Attachment

Agenda C-5(a)
October 2004

Proposed Alternatives to Revise the Fisheries Management Regulations for the Community Development Quota Program Groundfish and Halibut Fisheries

NMFS's preliminary alternatives to amend the management of the CDQ reserves, which were presented to the Council at the June 2004 meeting, are being revised to incorporate additional alternatives requested by the Council. NMFS requests that the Council review and comment on the following issues and options to confirm that they represent the full range of alternatives that the Council wants analyzed.

Issue 1: Which BSAI groundfish species or species groups would be allocated to the CDQ Program?

Status quo: All BSAI groundfish species or species groups, except squid.

Option 1.1: All BSAI groundfish species or species groups.

This option would reinstate the 7.5% allocation of the BSAI squid TAC to the CDQ Program, making the allocation and management of squid under the CDQ Program consistent with all other BSAI groundfish TACs .

Issue 2: Which BSAI groundfish species or species groups would be allocated to individual CDQ groups?

All groundfish species and the halibut prohibited species quota (PSQ) allocated to individual CDQ groups are managed with "hard caps," meaning that a CDQ group is prohibited from exceeding its allocation of a given species. If catch by the CDQ group exceeds the amount available for a particular allocation, the CDQ group has an "overage" and faces enforcement action as a result.

Salmon and crab prohibited species quotas also are allocated to the individual CDQ groups, but attainment of these PSQs results in time and area closures, not overages.

Status quo: All BSAI groundfish species or species groups allocated to the CDQ Program, except "other species," are allocated among the CDQ groups. Salmon, crab, and halibut prohibited species quotas also are allocated among the groups.

In 2003, NMFS implemented the Council's recommendation to no longer allocate "other species" to individual CDQ groups.

Option 2.1: Select from the following list of species or species groups that currently are allocated to the CDQ Program. Those selected would continue to be allocated to individual CDQ groups and managed with hard caps.

Pollock	Greenland turbot	Northern rockfish
Pacific cod	Arrowtooth flounder	Shortraker rockfish
Sablefish	Flathead sole	Rougheye rockfish
Atka mackerel	Other flatfish	Other rockfish
Yellowfin sole	Alaska plaice	
Rock sole	Pacific Ocean perch	

Management area designations also may be added to these species or species groups if their TACs are specified by area and the Council wants to handle quota accountability in one area differently than in another area (e.g. BS Pacific Ocean perch vs AI Pacific Ocean perch).

Those groundfish species not selected to be allocated to individual groups would be managed as "soft caps" for all CDQ groups combined based on the following regulations. The concept of "soft caps" described below is what NMFS also refers to as "management at the CDQ reserve level."

- The CDQ groups would be prohibited from directed fishing for species or species groups that are not allocated among the groups.

- Retention up to the maximum retainable amounts in current regulations would be allowed if the amount allocated to the CDQ Program was sufficient to allow retention. Otherwise, retention of the species or species group by any vessel fishing for any CDQ group would be prohibited at the beginning of each year.

- If retention were allowed, when catch of the species or species group not allocated to individual CDQ groups reached the amount of the CDQ allocation, then:

Sub-option 2.1.1: All vessels fishing for all CDQ groups would be prohibited from retaining the species or species group.

Sub-option 2.1.2: NMFS in-season managers would evaluate the status of the overall TAC for the species or species group and allow continued retention in the CDQ fisheries if it determined that total catch in the CDQ and non-CDQ fisheries combined for the remainder of the year was unlikely to exceed the overall TAC. This sub-option could limit unnecessary discards in species categories that would have enough remaining TAC to support retention in both CDQ and non-CDQ fisheries.

- Catch by all CDQ groups would accrue against the CDQ Program allocation until it was reached and then catch would accrue against the overall TAC for the species. No individual CDQ group would face enforcement action if catch by all CDQ groups combined exceeded the amount allocated to the program.

- If total catch of a species or species group by all sectors (CDQ and non-CDQ) approaches the overfishing limit, NMFS must limit some directed fishery(ies) in order to prevent overfishing. The fisheries that are limited to prevent overfishing is a decision made by the Regional Administrator under in-season management authority at 50 CFR part 679.20.

Issue 3: How could the list of species allocated to individual CDQ groups be changed from year to year?

Status quo: Changes currently are made through regulatory amendments recommended by the Council. In 2003, the Council recommended that "other species" no longer be allocated to individual CDQ groups. This was implemented through a regulatory amendment.

If, under Issue 2, Option 2.1, the Council selected certain species that would be allocated among the CDQ groups and others that would not be allocated among the CDQ groups, then under the status quo for Issue 3, these designations would be implemented through a regulatory amendment. Any future changes to the list of species or species groups that annually would be allocated among CDQ groups would require another regulatory amendment.

Option 3.1 The list of species or species groups allocated to individual CDQ groups could be specified annually as part of the groundfish specifications process.

This would allow the Council to recommend which CDQ species should be allocated among CDQ groups and managed with "hard caps" on an annual basis rather than conducting the lengthy rulemaking process for each change. It could more readily take into consideration annual biological or economic changes in the BSAI fisheries or the target fisheries in which the CDQ groups wish to engage. On the other hand, this option has the potential to further complicate the already complicated and time sensitive groundfish specifications process with additional analytical requirements.

Issue 4: Would CDQ groups be allowed to form cooperatives for quota management and quota monitoring purposes?

Status quo: No. Individual CDQ groups are individually accountable for quotas allocated to them.

Option 4.1 One or more CDQ groups could form a cooperative and the CDQ allocations made to individual CDQ groups in the cooperative would be combined into a CDQ cooperative allocation.

The cooperative would be prohibited from exceeding its allocation of all species allocated to the CDQ groups and combined under the cooperative. If the cooperative exceeded its CDQ allocation, enforcement actions would be initiated against the cooperative and the CDQ groups in the cooperative.

CDQ groups must form cooperatives before the fishing year starts. CDQ groups may not leave a cooperative or change cooperatives once the fishing year starts.

If a CDQ group joins a cooperative, then all groundfish and prohibited species allocated to the CDQ group would become part of the cooperative's allocation. NMFS would not manage some species for a CDQ group through a cooperative and other species at the CDQ group level. (See question below about halibut CDQ and the CDQ cooperatives.)

A cooperative contract would be required to contain information about the CDQ groups that are members of the cooperative, the vessels that would be fishing on behalf of the cooperative, and the name of the cooperative's agent for service of process (person authorized to receive and respond to any legal process issued in the U.S. with respect to all members of the cooperative).

Questions on Issue 4:

1. The Council or analysts may identify additional elements that NMFS would need in a CDQ cooperative contract.

2. Special consideration may be needed for how halibut CDQ allocations would be managed under CDQ cooperatives. Halibut CDQ could be excluded from those species allocated to CDQ cooperatives. Vessels less than 60' LOA that are halibut CDQ fishing probably could be excluded from CDQ cooperatives, because they generally operate completely independently from the multispecies groundfish CDQ fisheries. However, all groundfish incidental catch by vessels equal to or greater than 60' LOA that are halibut CDQ fishing currently is required to be accounted for against the CDQ groups' groundfish CDQ allocations. The analysis would need to examine how the halibut CDQ catch and the incidental catch of groundfish by these larger vessels would be accounted for under the CDQ cooperative option.

Issue 5: When could CDQ species allocated to individual CDQ groups be transferred among the CDQ groups (or among CDQ group cooperatives)?

Status quo (current): The CDQ groups may transfer annual amounts of groundfish CDQ among the groups at any time during the year and may transfer prohibited species quota only during the month of January and only together with groundfish CDQ. A CDQ group is prohibited from transferring quota after it has an overage in the particular quota category. Section 679.30(e) currently states that "NMFS will not approve transfers to coverage overages of CDQ or PSQ."

Status quo (expected by early 2005):

Under a proposed rule that will be published in the fall of 2004 (based on recommendations the Council made under BSAI Amendment 71, Issue 8), the CDQ groups would be allowed to transfer annual amounts of CDQ or PSQ at any time during the year. However, the prohibition against transfers to cover overages will remain in NMFS regulations.

Option 5.1 The CDQ groups may transfer annual amounts of groundfish CDQ and PSQ among the groups at any time during the year (this option would continue this element of status quo).

The prohibition against transferring CDQ from one CDQ group to another CDQ group to cover overages of groundfish CDQ allocations in § 679.30(e) would be removed.

Compliance with the requirement to not exceed any of a CDQ group's groundfish CDQ allocations would be assessed by NMFS at the end of the year rather than continuously during the year.

Questions on Issue 5:

1. The Council's motion for this new alternative refers to "after-the-fact" transfers of "CDQ." Did the Council intend to restrict this alternative to transfers of groundfish CDQ only, or did it intend for NMFS to also analyze the option of allowing "after-the-fact" transfers of prohibited species quota for halibut, salmon, and crab?

   Analysis of this option would require consideration about how after-the-fact transfers would apply to salmon PSQ or crab PSQ because attaining these allocations results in time and area closures, but do not currently result in "overages."

2. The analysis should consider whether NMFS would have to curtail the CDQ fisheries if it observed that a CDQ group was continuing to fish after all CDQ groups had reached their allocation of a particular species. This would mean that continued catch by any CDQ group of this particular species could not be covered by a transfer at the end of the year, because no CDQ group would have quota to provide for such transfers.