

Discussion Paper: Allow Community Quota Entities to fish IFQ derived from Category D QS to be fished on Category C vessels in Area 3A

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1 Introduction

In February 2018, the Council directed staff to produce a discussion paper on whether to allow Community Quota Entities (CQEs) in Area 3A to fish Category “D” (D-class) halibut quota on Category “C” (C-class) vessels after August 15th or September 1st. Currently, only vessels ≤ 35 ft length overall (LOA) have the ability to harvest D-class halibut IFQ in Area 3A. A C-class vessel is ≤ 60 ft LOA. The proposed action, known as a “fish-up”, was requested for Council consideration by industry stakeholders.

The Council received testimony that severe weather events and/or disabled small vessels have led to CQE-held D-class quota shares going unfished by eligible residents. While the amount of IFQ that has gone unfished remains confidential, CQEs in Area 3A communities held 6,324 lbs of D-class IFQ in 2018. Public testimony from an active CQE group in Area 3A stated that on occasion, there are one or more D-class designees who cannot fish their quota within the nine-month timeframe, thus a CQE may be faced with unfished D-class quota late in the season. Sometimes the only remaining vessel in the community that can fish IFQ is a C-class vessel (≤ 60 ft LOA), but, due to vessel size restrictions, these vessels are not permitted to fish D-class quota. If a holder of D-class quota is unable to fish their quota and the only vessel available in the community is a C-class vessel, then existing regulations require that this quota remains unharvested for the year.

The purpose of this action would be to provide a fallback mechanism for communities that do not have other means to fish D-class IFQ if something occurs to their designated D-class vessels in the last three months of the nine-month fishing season. The intent would be that D-class vessels still prosecute this fishery throughout the majority of the season; however, this provision would act as a safety net for CQEs and their residents by allowing them to avoid revenue loss by fishing the IFQ on a C-class vessel late in the season. As clarified at the February 2018 Council meeting, this would be a date-certain provision written in regulation.

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2 Background

2.1 The IFQ Program

The IFQ Program is a limited access privilege program for the commercial fixed-gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in the Exclusive Economic Zone (EEZ) off Alaska. This program was implemented in 1995 (58 FR 59375). The IFQ Program limits access to the halibut and sablefish fisheries by issuing quota share (QS) that equates to individual harvesting privileges through the annual issuance of IFQ permits. The specific amount (in pounds) that an individual permit holder is annually authorized to harvest is determined by the number of QS units held for that species, the total number of QS units issued for that species in a specific regulatory area, and the total amount of the species allocated for IFQ fisheries in a particular year. By ensuring access to a certain amount of the TAC at the beginning of the season, QS holders may determine where and when to fish, how much gear to deploy, and how much overall investment to make in harvesting.

The Council and NMFS designed the IFQ Program to provide economic stability in the commercial halibut and sablefish fixed-gear fisheries and to improve the long-term productivity of the halibut and sablefish fisheries while retaining the character and distribution of the fishing fleets as much as possible. During the development of the IFQ Program, the Council built in several provisions to address concerns regarding transferability and the goal of preserving an owner-operated fleet. Among other matters, the Council was concerned about consolidation of ownership and divestiture of QS by coastal communities and removing small community access to and participation in the fisheries.

In regard to these concerns, the IFQ program was designed with vessel categories to distribute QS among initial issues. Halibut QS were currently designated under the following four vessel categories: freezer (catcher processor) category A; catcher vessels greater than 60' LOA (Category B); catcher vessels 36' to 60' LOA (Category C); and catcher vessels 35' LOA or less (Category D). As described in §679.42, the QS or IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category, with some exceptions (described in the following sections). The categories were designed to maintain a diverse, owner-operated fleet and provide more entry-level opportunities in the IFQ fisheries, as it was thought that entry-level fishermen would be using smaller, D-class vessels. A relatively small amount of D-class quota is designated in each area, and generally, D shares are the least expensive category of halibut QS.

Since the implementation of the IFQ Program, numerous amendments have lifted the original vessel length landing restrictions of the QS vessel class designations. In 2004, the “fish down” provision allowed IFQ derived from larger class QS to be fished on smaller class vessels.² The current vessel length categories in Table 2-1 reflect the “fish-down” provision. The Council has also amended the IFQ Program to allow “fishing up” in some areas. Fishing up occurs when the IFQ derived from smaller class QS is fished on larger class vessels. While D-class QS were originally intended, in part, to provide an affordable opportunity for skippers and crew members to buy into the fishery, safety issues and economic hardships prompted Council action to allow these shares to be fished up on C-class vessels in certain areas, such as in Areas 3B, 4B, and 4C. Additionally, one fishery participant noted that crew members looking to buy into the fishery at the most attainable cost might purchase C-class QS and fish it on a larger boat rather than with other QS holders rather than purchase D-class QS.

² Implemented through GOA Amendments 42 and 67, and federal regulations at 50 CFR 679.40(a)(5)(ii).

Table 2-1 Current harvest authority for halibut under specific vessel categories.

Vessel Category	Authority
A	May harvest and process IFQ halibut on a vessel of any length (freezer/longliners)
B	May harvest IFQ halibut on a vessel of any length
C	May harvest IFQ halibut on a vessel \leq 60 ft LOA
D	May harvest IFQ halibut on a vessel \leq 35 ft LOA

2.2 The CQE Program

Under Gulf of Alaska (GOA) Amendment 66, effective in 2004, the Council revised the IFQ Program to allow a distinct set of remote, coastal communities with few economic alternatives to purchase and hold catcher vessel QS in Areas 2C, 3A, and 3B in order to help ensure access to and sustain participation in the commercial halibut and sablefish fisheries. Eligible communities can form non-profit corporations called CQEs to purchase catcher vessel QS. The annual IFQ resulting from the QS can be transferred to eligible community residents. In addition to purchasing commercial halibut and sablefish, some CQE communities may request to be issued charter halibut permits (CHPs) and/or Pacific cod endorsements for non-trawl groundfish licenses for lease to residents. In 2013, Amendment 94 added three eligible communities in the GOA to the list of communities eligible to form CQEs.³ In 2014, BSAI Amendment 102 expanded the program to include one community in Area 4B.⁴ As of 2018, there are 46 CQE-eligible communities.⁵

A CQE owns the QS and has the ability to transfer IFQ pounds to eligible community residents, creating a permanent asset to be used for the benefit of the community and its residents. The QS must remain with the CQE unless it is sold in order to improve, sustain or expand the opportunities for community residents to participate in the IFQ fisheries or to meet legal requirements.⁶ The CQE Program was intended as a way to promote ownership by individual residents in coastal communities, as individuals can lease annual IFQ from the CQE and gradually become financially able to purchase their own QS. Both community- and individually-held quota are important in achieving the Council's objectives for the IFQ Program in terms of fishing access and socioeconomic wellbeing.

CQEs are, in some cases, subject to different restrictions than individual QS holders. Prior to GOA Amendment 94 (implemented in 2013), CQEs in Area 3A⁷ could only purchase and use B-class and C-class halibut QS. CQEs were prohibited from holding D-class QS in Area 3A due to concern that an influx of CQEs in Area 3A would drive up the market price of D-class QS and result in fewer and more expensive shares available to individuals. The Council wanted to ensure that D-class QS would continue to be available to new entrants and crew members who want to enter the IFQ halibut fishery. Amendment 94 did not prohibit CQEs from holding D-class halibut QS in Area 3B, however no CQEs currently do. A relatively small amount of D-class QS exist in Area 3B (3% of Area 3B QS are D-class).

Public testimony received from residents of communities located in Area 3A led the Council to determine that additional CQEs in Area 3A could participate in the CQE Program if they were eligible to purchase D-

³ Game Creek, Naukati Bay, and Cold Bay (78 FR 33243, June 4, 2013).

⁴ Adak (79 FR 8870, February 14, 2014).

⁵ See Table 21 in 50 CFR 679.

⁶ 50 CFR 679.71(g): A CQE may transfer QS: (i) To generate revenues to provide funds to meet administrative costs for managing the community QS holdings; (ii) To generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries; (iii) To generate revenue to purchase QS to yield IFQ for use by community residents; (iv) To dissolve the CQE; or (v) As a result of a court order, operation of law, or as part of a security agreement. If the CQE sells its QS for any other reason, NMFS will withhold annual IFQ permits on any remaining QS held and will disqualify the CQE from holding QS on behalf of that community for three years. It also requires that the CQE divest itself of any remaining QS on behalf of that community.

⁷ Also applies to Area 2C, which has not been amended.

class halibut QS. By allowing CQEs in 3A to purchase D-class QS, Amendment 94 was meant to increase fishing opportunities for CQE communities in Area 3A and for the owners of the small category D catcher vessels they may use. Amendment 94 also capped the purchase of vessel category D QS by eligible Area 3A CQEs at 1,223,740 units,⁸ and allowed CQEs in Area 3A to purchase any size block of D-class halibut QS. For a comprehensive list of which CQEs may acquire which types of shares in which areas, see Table 21 in 50 CFR 679.

An understanding of which vessel size categories apply to CQE-held QS in each regulatory area is useful for comparing which restrictions and exemptions apply and to whom. Table 2-2 outlines these restrictions and exemptions. In certain regulatory areas, vessel size restrictions are not the same for CQE-held QS and individually-held QS.

Table 2-2 Summary of applicable CQE-held IFQ regulations, as of 2018.

IPHC Area	# eligible communities	# CQEs	Can they hold D-class quota?	Could they fish up quota?	Communities that currently hold QS	Do they currently hold D-class quota?
2C	23	14	No, can hold 2C and 3A quota but not D-class in either place	Yes, any length vessel can fish any CQE-held quota, but CQEs cannot hold D-class quota	<ul style="list-style-type: none"> Hoonah (currently only holds QS in 2C) 	No, they cannot by regulation
3A	14	8	Yes, CQEs in 3A can hold D-class in 3A and 3B	No, D-class cannot be fished up	<ul style="list-style-type: none"> Ouzinkie Old Harbor 	Yes, Ouzinkie does in 3A.
3B	8	4	CQEs in 3B can hold D-class quota in 3B, but not in 3A. CQEs in 3B can purchase B,C-class QS in 3A.	Yes, any length vessel can fish any CQE-held quota If a CQE in 3A held 3B D-class QS, they could fish it up in 3B	<ul style="list-style-type: none"> Old Harbor holds QS in 3B, but not D-class No 3B communities hold QS 	No
4B	1	1	Yes in 4B	Yes. D-class can only be fished on D or C-class vessels, other categories do not have QS class restrictions in 4B	<ul style="list-style-type: none"> Adak 	No
4ACDE	No eligible communities in areas 4A, 4C, 4D, or 4E.					

2.3 Data on CQE Participation in Area 3A

Participation in the CQE Program has been limited because most CQEs have had difficulty funding the purchase of QS, and only four CQEs have purchased QS.⁹ However, 27 of the 46 eligible GOA communities have completed the process to form a CQE and have it approved by NMFS. There are currently 14 eligible CQE communities in Area 3A but only 8 of these have created a CQE.¹⁰ Shown in Figure 2-1, the CQEs representing Old Harbor (orange) and Ouzinkie (red) are the only CQEs in Area 3A that hold commercial halibut quota. The CQEs representing Old Harbor and Ouzinkie have been participating in the program using halibut QS since 2006 and 2011, respectively. The CQE that represents the community of Ouzinkie

⁸ 50 CFR 679.41(g)(5)(ii).

⁹ Adak (4B), Hoonah (2C), Old Harbor (3A), and Ouzinkie (3A) are the four CQE communities that have purchased QS as of 2018.

¹⁰ Akhiok, Chenega Bay, Halibut Cove, Karluk, Larsen Bay, Nanwalek, Old Harbor, Ouzinkie, Port Graham, Port Lions, Seldovia, Tatitlek, Tyonek, and Yakutat.

(Ouzinkie Community Holding Corporation, or OCHC) is the only Area 3A CQE that has purchased and currently holds D-class quota. As of 2018, OCHC holds roughly 160,000 QS units (6,324 lbs in 2018) of D-class quota (Table 2-3). OCHC did not hold any D-class QS prior to 2017.

Figure 2-1 Map of eligible CQE communities in Area 3A.

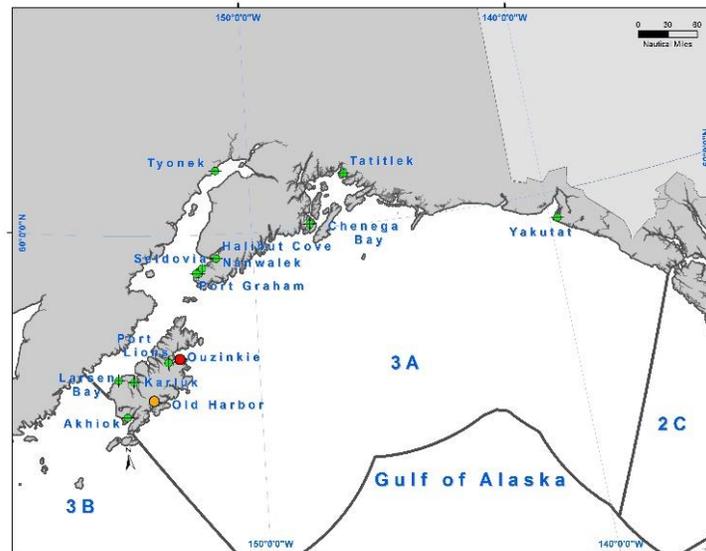


Table 2-3 2018 CQE QS holdings in Area 3A

AREA	CAT	COMPANY/LAST NAME	CITY	QS UNITS	Pounds of IFQ
3A	C	OLD HARBOR: CAPE BARNABAS INC.	OLD HARBOR	43,362	1,724
3B	B	OLD HARBOR: CAPE BARNABAS INC.	OLD HARBOR	50,542	2,443
3B	C	OLD HARBOR: CAPE BARNABAS INC.	OLD HARBOR	100,692	4,867
3A	C	OUZINKIE: OCHC	KODIAK	281,593	11,194
3A	D	OUZINKIE: OCHC	KODIAK	159,075	6,324

Source: NOAA, RAM Program.

As of 2018, 0.26% of all halibut QS in Area 3A are held by CQEs. Of all the halibut QS in Area 3A, 6.8% are D-class shares (Table 2-4). As shown in Table 2-5, of these D-class halibut shares, 1.3% is owned by a CQE (0.09% of the total QS in Area 3A).¹¹ In addition, about one-third (30.4%) of the QS currently held by residents of the eligible communities in Area 3A are D-class; 4.3% of these QS are held by one CQE. Currently, 33% of the halibut QS owned by CQEs in 3A is D-class quota, and the rest is C-class quota.

Table 2-4 Percentage of QS in each vessel class in Area 3A

Area	Vessel Class	2018 % of Area QS
3A	Class A	2.6%
	Class B	37.0%
	Class C	53.6%
	Class D	6.8%

¹¹ All in Ouzinkie

Table 2-5 Percentage of 3A QS that is held by CQEs in 2018, by class size, and percent of individually and CQE-held (combined) IFQ that went unfished in 2017.

Area	Vessel Class	% of total 3A QS held by CQEs	% of each class of QS held by CQEs	*2017 % lbs unfished
3A	Class A	0%	0%	0.25%
	Class B	0%	0%	0.57%
	Class C	0.17%	0.32%	0.26%
	Class D	0.09%	1.3%	0.21%

Note: *Includes both individually- and CQE-held quota.

Due to confidentiality restrictions, quantitative information on the amount of CQE-derived quota that has gone unfished cannot be presented. However, of the individually- and CQE-held D-class IFQ in 2017, 1,088 lbs (0.21%) went unfished in Area 3A (Table 2-5). In 2016, 2,580 lbs (0.51%) of the combined D-class IFQ went unfished in Area 3A. However, regulations at 50 CFR Section 679.40(e) state, “Underages of up to 10% of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ account in the year following determination of the underage”.¹² NMFS Restricted Access Management (RAM) has clarified that this underage provision does apply to CQE-held QS.

Each CQE-eligible community in Area 3A has access to a different number of vessels of each size class. Eligible community members (and their vessels) may be available to fish CQE-held halibut IFQ at different times of the year due to participation in other fisheries, other employment, or other circumstances. To provide some context for the number of potentially available vessels in CQE communities in Area 3A, one vessel greater than 35 ft and less than 60 ft LOA (C-class) and four vessels less than 35 ft LOA (D-class) landed IFQ in Ouzinkie in 2017.¹³ Three C-class vessels and zero D-class vessels landed IFQ in Old Harbor in 2017.¹⁴

3 Initial Look at Proposed Action and Scope of Impacts

The proposed action could increase economic efficiencies of halibut IFQ fishing operations and safety by allowing small boat IFQs to be fished on larger vessels. However, as proposed, this increased operational flexibility would be for a few months of the fishing season. CQE communities often have limited resources such as vessels of different class sizes, and their economies may be less diversified and therefore more dependent upon income made from CQE-held quota. Regulatory flexibility that allows quota to be fully harvested in the face of extenuating circumstances could be beneficial for these communities.

While this action could provide financial benefits for CQEs and the communities they represent, the magnitude and distribution of these impacts is uncertain. Further analysis may consider how allowing CQE-held IFQ to be fished up could impact both individual IFQ QS holders in CQE communities that are not allowed to fish their D-class QS on C-class vessels, as well as individuals in non-CQE communities. Potential changes in market demand for D-class (or C-class) QS quota that could be a result of this action are difficult to determine due to the small amount of quota to which this action applies. A “fish-up” for CQEs could reduce entry level opportunities for individual QS holders by increasing the cost of acquiring D-class QS. Any increase in the market value of D-class QS could disadvantage those trying to purchase D-class QS; however, D-class shares comprise less than 6.8% percent of Area 3A QS.

¹² This underage adjustment to the annual IFQ allocation will be specific to IFQ species, IFQ regulatory area, and vessel category for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.

¹³ Note that vessels that are greater than 35 ft and less than or equal to 60 ft LOA can also be used to fish A or B class QS, and vessels that are less than or equal to 35 ft LOA can be used to fish any class of QS due to the fish-down provision.

¹⁴ Not specific to only CQE-held IFQ.

4 Other considerations

Transition dates

If the Council chooses to move forward with this proposal, future analyses may benefit from the Council's discussion of the proposed transition dates. The Council has proposed two dates as sub-options under this proposal: August 15th or September 1st. The dates suggested are to provide every opportunity to have the D-class fishermen fish halibut while the weather is good, in order to maintain the CQE Program's intent of D-class quota being fished on D-class vessels. Because the weather generally changes in the Gulf of Alaska around the end of August or early September, the dates would allow maximum opportunity to fish and still allow time to transfer the D-class quota to a C-class vessel to fish in September.

As mentioned at the February 2018 Council meeting, one consideration is whether each CQE could determine their own transition dates. NMFS has advised, however, that different transition dates for each CQE would be difficult to implement and enforce. Criteria for each CQE have been developed by the community they represent, and many have stressed that they want to provide entry level opportunity through D-class QS. For this reason, community-level input on transition dates may be valuable to help ensure each community's ability to effectively harvest their CQE-held QS. In previous fish-up actions, transition dates were not put in place. Further analysis could continue to evaluate the two proposed transition dates.

Other regulatory areas and process

At the February 2018 Council meeting, members discussed the precedent-setting nature of this action. Currently, the only other CQEs that have purchased quota are those representing the communities of Adak (4B) and Hoonah (2C). As of 2018, Adak Community Development Corporation (ACDC) has not purchased any D-class quota. Hoonah Community Fisheries Corporation (HCFC) cannot purchase D-class quota due to Area 2C regulations. By regulation, CQEs can already fish up D-class QS in 3B and 4B, if they were to purchase some D-class QS in the future. D-class QS in 3B could be fished up under current regulations, however no CQEs currently own D-class quota for 3B. For these reasons, discussion of this issue is unique to Area 3A, and would not be precedent-setting.

Safety

According to fishery participants, small vessels (< 35 ft) in Area 3A face concerns related to weather and safety, particularly in the fall months. Further analysis could assess historical patterns of safety issues for small vessels in Area 3A during the fall. According to the National Institute for Occupational Safety and Health (NIOSH), there were 13 incidents with halibut boats under 36 ft in Alaska since the year 2000. Further analysis expanding on the issue of safety would need to include data on fishing effort in order to determine changes in frequency of these incidents in certain months.

Cost recovery

Any new regulations developed for this action would be implemented through the IFQ Program and any administrative costs resulting from action taken would be billed to IFQ cost recovery.

5 Venues for Council Action

Should the Council choose to move forward with an initial analysis, the Council would need to articulate a purpose and need statement and develop alternatives for analysis. This action would require a regulatory amendment. Current vessel size restrictions are specified in 50 CFR 679.42.

6 References

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7 Persons Consulted

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