

CQE small block restriction – discussion paper (revised)

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In June 2012, the Council heard testimony that a resident of a community that had established a Community Quota Entity (CQE) to purchase and lease halibut and sablefish individual fishing quota (IFQ) to community residents had attempted to sell his halibut IFQ to the community's CQE. The CQE was unable, however, to purchase the IFQ, because it was a block of quota share, and the CQE discovered it was limited by a minimum size restriction on its ability to purchase blocks. As a result, the Council requested a discussion paper to evaluate removing restrictions on CQE communities buying small blocks of IFQ, at least and especially from CQE residents.

1 Background

1.1 CQE program

The Council and NMFS developed a limited access system for the fixed gear halibut and sablefish fisheries off Alaska, to resolve the conservation and management problems commonly associated with open access fisheries. Fishing under the IFQ Program began in 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota share in specific management areas. Quota shares equate to individual harvesting privileges, given effect on an annual basis through the issuance of IFQ permits. The specific amount (in pounds) that an individual permit holder is annually authorized to harvest is determined by the number of QS units held for that species, the total number of QS units issued for that species in a specific regulatory area, and the total amount of the species allocated for IFQ fisheries in a particular year. If the abundance of halibut or sablefish decreases over time, the total allowable catch (TAC) for that species will decrease and, subsequently, the number of pounds on a person's annual IFQ permit also will decrease. By ensuring access to a certain amount of the TAC at the beginning of the season and by extending the season over a longer period, QS holders may determine where and when to fish, how much gear to deploy, and how much overall investment to make in harvesting.

Under GOA Amendment 66, effective in 2004, the Council revised the IFQ program to allow a distinct set of 42 remote, coastal communities with few economic alternatives to purchase and hold catcher vessel QS in Areas 2C, 3A, and 3B, in order to help ensure access to and sustain participation in the commercial halibut and sablefish fisheries². Eligible communities can form non-profit corporations called CQEs to purchase catcher vessel QS, and the annual IFQ resulting from the QS can only be leased to community residents.

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² In 2012, the Council recommended a revision to the CQE program to allow for the creation of a community non-profit organization to represent Adak, for the purpose of purchasing Area 4B halibut catcher vessel quota share (QS), and Aleutian Islands sablefish catcher vessel QS. This proposed amendment has not yet been approved by the Secretary of Commerce.

In effect, the CQE remains the holder of the QS, creating a permanent asset for the community to use to benefit its residents. The QS can only be sold in order to improve the community's position in the program, or to meet legal requirements, thus, the QS must remain with the community entity.³ The CQE Program was also intended as a way to promote ownership by individual residents, as individuals can lease annual IFQ from the CQE and gradually be in a position to purchase their own quota share. During the development of the program, it was noted that both community and individually-held quota were important in terms of fishing access and economic health.

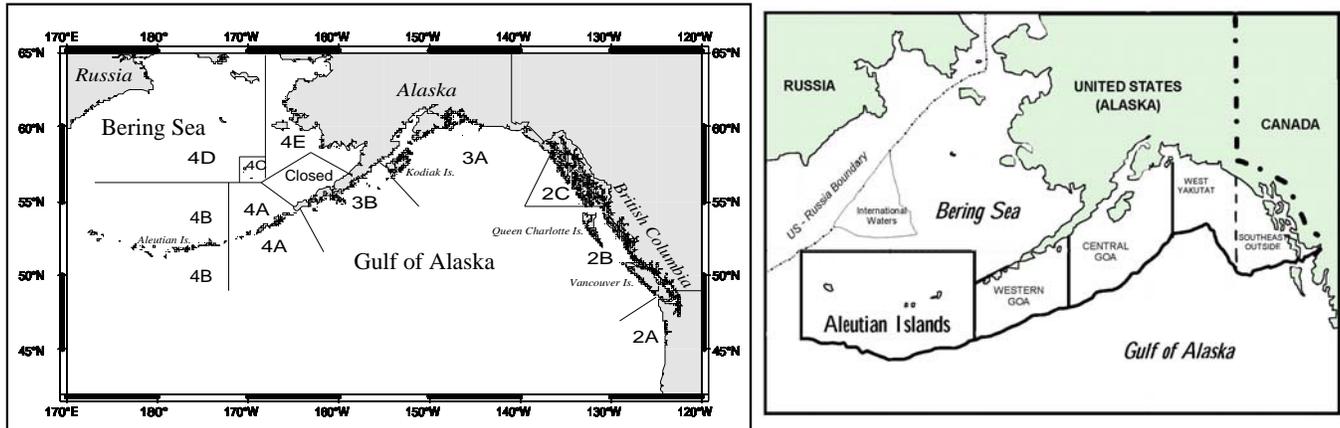
The CQE Program includes several elements that make CQEs subject to either more, the same, or fewer constraints than individual quota share holders. In some cases, the CQE is subject to the same latitude and limitations as individual users, as if the CQE is simply another category of eligible person. For example, an individual CQE is held to the same quota share cap as an individual holder. In other cases, the CQE is subject to less restrictive measures than individual holders. For example, the vessel size categories do not apply to QS when held by CQEs. In yet other cases, the CQE is subject to more restrictive measures than individuals, in part to protect existing holders and preserve entry-level opportunities for fishermen residing in other (non-eligible) fishery-dependent communities. In addition, there are caps on the amount of QS that all CQEs combined can purchase, and that each individual CQE can purchase. CQEs also have a limit on the number of pounds of halibut and sablefish IFQ that they can lease to an individual resident, and the amount of IFQ that can be used on an individual vessel. Both limits are inclusive of any individual IFQ held.

Participation in the CQE Program has been relatively limited with respect to the purpose of allowing communities to purchase halibut and sablefish quota shares in the Gulf and retaining that QS for use by resident fishermen⁴. Only two CQEs have purchased quota share to-date, and the program has not come close to reaching its regulatory limits on the amount of QS that may be purchased. While only two CQEs have purchased QS, 30 of the 42 eligible GOA communities have completed the process to form a CQE and have it approved by NMFS. Thus, three-quarters of the eligible communities have invested substantial time and resources in preparing to participate in the program, and several additional communities have made efforts to evaluate whether forming a CQE is of interest and benefit to the community at this time. Regardless of the interest conveyed and effort put forth to participate in the program, very little quota share has been purchased.

³ If the CQE sells its QS for any other reason, NMFS will withhold annual IFQ permits on any remaining QS held, and will disqualify the CQE from holding QS on behalf of that community for 3 years. It also requires that the CQE divest itself of any remaining QS on behalf of that community.

⁴ Note, the CQE model has since been extended to other Council programs, as beginning in 2011, eligible GOA communities may now hold non-trawl groundfish permits endorsed for Pacific cod, and community charter halibut permits.

Action area – Regulatory areas for the commercial halibut (left) and sablefish (right) fisheries



1.2 Block restrictions under the IFQ program

As part of the IFQ program, the Council also designed a “block program,” to further guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. The overall intent of the block restriction was to ensure that QS would be available to a part-time fleet of smaller operators, in order to help maintain some of the diversity of the fleet that existed under open access and thereby make the IFQ program less disruptive to isolated Alaska fishing communities. The block program reduced the amount of QS consolidation that could have occurred under the IFQ program, and slowed consolidation by restricting QS transfers. The following are provisions of the block program for individual QS holders:

- All initial QS allocations for both halibut and sablefish, which would have yielded less than 20,000 lb of IFQ in 1994, were placed permanently in a QS block. Blocks are not divisible and can only be bought or transferred in their entirety. In 2004, QS blocks in Areas 3B and 4A that yielded more than 20,000 lb, based on 2004 TACs, were divided into one block of 20,000 lb and the remainder as unblocked QS.
- A sweep-up provision allows very small blocks to be combined into a fishable amount. For halibut, blocks could be combined if the sum total would not exceed an amount of QS equal to 1,000 lb of IFQ in 1994. The same provision applies to sablefish, except that the poundage cap was set at 3,000 lb. In 1996, the sweep-up consolidation levels for small QS blocks were increased to 3,000 lb for Pacific halibut, and 5,000 lb for sablefish, using the pound equivalents in QS units for 1996 TACs. In 2004, the sweep-up consolidation level for halibut was again increased in Areas 2C and 3A only, to the 5,000 lb equivalent in 1996 QS units.
- Block restrictions limit the number of blocks a QS holder may hold. Initially, a QS holder was only allowed to hold up to two blocks of QS each for halibut and sablefish per IFQ regulatory area. This limit was increased to 3 blocks for halibut in 2004. However, if a QS holder holds any amount of unblocked QS for an area, he or she may hold only one block of QS for that area.

Slightly different block program restrictions apply to CQEs, however the intent remains the same in applying a block provision to QS held by community entities. By limiting the number of blocks a CQE may hold, it would help prevent communities from consolidating the type of QS that is most attractive to and feasible for existing smaller operators to purchase. A CQE may not hold more than 10 blocks of halibut QS in any IFQ regulatory area, and not more than 5 blocks of sablefish in any IFQ regulatory area, on behalf of any eligible community. Additionally, CQEs are restricted to purchasing blocks of shares that, when issued, exceeded a minimum poundage of IFQ, based on 1996 TACs. The minimum size limit of a QS block that may be purchased or used by a CQE is listed in Table 1. Under Amendment 66, the

limits were set to the same level as applied to sweep-up consolidation levels for individuals, namely the equivalent amount of QS that resulted in 3,000 lb for halibut, and 5,000 lb for sablefish, based on 1996 TACs (except that no minimum size limit was identified for halibut in Area 3B⁵). Subsequently, in GOA Amendment 67, the Council increased the sweep-up consolidation level for individuals holding halibut blocks in Areas 2C and 3A, to 5,000 lb in equivalent 1996 QS units, and this increased level was also applied to CQEs by increasing the minimum size limit of a QS block of halibut that could be purchased or used by a community for those regulatory areas.

Table 1 Minimum size limit of QS blocks that may be purchased or used by a CQE

Species	Area	QS block minimum	IFQ equivalent in 2012 TACs	Species	Area	QS block minimum	IFQ equivalent in 2012 TACs
Halibut	2C	33,320 QS	1,470 lb	Sablefish	Southeast Outside	33,270 QS	3,520 lb
	3A	46,520 QS	3,000 lb		West Yakutat	43,390 QS	3,550 lb
	3B	No restriction			Central GOA	46,055 QS	4,190 lb
					Western GOA	48,410 QS	4,220 lb

Effectively, this restriction prohibits communities from purchasing the smallest blocks of QS. Rationale for the Council’s recommendation may be found in the Amendment 66 analysis (prepared in 2002). The analysis noted that the original intent of the block provision was to ensure that QS would be available to a part-time fleet of smaller operators, in order to mitigate some of the negative impacts to isolated fishing communities. However, the community QS program was also intended to protect these same stakeholders, as community use of QS would potentially benefit many individual residents. At the same time, the analysis noted that if no limit on the acquisition of blocked QS was applied and, as assumed, blocked QS is the most “affordable” form available, qualifying communities would logically seek to acquire as much of this form of QS as they could. With the entry of potentially as many as 45 qualifying communities into the market for QS, the price “bid” for all forms of QS would be expected to rise, with blocked QS rising relatively more than unblocked, due to this being the preferred form sought by the new market entrants. The most likely sellers of blocked QS were anticipated to be the current QS holders residing in the target communities, who, not coincidentally, hold a disproportionate amount of blocked QS relative to that held by all Gulf communities. As a result, if no limit on acquisition of the “entry level” blocked shares was applied, gains in community QS holdings may (potentially in large part) have reflected losses of QS holdings among residents of these same target communities, i.e., a transference of “private” ownership, to “public” (community) ownership. The analysis noted as well that there may also be smaller, individual operators, of the type that the block provision was originally intended to protect, who are not residents of the target communities, and who could find it more difficult to purchase blocked QS if communities were allowed to enter the program.

The specific restriction on purchasing small blocks of QS was intended to allow some community purchase of blocked QS, while preserving the smallest (and least costly) blocks for individual holders. Although the analysis noted that there was considerable uncertainty in predicting how individual communities would participate in the program in the future, the small block purchase restriction, as well as other block restrictions, was implemented to mitigate concerns about communities flooding the market, and buying up all the blocked QS available to individual operators..

⁵ The Amendment 66 analysis noted that TAC had increased dramatically in Area 3B since initial issuance, resulting in the development of blocks of QS yielding very high pounds of IFQ. The Council subsequently addressed this issue under GOA Amendment 67, by dividing all QS blocks in Area 3B (and 4A, where there was a similar issue) into a block of 20,000 lb, based on 2004 TACs, with the remainder issued as unblocked QS.

1.3 Data on blocks

The information compiled in this section is specific to halibut QS, because the CQEs that have purchased QS to date only hold halibut QS. Similar information could also be compiled for sablefish QS holdings.

The majority of QS in Area 2C is blocked (Table 2). In the remaining areas relevant to the CQE program, blocked QS represents between a third and a half of total QS. As reported above, there are two CQEs that have purchased halibut QS. In both cases, the CQE holdings consist entirely of blocked QS.

Table 2 Total halibut catcher vessel QS holdings, by area.

Area	Total QS	Blocked QS	Unblocked QS	Total Number of Blocks
2C	58,287,044	71%	29%	1,422
3A	180,120,286	36%	64%	1,613
3B	52,608,160	46%	54%	574
4B	8,731,285	36%	64%	104

Source: NOAA Fisheries RAM, 11/5/2012.

Table 3 illustrates the quota share holdings of CQE community residents, and the proportion of their quota share that is blocked. Residence is determined by the residence or business address reported to NMFS. In most CQE communities, the majority of QS held by residents is blocked QS.

Table 3 Halibut QS holdings of CQE community residents, by self-reported residence/business address.

Area	Community	2C		3A		3B	
		Total QS	% blocked	Total QS	% blocked	Total QS	% blocked
2C	Angoon	197,746	70%				
	Coffman Cove			187,329	0%		
	Craig	1,654,693	83%				
	Edna Bay	230,154	100%				
	Elfin Cove	651,310	73%	253,254	72%	84,722	82%
	Gustavus	355,502	100%	154,850	100%	28,817	100%
	Hoonah	663,759	86%	313,203	83%		
	Hydaburg	46,583	100%				
	Take	735,724	61%				
	Klawock	29,495	100%	114,830	100%		
	Metlakatla	279,731	100%				
	Pelican	637,350	27%	213,519	100%		
	Point Baker	138,669	100%				
	Port Alexander	79,525	100%	78	100%		
Tenakee Springs	463	100%	175,498	100%			
Thorne Bay	143,735	97%					
3A	Old Harbor			149,323	100%	13,255	100%
	Port Graham			88,899	100%		
	Port Lions			99,525	100%		
	Seldovia			2,501,381	22%	592,497	39%
	Yakutat	1,086	100%	1,270,945	100%		
3B	Chignik					128,220	97%
	King Cove					782,660	75%
	Sand Point			13,324	100%	2,475,816	75%

Source: NOAA Fisheries RAM, 11/5/2012.

As demonstrated in Table 4, CQEs are currently prohibited from holding approximately two-thirds of the available blocks in Areas 2C and 3A, representing approximately a third of the blocked QS in each area (i.e., any blocks that yielded less than 5,000 lb, based on 1996 TACs). At the implementation of the CQE

program, prior to the increase in the sweep-up consolidation level for individuals, implemented under GOA Amendment 67, CQEs were only prohibited from holding close to half of the available blocks, or 16% of the available QS in each area.

Table 4 Number of halibut blocks, by size and regulatory area.

Area	Blocks that yielded ≤ 3,000 lb (based on 1996 TACs)		Blocks that yielded 3,001 - 5,000 lb (based on 1996 TACs)		Blocks that yield > 5,001 lb (based on 1996 TACs)	
	Number of blocks	% of total blocked CV QS	Number of blocks	% of total blocked CV QS	Number of blocks	% of total blocked CV QS
2C	649	16%	309	20%	464	64%
3A	760	16%	339	20%	514	63%

Source: NOAA Fisheries RAM, 11/5/2012.

2 Avenues for Council action

In order to change the block restrictions that apply to CQEs, the Council would need to initiate FMP and regulatory amendments. The current CQE block restrictions are specified in Section 3.7.1.8.3 of the GOA FMP, and in 50 CFR 679.41(e)(4) and (5). If the Council chooses to move forward with an amendment analysis on this issue, the Council should articulate a statement of the problem that the amendment is seeking to address, and alternatives for analysis.

Some issues that the Council should clarify, if it intends to move this forward for analysis, include the following:

- Does the Council want to consider changing the CQE minimum block size restriction for both halibut and sablefish?
- To what should the block restriction be changed? A lower limit, for example for halibut, reverting to the original Amendment 66 limit, or a removal of the limit?
- The Council's June 2012 discussion referenced a potential option of lifting the block restriction specifically when a CQE is buying QS from a community resident. Does the Council want to limit the analysis to this interpretation, or analyze changing the block restriction as it is applicable to any purchase?