

COMMERCIAL HALIBUT AND SABLEFISH IFQ OMNIBUS 4 AMENDMENTS

PROPOSED ACTIONS: Revise the halibut and sablefish commercial individual fishing quota program under eight amendments to the regulations and/or Bering Sea/Aleutian Islands (BSAI) Groundfish FMP and/or Gulf of Alaska (GOA) Groundfish FMP.

PROBLEM STATEMENT: The halibut/sablefish vessel size classes and block plan were designed to maintain a diverse, owner-operated fleet and provide an entry-level to the IFQ fisheries. Large quota increases and other factors suggest that these provisions should be reviewed to determine if changes are needed to ensure program goals are met. Due to consolidation and use patterns of the fleet, a review of block structure and its application is appropriate for all areas. To address medical hardships, establish a transfer provision for a limited period to address bonafide medical problems by QS holders. Product recovery rate provisions may be disincentives for fishermen to bleed fish, thereby reducing the quality of fish delivered. Due to whale depredations, the sablefish fisheries in the BSAI offer unique challenges to harvesting. Due to concerns over this harvest in other regulatory areas, options to verify fishing locations need to be developed.

ANALYSIS: CE/RIR/IRFA. None of the proposed actions are expected to significantly affect the human environment.

RANGE OF ACTIONS AND ALTERNATIVES:

Action 1. Amend regulations to allow medical transfers

Alternative 1. No action.

Alternative 2. Allow medical transfers.

Action 2. Amend QS use rights/hired skipper provisions

Alternative 1. No action.

Alternative 2. Tighten the criteria for the 20 percent ownership requirement (ownership is documented by contemporary abstract of title).

Option 1. Document 20% ownership by contemporary abstract of title continuously for previous:

a. 12 months

b. 24 months

c. year-to-date plus previous calendar year; and/or

Option 2. A vessel is limited to a maximum of 5 QS holders who may hire a skipper(s) on that vessel in the previous:

a. 12 months

b. 24 months

c. year-to-date plus previous calendar year

Action 3. Amend check-in/check out requirements

Alternative 1. No action.

Alternative 2. Add check-in/check out and/or VMS requirements to the BS and AI sablefish regulations.

Option 1. Add check-in/check-out for the Aleutian Islands and Bering Sea sablefish fishery (e.g., in Dutch Harbor, Adak, St Paul, St George)

Option 2. Require VMS when fishing in the Aleutian Islands and Bering Sea sablefish fishery

Action 4. Amend sablefish product recovery rate

Alternative 1. No action.

Alternative 2. Change product recovery rate from 0.98 to 1.0 for bled sablefish.

Action 5. Amend IFQ and CDQ regulations to allow Area 4C fishermen to harvest Area 4C IFQ and CDQ in Area 4D.

Alternative 1. No action.

Alternative 2. Allow Area 4C fishermen to harvest Area 4C IFQ and CDQ in Area 4D

Option: Allow Area 4D fishermen to harvest Area 4D IFQ and CDQ in Area 4C

Action 6. Amend halibut block program in Areas 2C, 3A, 3B, 4A, 4B, 4C, and 4D

Alternative 1. No action.

Alternative 2. Increase blocks from 2, to 3 or 4

Alternative 3. Unblock all QS > 20,000 lbs. (now in QS units) where the 2003 TAC level exceeds a 20,000 lb. unit equivalent

Alternative 4. Allow QS > 20,000 lbs. to be divided into smaller blocks

Alternative 5. Increase the Area 2C and 3A halibut sweep-up level to the 5,000 lb equivalent in current QS units (2C: 35,080 units; 3A: 40,860 units)

Action 7. Amend Area 3B, 4A, 4B, 4C and 4D QS categories

Alternative 1. No action.

Alternative 2. Allow D category QS to be fished as C category shares

Alternative 3. Allow D category QS to be fished as C or B category QS

Alternative 4. Combine C and D category QS

Action 8. Amend the fish down regulations for halibut (Area 2C) and sablefish (Southeast)

Alternative 1. No action.

Alternative 2. Eliminate the exception to the fish down regulations for halibut (Area 2C) and sablefish (Southeast)

ESTIMATE OF STAFF RESOURCES: Council staff will prepare the RIR/IRFA (EA if necessary), with data assistance from NMFS RAM Division. NMFS staff will prepare the CE memo, proposed rule, final rule, final RFA certification, CZMA letter, memos, and all other certifications. An inter-agency staff meeting will convene to review legal, enforcement, and implementation issues.

TIMELINE TO IMPLEMENTATION: Council staff has identified potential timelines for final action on the eight proposed actions. However, none of these scenarios will speed up implementation of those adopted by the Council due to NMFS priorities of implementing the crab rationalization program, halibut charter IFQ program, and the IPHC halibut annual management plan. Publication of the proposed rule is predicted to occur no sooner than Spring 2005 (except for Action 5 which would occur in the publication of the final rule implementing the halibut annual management plan after the conclusion of the 2005 Annual Meeting of the International Pacific Halibut Commission).

To optimize opportunities for public comment by stakeholders, the Council may wish to schedule initial review/final action for October/December 2004, when it convenes in Sitka and Anchorage, respectively. Or it could schedule Actions 1 through 5 for final action in October in Sitka because they are not controversial and are not expected to significantly affect the human environment. The proposed rule is not expected to be published prior to Spring 2005 under either timeline.

Three proposed actions that would amend the block program could be analyzed separately because this analysis is expected to be more data-driven than policy-driven. The Council could adopt either of the following timelines for each of the proposed actions: (1) initial review in October 2004 and final action in December 2004; (2) final action in October 2004. The two-meeting timeline allows for public testimony in Sitka and Anchorage. Again, the proposed rule is not expected to be published prior to Spring 2005.

COMMERCIAL HALIBUT AND SABLEFISH IFQ OMNIBUS 4 AMENDMENTS DISCUSSION PAPER

INTRODUCTION: The purpose of providing the following history of the development of the current halibut and sablefish Individual Fishing Quota (IFQ) program is to remind the Council and interested readers of the original intent of the specific elements of the IFQ program. Since the Council has changed these elements under numerous plan and regulatory amendments during the first ten years of implementation and proposes to change those same and additional elements further under the following eight plan and regulatory amendments, the Council may wish to consider its original intent of the program and whether and how the conditions in the halibut and sablefish fisheries have changed to no longer warrant the restrictions the Council is proposing to relax. Halibut quotas have increased, while sablefish quotas have dropped and leveled off. Ex-vessel prices and quota share prices for both species have increased. Fishing technology, fishery infrastructure, and conditions in other state and Federal fisheries have changed since the original program and supporting policy were developed.

Since initial implementation in 1995, the IFQ program has assigned the privilege of harvesting a percentage of the sablefish and halibut quota to specific individuals with a history of harvest in the fisheries. Quota shares can be bought and sold, allowing people who did not receive an initial allocation the option to buy or lease quotas. Ten major problems were identified by the NPFMC as threatening the North Pacific fisheries:

- Allocation conflicts
- Gear conflicts
- Dead loss (to lost gear)
- Bycatch loss
- Economic stability
- Discard mortality (high grading)
- Excess harvesting capacity
- Product wholesomeness
- Safety concerns
- Economic instability for the fishery and fishing communities
- Rural fleets lacking new opportunities

The purpose of the program was to provide for improved long-term productivity of the sablefish and halibut fisheries, by further promoting the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act and to retain the character and size of the fishing fleets as much as possible. The Council needed to address the issue of protecting small producers, part-time participants, and entry-level participants who may tend to disappear because of potential excessive consolidation under the IFQ program. For this reason the system includes restrictions designed to prevent too many quota shares from falling into too few hands (ownerships caps) or from being fished on too few vessels (vessel use caps). Other restrictions will prevent the fishery from being dominated by large boats or by any particular vessel class. This is the system of assigning quota shares to vessel categories and then restricting transfers between categories. A second design feature of the program was to require that most vessels in the fishery remain operated by their owners.

To maintain this predominantly “owner-operated” nature of the fishery, the program provides:

- Only QS holders who received their quota upon initial issuance may hire masters to fish the resulting IFQ. In Southeast Alaska (halibut area 2C and sablefish area east of 140 degrees west longitude), only corporations or partnerships may hire masters.
- When QS is transferred, it may only be transferred to an entity that received an initial award of quota share or to an individual who is a qualified crew member. If QS is transferred to an individual that individual must be on board while the IFQ is being fished.

- Though an individual who receives QS by initial issuance may incorporate his or her business and transfer the QS to that corporation, the owner on board requirement in Southeast Alaska remains.
- Quota share may be pledged as collateral. This means that it can be financed by an entity other than the transferor or the transferee, and it can be repossessed. However, the financial institution may not receive the IFQ and fish it if it is repossessed. That institution may only sell the QS to a qualified QS holder.

As described by Oliver (undated),

“Among the Council’s major concerns when structuring the IFQ program, were [*sic*] its potential sociocultural effects, particularly on Alaskan coastal communities which rely on this fishery as a large part of their economic base. Many of these communities have fleets comprising predominantly smaller vessels which deliver their catch to shoreside plants. A major fear of opponents of the program (as well as supporters) was that the fleets of small boats and the communities in which they are based would suffer as larger vessels with superior bargaining power bought up the QS/IFQ’s.

Several safeguards were built into the program to address these concerns. QS/IFQ’s would be designated for vessel categories based on vessel size and could not be traded outside these categories. This would ensure that the original amount allocated to each category would remain forever in that category, though fleet consolidation within a particular category could still occur.”

- Quota shares are issued specifically to a vessel class and to an IFQ regulatory area. There are six areas and three vessel categories for sablefish and eight areas and four vessel categories for halibut. This results in 50 combinations of QS issued by NMFS. Vessel categories are described by both length overall and the kind of fishery operation:

- Category A freezer vessels of any length;
- Category B catcher vessels > 60 ft;
- Category C for sablefish, catcher vessels ≤ 60 ft, and
for halibut, catcher vessels ≤ 60 ft but > 35 ft; or
- Category D for halibut, catcher vessels ≤ 35 ft.

Although the IFQ program included provisions designed to protect the social structure of the fishery and dependent communities, many persons remained concerned that the plan did not guarantee that enough QS would continue to be held by small part-time operators. These persons were concerned about the social impacts of the reduction in size or total elimination of such operations.

The Council designed a “block program” to further guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. It achieved some of the benefits of the original program while further constraining the IFQs in exchange for maintaining a relatively large and diverse group of fishing operations. It was a compromise that gave protection to new entrants and small vessels while not unduly restricting the larger participants.

The block program reduced the amount of QS consolidation that could have occurred under the IFQ program by significantly increasing the “theoretical minimum” number of QS holders. Simplistically, use caps of ½ percent for halibut and 1 percent for sablefish would have resulted in as few as 200 halibut and 100 sablefish QS holders for each area, if the maximum consolidation occurred. The block program resulted in raising the minimum number of participants to 1,050 halibut fishermen and 243 sablefish fishermen. It also slowed consolidation by restricting QS transfers and allowed fishermen, processors, and communities time to adjust to the program, and easing the transition from open access to IFQs. It provided an entry level to the IFQ

fisheries and enhanced opportunities for deck hands as well as fishermen receiving small allocations with stair-steps into the fisheries. It helped maintain the initial nature and diversity of the longline fleet by creating a broad size range of QS blocks. There are four elements of the block program.

- All initial QS allocations for both halibut and sablefish, which would yield less than 20,000 lb of IFQ in 1994, would be placed permanently in a block. Blocks are not divisible and can only be bought or transferred in their entirety.
- A sweep-up provisions allows very small blocks to be combined into a fishable amount. For halibut, blocks with QS which would yield less than 1,000 lb could be combined if the sum total would not amount to QS which would be worth more than 1,000 lb of IFQ in 1994. The same provisions would apply for sablefish, except that the poundage cap was set at 3,000 lb. In 1996, the sweep-up levels for small QS blocks were increased to 3,000 lb for Pacific halibut and to 5,000 lb for sablefish. The base year for determining the pound equivalents were revised to 1996 and the poundage were fixed as QS units equivalents. This was to eliminate any confusion as to the appropriate sweep up level in pounds, which otherwise would fluctuate with changes in the annual TAC.
- Ownership restrictions apply to both halibut and sablefish. A QS holder may hold up to two blocks of QS per IFQ regulatory area, if he/she does not hold any unblocked QS in that area as well. If a QS holder holds unblocked QS for one area, he/she may hold only one block of QS for that areas as well. A qualified QS holder may buy unblocked QS for a particular area limited to those vessel and use cap restrictions for those areas.

The Council developed a Catch Sharing Plan (CSP) for Pacific halibut in the Bering Sea and Aleutian Islands for allocating the Area 4 catch limit established by the International Pacific Halibut Commission among the five subareas. The CSP was adopted by the Secretary and first implemented in March 1996 as an interim measure while the IPHC further evaluated a new policy of using a biomass-based method for setting catch limits for Areas 4A, 4B, and 4C-E. In 1998, the CSP was amended to remove Areas 4A and 4B to concur with the newly adopted IPHC policy of using an equal exploitation rate strategy for the halibut resource in subareas 4A and 4B where considerable stock separation occurs. However, there was no biological basis for the distribution of the catch limits among Subareas 4C, 4D, and 4E because of a lack of stock separation among the areas. Therefore, the IPHC now sets a catch limit for Subareas 4C, 4D, and 4E.

In 1998, the Council identified that the historical apportionment of catch limits among Subareas 4C-E was important to achieve the socioeconomic objectives of the IFQ and Western Alaska Community Development Quota programs. It revised the CSP to apply an annual framework to the IPHC Subarea 4C, 4D, and 4E catch limit. A direct allocation of 80,000 lb is made to Subarea 4E (the entire subarea 4E halibut catch limit is assigned to the CDQ program) when the Subarea 4C, 4D, and 4E catch limit exceeds 1,657,600 lb to provide Subarea 4E CDQ fishermen with additional harvesting opportunities. The Council identified that the Subarea 4E catch limit had been unreasonably constrained in the years prior to the CSP. After the direct allocation to Subarea 4E, the remainder of the Subarea 4C, 4D, and 4E catch limit is allocated: 46.43 % to each of Subareas 4C and 4D and 7.14% to Subarea 4E.

In 2001, the Council blurred the boundary between Subareas 4D and 4E when it allowed a CDQ group with an allocation of Area 4D halibut CDQ to harvest all or part of that allocation in Area 4E to provide CDQ fishermen in Area 4E with additional halibut CDQ harvesting opportunities closer to the coast. The Area 4C-E allocative framework remains unchanged.

HISTORY OF IFQ AMENDMENTS: Since initial implementation of the program in 1995, the Council has made numerous amendments to the halibut and sablefish IFQ program that each have relaxed the restrictions that

enacted the Council's policy. This may be reasonable to consider given current market and fishing conditions, since the Council recognized the need to place tight restrictions on what was then a revolutionary approach to fisheries management with unknown economic and social consequences early in its deliberations. However, the Council should be aware of the cumulative effects from each incremental adjustments to the program on its original intent for the program.

CDQ Compensation. This regulatory amendment authorized a one-time trade of QS/IFQ received under the CDQ compensation formula between parties in different regulatory areas. The Council subsequently exempted the CDQ compensation "pieces" of QS/IFQ from the provisions of the Block amendment, except for freezer/longline vessels, and allowed for a one-time trade of these pieces exempt from the vessel category designations. Final rule was effective in February 1996.

Catch Sharing Plan. In December 1995 the Council approved a Catch Sharing plan for the IPHC subareas of Area 4 in the Bering Sea and Aleutian Islands. The action allows shifts, without plan or regulatory amendment, in the percentages of halibut distributed to the various areas. Final rule took effect in March 1996.

Multiple Area Fishing. An interim rule effective August 25, 1995, allowed vessels to fish IFQs in multiple areas without offloading, so long as there is an observer on board.

Catcher Vessel QS Use on Freezer Boats. Council reaffirmed in June 1994 that catcher vessel QS/IFQ for sablefish (but not halibut) can be used on freezer vessels so long as no processed IFQ product is on board for that trip. This allowed freezing of non-IFQ species such as Pacific cod and rockfish, while harvesting sablefish catcher vessel QS on a freezer vessel. Final rule became effective in July 1996.

Buy down/Fish up of QS Blocks. In January 1996, the Council approved an amendment wherein catcher vessel QS could be used on vessels of the same size class or smaller. It addresses the need for increased flexibility of halibut and sablefish QS transfers for Category B, C, and D vessels to alleviate a scarcity of large to medium block sizes in some areas. It allows the use of larger vessel Category (B and C) QS on smaller category vessels C and D), except that in halibut area 2C and sablefish southeast area, buy down of B category QS would be allowed only for blocks less than 5,000 lbs (based on 1996 quotas). Final rule became effective August 1996.

Sweep-up of QS Blocks. In April 1996, the Council increased the sweep-up levels of halibut and sablefish QS blocks: 3,000 lbs for halibut and 5,000 lbs for sablefish. The increase in the consolidation of very small, blocked QS was approved to provide economically fishable amounts for small QS holders, crew members, and new entrants to the fishery, without overly increasing consolidation or creating large blocks. This became effective for December 1996.

Slime and Ice Deduction. In December 1996, the Council approved a regulatory amendment to create standard deductions for ice and slime for halibut and sablefish to improve accurate accounting of harvests. The Council recommended standard deductions for halibut and sablefish of 0% (washed) and 2% (for ice and slime). Final rule became effective December 1997.

Longlining of Pots for Sablefish in Bering Sea. In April 1996, the Council approved a regulatory amendment to allow the use of pot longlines in the Bering Sea for sablefish. Pots would no longer have to be on single buoyed lines, and would be compatible with the regulations as they exist in the Aleutians. Final rule became effective in September 1996.

Extension of Sablefish Season in Aleutian Islands. In September 1995, the Council approved a regulatory amendment to extend the sablefish fishery in the Aleutian islands year-around for sablefish QS holders who also possess sufficient halibut IFQ to cover their halibut bycatch. This was not implemented by NMFS.

Emergency Transfers to Heirs. In September 1995, the Council approved authorization for immediate transfer of IFQ to a surviving spouse, with leasing provisions for a period of three years. The final rule took effect September 9, 1996. In June 1997, the Council amended the provision to allow transfer of QS upon death of the QS owner to any heir of the deceased's estate under a 3-year emergency provision.

Hired Skipper Requirements. In October 1997, the Council required a 20% minimum interest in vessels for QS holders wishing to hire skippers. The Council also grandfathered QS holders who had employed a hired skipper on or before April 17, 1997 to continue to use a hired skipper at the ownership level they had used prior to April 17, 1997. Any QS holder grandfathered under this provision will lose those grandfather rights if they purchase or otherwise acquire ownership or control of additional QS after September 23, 1997. Final rule was effective June 1999. In November 1998, the Council modified the hired skipper provisions to allow QS holders wishing to hire skippers to establish indirect vessel ownership through corporate ties. Final rule became effective May 2002.

Increased Quota Share Use Level in BSAI. In June 1996, the Council approved a regulatory amendment to increase the BSAI halibut QS use caps to 1.5% from the status quo limit of 0.5% of the total amount of halibut QS for regulatory areas 4A, 4B, 4C, 4D, and 4E, combined. Final rule became effective in March 1997.

Halibut Charter IFQ Program. In April 2001, the Council approved a program that would incorporate the charter sector into the commercial halibut IFQ program. Among its many provisions and restriction, QS would have limited transferability between the charter and commercial sectors. The proposed rule is under development by NMFS.

Community QS Purchase. In April 2002, the Council approved allowing 42 eligible Gulf of Alaska coastal communities to hold commercial halibut and sablefish catcher vessel QS in Areas 2C, 3A, and 3B for lease to community residents. Specified rural, coastal communities with no road access, populations of less than 1,500, and documented participation in the halibut and/or sablefish fisheries would be allowed to hold a maximum of 3% of the Area 2C, 3A, or 3B halibut QS and 3% of the SE, WY, CG, or WG sablefish QS in each of the first seven years of the program, with a 21% total cap by area, unless modified earlier through a review process specified by the Council. Final rule became effective in April 2004.

SUMMARY OF PROPOSED ACTIONS: Council and NMFS staff have provided short summaries of each of the proposed eight actions to amend the halibut and sablefish IFQ program, which were approved for analysis in December 2003. In June, the Council is scheduled to set staff tasking priorities (Agenda D-3) from among the eight IFQ regulatory and BSAI/GOA Groundfish FMP amendments and six subsistence halibut regulatory amendments. The alternatives and problem statement from the December 2003 meeting are identified in a box for each proposed action. In some cases, staff has noted inappropriate text; staff will assume the Council concurs with the strikeouts unless directed otherwise. The problem in the fishery as identified by staff, the proposal, background on the management issue(s), course of action, and staff requests for clarifications are presented for each proposed action below.

Action 1. Amend regulations to allow medical transfers.

Alternative 1. No action.

Alternative 2. Allow medical transfers.

Problem Statement: To address medical hardships, establish a transfer provision for a limited period to address bona-fide medical problems by QS holders.

Problem: The Council’s policy and implementing regulations, which require an owner of a vessel fishing halibut or sablefish QS (except for corporate owned IFQ) to be on board the vessel, do not allow the temporary transfer of QS by QS owners who experience a temporary disability that prevents the QS holder from fishing his/her shares. The Council recognized that it did not make this allowance when it designed the IFQ program and that injured QS holders would have to sell their QS outright. Those individuals would then purchase QS when they were physically able to reenter the fishery.

Proposals: Two proposals were approved for analysis which would allow the use of emergency medical transfers in the halibut and sablefish IFQ fisheries. Such transfers would allow QS holders to retain possession of their QS during temporary periods of disability when they might otherwise have to sell their QS to meet financial obligations, e.g., loans supporting the purchase of the QS in question. Numerous appeals for medical hardship have been raised with the Council and NMFS since the IFQ Program initially was implemented in 1995.

Background: Stories of injured or sick IFQ holders being transported on and off fishing vessels to meet “owner-on-board” requirements have been reported. Regulations currently allow only a very narrow exemption allowing for the transfer of QS in an emergency medical situation that occurs during a fishing trip. Regulations at 50 CFR 679.42(d) read as follows:

(d) Emergency waiver. The requirement of paragraph (c) of this section for an individual IFQ card holder to be aboard the vessel 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 IFQ sablefish retained on the fishing trip during which such emergency occurred.

Medical transfers were not included in the design of the IFQ program because of the Council’s policy of maintaining a fishing fleet of owner-operators in the IFQ fisheries by narrowly restricting leasing provisions. Initial proposals for a medical transfer provision were rejected based on the potential for abuse and the lack of technical expertise at NMFS to determine disability. During initial implementation, affected parties petitioned for an emergency transfer provision analogous to the State of Alaska’s program found at 20 AAC 05.1740. The State of Alaska provision sets up an elaborate system requiring a qualitative determination of “illness, disability, or other unavoidable hardship.” The State of Alaska also allows for further qualitative determinations of severity of injury, “good faith,” and “extraordinary circumstances.” The Council and some affected parties generally agreed that the State system had been subject to abuse and required an inordinate amount of administrative resources to maintain. The CFEC caseload of appeals has been identified as a potential issue for NMFS¹ should a similar rate of appeals occur. Nonetheless, advocates argued compellingly

¹ During 2002, the CFEC approved 686 out of 719 emergency transfer requests. The requests and approvals each represent less than two percent of 36,000 annual fishing permits and vessel licenses issued by the CFEC. Emergency transfer hearings are held and decided by paralegals. CFEC commissioners review each paralegal and hearing officer decision and may order further review and hearings on their own motion or upon the request of an affected party, and may subsequently modify, reverse or affirm the decisions. CFEC staff advised that a more “liberal” law/regulation providing for emergency transfers would lead to higher numbers of emergency transfer requests and approvals and a less “liberal” law/regulation would lead to fewer. (Source: K. Schelle, CFEC).

that emergency transfers were necessary to address situations where QS holders would be unable to be on board a vessel during fishing due to serious medical conditions such as cancers, broken bones, etc.

In its April 1995 minutes, the Team unanimously recommended the following policy statement to the Council. The Team also unanimously recommended that the emergency transfer involve IFQ and not QS.

“If a person can demonstrate to the Regional Director [*sic*] that due to some unforeseen accident, injury, or illness, he has been rendered incapacitated in his ability to longline, he may be allowed a one-time medical transfer provided the RD [*sic*] feels there is insufficient time before the season’s closure for recovery to harvest all or part of his quota share. Consideration by the RD [*sic*] will take into account vessel size and fall weather limitations, accordingly.

Medical documentation shall be satisfactory to NMFS in making impairment determination. Chronic injuries such as “bad backs,” or aging ailments such as arthritic crippling, loss of vision or hearing, do not constitute grounds for medical transfer. Incarceration does not constitute grounds for medical transfer. The onetime transfer provision may last for a period of no more than two fishing seasons. Decisions by the RD [*sic*] to allow transfers are final and not subject to further appeal.

Justification: The integrity of the IFQ system. If we can not produce a mechanism for medical transfer that has clear legitimacy, then the Council should consider either no transfer of QS or revisit leasing as a provision.”

In September 1995, the Council recommended that the Regional Administrator framework a number of regulatory changes, including allowing the use of medical transfers. The Council recommendation was to request that the RA use his discretionary authority to grant medical transfers. Proposed regulatory language stipulated that “. . . the Regional Director [*sic*] may approve the application for transfer of a person’s IFQ if it can be demonstrated that the person is presently unable to participate actively in the IFQ fisheries because of illness, disability, or other unavoidable hardship of a temporary, unexpected, and unforeseen nature.” The draft regulation would have provided that the “transfer” will remain “effective until the circumstance that made the transfer necessary are over. . .” The RA disapproved the action in March 1996, because NMFS did not have the expertise or the resources to make emergency transfer provisions a viable part of the IFQ Program using discretionary authority.

In October 2003, a reconstituted IFQ Implementation and Cost Recovery Team reviewed proposals to amend the IFQ program. The team noted that short term emergency situations are not likely to result in abuse and reiterated its 1995 recommendation that provisions for medical transfers be examined for inclusion in the halibut and sablefish IFQ program because a workable process now had been identified. Proposed criteria for medical transfers no longer includes the use of discretionary authority by the RA, but would require a signed affidavit by a medical professions who attests to a particular medical situation. The following language blends the need for medical transfer provisions with policy and enforcement needs to limit the potential for abuse that could otherwise undermine Council policy (e.g., *de facto* leasing under the guise of medical transfers).

Subsequent experience in the management and prosecution of the IFQ fisheries suggests that a new medical transfer system could be implemented that would avoid the unnecessary administrative burden and minimize the potential for abuse associated with the initial proposals. As a result, NMFS staff addressed the use of emergency transfers in a more expanded context to include medical emergencies that occur outside regular fishing activities. The following process has been developed by NMFS and NOAA General Counsel staff, in consultation with the industry.

Emergency Medical Transfers

Policy Element	Comment
<p>Eligibility for Benefit: Only individual halibut or sablefish QS holders to whom one or more catcher vessel IFQ permit(s) have been issued for any given fishing year, and only those who may not retain the services of a master (hire a skipper) to fish his/her annual IFQ permits, may apply for an Emergency Medical Transfer (EMT).</p>	<p><i>Benefit is intended only for those who have no other options for getting their IFQ permit fished; e.g. "2nd Generation" QS/IFQ holders, individuals holding QS/IFQ in Area 2C and SE, and IFQ Loan Program borrowers.</i></p>
<p>Nature of Benefit: Upon approval of an application to receive an EMT, an eligible individual QS/IFQ permit holder may transfer his/her annual IFQ permit to an eligible recipient; i.e., only an individual who is otherwise eligible to receive catcher vessel QS/IFQ by transfer (individuals who received QS upon initial issuance and individuals who are "IFQ Crewmembers").</p>	<p><i>Transferee must be eligible to receive catcher vessel QS by transfer.</i></p>
<p>Limitation: Approval of an application for an EMT will be valid only during the calendar (permit) year for which the permit(s) is issued. An application for an EMT in subsequent years, for the same medical condition, will not be approved unless the medical professional attests that there is a reasonable likelihood of recovery; in no event shall applications for EMTs be approved for more than three consecutive years for the same reason.</p>	<p><i>The maximum three-year limit is consistent with the "surviving spouse" language; chronic or irreversible conditions may not justify an EMT for more than one year.</i></p>
<p>Justification for an EMT: An application for an EMT will not be approved unless the applicant demonstrates that:</p> <ul style="list-style-type: none"> • s/he is unable to participate in the IFQ fishery(ies) for which s/he holds IFQ permit(s) because of a severe medical condition that precludes such participation; or, • s/he is unable to participate in the IFQ fishery(ies) for which s/he holds IFQ permit(s) because of a severe medical condition involving a family member that necessitates the IFQ permit holder's full-time attendance. 	<p><i>The EMT will only be approved for a <u>medical</u> condition; no other situation (e.g., economic hardship, required government service, family obligations, etc.) will suffice.</i></p>
<p>Evidence of Qualifying Medical Condition: An application for an EMT must be submitted on a form provided by NMFS and, to be approved, must be accompanied by an affidavit presented by a certified medical practitioner. The affidavit must describe the medical condition affecting the applicant and must attest to the inability of the applicant to participate in the IFQ fishery(ies) for which s/he holds IFQ permit(s) during the IFQ season, or (in the case of a family member) that describes the necessity for the IFQ permit holder to tend to an immediate family member who suffers from the medical condition.</p> <p>To be accepted, affidavits must be in a form prescribed by NMFS and will specifically include acknowledgment of the requirements precedent to approval of an application for an EMT. An affidavit so executed will be assumed to be dispositive.</p>	<p><i>NMFS would prepare an affidavit form for the "medical professional" to review and sign; the form would explain the rule and the consequences of the professional's assertions.</i></p> <p><i>"Medical Professional" suggests that the practitioner need not be a physician – but s/he must be certified as a medical professional (e.g., a village Health Aide would qualify).</i></p> <p><i>This section will benefit from a regulatory definition of "Certified Medical Professional" for these purposes.</i></p>

Consideration of Applications: Applications for EMTs, together with appropriate evidence (described above), must be submitted to the Regional Administrator (RA) or his/her designee on a form provided by the RA. The RA/designee may request additional information before taking action on the application.

If the application is approved, the applicant and the transferee will be so notified and the IFQ permit(s) will transfer.

Any time an application for an EMT is denied, such denial will be formally set out in an Initial Administrative Determination. As with all such determinations, it could be appealed to the NMFS office of Administrative Appeals.

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion.

In June, staff requests that the Council:

- (1) revise the current problem statement, which now states the action proposed by the Council rather than a problem in the fishery.**
- (2) specify the duration of emergency medical transfers for analysis.**
- (3) adopt the staff proposed process for emergency medical transfers for analysis (see box above).**

Action 2. Tighten QS use rights/hired skipper provisions for the 20 percent ownership requirement.

Alternative 1. No action.

Alternative 2. Tighten the criteria for the 20 percent ownership requirement (ownership is documented by contemporary abstract of title).

Option 1. Document 20% ownership by contemporary abstract of title continuously for previous:

- a. 12 months
- b. 24 months
- c. year-to-date plus previous calendar year; and/or

Option 2. A vessel is limited to a maximum of 5 QS holders who may hire a skipper(s) on that vessel in the previous:

- a. 12 months
- b. 24 months
- c. year-to-date plus previous calendar year

Problem Statement:

Problem: The Council continues to be concerned about alleged abuses of the regulatory provision that allows vessel owners who received QS at initial allocation to hire skippers to harvest their IFQs without having to be onboard the vessel. The problem statement from the “hired skipper” analysis follows.

“A key element of the IFQ Program is the requirement for catcher vessel QS holders to be on board the vessel during harvest and offloading of IFQ species. The Council intended this requirement 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. While sole proprietor commercial fishing businesses were unlikely to have difficulty complying with this restriction, the Council recognized that many fishing firms may use hired masters to operate their vessels. The

Council did not wish to constrain this option for small businesses and therefore created an exception (codified at 50 CFR 679.42(i) and (j)) for individuals who received initial allocations of catcher vessel QS, provided that such an individual (a) owns the vessel on which the IFQ halibut or sablefish are harvested and (b) is represented on the vessel by a master in his employment. Revised regulations inadvertently encourage nominal ownership of vessels by initial recipients due to inexact language related to ownership of vessels on which QS is fished.”

Proposal: Six proposals related to ownership of halibut and sablefish QS were reviewed by the team and were rejected. In their place, the team reconfirmed its 1999 recommendation to not expand leasing/hired skipper allowances and recommended that criteria should be established to tighten compliance with the 20 percent ownership requirement. The team did not identify what the criteria should be.

Background: Revising the hired skipper allowance has been before the Council numerous times. Some industry members oppose this allowance because it affects the amount and price of QS on the market for purchase (e.g., to crew or new participants). Some support the allowance because it was part of the traditional open access fisheries that the Council’s IFQ program was dedicated to maintain. Additionally, corporations holding QS cannot physically be “on-board” a vessel. Therefore, the current 20 percent ownership requirement was a compromise between not being able to hire a skipper and *sales and abuse of the allowance* (resales of QS for nominal dollar amounts occurred between QS holders that were clearly exploiting a regulatory loophole to avoid having a “real” QS holder on board the fishing vessel).

Various program constraints limit consolidation of QS and ensure that practicing fishermen, rather than investment speculators, retain harvesting privileges. The Gulf of Alaska Groundfish FMP and the Bering Sea and Aleutian Islands Area Groundfish FMP and the implementing regulations for the IFQ Program prohibits all leasing of IFQ derived from QS in categories B, C, and D and require that holders of such QS be aboard the vessel harvesting IFQ species during all fishing operations. An exception to this owner-aboard provision allows initial recipients of B, C, or D category QS to employ a hired skipper to fish their IFQ provided that the QS holder owns the vessel on which the IFQ are being fished. This exception was created to allow fishermen who had operated their fishing businesses with hired skippers before the IFQ Program was implemented to continue operating this way under the IFQ Program. While the IFQ Program promotes an owner/operator fixed gear fishery for sablefish and halibut, this exception allows initial recipients of QS to remain ashore while having their IFQ harvested by a hired skipper. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

A problem developed in the first years of the IFQ Program because the regulations did not clearly define vessel ownership. Some initial recipients of QS purchased a nominal interest in a vessel, for example 1 percent or less, and thereby saved the costs of operating a wholly-owned vessel and crew. Although such nominal vessel ownership served the objective of fishing capacity reduction, it compromised the Council’s social and economic intent for an owner-operator fishery in which QS holders actually participate in harvesting operations. Also, such nominal vessel ownerships created the potential for excessive loss of crew member jobs. The June 1999 (64 FR 24960) implementation of revised regulations specified a minimum vessel ownership interest that must be acquired before the QS holder may hire a skipper to harvest the IFQ. Under the revised regulations, initial recipients of B, C, or D category QS who wish to hire skippers to fish the IFQ derived from their QS must own a minimum of a 20 percent interest in the vessel on which the IFQ species are being harvested.

QS holders whose applications to hire skippers were approved prior to April 17, 1997, the date of the Council’s first review of the analysis of this issue, are exempt from the requirement provided that (1) the QS holder’s percentage of ownership in the vessel which the hired skipper will operate does not fall below the percentage held in that vessel at the time he or she had a hired-skipper application approved prior to April 17, 1997, and (2) the QS holder has acquired no additional QS after September 23, 1997, the date of the Council’s final action to recommend this regulatory change. A QS holder who held less than a 20 percent interest in a

vessel prior to April 17, 1997, must continue to hold at least the percentage held by him or her on that date, in order to be eligible to hire a skipper to fish his or her IFQ on that vessel. Moreover, because an initial recipient of QS may hire a skipper to fish not only the QS acquired as an initial allocation but also any QS acquired through transfer, the maximum amount of QS that can be used under this exemption is the level held prior to September 23, 1997, the date of the Council's final action on this proposal. This restriction assures that only existing business arrangements regarding levels of vessel ownership and QS holdings can use this exemption.

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action. Staff has not identified appropriate criteria that both meets Council intent but are not overly restrictive to those fishermen attempting to comply with the policy.

In June, staff requests that the Council:

- (1) **adopt a new problem statement or revise its 1997 problem statement to delete the last sentence because it is outdated.**
- (2) **specify the criteria referenced in Alternative 2 or announce that interested industry members should meet with NMFS staff to develop options for tightening restrictions.**
- (3) **revise Alternative 2 text as follows:**

To use the hired skipper exception, a QS holder must demonstrate at least a 20% owner interest in the vessel to be used and that no more than 4 other owners of that same vessel exist and have continuously owned the vessel for

Option 1. Document 20% ownership by contemporary abstract of title ~~continuously~~ **that shows continuous ownership for the previous:**

- a. 12 months
- b. months
- c. year-to-date plus previous calendar year; and/or

Option 2. A vessel is limited to a maximum of 5 QS holders who may hire a skipper(s) **to fish their IFQ on that vessel in the previous:**

- a. 12 months
- b. 24 months
- c. year-to-date plus previous calendar year

Action 3. Amend check-in/check out and/or VMS requirements to the BS and AI sablefish regulations.

Alternative 1. No action.

Alternative 2. Add check-in/check out and/or VMS requirements to the BS and AI sablefish regulations.

Option 1. Add check-in/check-out for the Aleutian Islands and Bering Sea sablefish fishery (e.g., in Dutch Harbor, Adak, St Paul, St George)

Option 2. Require VMS when fishing in the Aleutian Islands and Bering Sea sablefish fishery

Problem Statement: Due to whale depredations, the sablefish fisheries in the BSAI offer unique challenges to harvesting. Due to concerns over this harvest in other regulatory areas, options to verify fishing locations need to be developed.

Problem: Accurate catch reporting are alleged to be compromising the sablefish IFQ program in the Bering Sea and Aleutian Islands sablefish fisheries due to misreporting of harvest areas. Misreporting may be due to increased motivation to fish in the Western Gulf (WG) and claim the fish were harvested in the Bering Sea (BS) or Aleutian Islands (AI) because of:

- (1) higher sablefish population densities resulting in higher catch rates in the WG (0.259 kg/hook) compared with the BS (0.095 kg/hook) or AI (0.145 kg/hook);

- (2) lower whale depredation in the WG compared with the BS and AI (killer whales may selectively remove up to 100 percent of sablefish from longlines in the BS and AI compared with lower fishery interactions with sperm whales which may selectively remove up to 25 percent of sablefish from longlines in the WG);
- (3) lower fishing costs for many sablefish QS holders to fish in WG compared with BS or AI.

Proposal: A proposal to enhance monitoring of remote sablefish fishing areas through either vessel clearances or vessel monitoring systems to limit misreporting was received in 2003.

Background. There are no vessel clearance requirements in the sablefish IFQ program if transiting in the EEZ off Alaska. However, vessel clearance requirements between regulatory areas off Alaska are required in the halibut IFQ program. The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted. An operator obtaining a required vessel clearance must obtain the clearance from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained. The vessel operator shall specify the specific regulatory area in which fishing will take place. Vessel clearances shall be obtained between 0600 and 1800 hours, local time. No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4. Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed is exempt from the clearance requirements, provided that: (a) the operator of the vessel complies with NMFS vessel monitoring system regulations and (b) the operator of the vessel notifies NOAA Enforcement Division between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

Less than half of the BS and AI sablefish quota was harvested in 2003, while the BSA quota increased by more than 80% and AI quota increased by 40% since 1995. Increased incentives to misreport the area in which harvests actually occurred is of concern to the proposer. Increased incentives to misreport the area in which harvests actually occurred is of concern to the proposer. Misreporting the catch area provides inaccurate catch information for management and assessment of the North Pacific sablefish stock. In addition, misreporting the catch area could affect the calculation of subarea allocations of the sablefish ABC and subsequent subarea TACS. Sablefish abundance is estimated using catch rates from the annual sablefish survey ($\frac{2}{3}$ weight) and commercial fishery logbooks ($\frac{1}{3}$ weight). There are two types of catch estimation used in the stock assessment. Total catch by regulatory areas are summed and used to estimate the stock-wide (GOA, BS, AI) abundance; therefore, misreporting by area does not affect the overall abundance estimate. Catch *rates* by area (from logbooks) are used to determine area allocations of ABC and TAC; therefore misreporting of catch could affect area ABCs and TACs. However, logbooks are required only for vessels greater than 60 ft and catch rate data also is recorded by observers.

Action: A regulatory amendment would be required. In its December 2003 minutes, the team recommended that the analysis for this action consider: “(1) issues that are associated with the inability of the fleet to achieve the sablefish TAC in the BS and AI; (2) possible enforcement related issues and challenges that may exist in this fishery, and that may be associated with the proximity of the BS and AI sablefish Areas to the Western GOA sablefish area; (3) the price differential that exists between the price of sablefish QS in the BS and AI, and that of sablefish QS in the Western GOA; and (4) the methodology for sablefish TAC setting in the BS and AI.”

In June, staff requests that the Council consider revising the problem statement.

Action 4. Change product recovery rate for bled sablefish.

Alternative 1. No action.

Alternative 2. Change product recovery rate from 0.98 to 1.0 for bled sablefish.

Problem Statement: Product recovery rate provisions may be a disincentive for fishermen to bleed fish, thereby reducing the quality of fish delivered.

Problem: **Accurate catch reporting** may be compromised under the current application of the product recovery rate for bled sablefish.

Proposal: A proposal for a regulatory change to the bled sablefish PRR from 0.98 to 1.00 was received in 2003. The proposal addressed an alleged overestimation of IFQ catch reporting resulting from the application of the PRR for bled sablefish, which results in its round weight equivalent. Bleeding and handling practices on individual vessels and setting time affect delivery weight. The proposer stated that the current 0.98 PRR for sablefish is not reasonable, has no conservation benefit, is a disincentive to improved quality (i.e., to bleeding sablefish), and is an unfair reduction in sablefish IFQs. The proposal to eliminate the bled sablefish PRR (either the current 0.02 rate or the experimental rate of 0.017 reported below) also is based on the absence of a PRR for unbled sablefish (which had an experimental weight loss of 0.01).

Background: Accurate catch accounting is a critical component of determining appropriate levels of allowable biological catch and quotas. The 0.98 PRR for bled fish has been in regulations since the mid-1980s. Some processors may have been incorrectly reporting bled fish as “round” fish for years. To the extent that past misreporting by processors who reported bled sablefish as “round” weight has occurred, then sablefish harvest has been under-reported, both in the general recordkeeping and reporting system and IFQ accounting. Whether the potential discrepancy between real and applied weight loss from bleeding sablefish is significant for accurate catch reporting and the degree to which sablefish abundance has been incorrectly estimated would be addressed in an analysis.

The PRR for bled fish is based on research by the Observer Program in the 1980s. At the request of NMFS AKRO, AFSC-Auke Bay scientists conducted a study to determine the blood loss that could be expected for sablefish being bled onboard and delivered in the round. NMFS AKRO interpreted the following results to confirm the 0.98 rate and found no compelling reason to create a PRR for unbled sablefish. Sigler et al. (2003) reported (emphasis added):

“Accurate catch estimates are necessary for successful fishery management. Catch weights may be affected by fish bleeding; fishermen bleed fish to ensure product quality. We conducted field experiments during July 2002 and July 2003 in the Gulf of Alaska to estimate blood loss for sablefish. Fish weights were compared before and after bleeding. Sablefish lose more weight when bled without seawater (2.0%) than with flowing seawater (1.6%). Sablefish lose more weight when carefully brought aboard (2.0%) than when gaffed aboard (1.7%) (bled without flowing seawater). Sablefish lose weight even when not intentionally bled (1.0%), probably because of blood loss at the gaff wound. The adjustment (product recovery rate or PRR) applied by fishery managers to estimate catch weight for bled sablefish (2.0%) slightly overestimates blood loss for fish gaffed aboard (1.7%). The adjustment applied by fishery managers for unbled sablefish (0.0%) underestimates blood loss for fish gaffed aboard (1.0%). Estimating the actual blood loss for a commercial fishing trip is difficult because it requires accounting for storage methods and handling practices.”

Action: A regulatory amendment would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action. **In June, staff requests that the Council consider revising its problem statement.**

Action 5. Amend halibut regulations to allow Area 4C fishermen to harvest Area 4C IFQ and CDQ in Area 4D.

Alternative 1. No action.

Alternative 2. Allow Area 4C fishermen to harvest Area 4C IFQ and CDQ in Area 4D

Option: Allow Area 4D fishermen to harvest Area 4D IFQ and CDQ in Area 4C

Problem Statement:

Problem: During the 2003 fishing season, Area 4C fishermen landed just 42% of their IFQ halibut allocation compared to a statewide average of 97%. Only 45% of Area 4C CDQ halibut was landed. Loss of potential income was significant. This proposed change is intended to allow additional harvesting opportunities for the small boat halibut CDQ fishery in St. Paul and St. George to travel to Area 4D to harvest Area 4C quota. The CDQ groups could contract with larger boats to catch Area 4C halibut in Area 4D to maximize returns from its allocation.

Proposal: In December 2003, the Central Bering Sea Fishermen's Association, whose fishermen harvest both CDQ and IFQ halibut in Area 4C, requested a regulatory amendment to allow Area 4C fishermen to also harvest halibut from Area 4D and count it against their Area 4C quotas (the proposal is unclear as to whether it requested this exception for both CDQ and IFQ holders). The Council adopted Action 5 for analysis and included an option to allow Area 4D fishermen to harvest Area 4D halibut in Area 4C. The proposed action (with or without the option) would require revision to the Area 4 catch sharing plan (CSP) promulgated annually after the annual IPHC meeting.

Background Under current regulations established for the halibut IFQ and CDQ programs, the catch limit of halibut that is annually established for each area by the IPHC is divided among qualified halibut quota share holders. Halibut catch limits in Areas 4B, 4C, and 4D are divided between the IFQ and CDQ programs. Twenty percent of the Area 4B, 50 percent of the Area 4C, 30 percent of the Area 4D, and 100 percent of the Area 4E annual catch limits are allocated to the CDQ Program.

The halibut CDQ reserves are divided among eligible CDQ communities in accordance with Community Development Plans (CDP) submitted by CDQ groups and approved by NMFS. The Area 4 CSP originally was developed by the Council to apportion the IPHC Area 4 catch limit among Areas 4A, 4B, 4C, 4D, and 4E to carry out the social and economic objectives of the IFQ and CDQ programs. The CSP was first implemented in 1996. NMFS subsequently modified the Area 4 CSP to remove Areas 4A and 4B from the CSP in 1998, based on a Council recommendation. This change allowed the catch limits for Areas 4A and 4B and a combined Area 4C–4E to be set according to the IPHC’s revised area specific biomass-based methodology. The IPHC considers that Areas 4A, 4B, and 4C-E each have a separate halibut population; no biological distinction occurs among the 4C, 4D, and 4E subareas. A complete description of the revisions to the Area 4 CSP, catch limit apportionments, and geographical description of each subarea was published in the *Federal Register* on January 12, 1998. No changes have been made (nor were any proposed) to the existing Area 4 CSP framework that apportions the combined Area 4C-E annual catch limit among Areas 4C, 4D, and 4E.

All six CDQ groups have received halibut CDQ allocations in Areas 4C, 4D, and 4E since 1995. Past and current allocations recommended by the State of Alaska and approved by the Secretary have allocated Area 4C halibut CDQ to only two groups, Aleutian Pribilof Island Community Development Association (APICDA) and Central Bering Sea Fishermen’s Association(CBSFA). Allocations of *both* Area 4D and Area 4E halibut CDQ have gone to only two groups, Bristol Bay Economic Development Corporation (BBEDC) and Coastal Villages Region Fund (CVRF) based on their historical participation in the Area 4E halibut fishery and the contents of their CDP applications. Norton Sound Economic Development Corporation (NSEDC) and Yukon Delta Fisheries Development Association (YDFDA) have received only Area 4D halibut CDQ: residents of communities represented by these two groups (with the exception of two of NSEDC’s

communities) must travel extended distances offshore to harvest Area 4D halibut CDQ or the quota must be harvested by large, non-local vessels.

In 1999, CDQ groups that received Area 4D quota expressed a desire to increase the amount of halibut CDQ that could be harvested in their locally-based inshore halibut fishery by being allowed to harvest Area 4D halibut CDQ in Area 4E. All four of these groups represent communities along the western Alaska coast, ranging from Bristol Bay (south) to the Bering Strait (north). Almost all of the 56 communities represented by these groups are adjacent to Area 4E: only two are in Area 4D. In 1999, these groups approached the IPHC and Council to request a change in regulations to harvest halibut CDQ allocated to Area 4D in Area 4E. The IPHC had no objection to the request because it considers the halibut in Areas 4C, 4D, and 4E to be a single stock unit.

This change was intended to allow additional harvesting opportunities for the small boat halibut CDQ fishery in western Alaska, while maintaining the CDQ groups' flexibility regarding their harvest of Area 4D halibut. The final rule for the annual management measures for 2004 Pacific halibut fisheries states, ". . . the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E Community Development Quotas. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit."

In January 2002, the IPHC concurred with the Council's recommendation. On March 3, 2003, the final rule was published to allow CDQ Program participants to harvest allocations of Area 4D halibut CDQ in Area 4E as of February 28, 2003. The fishery operated for two years under an enforcement waiver, as if the recommendation was in effect while the rule was under development.

For 2003-2005, APICDA holds 15 percent and CBSFA holds 85 percent of annual allocations of Area 4C halibut CDQs. Four CDQ groups have received annual allocations of Area 4D halibut. BBEDC holds 26 percent, CVRF holds 24 percent, NSEDC holds 30 percent, and YDFA holds 20 percent of annual allocations of Area 4D CDQs. BBEDC holds 30 percent and CVRF holds 70 percent of annual allocations of Area 4E halibut. Between 1995 and 2004, the annual halibut CDQ reserve ranged from 385,000 to 1,015,000 lb in Area 4C, 231,000 to 609,000 lb in Area 4D and from 120,000 to 390,000 lb in Area 4E. Amounts specified for halibut catch limits, reserves, and allocations are all in net (headed and gutted) weight. The only change recommended in the halibut CDQ allocations between 2000-2002 and 2003-2005 was for Area 4C. The only two CDQ communities in Area 4C are St. Paul and St. George on the Pribilof Islands. In 2001 and 2002, CBSFA (representing St. Paul) was allocated 90% of the halibut Area 4C allocation and APICDA (representing St. George) was allocated 10%. For 2003-2005, the State recommended a 5% increase in the Area 4C halibut CDQ allocation to APICDA, because of the success that St. George fishermen had in harvesting APICDA's 4C allocation, and the demonstrated need for more halibut quota.

NMFS implemented the CSP without requiring the CDQ groups to submit documents requesting transfers of halibut CDQ between Areas 4D and 4E. NMFS monitors each CDQ group's halibut CDQ catch in Areas 4D and 4E. If the catch in Area 4E exceeds the group's initial allocation for Area 4E, then NMFS automatically subtracts this excess catch from the group's Area 4D allocation, which will no longer be available for harvest in Area 4D. Halibut CDQ catch from Area 4D also is subtracted from each group's Area 4D allocation. This procedure allows each CDQ group to decide where to catch its Area 4D halibut CDQ allocation without requiring transfers. Each CDQ group is required to monitor the harvest of Area 4D and 4E halibut CDQ to ensure that: (1) its total catch in Area 4D does not exceed its Area 4D allocation, minus any portion of its Area 4D quota harvested in Area 4E, (2) its total catch in Area 4E does not exceed the sum of its Area 4D and Area 4E allocations, minus any portion of its Area 4D allocation harvested in Area 4D, and (3) its total catch in Areas 4D and 4E does not exceed the sum of its Area 4D and Area 4E allocations.

There are 89 and 67 halibut QS holders in Area 4C and 4D harvesting 50% and 70% of subarea halibut quotas, respectively; it is not known (at this time) how many of these individuals also participate in the CDQ fisheries.

It is unclear whether the Council intends to include either those fishermen who only participate in the IFQ program or IFQs that also are held by CDQ fishermen under this proposed action. Note that a comprehensive exception for IFQ and CDQ holders would be simpler to regulate and enforce.

The IPHC has advised the Council that the subarea boundaries have no effect on the biology of the halibut stock. However, it is not yet clear how the proposed allowance for 4C/4D crossover may affect the 4D/4E crossover in terms of accounting. Under the proposed action, Area 4D (IFQ and?) CDQ could be counted against Area 4C quotas and Area 4C (IFQ and?) CDQ could be counted against Area 4D quotas. Allowing for multiple accounting exceptions calls into question the purpose of the CSP. Also, meeting CDQ criteria to maintain or develop “local” fisheries and to allocate CDQ to communities located in or proximate to the regulatory areas becomes more difficult as exceptions to the regulations defining the subareas are increased.

Action: The proposed change would be a regulatory amendment, and would be implemented in the final rule for annual management measures for Pacific halibut fisheries after the annual meeting of the IPHC, if the IPHC (and Secretary of Commerce) concurs with the Council action. Staff proposes preparing a categorical exclusion for this action.

In June, staff requests that the Council:

- (1) adopt a problem statement**
- (2) clarify to whom the exception is intended: CDQ fishermen only, CDQ fishermen and their IFQ holdings, all CDQ and IFQ fishermen)**
- (3) revise language as follows:**
 - Alternative 2. Allow Area 4C (IFQ and) CDQ holders to harvest such (IFQ)/CDQ in Area 4D.**
 - Option: Allow Area 4D (IFQ and) CDQ holders to harvest such (IFQ)/CDQ in Area 4C.**
- (4) clarify whether the option means “Combine Areas 4D and 4C and amend QS designations accordingly”), that is clarify the purpose of the 4C/4D boundary if complete crossover is allowed and consider whether the subarea one-way or two-way crossover allowances still meet the stated purpose of the CSP.**
- (5) consider whether to add a new alternative to combine Areas 4C, 4D, and 4E into a revised Area 4C that encompasses the C/D/E subareas, while ensuring that the IFQ allocations to existing recipients are maintained and CDQ allocations are maintained for the current allocation cycle. The timing for such an analysis is optimal because the next CDQ allocation cycle for 2006-2008 will be considered in 2005. Proposed regulations could be written to “keep whole” all participants for 2005. The next CDQ cycle and implementing regulations would take up future allocations to CDQ groups.**

Action 6. Amend halibut block program in Areas 2C, 3A, 3B, 4A, 4B, 4C, and 4D.

- Alternative 1. No action.
- Alternative 2. Increase blocks from 2, to 3 or 4
- Alternative 3. Unblock all QS \geq < 20,000 lb (now in QS units) where the 2003 TAC level exceeds a 20,000 lb unit equivalent
- Alternative 4. Allow QS \geq < 20,000 lb to be divided into smaller blocks
- Alternative 5. Increase the Area 2C and 3A halibut sweep-up level to the 5,000 lb equivalent in ~~current~~ 2003 QS units (2C: 35,080 units; 3A: 40,860 units)

Problem Statement: The halibut/sablefish vessel size classes and block plan were designed to maintain a diverse, owner-operated fleet and provide an entry-level to the IFQ fisheries. Large quota increases and other factors suggest that these provisions should be reviewed to determine if changes are needed to ensure program goals are met. Due to consolidation and use pattern of the fleet, a review of block structure and its application is appropriate for all areas.

Problem: The above problem statement captures Council intent for Alternative 2 through 4.

Proposals: Two proposals submitted in 2003 were incorporated into Action 6 which had been adopted for analysis by the Council in 1999, but had not been initiated. One proposal recommended that the Council expand the original geographic range (Areas 3B and Area 4²) to also include Areas 2C and 3A for Alternatives 2 through 4.

A second proposal recommended an increase in the sweep-up levels of Areas 2C and 3A halibut blocks from 3,000 lb to 5,000 lb, in QS equivalents using 2003 TACs. The Council adopted this proposal for analysis as Alternative 5. The proposal reported the sweep-up equivalents to be 35,080 QS units in Area 2C (compared with 19,992 units now) and 40,860 QS units in Area 3A (compared with 27,912 units). Alternatives 2 through 4 are for all IFQ regulatory areas, while Alternative 5 is for the Gulf of Alaska Areas 2C and 3A only. The proposal identified the problem in the Area 2C and 3A halibut fisheries as current sweep-up amounts for blocks: (1) are not comparable to those for other regulatory areas; (2) are not economically practical; (3) do not allow for incremental growth of small blocks without causing divestiture (and possible loss) of existing holdings; and (4) do not allow for limited growth and flexibility for small block sizes comparable to growth of unblocked QS.

Background: Before NMFS initially implemented the IFQ program, the Council amended it such that all initially issued QS that resulted in less than 20,000 lb (9 mt) of IFQ would be “blocked,” that is, issued as an inseparable unit. The block amendment created a variety of block sizes that were available for transfer. One of its primary purposes was to create small blocks of QS that could be purchased at a relatively low cost by crew members and new entrants to the IFQ fisheries (a more detailed discussion of the original intent of the IFQ program is presented in the introduction). As the experience of these fishermen increased and the size of their fishing operations grew, larger amounts of QS would be needed to accommodate this growth. One method to accommodate growth was the “sweep-up” provision, which allows very small blocks of QS to be permanently consolidated. The sweep-up level originally was set at 1,000 lb for halibut and 3,000 lb for sablefish, based on the 1994 TAC.

After completion of the first season, the IFQ longline industry reported that the established sweep-up levels were lower than the harvest amount of a worthwhile fishing trip. Therefore, industry requested a moderate increase in the sweep-up levels to allow greater amounts of QS to be swept-up into larger amounts that could be fished more economically. The Council determined that a moderate increase in the sweep up levels would

²Area 4E is not included in the proposed action because 100 percent of the halibut quota is allocated to the CDQ program

likely enhance the opportunity of crew members and small boat fishermen who seek to increase their QS holdings. The Council also determined that allowing persons to permanently consolidate slightly larger blocks of QS would not circumvent the primary goals of the block amendment (i.e., preventing excessive consolidation and maintaining the diversity of the IFQ longline fleet).

On December 20, 1996, regulatory amendments and BSAI and GOA Groundfish Plan Amendments 43/43 increased the sweep-up levels for small QS blocks for Pacific halibut and sablefish to 3,000 lb and a 5,000 lb, respectively. Also, the base year TAC for determining the pound equivalents were updated to the 1996 TACs, rather than 1994 TACs which initially were used and those QS levels were fixed and codified. This was to eliminate any confusion as to the appropriate sweep up level originally implemented in pounds, which otherwise would fluctuate with changes in the annual TAC.

Action: A regulatory amendment would be required to implement the proposed alternatives to the status quo, any or all of which may be selected by the Council. Staff proposes preparing a categorical exclusion for this action. From its October 2003 minutes, the team recommends that the analysis of issues that surround Action 6 include, but are not limited to: “(1) a discussion of the significant increases in halibut TAC that have occurred in some areas (e.g., Area 3B and Area 4), and how these increases may be addressed by Alternatives 3 and 4; (2) a description of those areas where Alternative 3 may not be applicable (e.g., Areas 2C and 3A); and (3) possible area-specific threshold amounts of TAC increase that may be applicable with respect to Alternatives 3 and 4. No proposals were received for amending the block program for sablefish and the team did not identify a problem in that fishery.”

In June, staff requests that the Council:

- (1) consider whether the proposed action to amend the block program addresses the Council’s original intent and policy as described in the introduction.**
- (2) revise the problem statement to strike the reference to sablefish.**
- (3) consider whether Alternative 5 addresses the same problems in the fisheries as Alternative 2 through 4 and revise the action(s) and problem statement(s) accordingly. Additional clarification of the proposed Alternative 5 problem statement is requested, if it is adopted by the Council:**
 - (i) clarify how Area 2C and 3A sweep-up levels are not comparable to those for other regulatory areas;**
 - (ii) clarify how they are not economically practical;**
 - (iii) clarify how not allowing for incremental growth of small blocks without causing divestiture (and possible loss) of existing holdings does not conform with the Council’s original intent and policy;**
 - (iv) clarify how unblocked QS has “grown.”**
- (4) strike the reference to “current 2003 QS units” and use 1996 QS units to maintain conformity with the sablefish IFQ regulations. Instead, the Council could increase the sweep-up levels to result in higher QS unit equivalents.**
- (5) revise language as follows:**
 - Alternative 2. Increase blocks **limits** to 3 or 4**
 - Alternative 3. Unblock all QS **blocks that yield < 20,000 lb****
 - Alternative 4. Allow **blocked** QS < 20,000 lb to be divided into smaller blocks**
 - Alternative 5. Increase the Area 2C and 3A halibut sweep-up level to the 5,000 lb equivalent in **1996 QS units****
- (6) clarify whether Alternatives 2 through 5 are mutually exclusive (note that Alternatives 2 through 4 would apply to all halibut regulatory areas and Alternative 5 would apply in Areas 2C and 3A.)**

Action 7. Amend Area 3B, 4A, 4B, 4C and 4D halibut QS categories.

- Alternative 1. No action.
- Alternative 2. Allow D category QS to be fished as C category shares
- Alternative 3. Allow D category QS to be fished as C or B category QS
- Alternative 4. Combine C and D category QS

Problem Statement: The halibut/sablefish vessel size classes and block plan were designed to maintain a diverse, owner-operated fleet and provide an entry-level to the IFQ fisheries. Large quota increases and other factors suggest that these provisions should be reviewed to determine if changes are needed to ensure program goals are met.

Problem: In 1999, the Team identified the following problem statement for westward IFQ fisheries:

Five years into the halibut and sablefish IFQ program, a reexamination of the needs of the block program [*sic*] because it appears that it does not protect small boat fishermen in Western Alaska for halibut as originally intended.

Proposal: In June 2001, the Council adopted a suite of alternatives for analysis for to amend the block program for halibut in Areas 3B, 4A, and 4B. In December 2003, the Council modified the proposed action by including Areas 2C, 3A, 4C and 4D and added Alternative 4. No proposals were received to include halibut regulatory areas 4C or 4D or to include sablefish in this proposed action, but public comment should advise the Council whether to extend the proposed action to those areas. The team recommended that the analysis should identify whether increased quotas, safety issues, and other relevant circumstances that are identified in Areas 3B, 4A, and 4B are also relevant in Areas 4C and 4D. These same issues would be analyzed for expanding the alternatives to Area 2C and 3A.

Background: The IFQ program assigns QS to vessel categories specified by length overall (LOA) and authorization to process IFQ species (freezer vessels) or not (catcher vessels):

- Category A freezer vessels of any length;
- Category B catcher vessels > 60 ft (18.3 m);
- Category C for sablefish, catcher vessels \leq 60 ft (18.3 m), and for halibut, catcher vessels \leq 60 ft (18.3 m) but > 35 ft (10.7 m); or
- Category D for halibut, catcher vessels \leq 35 ft (10.7 m) .

The Council prohibited QS transfer across vessel categories in the original design of the IFQ program to preserve the small boat fisheries to their original state, prior to limited access (a more detailed discussion of the original intent of the IFQ program is presented in the introduction). Public discussions leading up to IFQ Program implementation elicited substantial concern that harvesting privileges might ultimately transfer to owners of large vessels and disenfranchise owners of small vessels. The Council responded to these concerns in part by establishing vessel categories and prohibiting transfer and use of QS and IFQ across those categories. Thus, these transfer restrictions were intended to prevent consolidation of harvesting privileges among owners of large vessels. Concern over the potential for excessive consolidation also led to the modified block program implemented under Amendment 35. The block program required an initial allocation of IFQ of less than 20,000 lb in the year prior to implementation (1994) to be issued as an indivisible block that can be transferred in its entirety only. During the first year of fishing under the IFQ program in 1995, IFQ fishermen and their representatives reported to the Council that the prohibition against using or transferring QS across vessel categories limited their ability to improve the profitability of their operations. Many fishermen reported that they had received QS that represented far fewer pounds than their recent catch history prior to the IFQ program. Small boat fishermen reported the scarcity of medium- and large-size QS blocks (\geq 5,000 lb (2.3 mt) available to smaller vessels and requested that the Council enable them to purchase shares from QS holders in larger vessel size categories. Also, category B vessel operators reported difficulties in

using or marketing small category B blocks and requested the opportunity either to downsize operations or to sell smaller QS blocks to owners of smaller vessels.

The original IFQ program required that IFQ be fished only on vessels in the category to which the pertinent QS have been assigned with two exceptions. An exception allowed category B, C, or D IFQ to be fished on a category A freezer vessel provided its LOA is consistent with the vessel category of the IFQ being fished and it neither processes any species of fish nor fishes category A IFQ concurrently with the use of category B, C, or D IFQ. The regulations were also amended to allow IFQ fishermen to process groundfish on board their vessels under certain circumstances.

A second exception was implemented in August 1996 that allowed the use of category B or C QS on category C or D vessels in all GOA halibut regulatory areas, *except that QS assigned to vessel category B in IFQ Area 2C for halibut and east of 140° W. long. for sablefish was prohibited from use on vessels less than or equal to 60 ft except in QS blocks equivalent to less than 5,000 lb based on the 1996 TAC.* For example, an individual who holds two blocks of QS assigned to vessel category B in Area 2C (for halibut) or east of 140° W. long. (for sablefish) (one block of 13,000 lb and another of 3,000 lb, based on the 1996 TAC) would be able to transfer the smaller QS block or use its resulting IFQ on catcher vessels of any size, since the block is equivalent to less than 5,000 lb. The larger QS block, which would result in IFQ of more than 5,000 lb, would still be limited to vessel category B. *Unblocked* QS of any amount assigned to vessel category B in Area 2C and east of 140° W. long. would continue to be restricted to transfer or use on vessels in category B only.

Action: A regulatory amendment (for halibut) would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action.

In June, staff requests that the Council:

- (1) **clarify the current problem statement for this action; that is what specific problem does a change in vessel category fishing restrictions address.**
- (2) **revise language as follows:**
 - Alternative 2. Allow IFQ derived from D category QS to be fished on C category shares vessels (i.e., vessels between 35' and 60' LOA)**
 - Alternative 3. Allow IFQ derived from D category QS to be fished on as C or B category QS vessels (i.e., any vessel > 35' LOA)**
 - Alternative 4. Combine C and D category QS**
- (3) **clarify whether Alternative 4 intends to eliminate category D QS.**

Action 8. Amend the fish down regulations for halibut (Area 2C) and sablefish (Southeast).

Alternative 1. No action.

Alternative 2. Eliminate the exception to the fish down regulations for halibut (Area 2C) and sablefish (Southeast)

Problem Statement:

Problem: The problem in the fishery that would be addressed by the proposed action has not been identified.

Proposal: Eliminate the exception to the fish down regulations for halibut (Area 2C) and sablefish (Southeast). The proposer states that fishing regulations that allow the Southeast exemption to the “fish down” regulations are inequitable.

Background: The proposed action would reverse an exception to the general requirement that IFQ be fished only on vessels in the category to which the pertinent QS have been assigned. The Council’s rationale for the prohibition was that the proportion of QS assigned to vessel category B is significantly smaller than the amount assigned to other vessel categories in these regulatory areas (see the Introduction and Action 7 for background on the vessel category component of the IFQ program). Excessive consolidation of QS among smaller vessels in this region of the GOA would have reduced the larger vessel fleet and thus also have an undesirable impact on the fisheries’ socio-economic character. The prohibition was expected to provide owners of small boats with opportunities to acquire QS initially assigned to larger vessel categories and would make smaller category B blocks more marketable. The Council’s intent to prevent excessive consolidation of QS among owners of larger vessels would be maintained, while providing greater economic potential for owners/operators of smaller boats in the IFQ fisheries. Conversely, the additional provision to lessen the effect of the prohibition in Southeast Alaska would prevent excessive consolidation among owners of smaller boats in areas where category B QS is limited.

Action: A GOA groundfish plan amendment (for sablefish) and a regulatory amendment (for halibut) would be required to implement the proposed action. Staff proposes preparing a categorical exclusion for this action. **In June, staff requests that the Council adopt a problem statement for this proposed action. To assist in the preparation of the analysis, the Council may wish to identify the conditions in the halibut IFQ fishery in Area 2C and sablefish IFQ fishery in Southeast which have changed since its decision in 1996 to adopt the regulatory change that it is now proposing to eliminate.**