above. As applied to corporations and partnerships, the exception would cease whenever a change occurs in the corporation or partnership. Hence, a corporation that changes its ownership structure would be required to transfer its QS to an individual and comply with the QS-holder-on-board requirement after the change. The proposed rule (at § 676.22(j)(2)) defines such a change as an addition of any new shareholder or partner to the corporation or partnership after initial allocation of QS. The subtraction of a shareholder or partner and the addition of a court-appointed trustee to act on behalf of an incapacitated shareholder or partner would not be considered a change that would cause loss of the QS-holder-on-board exception. The intended effect of this provision is ultimately for all catcher vessel QS to be held by individuals who personally use the derived IFQ on board vessels fishing for the IFQ species.

Other QS Use Limitations

In addition to the QS use limitations described above:

1. The QS or IFQ specified for one regulatory area and one vessel category could not be used in a different area or category. This measure would be necessary to give effect to the separate area and vessel category allocations.
2. Halibut and sablefish IFQ could be used to harvest these species only with

fixed gear. Legal gear for harvesting halibut is hook-and-line gear (50 CFR 301.16). Any person who catches halibut with fishing gear other than hook-and-line gear must immediately return the fish to the sea with a minimum of injury. For example, a fisherman who holds halibut and sablefish IFQ in the BSAI and who catches both species with pot gear could use his sablefish IFQ to land the sablefish but would be required to discard his halibut. For sablefish, this measure would separate trawl gear from fixed gear and apply the IFQ program only to the fixed gear fishery. Annual apportionments of sablefish to trawl gear would continue to be harvested in an open access fishery.

3. Catcher vessel IFQ may be used on a freezer vessel, providing no frozen or otherwise processed fish products are on board at any time during a fishing trip on which catcher vessel IFQ is being used. This provision is intended to enhance opportunities for IFQ crew members. The Council assumed that most IFQ crew members who enter the fishery by purchasing QS would purchase catcher vessel QS because those QSs would be in greater supply and potentially less expensive than freezer vessel QS. However, the Council did not want to enhance opportunities to process fish of any species offshore and thereby deprive shore-based plants the opportunity to process those fish. Therefore, when catcher vessel QS is used on board a freezer vessel, all fish of any species would have to be landed as unprocessed product. Processing of IFQ species harvested with catcher vessel QS would not be allowed on board the vessel using those QSs. The reverse situation, using freezer vessel IFQ on a catcher vessel, would not be allowed. Moreover, a catcher vessel would not be allowed to land any IFQ species as frozen or otherwise processed product.

4. Fishing under the proposed program for halibut and sablefish is, expected to result in an incidental catch, or bycatch, of other species and vice versa. In addition, a bycatch of small halibut (i.e., less than the legal size of 32 inches (81.3 cm) specified at 50 CFR 301.12) is likely in halibut and other fixed gear fisheries. Such undersized halibut could not be retained and would not be counted against an IFQ. Hooking mortality of halibut is relatively low if the animal is carefully handled and returned to the water immediately with a minimum of injury. The bycatch of halibut in fixed gear fisheries for other species is controlled with prohibited species catch (PSC) limits. The Council recommended

temporary suspension of existing PSC limits of halibut applicable to fixed gear fisheries. The Council reasoned that maintaining the halibut bycatch limits could undermine the success of the program if IFQ fishermen were prevented from harvesting their allocation because the fishery was closed due to achievement of the bycatch limit. Without suspension of the halibut PSC limit, the bycatch of halibut in non-IFQ fisheries could cause early exhaustion of the PSC limit. If this were likely, it would result in a race for fish (i.e., PSC halibut) in one of the IFQ fisheries. Preventing the need to race for fish is one of the objectives of the proposed IFQ program. In addition, some halibut that would have been counted as bycatch in an open access fishery would be retained under the IFQ program. The remaining halibut bycatch mortality is not likely to be any greater than it is currently under open access management. NMFS would monitor closely the halibut bycatch under the IFQ program to determine whether the imposition of bycatch controls under the IFQ program is necessary.

Initial allocations of QS probably would not yield an IFQ large enough for many fishermen to conduct a full-time directed fishery for either halibut or sablefish throughout the IFQ fishing season. Therefore, many IFQ fishermen are expected to use their IFQ to retain their bycatch of halibut or sablefish in fisheries for other species. If the other species have more market value than the bycatch of IFQ species, fishermen would have an incentive to discard the bycatch of IFQ species. To prevent this practice, the proposed rule would prohibit the discard of IFQ halibut or sablefish from any catcher vessel when any IFQ holder on board has unused halibut or sablefish IFQ for that vessel and the area in which the vessel is operating. Exceptions to this prohibition include: (1) The discard of undersized halibut; (2) the discard of halibut caught outside of an open fishing period; (3) the discard of sablefish in excess of bycatch allowances; and (4) the discard of halibut or sablefish in excess of proposed vessel limits. In addition, the Council chose not to include freezer vessels in this prohibition because the processing technology used on such vessels often does not allow the retention of any bycatch.

Further, the proposed rule prohibits the discard of Pacific cod and rockfish taken as bycatch in a directed fishery for IFQ halibut or sablefish. This requirement is intended to prevent the reverse circumstance of discarding these species to save room for higher valued IFQ halibut or sablefish. Discarded

Pacific cod and rockfish would be wasteful of these resources because they are unlikely to survive hooking and rapid changes in depth. The only exception to this prohibition would occur when the Regional Director closes directed fishing for these species or determines that these species should be treated in the same manner as prohibited species to prevent exceeding their TACs.

Monitoring and Enforcement Provisions

A discussion of the monitoring and enforcement plan is provided at section 5.4 (page 5-25) of the FEIS/SEIS. A summary of several important provisions follows:

IFQ and Registered Buyer Permits

In addition to existing permit and licensing requirements (at 50 CFR 301.3, 672.4, and 675.4), an IFQ permit would be required of any person that harvests a QS allocation of halibut or sablefish. An IFQ permit would authorize the harvesting of that allocation up to prescribed use limits. The IFQ permit would identify the QS holder and the amount of sablefish or halibut that may be harvested by area and vessel category in which the permit holder is authorized to operate. All fishing vessels that harvest IFQ species would be required to have on board a copy of the IFQ permit available for inspection by an authorized officer.

The IFQ permit is a necessary mechanism for authorizing the use of a QS, or portions of a QS, and for sanctioning the continued use of all or part of a QS. On board inspections at sea that reveal amounts of IFQ halibut or sablefish that are in excess of the IFQ permit would indicate potential violations of IFQ rules. Sufficient IFQ for the amount of IFQ species to be harvested should be available before beginning an IFQ fishing trip to prevent fishermen from speculating on the purchase of IFQ or lease of QS before landing their IFQ fish.

In addition to an IFQ permit, all vessels that harvest IFQ species would be required to have on board one or more individuals who hold an IFQ card. This card would authorize the individual to whom it is assigned to land IFQ halibut or sablefish for debit against the permit holder's IFQ. The individual identified on the IFQ card may be the same individual listed on the IFQ permit. However, a corporation or partnership may authorize the issuance of several IFQ cards to individuals employed by the firm. As such, the IFQ card would function similar to a commercial credit card, several of which could be issued to

members of a family for debiting the purchase of merchandise against a single credit account. Each IFQ card also would identify an IFQ account against which the holder of the card could land IFQ halibut or sablefish. Holders of IFQ cards could pool their authorized amounts of halibut or sablefish harvests for use on a single vessel (up to the vessel harvesting limit). As a result, IFQ crew members are expected to establish a market for their services and a cadre of professional fishing vessel crew members.

Any person who receives IFQ halibut or sablefish from the person(s) who harvested it would be required to have a registered buyer permit. This permit would authorize a person to receive IFQ species from an IFQ card holder or make a landing of IFQ species. All halibut or sablefish harvested under the IFQ program would have to be landed to or by a person with a registered buyer permit. A registered buyer permit would be required to be present at the location of an IFQ landing and made available for inspection by an authorized officer. The purpose of such a permit is to establish a point at which reporting, accounting, and auditing of landed IFQ species will begin. The permit also would provide a sanctioning mechanism in response to violations of reporting and landing requirements.

A person who wishes to sell his harvest of IFQ halibut or sablefish directly to consumers may do so if they hold an IFQ permit, card, and a registered buyer permit. All required reports would have to be made from such dockside sales before any fish are sold or removed from the immediate vicinity of the vessel. Receipts would have to be issued to all persons who receive fish directly from the fisherman in this manner. This provision would allow a common practice to continue while maintaining a capability to monitor and enforce landing requirements.

Landing of IFQ Species

The proposed rule defines an "IFQ landing" as the unloading or transferring of any IFQ halibut or sablefish or products of those species from the vessel that harvested such fish. A transfer of IFQ halibut or sablefish from the harvesting catcher vessel to a freezer vessel would thus constitute an IFQ landing. This definition differs from the term "landing" as used in 50 CFR parts 672 and 675, which is simply the off-loading of any fish. The reason for this difference is the need to begin reporting requirements and accounting of IFQ species at the first off-loading of

such fish. This is the most critical point for monitoring and enforcement purposes in the movement of harvested fish from the ocean to market.

A capability to monitor an IFQ landing and enforce provisions of the IFQ rules is necessary to all IFQ landings. A requirement to give prior notice of an IFQ landing is proposed to satisfy this need. The operator of any vessel making an IFQ landing would be required to give NMFS notice of the landing no less than 6 hours before landing any IFQ species. No transfer of any fish from the vessel making the landing would be allowed until at least 6 hours after giving notice of the landing, unless permission is granted from an authorized officer. The IFQ permit would include instruction on how to give this notice.

The intent of this requirement is to give monitoring and enforcement personnel an option of observing the landing and inspecting the vessel making the landing. The real potential of such monitoring is expected to inspire most fishermen to comply with reporting and landing requirements. Prior notice of landing reports could be made whenever the vessel operator can determine the expected time of arrival of the vessel at the landing location. Hence, unproductive vessel time spent waiting for its landing time should be minimized by advance planning of the vessel operator.

Any person that makes an IFQ landing outside the State of Alaska would be required to (a) have a registered buyer permit and (b) receive written clearance for the vessel on which the IFQ halibut or sablefish are to be transported to the landing location. This vessel clearance would be required prior to departing waters in or adjacent to the State of Alaska. An estimated weight of the IFQ species would be required for clearance and a vessel seeking clearance would be subject to inspection of all fish as well as pertinent log books, permits, or other documents on board the vessel. Such vessel clearance would be issued by NMFS enforcement officers only at specified ports. The 16 ports specified in the proposed rule for this purpose were selected based on recent records of the volume of halibut and other groundfish landed in them and on their geographical locations.

The intent of this requirement is to assure that IFQ halibut and sablefish landed outside Alaska are adequately monitored, and that NMFS would have an opportunity to ensure compliance with IFQ rules before a vessel making such a landing is physically outside the range of enforcement. The primary ports

for vessel clearances were chosen to funnel such vessels through ports at which NMFS enforcement personnel would be permanently stationed. The requirement to have a registered buyer on board a vessel making an IFQ landing outside of Alaska is to assure that required landings reports would be submitted. This provision would not restrict the landing of IFQ halibut or sablefish to any registered buyer at any port.

Western Alaska Community Development Quota (CDQ)

The CDQ Program is proposed in conjunction with the IFQ program to provide fishermen who reside in eligible western Alaska communities a fair and reasonable opportunity to participate in the BSAI Pacific halibut and sablefish fisheries. This CDQ program is intended to help provide stable, long-term employment in eligible communities by guaranteeing them a definite proportion of the halibut and sablefish resources. This should improve their ability to capitalize and expand their participation in salmon, Pacific herring, and other near-shore fisheries while harvesting halibut and sablefish CDQs. The CDQ program would diversify the local economies and help to alleviate the growing socio-economic crisis within these communities.

Program Description

The NMFS Regional Director would hold the designated percentages of the annual fixed gear TAC for sablefish and halibut for the CDQ Program as described below. These amounts would be apportioned to eligible Alaska communities that submit a Community Development Plan (CDP) that is approved by the Governor of the State of Alaska (Governor) and submitted to the Secretary after consultation with the Council. The CDPs must satisfy the objections or the CDQ program and be consistent with the CDQ regulations and other applicable law. The portions of halibut and sablefish TACs for each management area not designated to CDQ fisheries would be allocated as QS and IFQs pursuant to the general IFQ program. For sablefish, the NMFS Regional Director will hold 20 percent of the annual fixed-gear TAC of sablefish for each management area in the BSAI for the CDQ program. Not more than 12 percent of the sablefish reserve may be designated for a CDP.

The amounts of quota to be set aside for the halibut CDQ program vary by IPHC area and are exclusive of issued QS under the IFQ program. For IPHC management area 4B, 20 percent of the halibut quota would be made available

for communities located in or proximate to the management area. For IPHC management area 4C, 50 percent of the halibut quota would be made available for communities located in the management area. For IPHC management area 4D, 30 percent of the halibut quota would be made available for communities located in IPHC management areas 4D and 4E. For IPHC management area 4E, 100 percent of the halibut quota would be made available to residents of communities located in or proximate to that management subarea, and trip limits of less than 6,000 pounds will be enforced. The term "proximate to" an IPHC management area is defined as within 10 nautical miles from the point where the boundary of the IPHC regulatory area intersects land. These proportions appear high; however, the halibut catch limits in these areas are relatively low. In 1992, the total catch limit to halibut in areas 4B, 4C, 4D, and 4E combined was more than 4,000,000 pounds (1,828 mt), or about 7.8 percent of the total halibut catch limit of all IPHC areas in and off of Alaska. In addition, these proportions roughly approximate recent catches of halibut by residents of these areas. For example, local fishermen in area 4C harvested an average of 42 percent of the total 4C catch over the 6-year period 1984-1989 and an average of 60 percent over the 2-year period 1988-1989.

Those persons who would otherwise have received a full complement of QS for either sablefish or halibut in any management area subject to the CDQ program, but would receive less due to the provisions of CDQs, will be partially compensated, and the cost of compensation will be borne equally by all initial halibut and sablefish QS/IFQ recipients. In general, this compensation plan will issue incremental amounts of QS in each non-CDQ area to each person disadvantaged by the CDQ program.

Eligible Communities

Communities that meet certain criteria would be eligible to apply for halibut and sablefish CDQs. Eligible communities are those that meet criteria developed by the Governor, in consultation with the Council. The Secretary has determined that the communities listed in Table 1 at § 676.25 meet these criteria; however, communities that may be eligible to submit CDPs and received halibut or sablefish CDQs are not limited to those listed in this table. For a community to be eligible, it must meet the following criteria:

(1) The community must be located within 50 nautical miles from the

baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean even if it is within 50 nautical miles of the baseline of the Bering Sea;

(2) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village;

(3) The residents of the community must collectively conduct more than one-half of their current commercial or subsistence fishing effort in the waters surrounding the community; and

(4) The community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that CDQ benefits would be the only way to realize a return from previous investments. Unalaska and Akutan are the only two communities at this time that would be excluded under this provision.

Prior to approval of the Governor's recommendations for approval of CDPs and allocations of halibut and sablefish CDQ, the Secretary would review the Governor's findings as to how the communities meet these criteria for eligible communities.

CDP Application

Under the proposed regulations, a qualified applicant from an eligible community or group of communities may apply for approval of a CDP but may not concurrently be a recipient of more than one halibut CDQ allocation or more than one sablefish CDQ allocation. To prevent monopolization of CDQ allocations and ensure an adequate distribution of benefits from the CDQ program, the Secretary would allocate no more than 12 percent of the sablefish CDQ reserve to any approved sablefish CDP. A CDP would consist of three parts: (1) Community development information; (2) business information; and (3) a statement of the managing organization's qualifications.

Community development information includes goals, objectives, and information concerning the project(s) that will develop the fishing industry in the community. The business information of a CDP includes information about the harvesting of CDQ sablefish or halibut, and the business aspects of the project. The statement of the managing organization's qualifications includes information to ensure that the managing organization,

whether it is the CDP applicant or a group contracted by the CDP applicant, is qualified and has the ability to manage properly the harvesting of halibut or sablefish CDQ and the fisheries development project of the community.

The intent of these regulations is for all CDPs to be similarly structured to facilitate their review and comparison. These standards are expected to reduce the need for follow-up information and should minimize administrative expenses for application review and evaluation.

Secretarial Review

The Governor, after consultation with the Council, would recommend specific CDPs to the Secretary. The Governor's recommendations may support all or part of the percentage of halibut or sablefish CDQs and the number of years of CDQ allocation requested by an applicant. The total CDQ allocation included in the CDPs recommended by the Governor may not exceed the total amount of sablefish CDQ reserve or the amount of halibut allocated for each of the four IPHC management areas.

When the Secretary receives the Governor's recommendations, including the Governor's findings that the CDPs meet the requirements of these regulations and the Alaska Coastal Management Program, the Secretary would review the record of the Governor's findings, the transcript or summary of the public hearings held by the Governor in making the recommendations, and other relevant information to determine if the proposed CDPs are consistent with the eligibility and approval criteria. The Secretary would then approve or disapprove the Governor's recommendations.

In the event of approval, the Secretary would prepare a set of findings with respect to the requirements of these regulations. The Governor and the Council would be notified in writing of the Secretary's decision, including the findings. Public notice of the decision would appear in the *Federal Register* and would include the specific allocation of halibut and sablefish CDQ reserve by area made to specific CDPs.

In the event of disapproval, the Secretary would notify the Governor and the Council in writing, including the reasons for disapproval. Publication of the decision also would appear in the *Federal Register*.

Monitoring of CDPs

A final report to the Governor would be required to be submitted by June 30 of the final year of a halibut or sablefish

CDP showing how the CDP's goals and objectives were met as set forth at § 676.25(d)(1). For continuing CDPs, annual reports would be required to be submitted to the Governor by June 30 of the year following the CDP allocation. Failure to submit an annual report could result in suspension or termination of a CDP. The Governor would then review the status of the project and determine whether the project is being managed according to the provisions of the original CDP, and submit an annual report with recommendations on whether to continue the allocation to the Secretary for approval. The Governor must be notified of and approve amendments to an approved CDP and submit a recommendation for approval of the amendment to the Secretary. Amendments to a CDP of which the Governor must be notified are those set forth at § 676.25(g)(3) and include any change in the relationships among the business partners, the profit sharing arrangements, the CDP budget, the management structure, or audit procedures or control.

Suspension or Termination

If any applicant fails to notify the Governor of an amendment to a CDP, if a CDP appears unlikely to meet its goals and objectives, or if a CDQ recipient is deviating from the approved CDP, the Governor may submit a recommendation to the Secretary that the CDP be suspended or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons, the Secretary would notify the Governor in writing of approval or disapproval of the Governor's recommendation. If the Secretary approves the Governor's recommendation, NMFS would publish a notice in the *Federal Register* that the CDP has been suspended or terminated, with reasons for the Secretary's decision. The Secretary may also suspend or terminate any CDP at any time if the Secretary finds that a recipient of a CDQ allocation is not complying with these regulations or any other regulations and provisions of the Magnuson Act or other applicable law, or if the FMPs are amended.

Consistency With Proposed Pollock CDQ Program

The pollock CDQ program that was authorized by the approved portion of Amendment 18 on March 4, 1992, has goals and objectives that are similar to this sablefish and halibut CDQ program. Communities that are eligible to apply for the pollock CDQ program are the

same communities that would be eligible to apply for sablefish and halibut CDQs. It is important for the pollock, sablefish, and halibut CDQ programs to be as consistent as possible, given that the same communities will be eligible to apply for each of the three types of CDQs to support CDPs with similar objectives. Significant differences in these two CDQ programs will confuse the public and create difficulties with the State and Federal evaluation of CDPs.

The Council approved a motion on the sablefish and halibut CDQ program in December 1991. This motion language contains some differences from the pollock CDQ program. In order to minimize the differences between the pollock and the sablefish/halibut CDQ programs, these regulations diverge from the motion language in several ways in order to maintain consistency. The parts of these regulations that diverge from the motion language are listed below:

1. The Council motion states "within 45 days of receipt of an application from a community, the Governor shall review the community's eligibility for the program and the community development plan, and at least 14 days prior to the next NPFMC meeting, forward the application to the North Pacific Fishery Management Council for its review and recommendations." The motion also states that "if portions of the total quota are not designated by the end of the second quarter, communities may apply for any portion of the remaining quota for the remainder of that year only." These two statements imply that the CDPs will be received throughout the year, and that a system needs to be in place to ensure Council review. These regulations propose a system similar to the pollock CDQ program where the Governor would announce an open application period in the third or fourth quarter when all proposed CDPs for the succeeding year would be received. The Governor would develop recommendations for the approval of CDPs, and consult with the Council on the recommendations before sending them to the Secretary for approval.

2. "Within 30 days of receipt of the criteria from the Governor, the Secretary will approve, disapprove, or return the criteria to the Governor with recommendations for changes necessary to comply with the provisions of this act, or other applicable law." This statement refers to the criteria, or the standards for proposed CDPs. As part of the pollock CDQ program the State developed these criteria in consultation with NMFS. These criteria were used by

NMFS in the regulations for the pollock CDQ program and also in these regulations. Therefore, the Secretary will approve these criteria if the pollock CDQ program final rule, or if these regulations, are approved.

3. The Council motion states that "within 30 days of the receipt of an application approved by the Governor, the Secretary will designate a portion of the quota to the community . . ." To make the two CDQ programs consistent, the "30 days" requirement should be changed to 45 days.

Classification

This proposed rule is published under section 304(a)(1)(D) of the Magnuson Act, as amended by Pub. L. 99-659, which requires the Secretary to publish regulations proposed by the Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has initially determined that the amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making final determinations, will take into account the data and comments received during the comment period.

The Council prepared a draft EIS/SEIS under the requirements of NEPA. The draft EIS/SEIS was revised in March 1992, to incorporate analysis of the Council's preferred alternative. Notification of a 45-day public comment period on the revised draft EIS/SEIS dated March 27, 1992, was published on May 15, 1992 (57 FR 20826). Public comments received are summarized and responded to in the FEIS/SEIS that was submitted to the Secretary by the Council in support of its proposed amendment. A copy of the FEIS/SEIS may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the FEIS/SEIS prepared by the Council. The FEIS/SEIS concludes that the total of the estimated

annual benefits that have been quantified ranges from \$30.1 million to \$67.6 million. The estimates could be increased by \$11.0 million to \$13.9 million if the vessel restrictions that prevent the redistribution of catch to the lowest cost vessels were eliminated. Total annual costs for administration and enforcement are estimated to be about \$2.7 million. In addition, there would be a one-time initial implementation cost of about \$1.9 million. Additional non-quantifiable costs include, but are not limited to, transition costs due to changes in employment patterns in the fisheries, and increased recordkeeping and reporting requirements. A copy of the FEIS/SEIS may be obtained from the Council (see ADDRESSES).

The Assistant Administrator concludes that this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. This determination is based on the FEIS/SEIS prepared by the Council. The FEIS/SEIS concludes that as many as 7,200 vessels/persons may be affected by a change to the proposed IFQ management program. Current active participants in the halibut fishery in any one year include about 4,000 vessels, and about 650 vessels in the sablefish fishery. These fishing vessels or operators are generally considered to be small businesses. A copy of the FEIS/SEIS may be obtained from the Council (see ADDRESSES).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) that have been submitted to the Office of Management and Budget for approval. The estimated response time for each proposed collection of information required during the 2-year implementation period is expected to be 5.5 hours for the QS application, 4 hours to file an appeal on a QS application, and 2 hours for an IFQ crew member eligibility application.

The estimated response time for each proposed collection of information during each year after the implementation period is 1 hour for notification of inheritance of QS, 2 hours for the application for transfer or lease of QS/IFQ, 2 hours for the Corporate/Partnership or other entity Transfer Eligibility application, 0.5 hours for the registered buyer application, 0.1 hour for the dockside sale receipt, 0.1 hour for prior notice of IFQ landing, 0.1 hour for permission to land IFQs at any time other than 0600-1800, 0.1 hour for the vessel clearance application, 0.2 hours for the IFQ landing report, 0.1 hour for a

transshipment notice, and 0.2 hour for the shipment or transfer report.

Additional costs to the public totaling \$150,000 for the implementation period and \$225,000 for each subsequent year are proposed for the IFQ program.

The estimated response time for each information requirement of the CDQ portion of the IFQ program will be approximately 160 hours per CDP, 40 hours for each annual report, 40 hours for each final report, and 10 hours for each amendment to a CDP.

These reporting burdens include the time for reviewing the instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

NMFS has determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

Adoption of the proposed management measures would not adversely affect any listed species within the jurisdiction of NMFS. Therefore, the Regional Director determined that a formal section 7 consultation is not required before publication of this proposed rule.

Implementation of the proposed rule would not adversely affect any marine mammal population.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 1992.

Nancy Foster,
Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended, and 50 CFR part 676 is proposed to be added, to read as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, a new definition is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *
Fixed gear means all groundfish pot-and-line or longline pot gear, and all hook-and-line gear, including longline, handline, jig, or troll gear that may be used to harvest groundfish subject to restrictions of this part.
* * * * *

3. Section 672.3 is revised to read as follows:

§ 672.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 620 and 675.

(d) *Limited access.* Regulations governing access to commercial fishery resources off Alaska are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.2, a new definition is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *
Fixed gear means all groundfish pot-and-line or longline pot gear, and all hook-and-line gear, including longline, handline, jig, or troll gear that may be used to harvest groundfish subject to restrictions of this part.
* * * * *

6. Section 675.3 is revised to read as follows:

§ 675.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(c) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska are set forth at 50 CFR parts 620 and 672.

(d) *Limited access.* Regulations governing access to commercial fishery resources off Alaska are set forth at 50 CFR part 676.

(e) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

7. In § 675.20, the introductory text of paragraph (a)(3) is revised to read as follows:

§ 675.20 General Limitations.

(a) * * *

(3) *Reserve.* Fifteen percent of the TAC for each target species and the "other species" category, except fixed gear sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC for each target species and the "other species" category, except fixed gear sablefish, is apportioned between DAH and TALFF. The reserve is not designated by species or species group and any amount of the reserve may be apportioned to a target species, except fixed gear sablefish, or the "other species" category, provided that such apportionments are consistent with paragraph (a)(2)(i) of this section and do not result in overfishing of a target species or the "other species" category.

* * *

8. In § 675.24, the introductory text of the section if removed and the section heading and paragraph (c)(1) are revised to read as follows:

§ 675.24 Gear limitations.

* * *

(c) *Gear allocations.* (1) Vessels using gear types other than those specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section must treat sablefish in the same manner as a prohibited species.

(i) In the Bering Sea and Bogoslof subareas, defined at § 675.2, fixed gear

may be used to take up to 50 percent of the TAC for sablefish; trawl gear may be used to take up to 50 percent of the TAC for sablefish.

(ii) In the Aleutian Islands subarea, defined at § 675.2, fixed gear may be used to take up to 75 percent of the TAC for sablefish; trawl gear may be used to take up to 25 percent of the TAC for sablefish.

* * *

9. A new part 676 is added to chapter VI of 50 CFR to read as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FISHERIES OFF ALASKA

Subpart A—Moratorium on Entry [Reserved]

Subpart B—Individual Fishing Quota General Provisions

Sec.

- 676.10 Purpose and scope.
- 676.11 Definitions.
- 676.12 Relation to other laws.
- 676.13 Permits.
- 676.14 Recordkeeping and reporting.
- 676.15 Vessel and gear identification.
- 676.16 General prohibitions.
- 676.17 Facilitation of enforcement and monitoring.
- 676.18 Penalties.

Subpart C—Individual Fishing Quota Management Measures

- 676.20 Individual allocations.
- 676.21 Transfer of QS and IFQ.
- 676.22 Limitations on use of QS and IFQ.
- 676.23 Management areas.
- 676.24 IFQ fishing season.
- 676.25 Western Alaska Community Development Quota Program.
- 676.26 Appeal procedure [Reserved].

Authority: 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 773 *et seq.*

Subpart A—Moratorium on Entry [Reserved]

Subpart B—Individual Fishing Quota General Provisions

§ 676.10 Purpose and scope.

(a) Subparts B and C of this part implement the individual fishing quota management plan for the commercial fisheries that use fixed gear to harvest sablefish (*Anoplopoma fimbria*) and Pacific halibut (*Hippoglossus stenolepis*) as prepared by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.

(b) Regulations in subparts B and C govern the commercial fishing for sablefish by vessels of the United States using fixed gear within that portion of the Gulf of Alaska and the Bering Sea and Aleutian Islands area over which the United States exercises exclusive

fishery management authority. Regulations in subparts B and C also govern the commercial fishing for sablefish with fixed gear in the reporting areas of the Bering Sea and Aleutian Islands management areas and the Gulf of Alaska conducted by persons who have been issued permits under § 676.13 of this part.

(c) Regulations in subparts B and C govern the commercial fishing for Pacific halibut by vessels of the United States using fixed gear in Convention waters described in 50 CFR 301.5 that are in and off of the State of Alaska.

§ 676.11 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR 301.2, 620.2, 672.2, and 675.2, except as otherwise noted, the terms in this part have the following meanings:

Catcher vessel, as used in this part, means any vessel that is used to catch, take, or harvest fish that are iced, headed, gutted, bled, or otherwise retained as fresh fish product on board during any fishing year.

Community Development Plan (CDP) means an economic and social development plan for a specific Western Alaska community or group of communities that is approved by the Governor of the State of Alaska and recommended to the Secretary under § 676.25 of this part.

Community Development Quota (CDQ) means a western Alaska CDQ for Pacific Halibut or sablefish that is assigned to an approved CDP.

Community Development Quota Program (CDQ program) means the Western Alaska Community Development Program implemented under § 676.25 of this part.

Fixed gear means all groundfish pot-and-line or longline pot gear, and all hook-and-line gear, including longline, handline, jig, or troll gear that may be used to harvest halibut or sablefish subject to restrictions at 50 CFR parts 301, 672, and 675.

Freezer vessel means any vessel that is used to process some or all of its catch during any fishing trip.

Governor means the Governor of the State of Alaska.

Halibut CDQ Reserve means the amount of the halibut catch limit for IPHC regulatory areas 4B, 4C, 4D, and 4E that is reserved for the halibut CDQ program.

Harvesting or to harvest, as used in this part, means the catching and retaining of any fish.

Individual means a natural person who is not a corporation, partnership, association, or other such entity.

Individual fishing quota (IFQ) means the annual catch limit of sablefish or

halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the total allowable catch of sablefish or halibut.

IFQ crew member means any individual who has at least 5 months experience working as part of the harvesting crew in any United States commercial fishery, and any individual who receives an initial allocation of QS.

IFQ halibut means any Pacific halibut (*Hippoglossus stenolepis*) that is harvested with fixed gear.

IFQ landing, as used in this part, means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish.

IFQ sablefish means any sablefish (*Anoplopoma fimbria*) that is harvested with fixed gear.

IPHC means the International Pacific Halibut Commission.

Person, as used in this part, means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

Quota share (QS) means the amount of sablefish or halibut on which the annual calculation of a person's IFQ is based.

Regulatory area, as used in this part, means:

(1) with respect to halibut, areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E defined at 50 CFR 301.6;

(2) with respect to sablefish, any of the three regulatory areas in the Gulf of Alaska defined at 50 CFR 672.2, and any subarea of the Bering Sea and Aleutian Islands management area defined at 50 CFR 675.2, for which a fixed gear TAC is annually specified.

Sablefish CDO Reserve means 12 percent of the sablefish fixed gear TAC for each subarea in the Bering Sea and Aleutian Islands management area for which a sablefish TAC is specified.

Trip, as used in this part, means the period of time from when a vessel commences fishing until either the vessel enters or leaves a regulatory area, or the commencement of an IFQ landing, whichever occurs first.

United States citizen, as used in this part, means:

(1) Any individual who is a citizen of the United States at the time of application for QS, or

(2) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States

during the QS qualifying years of 1988, 1989, and 1990.

§ 676.12 Relation to other laws.

(a) **Foreign fishing.** Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands area are set forth at 50 CFR 611.93.

(b) **Halibut fishing.** Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR part 301.

(c) **Domestic fishing for groundfish.** Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and the Bering Sea and Aleutian Islands area are set forth at 50 CFR parts 672 and 675, respectively, and at 50 CFR part 620.

§ 676.13 Permits.

(a) **General.** (1) In addition to the permit and licensing requirements prescribed at 50 CFR 301.3, 672.4, and 675.4, all fishing vessels that harvest IFQ sablefish or halibut must have on board:

(i) A copy of an IFQ permit that specifies the regulatory area and vessel category in which sablefish or halibut may be harvested by the IFQ permit holder and the amount of each species that may be harvested during the current IFQ fishing season; and

(ii) An original IFQ card issued by the Regional Director.

(2) All persons that receive IFQ sablefish or halibut from the person(s) that harvest the fish must possess a registered buyer permit. Persons that sell directly to the public (e.g., dockside sales) or otherwise transfer IFQ sablefish or halibut that they catch to other than a registered buyer also must possess a registered buyer permit.

(b) **Issuance.** (1) IFQ permits and cards will be renewed or issued annually by the Regional Director to each person with approved QS for IFQ sablefish or halibut allocated in accordance with § 676.20 of this part. Each IFQ permit issued by the Regional Director will identify the permitted person and specify the amount of sablefish or halibut that person may harvest from a specified area using fixed gear and a vessel of a specified vessel category. Each IFQ card issued by the Regional Director will display an IFQ permit number and the individual authorized by the IFQ permit holder to land IFQ sablefish or halibut for debit against the permit holder's IFQ.

(2) Registered buyer permits will be renewed or issued annually by the Regional Director to persons that have a

registered buyer application approved by the Regional Director.

(c) **Duration.** (1) An IFQ permit authorizes the person identified on the permit to harvest IFQ sablefish or halibut from a specified area at any time during the fishing year for which it is issued until the amount harvested is equal to the amount specified on the permit, or until it is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures). An IFQ card authorizes the individual identified on the card to land IFQ sablefish or halibut for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures), or canceled on request of the IFQ permit holder.

(2) A registered buyer permit authorizes the person identified on the permit to receive or make an IFQ landing by an IFQ permit or card holder at any time during the fishing year for which it is issued until the registered buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904 (Civil Procedures).

(d) **Alteration.** No person may alter, erase, or mutilate any IFQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated is invalid.

(e) **Transfer.** The IFQ permits issued under this section are not transferable except as provided under § 676.21 of this part. The IFQ cards and registered buyer permits issued under this section are not transferable.

(f) **Inspection.** (1) A copy of any IFQ permit issued under this section must be carried on board the vessel used by the permitted person to harvest IFQ halibut or sablefish at all times that such fish are retained on board. An individual that is issued an IFQ card must remain on board the vessel used to harvest IFQ halibut or sablefish with that card until all such fish are landed, and must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or registered buyer.

(2) A legible copy of the original registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer.

(g) **Permit sanctions.** Procedures governing permit sanctions and denials are found at Subpart D of 15 CFR part 904.

§ 676.14 Recordkeeping and reporting.

In addition to the recordkeeping and reporting requirements specified in 50 CFR parts 301, 672, and 675, all

registered buyers and all persons that hold IFQ for sablefish or halibut are responsible for the completion of the following reports, as applicable.

(a) *Prior notice of IFQ landing.* The Alaska Region, NMFS, must be notified by the operator of the vessel making an IFQ landing no less than 6 hours before landing IFQ sablefish or halibut, unless permission to commence an IFQ landing within 6 hours of notification is granted by an authorized enforcement officer. Such notices of IFQ landings must be made to the toll-free telephone number specified on the IFQ permit between the hours of 06:00 and 24:00 Alaska local time. The notice must include the name and location of the registered buyer(s) to whom the IFQ sablefish and halibut will be landed and the anticipated date and time of landing.

(b) *IFQ landing report.* All sablefish and halibut harvested with fixed gear, including sablefish and halibut that the IFQ holder does not intend to sell, must be landed and reported by an individual who possesses an IFQ card to a person holding a valid registered buyer permit. Registered buyers must report all IFQ sablefish and halibut landed in the manner prescribed on the registered buyer permit within 6 hours after all such fish are landed and prior to shipment of such fish or departure of the delivery vessel from the landing site.

(1) IFQ landings may be made only between the hours of 06:00 and 18:00 Alaska local time unless permission to land at a different time is granted in advance by a NMFS enforcement officer. An IFQ landing may continue after this time period if it was started during the period.

(2) All IFQ landings and all fish retained onboard the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized law enforcement officers or observers.

(3) Information contained in a complete IFQ landing report shall include the date, time, and location of the IFQ landing; the names and permit numbers of the IFQ card holder and registered buyer; the product type landed; and the fish product weight of sablefish and halibut landed.

(c) *Shipment Report.* All registered buyers, other than those conducting dockside sales, must report all shipments or transfers of IFQ sablefish and halibut. A Shipment Report must be submitted for any shipment or transfer of IFQ sablefish and halibut to any location other than the IFQ landing location. Such reports must be submitted to the NMFS, Alaska Region, prior to shipment or transfer, in a manner prescribed on the registered buyer permit. Shipment Reports must

specify the species and product type being shipped, the number of shipping units, fish product weight, the name of the shipper and receiver, the name and address of the consignee and consignor, the mode of transportation, and the intended route.

(1) Shipments of IFQ sablefish and halibut from a registered buyer to a destination within the United States may not commence until the Shipment Report is received by the Alaska Region, NMFS.

(2) A copy of the Shipment Report or a bill of lading that contains the same information must accompany the shipment to all points of sale in Alaska and to the first point of sale outside Alaska.

(d) *Dockside sales.* As used in this paragraph, "dockside sales" mean the transfer of IFQ sablefish or halibut directly to consumers or to persons who will sell the fish to consumers. A person holding a valid IFQ permit and IFQ card may conduct dockside sales of IFQ sablefish or halibut, providing that the person also holds a valid registered buyer permit. Dockside sales must be reported in the manner prescribed in paragraph (b) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested. A receipt that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the sablefish or halibut transferred must be issued to all persons receiving IFQ sablefish or halibut through dockside sales.

(e) *Transshipment.* (1) Transshipment of IFQ sablefish or halibut between the vessel that harvested such fish and another vessel is prohibited unless one of the vessels has a registered buyer on board and is capable of transmitting the required IFQ landing reports.

(2) In addition to the requirements of paragraph(e)(1) of this section, transshipment of processed IFQ sablefish or halibut between vessels may be conducted only after providing notice of such transshipment no less than 24 hours prior to commencement of the transfer, and only within the boundaries of a primary port listed in § 676.17 of this part

(f) A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer for a period of 3 years.

§ 676.15 Vessel and gear identification

Regulations pertaining to vessel and gear markings and limitations are set

forth in 50 CFR 301.16, 672.24, and 675.24.

§ 676.16 General prohibitions.

In addition to the prohibitions specified in §§ 620.7, 672.7, and 675.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Submit inaccurate information on any report, application, or statement required under this part;

(b) Retain sablefish or halibut caught with fixed gear without an IFQ card in the name of the individual on board and a valid IFQ permit;

(c) Except as provided at § 676.17 of this part, retain sablefish or halibut caught with fixed gear on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and area in which the vessel is operating, and that is currently held by all IFQ card holders onboard the vessel;

(d) Possess, buy, sell, or transport IFQ sablefish or halibut taken or landed in violation of any provision of this part;

(e) Make an IFQ landing without an IFQ card in the name of the individual making the landing;

(f) Possess on a vessel or land IFQ sablefish concurrently with sablefish caught in State internal waters or while sport fishing;

(g) Discard Pacific cod or rockfish that are taken incidental to the harvest of IFQ sablefish or halibut unless Pacific cod or rockfish are required to be discarded under §§ 676.20 or 675.20 of this chapter;

(h) Transfer QS or IFQ (other than by inheritance or operation of law) without the prior written approval of the Regional Director;

(i) Retain on any one vessel more IFQ sablefish or halibut than are authorized under § 676.21 of this part;

(j) Land IFQ sablefish or halibut other than directly to (or by) a registered buyer;

(k) Discard sablefish or halibut caught with fixed gear from any catcher vessel when any IFQ card holder on board holds unused sablefish or halibut IFQ for that vessel category and the area in which the vessel is operating, unless discard of halibut is required under 50 CFR 301.12, or discard of sablefish is required under 50 CFR 672.20 or 675.20, or discard of halibut or sablefish is required under §§ 676.22(h) or 676.24 of this part;

(l) Make an IFQ landing without prior notice of landing and before 6 hours after such notice, except as provided at § 676.14(a) of this part;

(m) Sell or otherwise transfer catcher vessel IFQ except as provided at § 676.21 of this part.

(n) Use IFQ to harvest sablefish or halibut with any gear other than fixed gear;

(o) Use IFQ assigned to one vessel category and area to harvest sablefish or halibut in a different vessel category or area;

(p) Participate in a Western Alaska CDQ program in violation of § 676.25 of this part, submit information that is false or inaccurate with a CDP application or request for an amendment, or to exceed a CDQ as defined at § 676.11 of this part; and

(q) Violate any other provision of this part.

§ 676.17 Facilitation of enforcement and monitoring.

In addition to the requirements of §§ 620.8 and 676.14 of this chapter, an IFQ landing must comply with the provisions described in this section.

(a) *Vessel clearances.* Any person that makes an IFQ landing at any location other than in the State of Alaska must be a registered buyer, obtain a written clearance of the vessel on which the IFQ halibut or sablefish are transported to the IFQ landing location, and provide an estimated weight of IFQ sablefish and halibut on board to the clearing officer. Clearance must be obtained prior to departing waters in or adjacent to the State of Alaska.

(1) Any person requesting a vessel clearance must have valid IFQ and registered buyer permits, IFQ that is equal to or greater than all IFQ sablefish and halibut on board, and must report the intended date, time, and location of IFQ landing.

(2) Any person granted a vessel clearance must submit an IFQ landing report, required under § 676.14 of this part, for all IFQ sablefish, halibut and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(3) A vessel seeking clearance is subject to inspection of all fish, log books, permits, and other documents on board the vessel, at the discretion of the clearing officer.

(4) Vessel clearances will be issued only by NMFS enforcement officers at any of the following primary ports in Alaska [geographic location descriptions reserved]:

Akutan	Kodiak
Cordova	Pelican
Craig	Petersburg
Dutch Harbor/	St. Paul
Unalaska	Sand Point
Excursion Inlet	Seward
Homer	Sitka
Ketchikan	Yakutat
King Cove	

(b) *Overages and underages.* Any person allocated IFQ must not harvest

halibut or sablefish using fixed gear in any amount greater than the amount indicated on that person's current IFQ permit. Any person that harvests IFQ halibut or sablefish should hold sufficient unused IFQ for the harvest before beginning a fishing trip. Any IFQ halibut or sablefish that is landed in excess of a specified IFQ will be considered an "IFQ overage." In addition to any penalties that may be assessed for exceeding an IFQ, the Regional Director will deduct an amount equal to the overage from IFQ allocated in the year following determination of the overage. This overage adjustment to the annual IFQ allocation will be specific to each regulatory area for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an overage. In addition, the landed value of overages of the amount specified on the IFQ permit of 5 percent or more shall be subject to forfeiture. Unharvested amounts of IFQ less than 5 percent of the amount specified on a IFQ permit for any year, area, and vessel category will be re-allocated to the subsequent year for that area and vessel category, and will apply to any person to whom the affected IFQ is allocated in the subsequent year. Unharvested amounts of IFQ in any year or area that are 5 percent or more of the amount specified on a IFQ permit will not be reallocated.

§ 676.18 Penalties.

Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson Act or Halibut Act or any regulation issued under the Magnuson Act or Halibut Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act or Halibut Act, to part 621 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law.

Subpart C—Individual Fishing Quota Management Measures

§ 676.20 Individual allocations.

The Regional Director shall annually divide the total allowable catch of halibut and sablefish that is apportioned to the fixed gear fishery pursuant to 50 CFR 301.10, 672.20, and 675.20, minus the CDQ reserve, among qualified halibut and sablefish quota share holders, respectively.

(a) *Initial allocation of quota share (QS).* The Regional Director shall initially assign to qualified persons halibut and sablefish fixed gear fishery QS that are specific to regulatory areas and vessel categories.

(1) *Qualified person.* As used in this section, a "qualified person" means a "person," as defined in § 676.11 of this part, who owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any regulatory area in any QS qualifying year. A person may be a qualified person also if it leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any halibut or groundfish reporting area in any QS qualifying year. A person who owns a vessel cannot be a qualified person during the same time period that another person leased the vessel and made legal landings of halibut or sablefish harvested with fixed gear. Qualified persons, or their successor-in-interest, must exist at the time of their application for QS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for QS in proportion to his interest in the dissolved partnership or corporation.

(i) A QS qualifying year is 1988, 1989, or 1990.

(ii) Evidence of vessel ownership shall be limited to U.S. Coast Guard documentation or registration by a State agency.

(iii) Evidence of a vessel lease shall be limited to a written vessel charter demise, or Federal income tax documents indicating that a person had responsibility for payment of crew because of a lease agreement, or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect.

(iv) Evidence of ownership interest in a dissolved partnership or corporation shall be limited to corporate documents (e.g., articles of incorporation or written contracts) between the persons involved in such businesses, or notarized statements signed by each interested person and specifying proportions of interest.

(v) As used in this section, a "legal landing of halibut or sablefish" means halibut and sablefish that were harvested and landed in compliance with State and Federal regulations in existence at the time of the landing. Evidence of legal landings shall be limited to documentation of State or Federal catch reports that indicate the amount of halibut or sablefish harvested, the regulatory area in which it was caught, the vessel and gear type

used to catch it, and the date of harvesting, landing, or reporting. Halibut and sablefish must have been harvested within any regulatory area, with fixed gear, to qualify as a landing for purposes of this paragraph. Sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered as harvested from a regulatory area.

(2) *Vessel categories.* Vessel categories include:

(i) Category A—freezer vessels of any length;

(ii) Category B—catcher vessels greater than 60 feet (18.3 meters) in length overall;

(iii) Category C—catcher vessels less than or equal to 60 feet (18.3 meters) in length overall for sablefish, or catcher vessels greater than 35 feet (10.7 meters) but less than or equal to 60 feet (18.3 meters) for Pacific halibut; and

(iv) Category D—catcher vessels that are less than or equal to 35 feet (10.7 meters) in length overall for Pacific halibut.

(b) *Calculation of initial QS.* The Regional Director shall calculate the halibut QS for any qualified person in each regulatory area based on that person's highest total landings of halibut in each regulatory area for any 5 years of the 7-year halibut QS base period 1984 through 1990. The Regional Director shall calculate the sablefish QS for any qualified person in each regulatory area based on that person's highest total landings of sablefish in each area for any 5 years of the 6-year sablefish QS base period 1985 through 1990. The sum of all halibut QS for a regulatory area will be the halibut QS pool for that area. The sum of all sablefish QS for a regulatory area will be the sablefish QS pool for that area. Each QS calculation will be modified to accommodate the Western Alaska Community Development Program prescribed at § 676.25 of this part.

(c) *Assignment of QS to vessel categories.* Each qualified person's QS will be assigned to a vessel category based on the length of vessel(s) in which that person made fixed gear landings of groundfish or halibut in the most recent calendar year during the period 1985 through September 25, 1991, and the product type landed.

(1) A qualified person's QS will be assigned to vessel category "A" if, at any time during their most recent calendar year of participation, that person's vessel processed any groundfish or halibut caught with fixed gear.

(2) A qualified person's QS will be assigned to vessel category "B" if, at any time during their most recent year of

participation, that person's vessel was greater than 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(3) A qualified person's sablefish QS will be assigned to vessel category "C" if, at any time during their most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(4) A qualified person's halibut QS will be assigned to vessel category "C" if, at any time during their most recent year of participation, that person's vessel was less than or equal to 60 feet (18.3 meters), but greater than 35 feet (10.7 meters), in length overall and did not process any groundfish or halibut caught with fixed gear.

(5) A qualified person's halibut QS will be assigned to vessel category "D" if, at any time during their most recent year of participation, that person's vessel was less than or equal to 35 feet (10.7 meters) in length overall and did not process any groundfish or halibut caught with fixed gear.

(6) If a person qualified for QS in more than one vessel category in their most recent calendar year of participation during the period January 1, 1988, through September 25, 1991, then their QS will be assigned to each vessel category in proportion to the harvests of halibut or sablefish made using vessels in each category in the most recent calendar year.

(7) If a person qualifies for halibut QS in one vessel category and qualifies for sablefish in a different vessel category in their most recent calendar year of participation during the period January 1, 1988, through September 25, 1991, then all QS for both species will be assigned to the vessel category in which the most recent landing of groundfish was made in the most recent calendar year.

(8) As used in this section, "participation" means the harvesting of any groundfish or halibut using fixed gear.

(d) *Application for initial QS.* Upon request, the Regional Director shall make available to any person an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current State and Federal confidentiality rules, and that are available to the Regional Director at the time of the request. An application period of no less than 180 days will be

specified by notice in the **Federal Register** and other information sources that the Regional Director deems appropriate. Complete applications received by the Regional Director will be acknowledged. An incomplete application will be returned to the applicant with specific kinds of information identified that are necessary to make it complete.

(1) Halibut and sablefish catch history, vessel ownership or lease data, and other information supplied by an applicant will be compared with data compiled by the Regional Director. If additional data presented in an application are not consistent with the data compiled by the Regional Director, the applicant will be notified of insufficient documentation. The applicant will have 90 days to submit corroborating documents in support of their application, to resubmit a revised application, or to file an appeal. All applicants will be limited to one opportunity to provide corroborating documentation or a revised application in response to a notice of insufficient documentation.

(2) Applications with uncontested data may be approved by the Regional Director. Based on these data, Regional Director will calculate each applicant's initial halibut and sablefish QS, as provided at paragraph (b) of this section, for each regulatory area, respectively, and will add each applicant's halibut and sablefish QS for an area to the respective QS pool for that area.

(3) Any applicant's catch history or other data that are contested by the Regional Director or another applicant will prevent approval of QS amounts that would result from the contested data until discrepancies are resolved. Amounts of QS that have not been approved by the Regional Director will not be added to the QS pool for any area until they are approved.

(e) *Appeal of initial allocation.* Initial allocation of QS must be appealed, pursuant to § 676.26 of this part, within 90 days of the date of issuing the allocation or the date of denial of a resubmitted application as provided in paragraph (d) of this section.

(f) *Annual allocation of IFQ.* The Regional Director shall assign halibut or sablefish IFQs to each person holding approved halibut or sablefish QS, respectively. Each assigned IFQ will be specific to a regulatory area and vessel category, and will represent the maximum amount of halibut or sablefish that may be harvested from the specified area and by the person to whom it is assigned during the specified fishing year, unless the IFQ assignment is changed by the Regional Director

within the fishing year because of an approved transfer or because all or part of the IFQ is sanctioned for violated rules of this part.

(1) The annual allocation of IFQ to any person (person p) in any regulatory area (area a) will be equal to the product of the total allowable catch of halibut or sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska Community Development Quota Program) and the quotient of that person's QS divided by the QS pool for that area. Overages will be subtracted from a person's IFQ and underages (up to 5 percent) will be added pursuant to § 676.17 of this part. Expressed algebraically, the annual IFQ allocation formula is as follows:

$$IFQ_{pa} = [(fixed\ gear\ TAC_a - CDQ\ reserve) \times (QS_{pa} / QS\ pool_a)] + \text{underage up to 5\% of } IFQ_{pa} \text{ of preceding year, or - overage of } IFQ_{pa} \text{ of preceding year.}$$

(2) For purposes of calculating IFQs for any fishing year, the amount of a person's QS and the amount of the QS pool for any area will be the amounts on record with the Alaska Region, NMFS, as of noon, Alaska local time, on December 31 of the previous year.

(3) The Regional Director shall issue to each QS holder, pursuant to § 676.13 of this part, an IFQ permit specifying the maximum amount of halibut and sablefish that may be harvested in a specified regulatory area and vessel category. Such IFQ permits will be sent by certified mail to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

§ 676.21 Transfer of QS and IFQ.

Any person that is allocated QS or IFQ, either initially or by subsequent approved transfer, may sell, lease, or otherwise transfer all or part of its QS or IFQ to another person only in accordance with the transfer restrictions and procedures described in this section.

(a) The QS and IFQ assigned to any vessel category are not transferable to any other vessel category.

(b) The QS assigned to any catcher vessel category may be transferred only to individuals who are U.S. citizens and IFQ crew members.

(c) Any person that receives title to QS by inheritance or court order must notify the Regional Director of such a transfer. Any person that receives QS in this manner may not use the IFQ resulting from it to harvest halibut or sablefish with fixed gear until such use is ratified by the Regional Director.

(d) Transfers of catcher vessel QS approved by the Regional Director

cannot be made subject to a lease or any condition of repossession or resale by the person transferring QS except as provided for leasing in paragraph (f) of this section or by court order. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(e) *Transfer procedure.* The transfer of QS or IFQ shall not be effective for purposes of harvesting halibut or sablefish until a transfer application is approved by the Regional Director and new IFQ permits are issued to the persons receiving and relinquishing the transferred QS or IFQ. The Regional Director shall provide a transfer application form to any person on request. Approved transfers will change the affected persons' QS or IFQ accounts on the date of approval, and the persons applying for transfer will be provided new IFQ permits by mail posted on the date of approval unless another communication mode is requested on the transfer application. Disapproved transfer applicants will be similarly informed of the reason for disapproval.

(1) *Transfer approval criteria.* A transfer of QS or IFQ by operation of law requires notification of the Regional Director pursuant to paragraph (c) of this section, but does not otherwise require approval of the Regional Director. Use of such IFQ will not be ratified, and any other transfer of QS or IFQ will not be approved, until the Regional Director has determined that:

(i) The person who is applying to transfer QS or IFQ is the same person that received the QS or IFQ either by initial allocation or subsequent approved transfer, or is a person that legally acquired the QS through inheritance or by court order;

(ii) The person applying to receive transferred QS or IFQ has a transfer eligibility application, containing currently accurate information, approved by the Regional Director;

(iii) The proposed transfer will not cause the person that would receive QS to exceed the use limits specified at § 676.22 of this part;

(iv) Both persons have their notarized signatures on the transfer application form, unless the transfer is by inheritance or by operation of law;

(v) There are not fines dues and owing or outstanding permit sanctions resulting from Federal fishery violations involving either person;

(vi) The person applying to receive transferred QS or IFQ currently exists; and

(vii) Other pertinent information requested on the transfer application

form has been supplied to the satisfaction of the Regional Director.

(2) *Transfer eligibility application.* All persons who apply to receive QS or IFQ by transfer must have a transfer eligibility application, containing currently accurate information, approved by the Regional Director. The Regional Director shall provide a transfer eligibility application form to any person on request. Applicants may request either an Individual IFQ Crew Member Eligibility Application or a Corporate/Partnership or Other Entity Eligibility Application. Persons that are not individuals must resubmit a transfer eligibility application if there is a change in their corporate structure or membership as described in § 676.22 of this part. Approved transfer eligibility applicants will be informed by certified mail of their transfer eligibility. A disapproved transfer eligibility application will be returned to the applicant with an explanation of why the application was disapproved. Reasons for disapproval of a transfer eligibility application may include, but are not limited to:

(i) Less than 150 days of experience at sea working as an IFQ crew member;

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.2 of this part;

(iii) An incomplete eligibility application; or

(iv) Fines due and owing or outstanding permit sanctions resulting from Federal fishery violations.

(f) *Leasing QS (applicable until [insert date three years after the effective date of this section]).* A person may transfer by lease no more than 10 percent of its total catcher vessel QS for any regulatory area to another person for any fishing year. A QS lease shall not have effect until approved by the Regional Director. The Regional Director shall change and reissue IFQ permits affected by an approved QS lease transfer. Approved QS leases must comply with all transfer requirements specified in this section. Applications to transfer by lease QS that is under sanction will not be approved. All lease transfers will cease to have effect on December 31 of the year in which they are approved.

§ 676.22 Limitations on use of QS and IFQ.

(a) The QS or IFQ specified for one regulatory area and one vessel category shall not be used in a different area or vessel category, except as provided in paragraph (i)(3) of this section.

(b) Halibut IFQ cannot be used to harvest halibut with any gear other than the fishing gear authorized at 50 CFR 301.16. Sablefish fixed gear IFQ cannot

be used to harvest sablefish with trawl gear in any regulatory area, or with pot-and-line or pot-and-longline gear in any regulatory area of the Gulf of Alaska.

(c) Any individual who harvests halibut or sablefish with fixed gear must:

- (1) Have a valid IFQ card;
- (2) Be aboard the vessel at all times during fishing operations; and
- (3) Sign any required fish ticket or IFQ landing report for the amount of halibut or sablefish that will be debited against the IFQ associated with the IFQ card.

(d) The requirement of paragraph (c) of this section for an individual IFQ card holder to be on board during fishing operations and to sign the IFQ landing report may be waived in the event of extreme personal emergency involving the IFQ user during a fishing trip. The waiving of these requirements shall apply only to IFQ halibut or sablefish retained on the fishing trip during which such emergency occurred.

(e) *Sablefish QS use.* No person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish fixed gear TAC for the Gulf of Alaska and Bering Sea and Aleutian Islands regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS. In the regulatory area east of 140° east longitude, no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS.

(f) *Halibut QS use.* Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

- (1) One percent (0.01) of the total amount of halibut QS for regulatory area 2C;
- (2) One-half percent (0.005) of the total amount of halibut QS for regulatory areas 2C, 3A, and 3B, combined; and
- (3) One-half percent (0.005) of the total amount of halibut QS for regulatory areas A4, 4B, 4C, 4D, and 4E, combined.

(g) If transferred QS would result in an IFQ that is greater than the use limits specified in paragraphs (e) and (f) of this section, then any IFQ permit based on such QS will be issued for only the maximum IFQ allowed under these limits.

(h) *Vessel limitations.* No vessel may be used, during any fishing year, to harvest:

- (1) More than one-half percent (0.005) of the combined total catch limits of

halibut for regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that, in regulatory area 2C, no vessel may be used to harvest more than one-half percent (0.005) of the halibut catch limit for this area; and

(2) More than 1 percent (0.01) of the combined fixed gear TAC of sablefish for the Gulf of Alaska and Bering Sea and Aleutian Islands regulatory areas, except that, in the regulatory area east of 140° west longitude, no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(3) Persons who received an approved IFQ allocation of halibut or sablefish in excess of these limitations may catch and retain all of their IFQ with a single vessel.

(i) *Use of catcher vessel IFQ.* In addition to the requirements of paragraph (c) of this section, catcher vessel IFQ cards must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraphs (d) and (i)(1) of this section.

(1) An individual who receives an initial allocation of catcher vessel QS does not have to be on board and sign IFQ landing reports if this individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.

(2) The exemption provided in paragraph (i)(1) of this section does not apply to individuals who receive an initial allocation of catcher vessel QS for halibut in regulatory area 2C or sablefish IFQ in the regulatory area east of 140° west longitude, and this exemption is not transferable.

(3) Catcher vessel IFQ may be used on a freezer vessel, provided no frozen or otherwise processed fish products are on board at any time during a fishing trip on which catcher vessel IFQ is being used. A catcher vessel may not land any IFQ species as frozen or otherwise processed product. Processing of fish on the same vessel that harvested those fish using catcher vessel QS is prohibited.

(j) *Use of catcher vessel IFQ by corporations and partnerships.* A corporation or partnership that receives an initial allocation of catcher vessel QS may use the IFQ resulting from that QS and any additional QS acquired within the limitations of this section, provided the corporation or partnership owns the vessel on which its IFQ is used, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial

allocation of QS. This provision is not transferable.

(1) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of catcher vessel QS must cease using its IFQ under the provisions of paragraph (1) of this section on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(2) For purposes of this paragraph, "a change in the corporation or partnership" means the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership.

(3) The Regional Director must be notified of a change in a corporation or partnership as defined in this paragraph within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph, is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership.

(4) Catcher vessel QS and IFQ resulting from that QS held in the name of a corporation or partnership that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 676.21 of this part, before it may be used at any time after the effective date of the change.

§ 676.23 Management areas.

The requirements and provisions of this subpart govern the harvest of all halibut caught with fixed gear in any regulatory area, as defined at § 676.11 of this part, and the harvest of all sablefish caught with fixed gear in any regulatory area, as defined at § 676.11 of this part, except that sablefish harvested within Prince William Sound, or under a State of Alaska limited entry program, will not be considered as harvested from a regulatory area.

§ 676.24 IFQ fishing season.

(a) The fishing season(s) for IFQ halibut are established by the International Pacific Halibut Commission and codified at 50 CFR 301.7.

(b) Directed fishing for sablefish using fixed gear in any regulatory area may be conducted at any time during the period from 00:01 Alaska Standard Time on March 1 through 24:00 Alaska Standard Time on November 30.

§ 676.25 Western Alaska Community Development Quota.

(a) *Halibut CDQ Program.* The Secretary will annually withhold from

IFQ allocation the proportions of the halibut catch limit that are specified in this paragraph for use as a community development quota (CDQ). Portions of the CDQ for each regulatory area may be allocated for the exclusive use of eligible western Alaska communities in accordance with Community Development Plans (CDPs) approved by the Governor of the State of Alaska in consultation with the Council and approved by the Secretary. The proportions of the halibut catch limit annually withheld for purposes of the CDQ program, exclusive of issued QS, are as follows for each area:

(1) In the IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in or proximate to this regulatory area. For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nautical miles from the point where the boundary of the IPHC regulatory area intersects land.

(2) In regulatory area 4C, 50 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities physically located in regulatory area 4C.

(3) In regulatory area 4D, 30 percent of the halibut quota shall be made available for the halibut CDQ program to eligible communities located in or proximate to IPHC management areas 4D and 4E.

(4) In regulatory area 4E, 100 percent of the halibut quota shall be made available for the halibut CDQ program to communities located in or proximate to IPHC management area 4E. A trip limit of 6,000 pounds will apply to halibut CDQ harvesting in IPHC management area 4E.

(b) *Sablefish CDQ Program.* In the notices of proposed and final harvest limit specifications required under § 675.20(a) of this chapter, the Secretary will specify 20 percent of the fixed gear allocation of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under § 675.24(c) of this chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of specific western Alaska communities in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. The Secretary will allocate no more than 12 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

(c) *State of Alaska CDQ responsibilities.* Prior to granting approval of a CDP recommended by the

Governor, the Secretary shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. The hearing(s) on the CDP do not have to be held on the actual documents submitted to the Governor under paragraph (d) of this section. Such hearing(s) must cover the substance and content of the proposed CDP in such a manner that the general public, and particularly the affected parties, have a reasonable opportunity to understand the impact of the CDP. The Governor must provide reasonable public notice of hearing date(s) and location(s). The Governor must make available for public review, at the time of public notice of the hearing, all State materials pertinent to the hearing(s). The Governor must include a transcript or summary of the public hearing(s) with the Governor's recommendations to the Secretary in accordance with § 676.25. At the same time this transcript is submitted to the Secretary, it must be made available, upon request, to the public. The public hearing held by the Governor will serve as the public hearing for purposes of Secretarial review under § 676.25(e).

(d) *CDP application.* The Governor, after consultation with the Council, shall include in his written findings to the Secretary recommending approval of a sablefish/halibut CDP, that the CDP meets the requirements of these regulations, the Magnuson Act, the Alaska Coastal Management Program, and other applicable law. At a minimum, the submission must discuss: the determination of a community as eligible; information regarding community development, including goals and objectives; business information; and a statement of the managing organization's qualifications. For purposes of this section, an eligible community includes any community or group of communities that meets the criteria set out in paragraph (f)(2) of this section. Applications for a CDP must include the following information:

(1) *Community development information.* Community development information includes:

(i) the goals and objectives of the CDP;

(ii) The allocation of sablefish or halibut CDQ requested for each subarea defined at § 675.2;

(iii) The length of time that CDQ allocation will be necessary to achieve the goals and objectives of the CDP, including a project schedule with measurable milestones for determining progress;

(iv) The number of individuals to be employed under the CDP, the nature of the work provided, the number of employee-hours anticipated per year, and the availability of labor from the applicant's community(ies);

(v) Description of the vocational and educational training programs that a CDQ allocation under the CDP would generate;

(vi) Description of existing fishery-related infrastructure and how the CDP would use or enhance existing harvesting or processing capabilities, support facilities, and human resources;

(vii) Description of how the CDP would generate new capital or equity for the applicant's fishing or processing operations;

(viii) A plan and schedule for transition from reliance on the CDQ allocation under the CDP to self-sufficiency in fisheries; and

(ix) A description of short- and long-term benefits to the applicant from the CDQ allocation.

(2) *Business information.* Business information includes:

(i) Description of the intended method of harvesting the CDQ allocation, including the types of products to be produced; amounts to be harvested; when, where, and how harvesting is to be conducted; and names and permit numbers of the vessels that will be used to harvest the CDQ allocation;

(ii) Description of the target market for sale of products and competition existing or known to be developing in the target market;

(iii) Description of business relationships between all business partners or with other business interests, if any, including arrangements for management, audit control, and a plan to prevent quota overages. For this section, business partners means all individuals who have a financial interest in the CDQ project;

(iv) Description of profit sharing arrangements;

(v) Description of all funding and financing plans;

(vi) Description of joint venture arrangements, loans, or other partnership arrangements, including the distribution of proceeds among the parties;

(vii) A budget for implementing the CDP;

(viii) A list of all capital equipment;

(ix) A cash flow and break-even analysis; and

(x) A balance sheet and income statement, including profit, loss, and return on investment on all business ventures within the previous 12 months by the applicant and/or the managing organization.

(3) *Statement of managing organization's qualifications.* (i)

Statement of the managing organization's qualifications includes information regarding its management structure and key personnel, such as resumes and references;

(ii) Description of how the managing organization is qualified to manage a CDQ allocation and prevent quota overages; For purposes of this section, a qualified managing organization means any organization or firm that would assume responsibility for managing all or part of the CDP and would meet the following criteria:

(A) Documentation of support from each community represented by the applicant for a CDP through an official letter of support approved by the governing body of the community;

(B) Documentation of a legal relationship between the CDP applicant and the managing organization that clearly describes the responsibilities and obligations of each party as demonstrated through a contract or other legally binding agreement; and

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application.

(e) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the community eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary shall then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary shall notify the Governor and the Council in writing that the Governor's recommendations for CDPs are consistent with the community eligibility conditions and evaluation criteria under paragraph (f) of this section and other applicable law, including the Secretary's reasons for approval. Publication of the decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP, and the availability of the findings, will appear in the **Federal Register**. The Secretary will allocate no more than 12 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A community may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per community will be accepted.

(2) If the Secretary finds that the Governor's recommendations for halibut and sablefish CDQ allocations are not

consistent with the criteria set forth in these regulations and disapproves the Governor's recommendations, the Secretary shall so advise the Governor and the Council in writing, including the reasons therefor. Publication of the decision will appear in the **Federal Register**. The CDP applicant may submit a revised CDP to the Governor for submission to the Secretary. Review by the Secretary of a revised CDP application will be in accordance with the provisions set forth in this section.

(f) *Evaluation criteria.* The Secretary will approve the Governor's recommendations for halibut and sablefish CDPs if the Secretary finds the CDPs are consistent with the requirements of these regulations, including the following:

(1) Each CDP application is submitted in compliance with the application procedures described in § 676.25(d);

(2) Prior to approval of a CDP recommended by the Governor, the Secretary will review the Governor's findings as to how each community meets the following criteria for an eligible community in (f)(2) (i), (ii), (iii), and (iv). The Secretary has determined that the communities listed in Table 1 at § 676.25 meet these criteria; however, communities that may be eligible to submit CDPs and receive halibut or sablefish CDQs are not limited to those listed in this table. For a community to be eligible, it must meet the following criteria:

(i) The community must be located within 50 nautical miles from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the westernmost of the Aleutian Islands, or on an island within the Bering sea. A community is not eligible if it is located on the Gulf of Alaska coast of the North Pacific Ocean even if it is within 50 nautical miles of the baseline of the Bering Sea;

(ii) The community must be certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Pub. L. 92-203) to be a native village;

(iii) The residents of the community must conduct more than one-half of their current commercial or subsistence fishing effort in the waters surrounding the community; and

(iv) The community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that benefits from an approved CDP would be the only way to realize a return from previous investments. The communities of

Unalaska and Akutan are excluded under this provision.

(3) Each CDP application demonstrates that a qualified managing organization will be responsible for the harvest and use of the CDQ allocation pursuant to the CDP;

(4) Each CDP application demonstrates that its managing organization can effectively prevent exceeding the CDQ allocation; and

(5) The Governor has found for each recommended CDP that:

(i) The CDP and the managing organization are fully described in the CDQ application, and have the ability to successfully meet the project milestones and schedule;

(ii) The managing organization has an adequate budget for implementing the CDP, and that the CDP is likely to be successful;

(iii) A qualified applicant has submitted the CDP application and that the applicant and managing organization have the support of each community participating in the proposed CDQ project as demonstrated through an official letter approved by the governing body of each such community; and

(iv) The following factors have been considered:

(A) The number of individuals from applicant communities who will be employed under the CDP, the nature of their work, and career advancement;

(B) The number and percentage of low-income persons residing in the applicant communities, and the economic opportunities provided to them through employment under the CDP;

(C) The number of communities cooperating in the application; and

(D) The relative benefits to be derived by participating communities and the specific plans for developing a self-sustained fisheries economy.

(6) For purposes of this paragraph, "qualified applicant" means:

(i) A local fishermen's organization from an eligible community, or group of eligible communities, that is incorporated under the laws of the State of Alaska, or under Federal law, and whose board of directors is composed of at least 75 percent resident fishermen of the community (or group of communities) that is (are) making an application; or

(ii) A local economic development organization incorporated under the laws of the State of Alaska, or under Federal law, specifically for the purpose of designing and implementing a CDQ project, and that has a board of directors composed of at least 75 percent resident fishermen of the community (or group

of communities) that is (are) making an application.

(7) For the purpose of this paragraph, "resident fisherman" means an individual with documented commercial or subsistence fishing activity who maintains a mailing address and permanent domicile in the community and is eligible to receive an Alaska Permanent Fund dividend at that address.

(8) If a qualified applicant represents more than one community, the board of directors of the applicant must include at least one member from each of the communities represented.

(g) *Monitoring of CDPs.* (1) Approved CDPs for halibut and sablefish are required to submit annual reports to the Governor by June 30 of the year following CDQ allocation. At the conclusion of a CDP, a final report will be required to be submitted to the Governor by June 30 of the final year of CDQ allocation. Annual reports for CDPs will include information describing how the CDP has met its milestones, goals, and objectives. The Governor will submit an annual report to the Secretary on the final status of all concluding CDPs, and recommend whether allocations should be continued for these CDPs that are not yet concluded. The Secretary must notify the Governor in writing of receipt of the Governor's annual report, accepting or rejecting the annual report and the Governor's recommendations on the continuance of CDPs. If the Secretary rejects the Governor's annual report, the Secretary will return the Governor's annual report for revision and resubmission to the Secretary.

(2) If an applicant requests an increase in an existing halibut or sablefish CDQ allocation, the applicant must submit a new CDP application for review by the Governor and approval by the Secretary as described in paragraphs (d) and (e) of this section.

(3) Amendments to a CDP will require written notification to the Governor and subsequent approval by the Governor and the Secretary before any change in a CDP can occur. The Governor may recommend to the Secretary that the request for an amendment be approved. The Secretary may notify the Governor in writing of approval or disapproval of the amendment. The Governor's recommendation for approval of an amendment will be deemed approved if the Secretary does not notify the Governor in writing within 30 days of receipt of the Governor's recommendation. If the Secretary determines that the CDP, if changed, would no longer meet the criteria under paragraph (f) of this section, or if any of

the requirements under § 675.27 would not be met, the Secretary shall notify the Governor in writing of the reasons why the amendment cannot be approved.

(i) For the purposes of this section, amendments are defined as substantial changes in a CDP, including, but not limited to, the following:

(A) any change in the relationships among the business partners;

(B) Any change in the profit sharing arrangements among the business partners, or any change to the budget for the CDP; or

(C) Any change in management structure of the project, including any change in audit procedures or control.

(ii) Notification of an amendment to a CDP shall include the following information:

(A) Description of the proposed change, including specific pages and text of the CDP that will be changed if the amendment is approved by the Secretary; and

(B) Explanation of why the change is necessary and appropriate. The explanation should identify which findings, if any, made by the Secretary in approving the CDP may need to be modified if the amendment is approved.

(h) *Suspension or termination of a CDP.* (1) The Secretary may, at any time, partially suspend, suspend, or terminate any CDP, upon written recommendation of the Governor setting out his reasons, that the CDP recipient is not complying with these regulations. After review of the Governor's recommendation and reasons for a partial suspension, suspension, or termination of a CDP, the Secretary will notify the Governor in writing of approval or disapproval of the Governor's recommendation. In the event of approval of the Governor's recommendation, the Secretary will publish an announcement in the Federal Register that the CDP has been partially suspended, suspended, or terminated along with reasons therefor.

(2) The Secretary also may partially suspend, suspend, or terminate any CDP at any time if the Secretary finds a recipient of a CDQ allocation pursuant to the CDP is not complying with these regulations or other regulations or provisions of the Magnuson Act or other applicable law or if the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area is amended. Publication of suspension or termination will appear in the Federal Register along with the reasons therefor.

(3) The annual report for multi-year CDPs, which is required under paragraph (g) of this section, will be used by the Governor to review each CDP to determine if the CDP and CDQ

allocation thereunder should be continued, decreased, partially suspended, suspended, or terminated under the following circumstances:

(i) If the Governor determines that the CDP will successfully meet its goals and objectives, the CDP may continue without any Secretarial action.

(ii) If the Governor determines that a CDP has not successfully met its goals and objectives, or appears unlikely to become successful, the Governor may submit a recommendation to the secretary that the CDP be partially suspended, suspended, or terminated. The Governor must set out in writing his reasons for recommending suspension or termination of the CDP. After review of the Governor's recommendation and reasons therefor, the Secretary will notify the Governor in writing of approval or disapproval of his recommendation. The Secretary would publish a notice in the Federal Register that the CDP has been suspended or, with reasons therefor, terminated.

(i) *Compensation for CDQ allocations.*

(1) The Regional Director will compensate persons that receive a reduced halibut IFQ in regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC management areas 2C, 3A, and 3B. This compensation of halibut QS from areas 2C, 3A, and 3B will be allocated in proportion to the amount of halibut IFQ foregone due to the CDQ allocation authorized by this section.

(2) The Regional Director will compensate persons that receive a reduced sablefish IFQ in any subarea of the Bering Sea and Aleutian Islands management area because of the sablefish CDQ program by taking sablefish QS from the Federal reporting areas of the Gulf of Alaska and allocating it in proportion to the loss suffered by persons in the BSAI area. Such additional compensation of sablefish QS will be allocated in proportion to the amount of sablefish IFQ foregone due to the CDQ allocation authorized by this section.

(j) *Limitation on use of CDQ.* (1) Directed fishing for halibut with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ fishing may occur only during the fishing periods specified in 50 CFR 301.7. Directed fishing of sablefish with fixed gear under an approved CDQ allocation may begin on the effective date of the allocation, except that CDQ directed fishing may occur only during the IFQ fishing season specified in § 676.24 of this part.

(2) *CDQ permits.* The Regional Director will issue a CDQ permit to the

managing organization responsible for carrying out an approved CDQ project. A CDQ permit will authorize the managing operation identified on the permit to harvest halibut or sablefish with fixed gear from a specified area. A copy of the CDQ permit must be carried on any fishing vessel operated by or for the managing organization, and be made available for inspection by an authorized officer. Each CDQ permit will be non-transferable and will be effective for the duration of the CDQ project or until revoked, suspended, or modified.

(3) *CDQ cards.* The Regional Director will issue CDQ cards to all individuals named on an approved CDP application. Each CDQ card will identify a CDQ permit number and the individual authorized by the managing organization to land halibut or sablefish for debit against its CDQ allocation.

(4) No person may alter, erase, or mutilate any CDQ permit or card or registered buyer permit issued under this section. Any such permit or card that has been intentionally altered, erased, or mutilated will be invalid.

(5) All landings of halibut or sablefish harvested under an approved CDQ project must be landed by a person with a registered buyer permit, and reported as prescribed in § 676.14 of this part.

Table 1.—Communities Initially Determined To Be Eligible To Apply for Community Development Quotas

Aleutian Region

1. Atka

2. False Pass
3. Nelson Lagoon
4. Nikolski
5. St. George
6. St. Paul

Bering Strait

1. Brevig Mission
2. Diomedes/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay

1. Aleknagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Eku
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands

1. Alakanuk
2. Chefornek

3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

§ 676.26 Appeal procedure. [Reserved]
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