

# **DRAFT FOR INITIAL REVIEW**

## **Regulatory Impact Review and Initial Regulatory Flexibility Analysis for Four Proposed Amendments to Regulations that Implement the Halibut and Sablefish IFQ Program**

**Date:** November 24, 2005

**Lead Agency:** NOAA Fisheries Service  
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**Responsible Official:** Jim Balsiger, Alaska Regional Administrator

**Abstract:** This document is a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for four proposed actions to amend halibut and sablefish Individual Fishing Quota (IFQ) regulations and the Groundfish Fishery Management Plans for the Gulf of Alaska and Bering Sea/Aleutian Islands under the authority of the NOAA Fisheries Service. The proposed alternatives would allow: (1) non-IFQ species to be frozen onboard while directed fishing for halibut and sablefish; (2) the use of pot longline gear in the Bering Sea sablefish fishery during June; (3) withdrawal of halibut and sablefish QS from initial recipients who have never fished any of those shares across all regulatory areas or allow voluntary surrender of unused QS, with an option to allow a lottery for awarding removed or surrendered QS to qualified crewmen; and (4) temporary transfer of IFQs held by activated reservists.

**Comment Due Date:** Public comments may be provided prior to and during the December 2005 Council meeting.

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## Acronyms and Abbreviations

ABC	acceptable biological catch
AD	Administrative Determination
AI	Aleutian Islands
BS	Bering Sea
BSAI	Bering Sea and Aleutian Islands
CDQ	Community Development Quota
CFEC	State of Alaska Commercial Fisheries Entry Commission
CFR	Code of Federal Regulations
Council	North Pacific Fishery Management Council
EEZ	exclusive economic zone
EMT	Emergency Medical Transfer
EO	Executive Order
FMP	Fishery Management Plan
FR	Federal Register
ft	feet
GOA	Gulf of Alaska
IFQ	Individual Fishing Quota
IPHC	International Pacific Halibut Commission
IRFA	Initial Regulatory Flexibility Analysis
lb	pound(s)
LOA	length overall
mt	metric ton(s)
NMFS	National Marine Fisheries Service
RAM	Restricted Access Management Program
NOAA Enforcement	National Oceanic and Atmospheric Administration, Office of Law Enforcement
NPFMC	North Pacific Fishery Management Council
PRR	product recovery rate
QS	quota share
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
TAC	total allowable catch
VMS	vessel monitoring system

## Executive Summary

Proposed amendments to the halibut and sablefish fishery regulations would address four issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. In 2005, the North Pacific Fishery Management Council identified four proposed actions as follows. Plan and regulatory amendments to the BSAI and GOA Groundfish FMPs would be needed for Action 1 and regulatory amendments would be needed for Actions 2, 3, and 4).

### **ACTION 1. Use of catcher vessel QS**

Alternative 1. No action

Alternative 2. Allow processing of non-IFQ species on a fishing vessel when IFQ halibut resulting from quota shares assigned to vessel categories B, C, or D are on board the vessel in the Gulf of Alaska, Bering Sea, and Aleutian Islands.

### **ACTION 2. Sablefish pots**

Alternative 1. No action

Alternative 2. Allow use of longline pot gear in the Bering Sea IFQ sablefish fishery during June

### **ACTION 3. Inactive IFQ permits**

Alternative 1. No action

Alternative 2. Remove all unused QS held by *completely* inactive initial recipients from the QS Pool (i.e., not 1 QS unit in any regulatory area has been harvested or transferred by IFQ permit holder for either species)

Alternative 3. Allow surrender of unused QS held by completely inactive initial recipients from the QS Pool

Option. One-time crew lottery for unused small blocks of quota shares

- 1) Lottery would be held one year after individuals holding any quota share/IFQ which has never been fished or transferred, have been given an opportunity to fish it or transfer it.
- 2) Individuals would need to make application to RAM.
- 3) There would be a 60-day window for making application.
- 4) Those individuals applying for the lottery would need bona fide crewman status i.e. Transfer Eligibility Certificate.
- 5) Lottery winners would receive all associated first generation allocation privileges.
- 6) Those individuals receiving quota would have one year (365 days) after first day of full season to fish or sell their quota shares. After that time, any unfished or non-transferred shares would by default return to the general quota share pool.
- 7) Crewman would apply by species and area.
- 8) Proposed area and species lottery breakdown.

#### Halibut

Area 2C - 4 Winners  
Area 3A – 10 winners  
Area 3B – 1 winner  
Area 4A – 1 winner  
Area 4B – 1 winner  
Area 4C – 1 winner

#### Sablefish

Bering Sea – 1 winner  
Western Gulf – 1 winner  
Central Gulf – 1 winner  
West Yakutat – 1 winner  
Southeast – 1 winner

- 9) Quota share awarded in the lottery would maintain its area and vessel restrictions; however, all lottery quotas would be designated as unblocked.

### **ACTION 4. Military exemption for activated reservists**

Alternative 1. No action.

Alternative 2. Allow activated National Guardsmen to temporarily transfer IFQs for the duration of their deployment.

# REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS

## 1.0 Introduction

This document contains the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for four proposed amendments to regulations that describe management of Pacific halibut Individual Fishing Quota (IFQ) fisheries in North Pacific Halibut Convention waters in and off Alaska, and sablefish IFQ fisheries in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Federal waters.

The proposed actions are the result of two solicitations by the North Pacific Fishery Management Council (Council) for proposals from the public in 1999 and 2003. Proposals were reviewed by the IFQ Implementation Team in 1999 and 2003, and the Team recommended seven proposals to the Council. Seven proposed actions to amend the halibut and sablefish IFQ program, referred to as “Omnibus IV,” were adopted by the Council in December 2004 and forwarded to NOAA Fisheries Service for Secretarial review in October 2005. Two of the four current proposals were not included in Omnibus IV due to their lack of clarity; they were resubmitted and adopted by the Council for consideration. Two proposals were initiated by the Council as a result of public testimony and a discussion with NOAA Fisheries Service staff in 2005. Each action is addressed individually, by chapter, with the RIR analysis preceding the IRFA.

### 1.1 Management Authority

Management of the halibut fishery in and off Alaska is based on an international agreement between Canada and the United States and is given effect by the Northern Pacific Halibut Act of 1982. The Act provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council’s actions are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

Regulations implementing the commercial IFQ fishery for Pacific halibut and sablefish may be found at 50 CFR 679: Fisheries of the Exclusive Economic Zone off Alaska, Subpart D – Individual Fishing Quota Management Measures, Sections 679.40 through 679.45.

### 1.2 Requirements of a Regulatory Impact Review

The RIR is required under Presidential Executive Order (EO) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in EO 12866 are summarized in the following statement from the order: “In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.”

EO 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A significant regulatory action is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

### 1.3 Requirements of a Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 601, et. seq., was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, 1) “certify” that the action would not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a “factual basis”, demonstrating this outcome, or, 2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the seven proposed IFQ actions, it appears that “certification” would not be appropriate. Therefore, an IRFA has been prepared for each action. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
  - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
  - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
  - c. The use of performance rather than design standards;
  - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The “universe” of the entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof, (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis. In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general, descriptive statements if quantification is not practicable or reliable.

### Definition of Small Entities

The RFA recognizes and defines three kinds of small entities: 1) small businesses; 2) small non-profit organizations; and 3) small government jurisdictions. Only small businesses are directly regulated by any of the four proposed actions.

Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and does not dominate in its field of operation. The U.S. Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

NOAA Fisheries Service has defined all halibut and sablefish vessels as small businesses, for the purpose of this analysis. In 2004, 1,335 unique vessels made IFQ halibut landings, and 389 unique vessels made sablefish landings. The number of small entities operating as fishing vessels in the IFQ Program may be deduced from certain restrictions the program places on those vessels. The IFQ program limits the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to one half percent (0.5 percent) of all halibut IFQ TAC, or up to one percent (1.0 percent) of all sablefish TAC.

NOAA Fisheries Service annually publishes “standard prices” for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NOAA Fisheries uses these prices for calculating permit holder cost recovery fee liabilities. In 2003, these price data suggested that the prevailing prices might have been about \$2.92 per pound for halibut (headed and gutted weight), and \$2.36 per pound for sablefish (round weight) (68 FR 71036). In combination, these harvest limits and prices imply maximum ex-vessel revenues of about \$1.68 million (for halibut and sablefish taken together).

While some of the operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and/or sablefish fisheries likely represent the largest single source of annual gross receipts for these operations. Based upon available data, and more general information concerning the probable economic activity of vessels in these IFQ fisheries, no vessel subject to these restrictions could have been used to land more than \$3.5 million in combined gross receipts in 2003 (the maximum gross revenue threshold for a “small” catcher vessel, established by SBA under RFA rules). Therefore all halibut and sablefish vessels have been assumed to be “small entities,” for purposes of the IRFAs. This simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

## 1.4 Structure of the IFQ Program

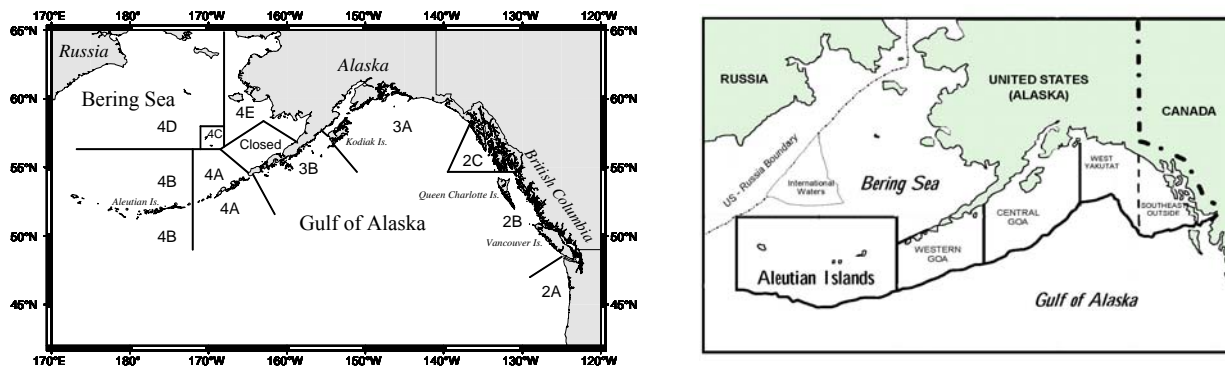
The IFQ Program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) in the North Pacific Halibut Convention waters in and off Alaska, and sablefish (*Anoplopoma fimbria*) fisheries in waters of the Exclusive Economic Zone off Alaska.

The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982, adopted the IFQ Program in 1991, and implementing regulations were published in the *Federal Register* on November 9, 1993 (58 FR 59375). Fishing began under the program in 1995.

The program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based; to allocate specific harvesting privileges among U.S. fishermen; to resolve management and conservation problems associated with “open access” fishery management; and to promote the development of fishery-based economic opportunities in western Alaska. The IFQ approach was chosen to provide fishermen with the authority to decide how much and what type of investment they wished to make to harvest the resource. By guaranteeing access to a certain amount of the total catch at the beginning of the season, and by extending the season over a period of eight months, those who held the IFQ could determine where and when to fish, how much gear to deploy, and how much overall investment in harvesting they would make. The development and design of the halibut and sablefish IFQ fishery is described in Pautzke and Oliver (1997), Hartley and Fina (2001a, b), and the annual *Report to the Fleet* (NOAA Fisheries 2003a, in prep.).

### Design of the IFQ Program

Restrictions are intended to prevent the fisheries from being dominated by large boats or by any particular vessel class. Quota shares (QS) were initially assigned to vessel categories based on vessel size and kind of fishery operation. QS are issued specifically to a vessel class and to an IFQ regulatory area. There are eight areas and four vessel categories for halibut (below left), and six areas and three vessel categories for sablefish (below right).



The Council also designed a “block program,” to further guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. The block program reduced the amount of QS consolidation that could have occurred under the IFQ program, and slowed consolidation by restricting QS transfers. The following are provisions of the block program.

- All initial QS allocations for both halibut and sablefish, which would have yielded less than 20,000 lb of IFQ in 1994, were placed permanently in a QS block. Blocks are not divisible and can only be bought or transferred in their entirety.
- A sweep-up provision allows very small blocks to be combined into a fishable amount. For halibut, blocks could be combined if the sum total would not exceed an amount of QS equal to 1,000 lb of IFQ in

1994. The same provision applies to sablefish, except that the poundage cap was set at 3,000 lb. In 1996, the sweep-up consolidation levels for small QS blocks were increased to 3,000 lb for Pacific halibut, and 5,000 lb for sablefish. The base year for determining the pound equivalents was revised to 1996 and the poundages were fixed as QS unit 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.

- Block restrictions limit a QS holder to hold up to two blocks of QS each for halibut and sablefish per IFQ regulatory area. However, if a QS holder holds any amount of unblocked QS for an area, he or she may hold only one block of QS for that area.

An amendment to the IFQ program in 1996, relaxed the restrictions on using QS across vessel categories. The ‘fish down’ amendment, as it was termed, allowed QS deriving from larger catcher vessels to be fished on smaller vessels, with an exception in Southeast Alaska:

- |            |  |
|------------|--|
| Category B | authority to harvest IFQ species on a vessel of any length (except in halibut Area 2C or sablefish Southeast Outside District, unless the IFQ derives from blocked QS units that result in less than 33,321 halibut, or 33,271 sablefish QS units) |
| Category C | authority to harvest IFQ species on a vessel less than or equal to 60 ft LOA   |
| Category D | authority to harvest IFQ halibut on a vessel less than or equal to 35 ft LOA   |

In 2004, the Council made five recommendations for changes to the block program; these are under Secretarial review.

- increase the number of QS blocks that may be held by a person in each regulatory area to three blocks, unless unblocked QS is held, in which case the limit is one block.
- divide all QS blocks in halibut Areas 3B and 4A which yield more than 20,000 lb, based on the 2004 TACs, into one block of 20,000 lb with the remainder as unblocked QS. This proposed exception to the current block limits would no longer be in effect for a QS holder once one of his/her two blocks is transferred.
- increase the Areas 2C and 3A halibut sweep-up level to a 5,000 lb equivalent in 1996 QS units.
- allow category D QS to be fished on vessels less than or equal to 60-ft LOA in Areas 3B and 4C only
- allow category B QS to be fished on a vessel of any length.

Another design feature of the IFQ program is to require that, for the most part, holders of IFQ be onboard at the time of harvest. To maintain this predominantly “owner-operated” nature of the fishery, the program provides that:

- Only QS holders who received their quota upon initial issuance may hire skippers to fish the resulting IFQ. In Southeast Alaska (for halibut, Area 2C and for sablefish, east of 140 degrees west longitude), only corporations or partnerships that received their QS on initial issuance may hire masters.
- When QS is transferred, it may only be transferred to an entity that received an initial award of QS 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.

The Council has amended the program a number of times to tighten the hired skipper provision. In 2004, the Council recommended further limits on the use of hired skippers. In addition to the current regulatory requirement that QS holders must demonstrate at least a 20 percent ownership interest in a vessel to use a hired skipper on that same vessel, the preferred alternative would require an abstract of title that documented continuous ownership in the vessel, upon which the hired skipper is used, for the previous 12 months.



## 1.5 Description of the Fishery

A detailed description of the fishery can be found in the *Report to the Fleet*, prepared regularly by the Restricted Access Management Program (NOAA Fisheries 2003a, in prep.). In 2005, approximately 59 million pounds of halibut were allocated among halibut QS holders in the eight halibut IFQ regulatory areas. Also, 38 million pounds of sablefish were allocated among sablefish QS holders in the six sablefish IFQ regulatory areas. Ninety-three percent of the halibut harvest and 89 percent of the sablefish harvest was harvested across all areas as of the end of October 2005. The information below is taken from these reports. Table 1.1 shows the number of unique QS holders, by regulatory area, for halibut and sablefish. While 102 persons hold Area 4E halibut QS, no IFQs are awarded to this area, as the entire Area 4E allocation is made to the western Alaska CDQ Program.

Table 1.1 Number of Persons holding halibut and sablefish QS in 2004.

NOTE: Counts are not additive across areas. Data as of November 1, 2005. Source: NOAA Fisheries RAM.

Halibut	Area	Number of Persons	Sablefish	Area	Number of Persons
	2C	1,388		Southeast Outside	451
	3A	1,847		West Yakutat	276
	3B	547		Central GOA	414
	4A	271		Western GOA	173
	4B	106		Aleutian Islands	100
	4C	63		Bering Sea	117
	4D	47		TOTAL	874
	4E	103		TOTAL H&S QS HOLDERS	3,519
	TOTAL	3,292			

Table 1.2 Vessels participating in the halibut and sablefish fisheries in 2004 by size and area.

NOTE: Counts are not additive across areas. Data as of November 1, 2005. Source: NOAA Fisheries RAM.

Halibut	Area	Number of Vessels				Sablefish	Area	Number of Vessels			
		0-35'	36-60'	61-125'	≥126'			0-35'	36-60'	61-125'	≥126'
	2C	236	405	24	0		SE Outside	8	184	39	2
	3A	173	406	85	2		West Yakutat	0	84	44	1
	3B	36	189	71	4		Central GOA	7	116	60	6
	4A	28	44	29	3		Western GOA	2	39	28	7
	4B	2	14	20	2		Aleutian Isl.	0	11	16	6
	4C	6	1	2	0		Bering Sea	2	20	15	7
	4D	0	13	16	1						

A total of 1,304 unique vessels participated in the halibut fishery, 396 unique vessels participated in the sablefish fishery, and 1,335 unique vessels participated in both fisheries in 2004. Table 1.2 illustrates the relative size of participating vessels in the halibut and sablefish fisheries, across the regulatory areas. In the halibut fishery, less than 10 percent of the annual harvest in any regulatory area is allocated to vessels that are allowed to process onboard (i.e., those with category A QS). In the sablefish fishery, 38-56 percent of QS is allocated to freezer longliner vessels in the Bering Sea, Aleutian Islands, and western GOA, although in the central and eastern GOA, only 7-16 percent of sablefish IFQ may be processed onboard.

## 2.0 Action 1. Use of catcher vessel QS

The objective of Action 1 is to reduce inefficiencies of harvest and landings among fishermen who may hold halibut vessel category A (processor) IFQs along with B, C, and or D category IFQs and other non-IFQ permits so that they may harvest all their IFQs at any time, in any order throughout the season and process non-IFQ fish along harvested along with any of those shares. The primary impediment to efficiency under this action is a restriction on the processing of category A IFQs and non-IFQ groundfish if any halibut or sablefish catcher vessel (categories B, C, or D) IFQs remain unharvested. The proposed change would allow unrestricted processing of A shares or non-IFQ groundfish, regardless of whether all catcher vessel IFQs held by all fishermen on a vessel are completely harvested. The groundfish FMPs would need to be amended and specific regulatory language in §679.7(f)(13), §679.7(f)(15) and §679.42(k) would be deleted or modified under Action 1.

### 2.1 Problem in the fishery

Currently, processing of category A halibut and/or category A sablefish IFQs and/or non-IFQ species is not allowed **if unharvested** halibut catcher vessel (B, C, or D) IFQs are held by *any* harvester on board a vessel. The original intent of the prohibition on mixing processed and fresh IFQ halibut and non-IFQ fish was to maintain the small boat, owner-operator nature of the halibut fleet; however, the social or economic conditions that existed at initial implementation of the IFQ program may no longer be in effect. Landings have shifted due to improved fresh market conditions since the prohibition was implemented under an early plan amendment to the IFQ program in 1996. It is very difficult to zero an IFQ account without exceeding the overage limit and subsequent penalties. Stacking of QS is already well addressed by use and vessel caps. Increased retention and utilization have occurred over the years, and would increase further under the proposal. Increased prices would result from freezing other species and more small boats have freezer capacity. There is no market for unfrozen cod due to poor quality. No negative effects on communities would occur.

### 2.2 Alternatives

Alternative 1. No action.

The following regulatory language would remain in effect under Alternative 1.

**§ 679.7 Prohibitions (f) IFQ fisheries (13)** Possess processed and unprocessed IFQ species on board a vessel during the same trip except when fishing exclusively with IFQ derived from vessel category A QS.

**§ 679.7 Prohibitions (f) IFQ fisheries (15)** Process fish on board a vessel on which a person aboard has unused IFQ derived from QS issued to vessel categories B, C, or D, except as provided in § 679.42(k) of this part.

**§ 679.42 Limitations on use of QS and IFQ. (k) Processing of fish other than IFQ halibut and IFQ sablefish.** Fish other than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons:

- (1) Are authorized to harvest IFQ halibut or IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel category A; or
- (2) Are authorized to harvest IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel categories B or C unless any person aboard the vessel is authorized to harvest IFQ halibut based on allocations of IFQ resulting from QS assigned to vessel categories B, C, or D.

In 1991, the Council developed the IFQ program to end the race for fish that resulted from the open access management system for the halibut and sablefish longline fisheries during the 1980s. In crafting the IFQ program, the Council demonstrated a deep concern for the potential social and economic effects of a market-based allocation scheme especially on small Alaska fishing communities and the characteristic small-scale, owner-

operator fishing businesses involved in these fisheries. Hence, the Council's recommended IFQ policy included a variety of rules to prevent excessive consolidation of QS, and economic protection of small-scale and entry-level fishermen. These rules were acknowledged to create inefficiencies in the fisheries but were considered necessary in a rationalized fishery.

The Secretary of Commerce approved the Council's recommended IFQ program and implementing rules were published November 9, 1993 (59 FR 28281). Fishing under the IFQ program started in March 1995. The implementing rules have been amended frequently. On June 13, 1996, the Secretary approved groundfish FMP Amendments 33 and 37 (61 FR 33382), which were designed by the Council to allow processing of non-IFQ species (i.e., any species of fish other than sablefish and halibut taken with longline gear off Alaska) on fishing vessels on which persons possess sablefish IFQ derived from QS in the non-processing or catcher vessel categories (i.e., categories B and C). This change was intended to relieve a restriction and associated inefficiency imposed on processor vessels. At that time, a person authorized to use sablefish IFQ derived from QS assigned to vessel categories B and C was not allowed to process any fish on board the harvesting vessel because the definition of "freezer vessel" included the processing of any species, regardless of whether it was an IFQ species. The Council's recommendation to relieve this restriction, however, did not extend to persons holding halibut IFQ derived from QS assigned to the non-processing vessel categories B, C, and D. Hence, a person holding halibut IFQ in any of these categories would effectively prevent the vessel used by the person from processing any non-IFQ species, until the IFQ is exhausted or the person leaves the vessel.

The Council's rationale for making a distinction between halibut and sablefish was described in the preambles to the proposed and final rules implementing Amendments 33 and 37 as follows.

*The Council declined to extend the IFQ sablefish exemption to IFQ halibut due to the socio-economic differences between the fisheries. The halibut fishery characteristically is prosecuted by local vessels that do not have on-board processing capabilities. The Council does not intend to change this characteristic of the halibut fishery. Also, not extending the authorization to process fish other than IFQ sablefish and IFQ halibut [to holders of B, C, or D category IFQ] is consistent with one of the objectives of the IFQ Program, which is to maintain a diverse fleet where all segments, and the social structures associated with those segments, continue to exist.*

*The Council expressed concern that if the owners of large, industrial-type vessels that process their catch could harvest IFQ species with IFQ resulting from QS assigned to vessel categories B, C, or D while processed fish is on board, these owners could acquire the majority of the "catcher vessel" QS. The result would be an increase in harvesting IFQ species on large, industrial-type vessels that process their catch and a decrease in harvesting of IFQ species on small vessels that do not have processing capabilities. These small vessels that do not have processing capabilities are more likely to make landings at local coastal communities. The Council determined that phasing out small vessels that do not have processing capabilities, and which would not be able to compete with large, industrial-type vessels that process their catch..., would have a detrimental socio-economic impact on coastal communities. This is especially true for halibut IFQ. Many coastal communities rely on the delivery of halibut harvested by persons operating small vessels that do not have processing capabilities as a source of revenue. (Proposed rule preamble at page 14548).*

The Council's rationale for allowing the processing (e.g., freezing) of non-IFQ species on vessels used by persons holding sablefish IFQ assigned to vessel categories B or C, however, recognizes market value and product quality reasons for making the change as follows.

*Prohibiting the processing of fish other than IFQ halibut or IFQ sablefish on category B or C vessels resulted in the unanticipated waste of fish caught incidentally with IFQ sablefish, because sablefish can be preserved longer on ice than some incidentally-caught fish (e.g., Pacific cod). The longer "shelf life" of fresh sablefish allowed a typical sablefish longline trip to exceed the time period in which fish other than IFQ halibut or IFQ sablefish maintain sufficient quality to market as fresh fish. This often resulted in the discard of some or all incidentally*

*caught fish. Also persons are required to retain Pacific cod and rockfish caught incidentally to IFQ sablefish. This forces persons authorized to harvest IFQ sablefish, based on an annual allocation of IFQ assigned to vessel categories B and C, to keep Pacific cod and rockfish caught incidentally with IFQ sablefish, even though the value of the Pacific cod and rockfish is diminished during a long sablefish trip. Amendments 33 and 37 will eliminate the lost revenue of discarding, or landing poor quality, fish other than IFQ halibut and IFQ sablefish due to the repealed prohibition on processing fish other than IFQ halibut and IFQ sablefish. (Final rule preamble at pages 33383-33384).*

Alternative 2. Allow processing of non-IFQ species on a fishing vessel when any amount of IFQ halibut resulting from quota share (QS) assigned to vessel categories B, C, or D are held by fishermen on board a vessel in the Gulf of Alaska, Bering Sea, and Aleutian Islands

Groundfish Plan Amendments 33 and 37 allowed persons who are authorized to harvest IFQ sablefish based on an annual allocation of IFQ resulting from sablefish QS assigned to vessel categories B or C to process species other than IFQ halibut and IFQ sablefish. Changes to the regulatory text of the IFQ Program included the definitions of “freezer vessel” and “catcher vessel,” which were removed and a definition of “processing” was added. Vessel category A, previously described as “freezer vessels of any length,” was changed to vessels of any length authorized to process IFQ species. A provision was added to allow the processing of fish, other than IFQ halibut and IFQ sablefish, onboard vessels on which persons are harvesting IFQ sablefish based on an annual allocation of IFQ resulting from sablefish QS assigned to vessel categories B and C (catcher vessels that are greater than 60 ft length overall). Revised regulations describe vessel categories in terms of: (1) vessel length; (2) specific species designations (i.e., vessel category D for IFQ halibut only); and (3) authorization to process IFQ species.

The previous prohibition on processing fish, other than IFQ halibut or IFQ sablefish, on category B or C vessels resulted in the unanticipated waste of fish caught incidentally with IFQ sablefish because sablefish can be preserved longer on ice than some incidentally caught fish (e.g., Pacific cod). The longer “shelf life” of fresh sablefish allows a typical sablefish longline trip to exceed the time period in which fish other than IFQ halibut or IFQ sablefish maintains sufficient quality to market as fresh fish. This often results in the discard of some or all incidentally caught fish. Also, persons are required to retain Pacific cod and rockfish caught incidentally to IFQ sablefish. This forces persons who are authorized to harvest IFQ sablefish based on an annual allocation of IFQ resulting from sablefish QS assigned to vessel categories B and C to keep Pacific cod and rockfish caught incidentally with IFQ sablefish, even though the value of the Pacific cod and rockfish is diminished during a long sablefish trip. The Council intended that Amendments 33 and 37 address the lost revenue that occurs because fish other than IFQ halibut and IFQ sablefish are discarded, or if not discarded, landed in poor condition, due to the current prohibition on processing fish, other than IFQ halibut and IFQ sablefish.

The authorization to process fish, other than IFQ halibut or IFQ sablefish, would not extend to persons who are authorized to harvest IFQ halibut based on an annual allocation of IFQ resulting from halibut QS assigned to vessel categories B, C, or D. The Council declined to extend the IFQ sablefish exemption to IFQ halibut due to the socio-economic differences between the fisheries. The halibut fishery characteristically is prosecuted by local vessels that do not have on-board processing capabilities. The Council does not intend to change this characteristic of the halibut fishery. Also, not extending the authorization to process fish other than IFQ sablefish and IFQ halibut to persons that are authorized to harvest IFQ halibut based on an annual allocation of IFQ resulting from halibut QS assigned to vessel categories B, C, or D is consistent with one of the objectives of the IFQ Program, which is to maintain a diverse fleet where all segments, and the social structures associated with those segments, continue to exist. The prohibition on processing on board the harvesting vessel by persons harvesting IFQ species with IFQ resulting from QS assigned to specific vessel categories is one method of accomplishing that objective. The Council expressed concern that if the owners of large, industrial-type vessels that process their catch could harvest IFQ species with IFQ resulting from QS assigned to vessel categories B, C, or D while processed fish is on board, these owners would acquire the majority of the “catcher vessel” QS. The result would be an increase in harvesting of IFQ species on large, industrial-type vessels that process their catch and a decrease in harvesting of

IFQ species on small vessels that do not have processing capabilities. These small vessels that do not have processing capabilities are more likely to make landings at local coastal communities. The Council determined that phasing out small vessels that do not have processing capabilities, and which would not be able to compete with the large, industrial-type vessels that process their catch for available IFQ, would have a detrimental socio-economic impact on coastal communities. This is especially true for halibut IFQ. Many coastal communities rely on the delivery of halibut harvested by persons operating small vessels that do not have processing capabilities as a source of revenue.

Specific regulatory language at § 679.7(f)(13), § 679.7(f)(15) and § 679.42(k) would be deleted if Alternative 2 is implemented by NOAA Fisheries Service.

### 2.3 Expected effects of Alternatives 1 and 2

The sections below outline the fishery conditions that would hold under both Alternatives 1 and 2. That is, whether or not the amendment to allow a vessel using halibut or sablefish freezer IFQ shares to simultaneously process (freeze) non-IFQ species is approved by the Council. The species of highest interest to proponents of Alternative 2 are Pacific cod and the various species of rockfish.

Under both Alternatives 1 and 2, vessels targeting IFQ halibut or sablefish are required to retain bycatch of Pacific cod and rockfish (§ 679.7 (8)(i) (1) and (2)). The exceptions to this requirement occur when: a) either Pacific cod or rockfish are on prohibited species catch (PSC) or b) the bycatch of Pacific cod or rockfish for a specific trip has exceeded the maximum retainable MRA.

Therefore, under both the status quo (Alternative 1) or Alternative 2, the IFQ halibut and sablefish freezer/longliners are required to retain the incidental harvest.

For vessels targeting IFQ sablefish, the maximum allowable harvest of Pacific cod under the MRA for the Bering Sea/Aleutian Islands and Gulf of Alaska is 20 percent of the trip harvest of the target species. The Bering Sea/Aleutian Islands maximum trip harvest under the MRA is 15 percent for aggregated rockfish. In the Gulf of Alaska, the maximum trip harvest under the MRA for rockfish varies by species. For aggregated rockfish, the MRA is 15 percent of the targeted harvest. For shortraker/rougheye rockfish, the MRA is the Eastern regulatory area is 7 percent of the targeted harvest (Federal Fisheries Regulation § 679, Tables 10 and 11).

The MRA limits for bycatch species harvested while targeting halibut are set in the same regulation, but are contained in the category of “Aggregated amount of non-groundfish species”, since halibut is not specifically included in a separate category in the tables cited above. The Bering Sea/Aleutian Islands maximum trip harvest under the MRA is 15 percent for aggregated rockfish. In the Gulf of Alaska, the maximum trip harvest under the MRA for rockfish varies by species. For aggregated rockfish, the MRA is 15 percent of the targeted harvest. For shortraker/rougheye rockfish, the MRA is the Eastern regulatory area is 7 percent of the targeted harvest (Federal Fisheries Regulation § 679, Tables 10 and 11). As a point of clarification, Tables 10 and 11 do not specifically refer to MRAs for IFQ halibut. In the next version of the regulations, a footnote will appear on the tables, defining ‘all aggregated groundfish’ as all legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in the tables.

To summarize, the upper limit of incidental harvests of rockfish and/or Pacific cod by IFQ halibut or IFQ sablefish longliner/freezers will be the same under the status quo (Alternative 1) of Alternative 2.

### 2.4 Expected effects of Alternatives 1

Under the status quo, the prohibition for IFQ halibut and IFQ sablefish freezer/longliners to process incidental catches of non-IFQ species, such as Pacific cod and rockfish, would remain in force. The impacts on the IFQ

halibut and IFQ sablefish freezer/longliner fleet, described below, would continue to occur. Incidentally caught species could not be frozen, making it necessary to ice this portion of the catch, ultimately delivering a lesser quality product since both halibut and sablefish retain quality in the hold longer than Pacific cod or rockfish.

## 2.5 Expected effects of Alternative 2

Under Alternative 2, a vessel fishing halibut, using freezer IFQ shares or a vessel fishing sablefish using IFQ freezer shares would be able to process (freeze) catches of Pacific cod, rockfish or other non-IFQ species landed incidentally to the targeted halibut or sablefish.

There are 33 freezer/longline vessels that participate in the IFQ halibut fishery that would potentially be affected by this amendment. There are 38 freezer/longliner vessels that participate in the IFQ sablefish fishery that would potentially be affected by this amendment.

With the change allowed under this amendment, the IFQ halibut and IFQ sablefish freezer/longliners could increase the quality and value of its Pacific cod, rockfish and another non-IFQ species. As described by proponents of this action, under the status quo, the quality and value of non-IFQ species caught incidentally is diminished, since they deteriorate more rapidly than do halibut and sablefish. As noted above, retention of these incidentally caught non-IFQ species is required, unless the species is under prohibited species status, or of the vessel has reached the MRA limit for that species.

The Council process typically addresses the Net National Benefit of changes proposed by new amendments. For Alternative 2, the potential increment to Net National Benefit include the following:

- A potential increase in value of Pacific cod, rockfish and other non-IFQ species that are harvested by freezer/longliners as bycatch during their targeted halibut/sablefish catch.
- A potential change in value-added expenditures for Pacific cod, rockfish and other species processed on-board freezer/longliners under this amendment. Generally, non-IFQ species processed by freezer/longliners receive less processing than they could receive at a shore plant. To the extent that such value-added does not occur, represents diminished economic benefits to the nation from utilization of this resource.
- There may also be some consumer effect of this proposed change. As a generalization, frozen product from freezer/longliners may have a higher propensity to export product directly to nations in the Pacific rim or in Europe. There may be a higher propensity for product processed at a shore plant to be shipped to domestic consumers in the Pacific northwest. There is currently no data available to quantify this comparison.

If this amendment were to result in a shift of Pacific cod, rockfish and other non-IFQ species from domestic markets to export markets, consumers could be affected by reduced choice or increased prices.

Impacts that do not affect the net benefits to the nation are nonetheless important to the regions involved. Concern over intra-regional shifts of benefits from Pacific cod and rockfish was a large portion of the initial rationale for this regulation. Intra-regional shifts that may occur from this amendment include the following:

- On the side distributional side of impacts to shore plants, there is an unknown potential for intra-regional shifts of benefits from the catch, i.e. moving catch from the immediate area to another site of landing. Fish taxes 'leak' from the state of Alaska. Local city or borough taxes may accrue to a location outside the region or not be captured at all. There is also potential for loss of activity in onshore processing, to the extent that it is greater in terms of value added, than lesser level of processing on board an IFQ freezer/longliner.

- The Alaska Department of Revenue is responsible for capturing and monitoring fish taxes. They do not have available specific data on landings by species for different ports.

Interviews with several NOAA Fisheries enforcement personnel yielded the opinion that IFQ vessels are making fewer deliveries out of the region, compared with the early years of the program.

Data are not readily available just for the freezer/longliner portion of IFQ deliveries. However, Tables 1 and 2 show the respective port of delivery – inside and outside of Alaska – for all IFQ deliveries of halibut and sablefish. Table 1 shows that the proportion of IFQ halibut landed at ports outside Alaska has tended to decrease over time, from 12.23 percent in 1996 to 2.31 percent in 2005. Table 2 shows the same data for IFQ sablefish landings. Sablefish landings outside Alaska have been more consistent over time than IFQ halibut. In 2005, 7.2 percent of IFQ sablefish was landed outside Alaska.

Table 2.1: IFQ Landings of Halibut by area of Landing 1996-2005		
Year	Alaska	Ports outside Alaska
2005 pounds	53,847,643	1,274,077
2005 percent	97.69%	2.31%
2004 pounds	55,595,900	1,670,720
2004 percent	97.08%	2.92%
2003 pounds	55,739,684	1,672,360
2003 percent	97.09%	2.91%
2002 pounds	55,975,405	2,146,934
2002 percent	96.31%	3.69%
2001 pounds	55,738,032	20,737
2001 percent	96.28%	3.72%
2000 pounds	49,870,240	1,925,913
2000 percent	96.14%	3.86%
1999 pounds	53,370,704	3,065,825
1999 percent	94.26%	5.74%
1998 pounds	46,735,735	4,711,741
1998 percent	89.92%	10.08%
1997 pounds	45,240,954	4,053,674
1997 percent	91.04%	8.96%
1996 pounds	31,692,342	3,875,345
1996 percent	87.77%	12.23%

Table 2.2: IFQ Landings of Sablefish by area of Landing 1996-2005		
Year	Alaska	Ports outside Alaska
2005 pounds	30,657,511	2,208,749
2005 percent	92.80%	7.20%
2004 pounds	31,424,348	2,270,968
2004 percent	92.77%	7.23%
2003 pounds	29,001,176	1,837,724
2003 percent	93.66%	6.34%
2002 pounds	25,534,159	1,557,782
2002 percent	93.90%	6.10%
2001 pounds	25,103,187	1,245,115
2001 percent	95.04%	4.96%
2000 pounds	26,082,996	1,541,509
2000 percent	94.09%	5.91%
1999 pounds	23,349,894	2,060,476
1999 percent	91.18%	8.82%
1998 pounds	26,954,161	1,671,733
1998 percent	93.80%	6.20%
1997 pounds	26,954,121	1,671,773
1997 percent	93.80%	6.20%
1996 pounds	29,321,134	3,875,345
1996 percent	86.78%	13.22%

Sources: 1996 through 2002 (except 2002), Report to the Fleet, NMFS, Alaska Region, Restricted Access Management, various years.

Data for 2000, and 2003-2005 are from online data reports available at <http://www.fakr.noaa.gov/ram/>.

note: sablefish are listed in round weight, halibut are in net weight.

Since the MRA levels are the same under both the status quo (Alternative 1) and Alternative 2), there is limited potential for intra-regional distributional changes for shifts in harvests of Pacific cod, sablefish, and other non-IFQ species.

#### Administrative, Enforcement, and Information Costs

Alternative 1 should have no effect on administrative, enforcement or information costs.

The current regulation is difficult to enforce. Neither NOAA Enforcement nor USCG has indicated that they would object to the removal of the processing prohibition with Alternative 2.

Under Alternative 2, NOAA Fisheries should not incur additional management costs, associated with the number of medical emergency transfers requested, associated cost of appeals, and the associated administrative costs of implementing the alternative.

Alternative 2 would represent no change to the monitoring of the targeted species of IFQ halibut and sablefish. Freezer/longliners can harvest both halibut and sablefish on the same trip, up to the limit of their IFQ holdings. Once they reach their IFQ limit, both sablefish and halibut become prohibited species.



Vessels can offload halibut and sablefish separately, but they have to offload all of the IFQ species at the same time, (including frozen, and non-frozen). Under the status quo (Alternative 1) and Alternative 2, freezer/longliners are ultimately limited by the MRA limits for non-IFQ species.

## 2.6 Conclusions

Table 2.3 summarizes the benefits of the respective alternatives. Alternative 2 is expected to increase economic efficiency and operational flexibility for IFQ fishermen.

Minor administrative costs of the program would be recovered by annual cost recovery fees, already a component of the IFQ program. Action 1, Alternative 2 best meets the objectives of the proposed action.

Table 2.3 Summary of the cost and benefit analysis of Action 1 .

	<b>Alternative 1.</b>	<b>Alternative 2. Allow processing of non-IFQ species on a fishing vessel when any amount of IFQ halibut resulting from quota share (QS) assigned to vessel categories B, C, or D are held by fishermen on board a vessel</b>
<b>Who may be affected</b>	baseline	There are 33 freezer/longline vessels that participate in the IFQ halibut fishery and 38 freezer/longliner vessels that participate in the IFQ sablefish fishery that would potentially be affected by this amendment. Since this amendment would potentially benefit this fleet, it is likely that most of them would take advantage of the opportunity to process (freeze) non-IFQ species.
<b>Impacts to the resource</b>	baseline	There should be no resource impacts associated with Alternative 2. Bycatch limits are regulated under MRA and would remain unchanged
<b>Benefits</b>	baseline	There are likely to be benefits from increased value of processed Pacific cod, rockfish and other non-IFQ species by the IFQ halibut and IFQ sablefish freezer/longliner fleet.
<b>Costs</b>	baseline.	There is an unknown potential for diminished value added contribution for non-IFQ species, primarily Pacific cod and rockfish because of a relatively lower level of processing, versus the existing situation. The total value of this impact is not known, but is expected to be relatively modest due to relatively small harvest amounts.  There is a potential for intra-regional shifts of benefits through changes in delivery patterns, or capture of regional and/or local tax benefits from the proposed change.
<b>Net benefits</b>	baseline	Because of the costs and benefits are largely unquantified, the respective ratio of benefits and costs are unknown. The benefits from Alternative 1 are largely benefits to the nation, whereas the costs result from intra-regional shifts that are not part of the net national benefit calculation.
<b>Action objectives</b>	Does not address the objectives of the Council for this action.	Best meets the objectives of the Council.

## 2.7 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing IFQ halibut and IFQ sablefish freezer/longliners to process (freeze) non-IFQ species harvested along with their targeted species. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

### Reason for action and objectives

Alternative 2 would remove a prohibition on processing (freezing) by IFQ halibut and IFQ sablefish

freezer/longliners for non-IFQ species incidentally harvested along with their targeted species. The intent of the proposed action is to increase the value of the non-IFQ species harvested by increasing the quality of the product. As discussed in the RIR, the fleet is required to retain this catch, except under the conditions of the species being listed as a prohibited species, or when the MRA limit for that species had been reached.

#### Description and estimated number of small entities

The proposed action has the potential to directly regulate the 33 freezer/longline vessels that participate in the IFQ halibut fishery and 38 freezer/longliner vessels that participate in the IFQ sablefish fishery. Data are not currently available to determine the number of small entities within this fleet. It is likely that the group includes both large and small entities.

#### Alternatives considered and their potential adverse impacts on small entities

The analysis reviewed the status quo (Alternative 1) which would maintain the prohibition on processing of non-IFQ species. Under the status quo, the potential increase in product values for the incidental harvest of non-IFQ species would not occur.

Alternative 2 would eliminate the prohibition and would allow the IFQ halibut and IFQ sablefish freezer/longliners to process (freeze) the incidental harvest of non-IFQ species.

#### Description of recordkeeping, reporting and other compliance requirements

Paperwork Reduction Act requirements will be addressed by NOAA Fisheries in the final rule. Implementation of this amendment would remove a regulatory impediment rather than impose a new regulatory situation. Therefore, it is likely that the proposed action would require minimal recordkeeping, reporting or compliance requirements in excess of the status quo (Alternative 1).

#### Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

#### Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

### 3.0 Action 2: Allow use of longline pot gear in the Bering Sea IFQ sablefish fishery during June

#### 3.1 Problem and management objectives for the action

Potential gear conflicts that were thought to have been occurring at the time of implementation of the prohibition on the use of longline pots in the Bering Sea were undocumented then and now. If gear conflicts were occurring, then additional gear limits would have been implemented. In fact, there are no limits on the number of pots that may be strung together and longline pots are allowed to be stored on the fishing grounds when not being fished; pot gear can not all be stacked on the fishing vessel for transport off the fishing grounds.

#### 3.2 Alternatives

##### Alternative 1. No action.

The nature of longline pot gear and strategies used in fishing longline pots deter fishermen from deploying hook-and-line and trawl gear on fishing grounds where longline pot gear is set. This effectively pre-empts common fishing grounds. In 1991, the Council recommended a prohibition on the use of longline pot gear in the Bering Sea subarea groundfish fisheries to prevent the pre-emption of fishing grounds. Final regulations were published by the Secretary on August 21, 1992 (57 FR 37906).

In 1995, the Individual Fishing Quota (IFQ) Program for fixed gear sablefish fisheries extended the fishing season in Federal waters off Alaska to 8 months. By allowing the fleet to spread its operations over time, the IFQ Program greatly reduced the possibility of congestion and pre-emption of common fishing grounds. During the first IFQ season, commercial fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been underharvested due in part to fishery interactions with killer whales. Sablefish consumed by killer whales (and sperm whales) represent undocumented fishing mortality. Even though the sablefish quota may be underharvested by fishermen, overall fishing mortality could actually be higher than the specified quota, resulting in overharvests. Attempts to deter the whales by various non-lethal means have proven unsuccessful. Research concluded that the only viable method for reducing killer whale interactions with this fishery is to harvest with longline pot gear instead of hook-and-line gear, and thus deny killer whales the opportunity to take fish being hauled to the surface.

The reintroduction of longline pot gear into the Bering Sea fisheries posed less of a grounds pre-emption threat in 1996 compared to 1992 when longline pots were prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery allowed fishermen to use this gear and reduce interactions with killer whales. In recommending the lifting of the ban on longline pots, the Council expressed concern that, despite the decreased likelihood of grounds preemption, fishermen using traditional hook-and-line gear in relatively small boats may be pre-empted from grounds by fishermen in larger boats using longline pot gear. Therefore, a Bering Sea closure to longline pot gear from June 1 through June 30 replaced the year-round gear prohibition on September 18, 1996 (61 FR 49076).

##### Alternative 2. Allow use of pot gear in the Bering Sea sablefish fishery during June

In October 2004, a representative for longline pot vessels suggested that gear competition or fishing grounds

#### **§ 679.24 Gear limitations.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea, except as provided in paragraph (c)(4)(ii) of this section.

\* \* \* \* \*

(c) \* \* \*

(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, pot, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

preemption between the sablefish pot longline fleet and other fisheries has not occurred. The request was made to remove the June longline pot prohibition. As a result, the Council initiated analysis of Action 2.

### 3.3 Expected effects of Alternative 1

Alternative 1 would maintain a regulatory prohibition on the use of longline pot gear in the Bering Sea IFQ sablefish fishery during June. Under the status quo, QS holders would continue to interrupt their fishing activities and stand down for the month. There is no restriction on storing gear in the water or requirement to remove them from the fishing grounds. Mortality of fish or crabs in these unbaited pots left untended on the grounds is unknown. Under status quo, management costs would remain unchanged.

### 3.4 Expected effects of Alternative 2

Alternative 2 addresses a problem in the IFQ sablefish fishery that remained after a past Council recommendation. Due to a prohibition on the use of longline pot gear in the Bering Sea IFQ sablefish fishery during June, inefficient harvesting practices were required as vessels using the prohibited gear must stand down during June of each year. No benefits due to the closure have been identified since gear competition or preemption issues have not been reported or documented, although some small vessels may prefer to maintain the prohibition during that month of relatively better weather conditions (J. Knudsen, pers. commun.). The Council noted in 2005 that if gear conflicts did occur on the fishing grounds, then a number of issues regarding the handling of pot longline gear in the sablefish IFQ fishery would have arisen previously. These issues include: (1) lack of other regulations that limit gear (i.e., the regulations do not limit the number of pots that may be strung together on a longline); (2) operational efficiencies (i.e., longline pot gear can not all be stacked on a fishing vessel in one trip for transport off the fishing grounds), which may have led to: (3) lack of other regulations that limit gear (i.e., regulations do not prohibit the storage of pot longline gear on the grounds when they are not being fished).

The directed fishery primarily is a hook-and-line fishery. Pots and pot longlines are more common since the late 1990's, when marine mammal mortality increased. And due to predation, as well as higher fixed costs related to distances to the fishing grounds, the sablefish IFQ allocations have not been attained since implementation of the IFQ program in 1995. In 2005, only 57 and 60 percent, respectively, of the BS and AI sablefish IFQ allocations were harvested compared with 99 percent in most Gulf of Alaska regulatory areas (Table 3.1). The CDQ fisheries attained 74 and 88 percent of the AI and BS sablefish fixed gear allocations (Table 3.2).

**Staff requests clarification whether the proposed action should be expanded to apply also to the CDQ sablefish fisheries.** Continuation of the June pot longline prohibition was raised with CDQ Program staff by representatives of two CDQ groups originally in October 1999, soon after the first full year of the multi-species CDQ fisheries (S. Bibb, pers. commun.). From the table at left, CDQ participation in the sablefish pot fishery (single and longline pots can not be distinguished) has expanded since 2000. At approximately \$2.00/pound standard ex-vessel value

**Table 3.1 Individual Fishing Quota (IFQ) and Community Development Quota Allocations and Landings (27-Feb-05 to 22-Nov-05)**

	Area	Catch Pounds	Allocation Pounds	Remaining Pounds	Percent Landed
IFQ	AI	2,086,603	3,465,631	1,379,028	60
	BS	1,227,693	2,151,690	923,997	57
	CG	12,597,455	12,786,680	189,225	99
	SE	7,796,182	7,870,422	74,240	99
	WG	4,185,407	4,479,747	294,340	93
	WY	4,984,406	5,011,056	26,650	99
CDQ	AI	652,003	886,172	234,169	74
	BS	475,670	537,776	62,106	88

**Table 3.2 Number of boats harvesting sablefish with pot gear in the Bering Sea, by year**

Year	CDQ	non-CDQ
2000	1	65
2001	2	62
2002	4	58
2003	3	60
2004	4	47
2005	5	na

(<http://www.fakr.noaa.gov/ram/2004ifqfees.pdf>), the entire CDQ sablefish fishery is worth approximately \$940,000. It is unknown whether the June gear prohibition results in foregone revenue, or whether harvests occur in the remaining months of the fishing season.

The following is excerpted from Hanselman et. al (2006). Longline gear in Alaska is fished on-bottom. In the 1996 directed fishery for sablefish, average set length was 9 km and average hook spacing was 1.2 m. The gear is baited by hand or by machine, with smaller boats generally baiting by hand and larger boats generally baiting by machine. Circle hooks usually are used, except for modified J-hooks on some boats with machine baiters. The gear usually is deployed from the vessel stern with the vessel traveling at 5-7 knots. Some vessels attach weights to the longline, especially on rough or steep bottom, so that the longline stays in place and lays on-bottom.”

Industry representatives report that as many as 7 pot longline vessels may fish during June if the gear prohibition was removed, as that month typically has good weather (CAPT R. Brill to E. Olsen, pers. commun.). These vessels fish on both sablefish CDQ and IFQ allocations. They typically deploy the pot longline gear in depths of 200-250 fathoms. Halibut longline gear typically is fished at depths of 100 fathoms in different areas of the Bering Sea subarea (G. Williams, pers. commun.). One instance of conflict has been identified and industry reports that the conflict was quickly resolved between the vessels (CAPT R. Brill to E. Olsen, pers. commun.).

There are few small boats commercial fishing in the Bering Sea in June. Other fisheries that may have potential conflicts include the following (M. Furness, pers. commun.). Public testimony may provide additional information on gear conflicts or grounds preemption.

- Pacific cod summer allocation occurs later in the summer, typically August 15.
- Trawl flatfish typically runs out of halibut prohibited species catch limits by June.
- Pollock trawl fisheries open on June 10, but in different areas and depths.
- Greenland turbot hook-and-line fishing occurs in June, but no gear conflicts reported.
- Yellowfin sole trawl fishing occurs in June, but no gear conflicts reported

During its December 2004 review of this proposal, the IFQ Implementation Team recommended that the analysis examine gear selectivity for sablefish to determine if, pot gear catches smaller fish than longline gear.

The following is taken from the Alaska Sablefish Assessment for 2006 by Hanselman et al. (2005). Pot fishing for sablefish has increased in the Bering Sea and Aleutian Islands as a response to depredation of longline catches by killer whales. In 2000 the pot fishery accounted for less than ten percent of the fixed gear sablefish catch. In 2004, the pot fishery accounted for nearly fifty percent of the fixed gear catch in these areas. The Plan Teams recommended that the different selectivity of pots and longline gear should be explored because of the increased use of pots in the Bering Sea. We compared the length frequencies recorded by observers from the 2001-2004 longline and pot fisheries (Figure 3.1). The lengths of sablefish in the Aleutian Islands and in the Bering Sea

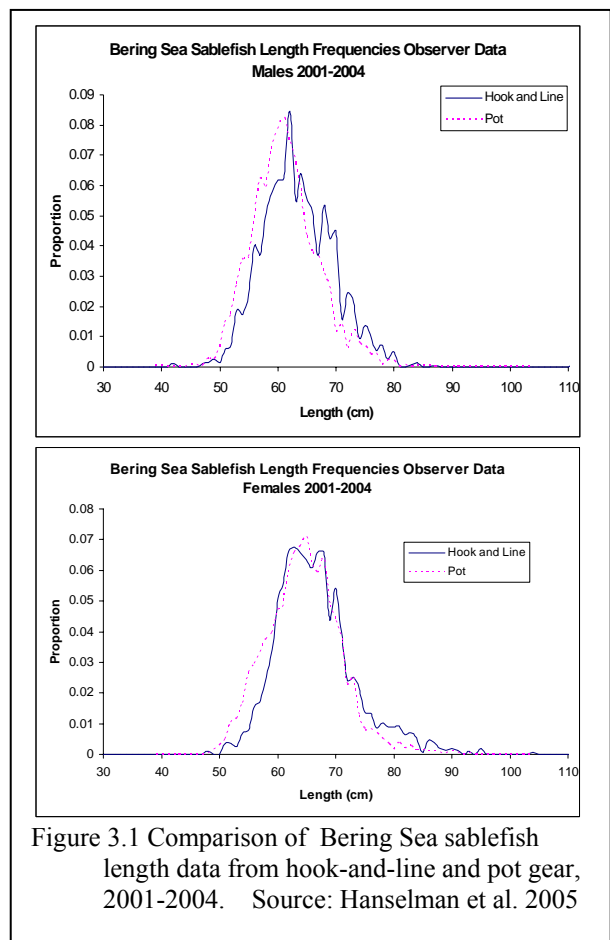


Figure 3.1 Comparison of Bering Sea sablefish length data from hook-and-line and pot gear, 2001-2004. Source: Hanselman et al. 2005

were smaller for pot caught sablefish than longline gear, but the difference was minor. In all years the difference between the two gear types was greatest in the Aleutian Islands. We do not believe that the difference in lengths is significant enough to effect population recruitment and did not see any indication that undersized fish were being selected by pots.

If an examination of Table 3.3 informs the Council regarding fishing activity during June, staff will refine this information for the sablefish target fishery and other fisheries for which potential gear conflict or grounds preemption is identified.

Table 3.3. Number of vessels that caught groundfish in the BSAI by month, area, vessel type, and gear, 2000-04.

			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year	
Bering Sea & Aleutian Islands	Catcher-vessels (excluding C/Ps)	Hook & line	2000	2	2	6	10	23	25	29	26	23	19	8	8	79
			2001	2	3	2	9	16	40	43	46	32	18	12	5	92
			2002	2	3	4	12	27	37	26	35	20	9	5	0	78
			2003	0	0	6	9	26	34	27	30	27	17	6	0	72
			2004	0	8	9	14	24	23	28	22	15	11	8	1	60
		Pot	2000	37	70	81	1	2	2	1	1	5	1	1	0	88
			2001	3	4	57	3	7	7	3	4	25	16	6	3	74
			2002	5	20	40	6	7	8	5	5	20	19	6	1	59
			2003	7	47	46	10	6	8	10	8	28	37	21	5	80
			2004	19	49	10	16	18	9	7	5	27	28	8	0	78
	Trawl	2000	62	89	90	68	0	2	43	72	78	52	22	0	112	
		2001	45	94	105	50	6	8	58	79	91	51	0	0	123	
		2002	63	106	105	55	6	19	60	90	80	51	6	0	124	
		2003	60	108	111	65	13	31	73	90	75	47	0	0	120	
		2004	77	99	98	42	1	39	70	79	78	58	15	0	109	
	All gear	2000	101	161	176	79	25	29	73	99	105	72	31	8	273	
		2001	50	101	164	62	29	55	104	129	148	85	17	8	285	
		2002	70	129	149	73	40	64	91	130	120	79	17	1	257	
		2003	67	155	163	84	45	73	109	126	130	100	27	5	265	
		2004	96	156	115	72	43	71	105	106	120	97	31	1	239	
Catcher/Processors	Hook & line	2000	35	34	37	20	31	14	5	11	37	36	38	35	43	
		2001	33	37	41	17	25	11	8	37	39	40	38	35	45	
		2002	34	35	37	13	11	6	11	37	39	40	39	18	42	
		2003	32	39	39	14	11	11	15	36	36	36	37	31	40	
		2004	34	37	37	13	12	9	16	38	39	39	38	37	40	
	Pot	2000	7	9	9	1	1	0	0	0	0	0	0	1	0	12
		2001	1	1	5	1	1	0	0	0	0	3	3	2	0	7
		2002	0	3	4	0	0	0	0	0	0	3	3	3	0	5
		2003	0	2	2	0	0	0	0	0	0	3	2	2	1	3
		2004	2	2	3	0	1	0	0	0	0	1	1	1	0	4
	Trawl	2000	35	37	37	34	20	13	29	37	37	31	12	3	39	
		2001	35	37	38	35	9	15	33	35	36	34	14	5	39	
		2002	35	38	37	22	18	22	32	37	36	26	6	0	39	
		2003	36	38	38	24	16	29	34	37	37	14	3	1	40	
		2004	38	39	39	24	23	32	37	31	32	17	3	0	40	
	All gear	2000	77	80	82	54	51	27	34	48	73	67	51	38	88	
		2001	69	75	84	53	35	26	41	72	78	77	54	40	90	
		2002	69	76	78	35	29	28	43	74	78	69	48	18	86	
		2003	68	79	79	38	27	40	49	73	76	52	42	33	83	
		2004	74	78	78	37	35	41	53	69	72	57	42	37	82	

If an examination of Table 3.4 informs the Council regarding fishing activity, staff will refine this information for the sablefish target fishery and other fisheries for which potential gear conflict or grounds preemption is identified.

Table 3.4. Catcher vessel (excluding catcher-processors) weeks of fishing groundfish off Alaska by area, vessel-length class (feet), gear, and target, 2000-04.

			Gulf of Alaska			Bering Sea and Aleutians			All Alaska		
			Vessel length class			Vessel length class			Vessel length class		
			<60	60-124	>=125	<60	60-124	>=125	<60	60-124	>=125
Hook & line	Sablefish	2000	1022	323	-	99	58	-	1121	381	-
		2001	1026	345	-	142	50	-	1168	395	-
		2002	1051	303	-	143	50	1	1194	353	1
		2003	1058	314	-	174	26	-	1232	340	-
		2004	1065	328	-	114	24	2	1179	352	2
	Pacific cod	2000	1624	35	-	126	11	3	1750	46	3
		2001	1309	21	-	164	25	-	1473	45	-
		2002	1066	19	-	98	9	-	1164	28	-
		2003	1061	22	-	89	8	1	1150	30	1
		2004	1337	45	-	147	5	1	1484	50	1
	Flatfish	2000	-	-	-	5	6	-	5	6	-
		2001	-	-	-	21	3	-	21	3	-
		2002	-	-	-	1	-	-	1	-	-
		2003	1	-	-	6	5	-	6	5	-
		2004	-	-	-	1	-	-	1	-	-
	Rockfish	2000	257	11	-	5	2	-	262	13	-
		2001	236	15	-	5	2	-	242	17	-
		2002	241	26	-	4	1	-	245	27	-
		2003	213	15	-	3	1	-	216	16	-
		2004	244	13	-	1	-	-	245	13	-
All groundfish	2000	2908	370	-	233	77	3	3141	447	3	
	2001	2585	381	-	333	80	-	2918	461	-	
	2002	2358	348	-	246	60	1	2604	407	1	
	2003	2489	360	-	272	41	1	2761	401	1	
	2004	2710	389	-	263	28	3	2974	417	3	
Pot	Pacific cod	2000	1115	530	44	2	229	136	1116	759	180
		2001	724	203	-	27	227	63	750	430	63
		2002	749	200	3	35	159	56	784	359	59
		2003	605	143	10	41	201	64	646	344	74
		2004	816	211	4	87	166	60	903	377	64
	All groundfish	2000	1117	532	44	2	253	137	1118	785	181
		2001	748	203	1	32	263	65	780	466	66
		2002	750	202	3	48	215	56	798	417	59
		2003	605	143	10	56	302	64	661	445	74
		2004	816	217	4	88	280	67	904	497	71

### 3.5 Other management tools

As part of this analysis, the Council requested a discussion of the use of escape rings and soak time limits. AFSC Auke Bay scientists have suggested that while both possible management tools may have merit, that an analysis of such measures be reviewed in a separate analysis to allow experimental research to be conducted to determine the effectiveness of different size escape rings and soak times (P. Rigby, pers. commun.). AFS staff provided responses to a series of questions posed to them based on a discussion the analyst had with a sablefish longliner:

- The slime bank off Dutch Harbor (between Unimak Pass and Port Moller) has high catches of small fish and may be a nursery area for sablefish. While an abundance of sablefish from the 1977 year class was noted along the Bering Sea shelf north and northwest of the Slime Bank as 1-3 year olds (Umeda, Sample, and Bakkala, 1983), the Slime Bank, as indicated on nautical charts, has not previously been noted by scientists as an area of sablefish abundance. If high catches of small sablefish occur on the Slime Bank, closer attention to this area in the trawl survey and fishery bycatch monitoring is merited.
- Cannibalism among sablefish may be occurring in the pots, although it has not been reported previously for sablefish. Cannibalism conceivably could occur in the confined volume of a trap. There are two approaches to test the hypothesis that cannibalism occurs in pots. One approach is to examine fishery and survey length frequencies to determine if the length range is wide enough for cannibalism to be plausible. Notably, even the most notorious cannibal in the North Pacific Ocean, the walleye pollock, primarily consumes only young-of-the-year pollock. The second approach is for fishery observers to examine stomach contents of sablefish caught in the pot fishery.
- There may be a missing year class. Fisheries with high juvenile sablefish bycatch may diminish strong year classes of sablefish. Fisheries with high juvenile bycatch may diminish strong year classes. For sablefish, if such an effect were to occur, it might go unnoticed because of the relatively small biomass of juvenile sablefish and the sporadic occurrence of large year classes. Examining fishery length frequencies can test this potential. Three gear types in the southeastern Bering Sea, trap, trawl, and longline catch sablefish.

In 2003 the Plan Teams recommended exploring the selectivity differences between pots and longline gear because of the increased use of pots. Length frequency plots of pot versus longline caught sablefish from observer data were presented in the 2004 SAFE document. Results indicated pot gear catches fewer larger fish than longline gear. In the Bering Sea, pot gear caught a higher proportion of smaller fish (50-60cm) than longline gear. Following fishery catch length frequencies over time may help to determine the occurrence of large year classes. An analysis that would look at area-year effects would require a person-month of time.

- The Bering Sea sablefish fishery only catches about half the quota. In 2004, 45% of the Bering Sea and 51% of the Aleutian Islands sablefish TAC were taken. These proportions are substantially lower than for the GOA. The BSAI represent 43% of the total exploitable habitat in Alaska waters while survey catch rates are less than half those of GOA catch rates. This suggests these regions are sparsely populated compared to the GOA and the density of fish per unit area is much less. Survey catch rates in the BSAI have remained relatively stable since 1996 when these areas were first surveyed. Yet the percentage of quota taken has not varied significantly since 1997, except for a spike in 2002, which may be the result of a large year class moving through the region. Reasons why the quota has never been fully utilized may be largely influenced by economics. Because of travel distances, killer whale depredation, small individual quotas for these areas, and the low density of fish, vessels may not cover their operating expenses because of their low catch rates. Survey and fishery catch rates did go down in 2003 in the Bering Sea, which has resulted in a reduced quota for 2005.



- Pot boats are not causing decline of sablefish. Pot harvests are too small to significantly contribute to adult sablefish mortality and cause a population decline. In 2004, pot harvests comprised only 4% of the total sablefish landings in Alaska. Prior to 2001, this percentage was <1%. Because there has been a large increase in the pot fishing harvest and that it primarily occurs in the Bering Sea region, it is a concern to the management of sablefish. Additionally, if juvenile sablefish mortality is adversely affected by pot fishing as suggested above, then the risk of increased sablefish mortality by pot gear should be addressed.
- There is not sufficient information available on which to comment on whether current regulations may be insufficient for sablefish.
- There is no apparent biological a basis for prohibiting the use of pot longlines in June.
- Escape rings are a common sense option that addresses juvenile bycatch concerns. The Canadian study examined one ring size. It could be reviewed and implications analyzed in about one month. A full evaluation of optimal size, placement, and numbers per pot requires an extensive field study.

#### **Canadian regulations on gear**

Fishing for sablefish is permitted only by trap and/or hook and line gear.

By regulation, no person shall fish for sablefish with a trap, unless the trap has in a side wall a section that has been laced, sewn or otherwise secured by a single length of untreated natural fibre not larger than 2 mm in diameter and that, on deterioration or parting, produces in the side wall an opening with four sides, each of which is at least 20 cm in length.

By licence condition, no person shall fish for sablefish with a trap unless the trap has in the side walls at least two escape openings each having an inside diameter of not less than 3.5 inches (8.89 cm) which creates an unrestricted exit out of the trap.

No person shall set a trap and leave the trap in the water for more than four consecutive days without lifting the trap from the water and removing all of the sablefish from it. Vessels leaving gear unattended must notify Archipelago Marine Research Limited (AMR) upon leaving the gear and identify gear location, time and date gear was set and estimated return time. Vessels must notify AMR upon returning to unattended gear. Vessels leaving unattended gear in the water for more than four consecutive days will be required to take an onboard observer at the vessel's expense for the remainder of the season.

The adoption of escape rings was promoted by the Canadian fishing industry in the late 1990s and some experiments were conducted (Haist et al. 2004, 2005). Rob Kronland, Department of Fisheries and Oceans, reported that he had little doubt that the rings reduce the retention of smaller fish. He cautioned, however, that the use of escape rings “restarts” existing commercial CPUE indices since the gear selectivity changes. DFO anticipates proposals to increase and decrease ring size as the size of fish and sablefish recruitment changes year to year. Changes to ring size, however, “plays havoc” with CPUE indices. He advised that any regulation specify the escape ring diameters, rather than a minimum size because the escape ring size used is unknown. DFO logbooks indicate that mixed escape ring sizes may be used even on the same string.

#### Administrative, Enforcement, and Information Costs

No additional enforcement or information costs have been identified under the proposed action.

### 3.5 Conclusions

Table 3.5 summarizes the benefits of the respective alternatives. Insufficient data is available to distinguish between single pot and longline pot landings and effort in the NOAA Fisheries Service catch accounting system. It is known that more pot longlines and fewer hook-and-line longlines are being deployed in the Bering Sea due to whale depredation of sablefish on hook-and-line longline gear. It is also known that single pots are not much used in the Bering Sea because sea conditions result in their loss. Therefore, one may assume that most gear reported as pots in the Bering Sea, are longline pots. Alternative 2 is expected to increase economic efficiency and operational flexibility for Bering Sea IFQ sablefish fishermen, although they can be assessed only qualitatively. It is expected to increase the likelihood of achieving optimum yield of sablefish by allowing the use of a more efficient gear for the entire season

Beneficiaries of the proposed action include those fishermen who would use longline pot gear during June, if allowed to do so. It is not possible to speculate on the number of individuals who would make this choice.

Table 3.5 Summary of the cost and benefit analysis of Action 2.

	<b>Alternative 1</b>	<b>Alternative 2. Allow the use of pot longline gear in the Bering Sea IFQ sablefish fishery.</b>
<b>Who may be affected</b>	Status quo, baseline	One hundred seventeen Bering Sea IFQ sablefish permit holders could be affected. However, industry members identified that approximately six pot longline vessels out of a total of 44 total vessels participating in the fishery (in 2005) would be expected to fish in June.
<b>Impacts to the resource</b>	baseline	May increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, consistent with sound management practices.
<b>Benefits</b>	baseline	Use of longline pot gear during the eight and ½ month IFQ sablefish season would not be interrupted, leading to economic efficiencies for those using pot longline gear. Sablefish longline pot fishermen would not have to remove or store gear during the one month mid-season closure.
<b>Costs</b>	baseline	There do not appear to be costs associated with this alternative, since there is no known gear conflict or grounds preemption.
<b>Net benefits</b>	baseline	Net benefits are expected to be positive since at least six vessels may be expected to use pot longline gear during June, and no vessels from other fleets are believed to be negatively impacted. These fleets are separated in either space and/or time.
<b>Action objectives</b>	Does not address the objectives of the Council.	Best meets the objectives of the Council by increasing economic efficiency of the IFQ sablefish pot longline fleet.

### 3.6 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing the use of medical transfers of IFQ. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

#### Reason for action and objective

The Council believed that gear conflicts and grounds preemption may still be occurring in the Bering Sea sablefish fixed gear fishery. It, therefore, recommended and NOAA Fisheries Service implemented a prohibition the use of longline pots in the Bering Sea during June, so that small hook-and-line longline vessels would have

one month of good weather to fish on the grounds free of pot longline gear. Since then, pot longline vessels have reported that no gear conflicts or grounds preemption are occurring and have requested removal of the regulatory prohibition.

#### Description and estimated number of small entities

This action has the potential to directly regulate perhaps approximately 117 persons who hold sablefish QS in the Bering Sea regulatory area, as of 2005 (Table 1.2). Perhaps six pot longline vessels may use their gear in June, if the prohibition is lifted. At present, NOAA Fisheries Service does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that would be adversely impacted by the present action.

#### Alternatives considered and their potential adverse impact on small entities

This analysis reviews the status quo and an alternative to relieve a regulatory prohibition on the use of pot longline gear in the Bering Sea during June. The alternatives are explained in Section 2.2, and the following summary of impacts on small entities is from the discussion in Sections 2.3 and 2.4.

Alternative 1 is the no action alternative and would continue any associated adverse economic impacts on directly regulated small entities. Under the status quo, pot longline gear is prohibited in the Bering Sea during June.

Alternative 2 would remove a prohibition on the use pot longline gear in the Bering Sea during June each year.

#### Description of recordkeeping, reporting and other compliance requirements

No Paperwork Reduction Act requirements have been identified as part of this proposed action.

#### Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries Service is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

#### Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries Service is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

## 4.0 Action 3: Remove all unused QS held by completely inactive initial recipients from the QS Pool

### 4.1 Problem and management objectives for the action

Numerous initial recipients of halibut and sablefish have never fished, transferred, or leased **any**<sup>1</sup> of their QS/IFQ, which resulted in dormant IFQ permits. The QS held by these dormant permit holders, however, is miniscule. Some of these individuals have requested to be removed from the program, but Federal regulations do not clearly provide for the voluntary removal of QS other than through transfer.

### 4.2 Alternatives

#### Alternative 1. No action.

There is no clear regulatory authority for NMFS to void QS. A QS (permit) holder may voluntarily transfer (by sale or gift) his/her QS or fish the associated IFQ, neither one of which is apparently happening for a substantial number of holders of very small awards. Private brokerages maintain listings, and NMFS/RAM updates several files of QS holders and transfer-eligible persons daily to facilitate transfers and for general public information. All files include descriptions of the QS held (e.g., species, area, category, block type, fish down, CDQ compensation QS), number of QS units held, and include business mailing addresses of QS holders. These have been made available to the general public, but few transfers of very small QS holdings have occurred.

#### Alternative 2. Remove all unused QS held by completely inactive initial recipients from the QS Pool

Under Alternative 2, QS held by “dormant persons” that is, persons who have neither fished nor transferred QS or IFQ in or out since initial issuance, would be forfeited (with no compensation) under a “use it or lose it” provision. The concept mirrors that whereby voter registration rolls are “purged” periodically to remove those who don’t exercise their right to vote. Relinquished QS would be eliminated from the program, which would result in diminutively smaller QS pools and diminutively larger IFQ allocations to remaining participants, proportionate to their holdings.

Features of the proposed action include the following<sup>2</sup>.

- Advance notice of one fishing year would be given to all initial recipients whose permits would be forfeited if their permits remain dormant during that “use it or lose it” year. Fishing, transferring, or leasing as little as 1 QS unit or 1 IFQ pound would remove the permit holder from the inactive list.
- Additionally, during that year RAM Division staff would determine whether dormant permit holders wish to be included in a database to be posted on the RAM website, which would notice their interest in

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<sup>1</sup> **The Council should confirm or correct staff’s interpretation that the proposed alternatives would apply to the combination of halibut and sablefish QS, and not by species.**

<sup>2</sup> The Council could choose to mitigate the effects of purging the entire dormant QS pool by qualifying dormant QS holders as “active” if they apply to be listed on the RAM website. Listing would not commit a dormant QS holder to transferring any of his/her dormant QS holdings.

transferring their QS, in all or in part during that one year notice period.

Alternative 3. Allow surrender of unused QS held by completely inactive initial recipients from the QS Pool.

A less draconian, and perhaps less effective, measure would amend the regulations, if necessary, to provide NOAA Fisheries Service with clear authority to accept voluntarily relinquished QS. NOAA Fisheries is currently licenses, including QS. Only a few dormant QS holders may opt to file the paperwork to relinquish small

holdings, although results might be more reasonably effective if NOAA Fisheries solicits QS surrender by sending forms to dormant QS holders. Therefore, additional rulemaking or OMB approval to notify or survey QS holders might be necessary to make this approach effective.

Option. One-time crew lottery for unused small blocks of quota shares.

- 1) Lottery would be held one year after individuals holding any quota share/IFQ which has never been fished or transferred, have been given an opportunity to fish it or transfer it.
- 2) Individuals would need to make application to RAM.
- 3) There would be a 60-day window for making application.
- 4) Those individuals applying for the lottery would need bona fide crewman status (i.e., Transfer Eligibility Certificate).
- 5) Lottery winners would receive all associated first generation allocation privileges (including hiring a Master).
- 6) Those individuals receiving quota would have one year (365 days) after first day of full season to fish or divest their quota shares. After that time, all QS held by a lottery winner who remains inactive would by default return to the general quota share pool.
- 7) Crewman would apply by species and area.
- 8) Proposed area and species lottery breakdown.

<u>Halibut</u>	<u>Sablefish</u>
Area 2C - 4 Winners	Bering Sea – 1 winner
Area 3A – 10 winners	Western Gulf – 1 winner
Area 3B – 1 winner	Central Gulf – 1 winner
Area 4A – 1 winner	West Yakutat – 1 winner
Area 4B – 1 winner	Southeast – 1 winner
Area 4C – 1 winner	

- 9) Quota share awarded in the lottery would maintain its area and vessel restrictions; however, all lottery quotas would be designated as unblocked.
- 10) The Council accepted a proposal for reallocating mandatory (under Alternative 2) or voluntary (under Alternative 3) relinquished halibut and sablefish QS by the Deep Sea Fishermen’s Union in February 2005. Instead of being, in effect, reallocated to current QS holders, the option would result in lotteries that would be open to all halibut and sablefish crew members and conducted by the RAM Program. A number of issues require clarification.
  - Are crew eligible to apply for lotteries for species and/or areas in which s/he already holds QS or is the lottery intended for crew with no QS for that species/area?
  - Are crew eligible to apply for lotteries for species and/or areas in which s/he does not hold QS but does hold QS for other species/areas or is the lottery intended for crew with no QS for any species/area?
  - May lottery winners lease the QS or must they fish them (hiring a Master is a first generation allowance)?
  - If they choose not fish them, is there a sunset date after which those QS would be subject to mandatory relinquishment? Would there be a second lottery for those shares or would they be extinguished?
  - May crew apply for more than 1 lottery?
  - May crew win QS in more than 1 lottery?
  - Would all other IFQ program features apply to those QS (i.e., block limits; sweep-up limits)?
  - Would skippers be included in the lottery?
  - When would the lottery be held (before or after the known forfeited QS pool is identified)?
  - How would the determination be made that sufficient QS was available to be awarded to multiple winners in Area 2C (4 winners) and 3A (10 winners)?
  - Is the lottery open to IFQ Crew Members only, or also to any individual and/or non-individual initial recipient?
  - Is the lottery only for “small blocks” or also for any unblocked QS held by dormant persons?

### 4.3 Expected effects of Alternative 1

Alternative 1 would not revise the IFQ regulations to grant the agency the authority to either: 1) remove QS and IFQ permits held by dormant persons, or 2) accept voluntary relinquishment of the same. Under the status quo, RAM will continue to send annual paperwork related to annual IFQ permits and other program to all 3,519 unique QS holders, including 594 initial recipients who hold either halibut or sablefish (or both) QS and have not fished, transferred, or leased even one unit of their QS holdings between initial implementation of the IFQ program in 1995 and the end of the 2005 IFQ fishing year. Under the status quo management, management costs are expected to remain at their current levels.

### 4.4 Expected effects of Alternative 2

Alternative 2 addresses a problem that staff has identified in the IFQ fisheries since initial implementation. In 1995, hundreds of initial QS recipients were issued QS in amounts that were and remain too small to fish, lease, or transfer and there is no clear regulatory authority for NOAA Fisheries Service to accept relinquishment of these allocations that are in fact impractical or uneconomical to fish. Some QS allocations amounted to less than an average sized fish. Dormant QS holders are defined here as those initial QS recipients (halibut, sablefish, or both) who have not fished, leased, or transferred even 1 QS unit or 1 IFQ pound in the 11 years of the IFQ program.

RAM data indicate that the sum of dormant QS units is insignificant (Table 4.1). It amounts to less than 1 percent of halibut and/or sablefish QS units compared with either initially issued QS or QS held by those initial recipients who still hold QS (that is, many initial recipients have dropped out of the program by transfer (i.e., “selling”). Those initial recipients that dropped out of the program were able to find a buyer for their QS. However, nearly 600 QS holders have dormant halibut and/or sablefish QS holdings. These QS holders comprise about 12 percent of halibut initial QS recipients and 25 percent of those initial recipients who still hold QS. The Council could apply Alternative 2 separately to halibut and sablefish dormant QS holdings. If it did, then the numbers are nearly the same for halibut as for the combined species because of the markedly larger number of dormant halibut QS holders. But the numbers would differ markedly for sablefish. Between ~0 and 11 percent of initial recipients would be affected if the proposed action was applied to collective halibut and sablefish holdings; between 4 and 19 percent of current QS holders would be affected if sablefish are examined separately.

Individual dormant QS holdings have no economic value because there is no market for very small QS allocations and the relatively high cost and burdensome paperwork involved in transfers of small holdings (evidenced by their lack of transfer). But if they are reallocated to currently active QS holders, the foregone value of halibut QS held by dormant persons would be captured by active QS holders.

QS holdings by dormant persons by subarea are provided in Table 4.4. The halibut QS would yield roughly 280,000 lb and \$840,000 annually if reallocated to currently active QS holders and completely fished (based on the 2005 halibut quota and market, and \$3.00 per pound ex-vessel value). The total halibut QS held by dormant persons, if transferred (i.e., sold) at current market value, would be worth \$7.7 million. Sablefish QS held by dormant persons would yield roughly 16,000 lb and \$32,000 annually, if reallocated to currently active QS holders and completely fished, (based on the 2005 halibut quota and market, and \$2.00 per pound ex-vessel value). The total sablefish QS held by dormant persons, if transferred at current market value, would be worth \$123,000 (Source: <http://www.dockstreetbrokers.com/ifqs.php?type=Halibut>).

Table 4.1	HALIBUT						SABLEFISH						HALIBUT /SABLEFISH					
	Persons	%IR	%CIR	Units	%IR	%CIR	Persons	%IR	%CIR	Units	%IR	%CIR	Persons	%IR	%CIR	Units	%IR	%CIR
<b>Initial Recipients (IR)</b>	4,829			332,585,547			1,054			317,844,583			4,867			650,430,130		
<b>Current Initial Recipients (CIR)</b>	2,220	46		243,939,534	73		582	55		242,896,981	76		2,349	48		486,836,515	75	
<b>Initial Recipients who currently holds QS for a species with no activity for that species</b>	570	12	26	1,089,946	~0	~0	113	11	19	160,959		~0	589	12	25	1,250,905	~0	~0
<b>Initial recipient and currently holds QS for either species with no activity for either species</b>	569	12	26	1,087,440	~0	~0	25	~0	4	96,266		~0	594	12	25	1,183,706	~0	~0



In its review of the proposal in December 2004, the IFQ Implementation Team noted the following:

- Only active QS holders pay the IFQ recovery fee (which is based on landings) to compensate the Federal Government for the costs of the IFQ program and dormant QS holders are free riders on that program.
- The IFQ program is a privilege and not a right and the legal aspect of a “taking” is not applicable to this proposal.
- Initial recipients are allowed to hire a Master, except for halibut Area 2C and sablefish Southeast Outside.
- The Magnuson-Stevens Act mandates full utilization and reallocating QS after 11 years of inactivity would address National Standard 1.
- Inactivity of some QS holders during the ten years of the program has led to inefficiencies.
- “Banking” unharvested halibut could have positive effects on the stock

The Team recommended the following methods for consideration by the Council to address the issue of dormant QS holders. The Council did not adopt the recommendations.

- Withdraw QS from unused IFQ permits after a 2-year notice.
- Implement a fee system on inactive permit holders to continue to hold their unused QS (modeled after the CFEC system on salmon permits). It would recover program costs that could reduce the cost recovery fees of active permit holders. The fee was proposed as voluntary method for inactive fishermen to opt in or out of the program in the future; that is, a dormant QS holder could be deemed active by the payment of an annual fee.
- Canvas inactive permit holders for their consent to be included in an on-line database of inactive permits and associated QS to facilitate transfers. This would assist those QS holders to extract rent from their unharvested QS, increase fishery efficiencies for achieving the quotas and increase opportunities for new entrants.

#### 4.4 Expected effects of Alternative 3

The Council added Alternative 3 for voluntary relinquishment of dormant QS to the staff-generated proposal to accommodate initial recipients of dormant QS who do not wish to fish, lease, or transfer even 1 QS unit but still wish to hold their QS allocation. The same number of initial recipients and QS units would be affected under Alternative 3, as is identified under Alternative 2. The voluntary nature of this alternative suggests that few are likely to fill out the paperwork to relinquish their QS holdings; however, a few may be expected to respond if the RAM Program simplifies the process by providing a form to sign.

The Council may wish to consider another method to address the interests of some dormant QS holders to retain their QS holdings. Rather than allow a voluntary relinquishment by submitting an application, the Council may allow the retention of dormant QS by dormant QS holders who submit an application to retain their QS or as suggested above, merely identify themselves in a database as holding unused QS. Such application could be deemed evidence of activity. This proposed application is expected to increase the likelihood of attaining optimal yield of the halibut and sablefish resource, of purging hundreds of dormant QS holders from the IFQ Program with minor savings in mailings to these persons, while maintaining whatever social or economic benefits may be perceived by these dormant QS holders in the privilege of holding such QS.

#### 4.5 Expected effects of Lottery Option

Numerous clarifications regarding eligibility and administration of a proposed lottery of unused QS were requested by staff under Section 4.2. Analysis of expected effects is hindered until such clarifications are made.

Those who wish to receive QS/IFQ by transfer but did not have QS initially awarded to them must submit an application for eligibility to receive QS/IFQ to the RAM Division for approval. Only those who have 150 or more days of experience working as part of a harvesting crew in any U.S. commercial fishery are eligible to receive a Transfer Eligibility Certificate (TEC). Work in support of harvesting but not directly related to it is not considered

harvesting crew work. Since the start of the IFQ Program, more than 2,700 IFQ crew members hold transfer eligibility certificates or TECs. Of those, more than 1,100 or 41 percent currently hold QS for one or more species in one or more regulatory areas.

Table 4.2. Count of individual Alaskan/Non-Alaskan U.S. Citizens who did not receive QS by initial issuance but who have demonstrated their eligibility to receive QS by transfer (as IFQ Crew Members) and to whom "IFQ Crewmember" Transfer Eligibility Certificates have been issued/Count of such individuals who currently hold QS.

	<b># of Individuals</b>	<b># who currently hold QS</b>
Number of Alaskans	1,931	833
Number of non-Alaskans	<u>788</u>	<u>294</u>
Total	2,719	1,147

Table 4.3. Count of "IFQ Crewmembers" who have received sablefish QS by transfer since the start of the program in 1995, who still hold QS, and QS units they currently hold (by IFQ Management Area).

Area	Halibut		Area	Sablefish	
	Persons	QS Units		Persons	QS Units
2C	742	18,515,581	AI	42	7,387,174
3A	951	41,411,741	BS	38	5,511,620
3B	297	13,403,035	CG	180	13,252,013
4A	255	4,929,917	SE	260	16,710,142
4B	67	2,658,181	WG	59	3,906,827
4C	33	1,110,178	WY	119	6,235,073
4D	25	1,026,750			

1. Tables do not include those who received QS by initial issuance, nor those to whom TECs were issued for the purpose of receiving category "A" shares only by transfer.
2. Designation of "Alaskan" or "non-Alaskan" is premised on TEC holders' self-reported business mailing address; NMFS/RAM makes no effort to verify residency.
3. Excludes persons with unknown addresses.

Using the 2005 halibut and sablefish TACs, blocked and unblocked QS held by dormant persons are shown in Table 4.4. Note that the Area 2C and 3A winnings would be divided among 4 and 10 winners, respectively. And according to the proposed lottery rules all the blocked shares would be transferred as unblocked shares, and presumably remain unblocked upon subsequent transfer. Table 4.4 lists the amount of blocked and unblocked QS that would be awarded under Alternative 2. Much less would be available to be awarded under Alternative 3, proportionate to the amount of QS voluntarily forfeited.

**Table 4.4 Lottery winnings under proposed option to Alternative 2**

Species	Area	Block size (in 2005 lb equivalents)	Blocks	QS units	in 2005 lb	Asking Price	Value	winners	lb per winner
Halibut	2C	> 10,000 and <= 15,000	1	61,113	11,216	19.00	213,000		
		>5,000 and <= 10,000	1	44,769	8,216	18.00	148,000		
		<= 5,000	173	327,139	60,036	20.00	1,201,000		
		unblocked		3,018	555	21.00	12,000		
		<b>Total</b>		<b>175</b>	<b>433,021</b>	<b>79,468</b>		<b>1,574,000</b>	<b>4</b>
Halibut	3A	> 10,000 and <= 15,000	2	157,848	21,742	20.00	435,000		
		> 15,000 and <= 20,000	1	116,283	16,017	20.00	320,000		
		>5,000 and <= 10,000	3	131,681	18,139	20.00	363,000		
		<= 5,000	372	747,429	102,955	16.00	1,647,000		
		unblocked		394,496	54,339	21.00	2,765,000		
<b>Total</b>		<b>378</b>	<b>1,153,241</b>	<b>158,853</b>		<b>5,530,000</b>	<b>10</b>	<b>15,885</b>	
Halibut	3B	>5,000 and <= 10,000	3	102,374	24,809	15.50	385,000		
		<= 5,000	18	46,232	11,205	16.50	185,000		
		unblocked		2,600	628	15.00	9,400		
<b>Total</b>		<b>21</b>	<b>148,606</b>	<b>36,014</b>		<b>579,400</b>	<b>1</b>	<b>36,014</b>	
Halibut	4A	<= 5,000	9	21,100	4,976	10.50	52,000		
		unblocked		648	152	10.50	1,600		
<b>Total</b>		<b>9</b>	<b>21,748</b>	<b>5,128</b>		<b>53,600</b>	<b>1</b>	<b>5,128</b>	
Halibut	4B	<= 5,000	4	9,922	1,932	5.50	10,000	1	1,932
Halibut	4C	<= 5,000	1	578	131	5.50	700	1	131
Halibut	4D		0	0	0			1	0
<b>HALIBUT TOTAL</b>					<b>281,526</b>		<b>7,747,700</b>	<b>19</b>	<b>14,817</b>
Sablefish	BS	<= 5,000	1	30,548	3,498	3.25	11,000		
		unblocked		21,522	2,465	3.25	8,000		
<b>Total</b>		<b>1</b>	<b>52,070</b>	<b>5,963</b>		<b>19,000</b>	<b>1</b>	<b>5,963</b>	
Sablefish	CG	<= 5,000	14	21,702	2,458	12.00	30,000		
		unblocked		20,614	2,360	12.00	28,000		
<b>Total</b>			<b>42,316</b>	<b>4,818</b>		<b>58,000</b>	<b>1</b>	<b>4,818</b>	
Sablefish	SE	<= 5,000	9	16,185	1,926	12.25	24,000		
		unblocked		2,113	252	12.25	3,000		
<b>Total</b>		<b>9</b>	<b>18,298</b>	<b>2,178</b>		<b>27,000</b>	<b>1</b>	<b>2,178</b>	
Sablefish	WG	<= 5,000	2	22,871	2,844	5.75	16,000		
		unblocked		1,147	143	5.75	800		
<b>Total</b>		<b>2</b>	<b>24,018</b>	<b>2,987</b>		<b>16,800</b>	<b>1</b>	<b>2,987</b>	
Sablefish	WY	unblocked		1,723	162	16.00	2,600	1	162
	AI		0	0	0			1	0
<b>SABLEFISH TOTAL</b>					<b>16,108</b>		<b>123,400</b>	<b>6</b>	<b>2,685</b>

### Administrative, Enforcement, and Information Costs

There is no additional enforcement cost associated with this action. Additional short term administration costs may be borne by the RAM Division from developing and posting a database of dormant QS holdings for one year, for processing transfers that may result from identifying those willing to transfer their holdings on its website under Alternatives 2, and for developing, printing, and processing applications to either relinquish or retain dormant QS under Alternative 3. Some long term savings will accrue from reducing the number of recipients for annual IFQ mailings and other communications by the RAM Division. Administration and information costs are recovered to some extent by the cost recovery fee paid by active QS holders. However, implementing a lottery for nearly 3,000 IFQ crew members would be very time, money and labor intensive for only a few QS holdings. The costs of implementing the lottery would be difficult to separate from other IFQ costs.

### 4.6 Conclusions

Table 4.5 summarizes the benefits of the respective alternatives. The preferred alternative is expected to increase economic efficiency and operational flexibility for IFQ fishermen. It is expected to increase the likelihood of achieving optimum yield of halibut and sablefish by allowing additional IFQ allocations to be harvested, which under current rules have been foregone.

Beneficiaries of the proposed alternatives would include all active IFQ fishermen and potentially some inactive fishermen who are faced with unwanted mailings from the Federal government. In addition, (1) processors may benefit by continuing to receive halibut and sablefish associated with the otherwise inactive IFQ; (2) communities may benefit from the continued income stream generated by exercise of the IFQ; (3) suppliers of fishing inputs (e.g., gear purveyors, fuel suppliers, boat yards) may benefit by the continued activity generated by use of the transferred IFQ; (4) consumers may benefit by continued supply of product (associated with the otherwise inactive IFQ) to the marketplace; and (5) the Nation may benefit to the extent that adoption of this action provides stability and support to the “owner-on-board” management objective that characterizes the halibut and sablefish QS program.

Minor administrative costs of the program would be recovered over a 1-2 year period, by annual cost recovery fees, already a component of the IFQ program. Action 1, Alternative 2 best meets the objectives of the proposed action.

### 4.7 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing the use of medical transfers of IFQ. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

#### Reason for action and objectives

Removal of QS held by dormant persons from the QS Pool would result in a *diminimus* increase in the attainment of the optimal yield for halibut and sablefish but would enhance recordkeeping and economic efficiency by removing inactive IFQ permits.

#### Description and estimated number of small entities

This action has the potential to directly regulate perhaps approximately 570 of the 3,519 halibut and sablefish QS holders as of 2005 (Table 1.2) and 23 crewmen under an option. At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that would be adversely impacted by the present action.

Table 4.5 Summary of the cost and benefit analysis of Action 3.

	<b>Alternative 1</b>	<b>Alternative 2. Mandatory relinquishment of unused QS</b>	<b>Alternative 3. Voluntary relinquishment of dormant QS</b>	<b>Option. Crew lotteries</b>
<b>Who may be affected</b>	Status quo, baseline	Approximately 570 dormant initial recipients of QS would forfeit their halibut and sablefish QS, if they did not activate their IFQ permits by fishing, leasing, hiring a Master, or transferring at least 1 QS unit during the year following implementation. The remaining 1,800 active QS holders would benefit proportionate to the QS holdings from the reduction in the QS Pool. Approximately 1,800 current (active) QS holders would have their allocations minutely increased.	Only a few of the 570 dormant QS holders would be expected to voluntarily relinquish their dormant QS holdings.	Relinquished QS units would be awarded to crewmen instead of being reallocated to current QS holders. Five crewmen would be allocated 96,000 sablefish QS units. These shares would generate \$32,000 ex-vessel annually and \$123,000 if transferred. Individual awards range in size from 0 in the Aleutian Islands to 6,000 lb in the Bering Sea (in 2005 QS equivalents). Eighteen crewmen would share 1,100,000 halibut QS units. These shares would generate \$840,000 ex-vessel annually and \$7.7 million if transferred. Individual awards would range between 0 lb in Area 4D to 36,000 lb in Area 3A.
<b>Impacts to the resource</b>	baseline	May increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, consistent with sound management practices.	Impacts would be the same, but reduced to the degree that dormant QS remain unfished.	Impacts would be the same, but reduced to the degree that dormant QS remain unfished.
<b>Benefits</b>	baseline	Halibut held by dormant persons would yield roughly \$880,000 annually. The total dormant halibut QS, if transferred at current market value, would be worth \$7.7 million. Dormant sablefish QS would yield roughly \$32,000 annually, if reallocated to currently active QS holders and completely fished. The total dormant sablefish QS, if transferred at current market value, would be worth approximately \$123,000. Additional benefits include circulating increased revenues within support industries.	Benefits would be the same as Alternative 2, but reduced to the degree that dormant QS remain unfished.	Benefits would be the same as Alternative 2, but reduced to the degree that dormant QS remain unfished.
<b>Costs</b>	baseline.	Nominal costs would likely be incurred due to administrative and information costs. Estimates of these costs cannot be provided, <i>a priori</i> . However, most or all of these costs would be recovered by the IFQ fee that would now be applied to formerly unharvested landings.	Costs would be the same.	Lottery costs could be significant.
<b>Net benefits</b>	baseline	Net benefits to the Nation are expected to increase via opportunity for attainment of halibut and sablefish OY and product availability to consumers.	Same as Alternative 2, but reduced to the degree that dormant QS remain unfished.	Same as Alternative 2, but reduced to the degree that dormant QS remain unfished.
<b>Action objectives</b>	Does not address the action's objectives.	Best meets the objectives of the proposed action.	Better meets the objectives of the proposed action than status quo. Attainment of the objectives is lessened by the amount of unfished QS.	Would enhance entry level opportunities for 23 crewmen.

### Alternatives considered and their potential adverse impact on small entities

This analysis reviews the status quo (no relinquishment of dormant halibut or sablefish QS), and two alternatives to allow either mandatory or voluntary relinquishment of dormant QS. The alternatives are explained in Section 4.2, and the following summary of impacts on small entities is from the discussion in Sections 4.3 and 4.4.

Alternative 1 is the no action alternative and would continue any associated adverse economic impacts on directly regulated small entities. Under the status quo, dormant QS holders would have no option to relinquish their halibut or sablefish QS.

Alternative 2 would provide clear regulatory authority to require relinquishment of dormant QS after a year in which dormant QS holders will be provided with additional opportunities to transfer at least 1 QS unit for either species.

Alternative 3 would provide clear regulatory authority to allow voluntary relinquishment of QS held by dormant persons. If so clarified by the Council, Alternative 3 would allow an application to activate a permit. All others would be relinquished.

### Description of recordkeeping, reporting and other compliance requirements

Paperwork Reduction Act requirements will be addressed by NOAA Fisheries in the final rule. NOAA Fisheries would notice dormant QS of the potential for them to forfeit the dormant QS if they do not activate their IFQ permit in the fishing year following implementation. NOAA Fisheries would request dormant QS holders who wish to post their QS holdings on a NOAA Fisheries website to assist them in transferring dormant QS to submit an application. To obtain the social or economic benefit of retaining dormant QS under Alternative 3, a QS holder would be required to file a NOAA Fisheries application. To obtain the economic benefit of being awarded dormant QS in a lottery under an option, a crewman would be required to file a NOAA Fisheries application under Alternative 3. The cost to the applicant should be *diminimus*.

It is unknown how many of the nearly 600 dormant QS holders would apply to list their holdings on a website to assist them in transferring their dormant QS under Alternative 2, *a priori*. As noted in Section 4.4, it is reasonable to assume that only a few dormant QS holders would be expected to apply to keep their QS holdings under proposed revisions to Alternative 3. It is reasonable to assume many of the more than 2,700 crewmen eligible for the lotteries would be expected to apply under the option.

### Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

### Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

## 5.0 Action 4: Exemption for use of IFQs by active reservists<sup>3</sup>

Action 4 addresses a blanket exemption to limits on transfer of halibut and sablefish IFQs for mobilized reservists. It would not apply to full-time military personnel.

The Alaska Regional Administrator briefed the Council on the issue during the June 2005 Council meeting. An individual sent an email on February 5, 2005, to Senator Lisa Murkowski's office in Washington, D.C. He represented the interests of a National Guardsman who was mobilized overseas. The email addressed the inability to temporarily transfer the Guardsman's IFQ to him. On May 12, 2005, Sen. Murkowski's staff forwarded the email to NOAA. On May 13, 2005, NOAA Alaska Region drafted a response to Sen. Murkowski, which outlined three options described below. During its June 2005 discussion, the Council advised NOAA Fisheries Service that it wished to address a long term solution to situations where QS holders are mobilized.

### 5.1 Problem and management objectives for the action

Federal fishery regulations do not provide for the temporary transfer of IFQs held by reservists who are mobilized. The inability to temporarily transfer IFQs during their mobilization constitutes an economic hardship to them and their families.

### 5.2 Alternatives

Alternative 1. No action.

The IFQ regulations at 50 CFR 679.42(d) currently allow an emergency waiver in only a very narrow application for the transfer of QS in an emergency medical situation that occurs at sea during a fishing trip. An emergency transfer only allows the permit to be temporarily fished, and the landing made, by someone other than the permit holder or Hired Master. Typically, the exception applies to a situation requiring a medical evacuation or other rescue scenario, where an IFQ cardholder must be transferred from the vessel during fishing. Emergency medical transfers (EMT) were originally prohibited, due to the overarching IFQ policy of maintaining a fishing fleet of owner-operators. Initial proposals for a medical transfer provision were rejected based on the potential for abuse and the lack of technical expertise at NOAA Fisheries to determine medical disability. After numerous petitions since initial implementation of the IFQ program in 1995, the Council selected a preferred alternative in December 2004 to allow emergency medical transfers. The proposed rule is being prepared by NOAA Fisheries Service.

Contrary to what many people believe, NOAA General Counsel has determined that no exemption for military service by activated reservists under current fishery regulations exists; that is, neither The Uniformed Services Employment and Reemployment Rights Act of 1994 nor the Servicemembers Civil Relief Act of 2003 applies in this situation. And no Federal legislation has been introduced to effect such a change. Therefore, three options are available to all QS holders who are temporally unable to fish their IFQs:

- 1) s/he may choose not to fish, and may carry over 10% of his 2005 annual IFQ account to 2006;
- 2) s/he may hire a Master to fish his IFQ (provided he owns a minimum of 20% of the vessel upon which his hired Master will be fishing); or
- 3) s/he may transfer his shares to any eligible person.

Alternative 2. Allow reservists to temporarily transfer IFQs for the duration of their mobilization.

National Guard units can be activated at any time by presidential order to supplement regular armed forces, and upon declaration of a state of emergency by the governor of the state in which they serve. Unlike Army Reserve

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<sup>3</sup>The Council should confirm or correct staff's interpretation that the proposed alternative would apply only to members of the Air National Guard, Army National Guard, Alaska State Defense Force, and Alaska Naval Militia.

members, National Guard members cannot be activated individually (except through voluntary transfers), but only as part of their respective units. There are 183,366 National Guard members and reservists on active duty nationwide as of 2003. The Air National Guard has more than 106,000 personnel and the Army National Guard around 350,000 personnel, as of 2001. [Source: [http://en.wikipedia.org/wiki/United\\_States\\_National\\_Guard](http://en.wikipedia.org/wiki/United_States_National_Guard)].

There are roughly 4,000 personnel in the Alaska National Guard, about evenly split between Air National Guard and Army National Guard. Approximately 20 percent are on active duty status, meaning that they are deemed unable to perform their regular jobs. Length of deployments in the Army National Guard are typically 1½ years, with 1 year “on the ground” assignments and 3 months pre-assignment and post-assignment. Deployments in the Air National Guard vary widely, between a few months to a year or more. The Alaska National Guard is reported to be gearing up for additional, but unquantified, activations (Calais Brooks, pers. commun.).

State Defense Forces or State Guards in the U.S. are military units that operate under the sole authority of a state government. State Defense Forces are authorized by state and federal law and are under the command of the governor, as commander-in-chief, through the Adjutant General as the state’s chief military officer. State Defense Forces are distinct from the National Guard in that they are not federal entities and cannot be made so. The federal government officially recognized State Defense Forces under 32 USC Sec 109 and provided that State Defense Forces “may not be called, ordered, or drafted into the armed forces” (of the United States), thus preserving their separation from the National Guard. Only about 25 states currently have active State Defense Forces, plus Puerto Rico, each with different levels of activity, state support, and strength. They generally operate with emergency management and homeland security missions. The mission of the Alaska State Defense Force is to maintain an organized, trained military force, capable of timely and effective response to state emergencies, or, on other occasions deemed appropriate by the Governor, to provide military assistance to civil and military authorities in the preservation of life, property, and public safety. In addition to the Alaska Air National Guard and Alaska Army National Guard, the State has an Alaska State Defense Force and Alaska Naval Militia. Most states organize their State Defense Force in parallel to their National Guard force, having it report to the governor through the Adjutant General. In most states, members act on a completely volunteer basis, have to purchase any uniforms after the first, and supply their own arms (if armed). Efforts are being made in Congress to better integrate the State Defense Forces into a larger Homeland Security strategy. [Source: [http://en.wikipedia.org/wiki/United\\_States\\_National\\_Guard](http://en.wikipedia.org/wiki/United_States_National_Guard); <http://www.ak-prepared.com/asdf/> ]

The Alaska State Defense Force is authorized for 254 reservists. Current enrollment is approximately 300 due to those who have transferred out of state. State reservists are not authorized to be activated out of the State, but may be sent to other areas of the State in response to State homeland security threats or national disasters (CAPT Laura Caperton, pers. commun.).

An exemption for reservists who are activated is modeled after the December 2004 preferred alternative to allow temporary transfers of IFQs for medical emergencies. A Temporary Military Transfer (TMT) (see below) would exempt successful applicants from the basic prohibition on the leasing of catcher vessel IFQ. As such, the “eligibility” description could apply to: (a) those that have military orders, and (b) otherwise would be prevented from leasing their IFQs. The “limitation” description would specify that “eligibility” would continue during the length of the military deployment but that an application to lease would have to be submitted and approved by NOAA annually, and would not automatically be in effect for the length of the mobilization. In the event that the activated reservist is injured, then EMT provisions would apply. If the reservist dies in service, then her or his QS and IFQ would be transferable under surviving heir provisions.



## TEMPORARY MILITARY TRANSFER

Policy Element
<p><b>Eligibility for Exemption:</b> 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 Master) to fish his/her annual IFQ permits, may apply for a Temporary Military Transfer (TMT).</p>
<p><b>Nature of Exemption:</b> Upon approval of an application to receive a TMT, 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 Crew members”).</p>
<p><b>Limitation:</b> Approval of an application for a TMT will be valid for the duration of the military mobilization, with a requirement to reapply each calendar year. There is no limit on the number or duration of a TMT.</p>
<p><b>Justification for a TMT:</b> An application for a TMT will not be approved unless the applicant demonstrates that she or he is unable to participate in the IFQ fishery(ies) for which she or he holds IFQ permit(s) because of a military mobilization. <b>Council should clarify if they want this exemption for any military or just activated reservists.</b></p>
<p><b>Evidence of Military Mobilization:</b> An application for a TMT must contain information required by NOAA Fisheries Service and be submitted on a form provided by NOAA Fisheries Service. NOAA Fisheries Service will not approve an application unless it is accompanied by a copy of the military mobilization order.</p>
<p><b>Consideration of Applications:</b> Applications for TMTs, 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. If the application is not approved, the applicant will receive an Initial Administrative Determination (IAD) that sets out the reason(s) the application is not approved. An applicant whose application is denied by an IAD may appeal that denial.</p>
<p><b>Consideration of Appeals:</b> Any time a TMT application is denied by the Restricted Access Management Division, such denial would be formally set out in an Initial Administrative Determination. As with all such determinations, it could be appealed to the NOAA Fisheries Service Office of Administrative Appeals (OAA). If the applicant fails to appeal, or an appeal is not accepted, the IAD becomes Final Agency Action (FAA). If an appeal is accepted by OAA, OAA will produce a formal Decision on the case. An appellant may request for OAA reconsideration of a Decision. An OAA Decision becomes FAA unless by the effective date, the Regional Administrator orders a review of the Decision. In this case, FAA occurs after RA review.</p>

### 5.3 Expected effects of Alternative 1

Alternative 1 would not create an allowance for temporary transfers of halibut or sablefish IFQs made necessary due to mobilization of reservists. Under the status quo, QS holders would either sell their QS, or forego the economic benefits of those QS for the duration of their mobilization. However, private arrangements to sell and then repurchase the “same” QS may be viewed as circumventing Council intent to prevent *de facto* leasing, and could potentially place the “seller” and “buyer” at increased financial risk (e.g., because the “private arrangement” is not sanctioned under the IFQ Program rules, enforcement of the terms of such an agreement could be problematic. Furthermore, legal and/or administrative sanctions could be applied if evidence was presented to NOAA Fisheries indicating this unauthorized temporary transfer had taken place). Under the status quo, management costs should remain at their current levels.

### 5.4 Expected effects of Alternative 2

Alternative 2 addresses a problem that has been identified recently in the IFQ fisheries. A proposed program is under review that would allow temporary military transfers to be granted, without jeopardizing the Council’s

policy of having an owner-operated IFQ fleet. Alternative 2 would allow temporary military transfers of an IFQ permit, if the applicant meets specified requirements related to eligibility, limit on transfers, and evidence of activation. An application and appeals process would be outlined in the regulations. The Council has modeled the policy elements of Alternative 2 on the preferred alternative for emergency medical transfers, which is under NOAA Fisheries Service review.

Alternative 2 would implement a procedure for allowing temporary transfer of annual IFQ permit(s) by activated reservists. The recipient of such transfer presumably would pay the original QS holder an agreed upon amount of money for that privilege, thus allowing the QS holder to recoup some portion of the potential economic loss which would be associated with the inability of the activated QS holder to fish that year. This allowance would benefit the activated QS holder and the temporary recipient. Otherwise, the transaction would not occur. It would also result in higher utilization of the halibut or sablefish IFQ allocation than under the status quo, delivering more products to the marketplace, with the associated benefits to consumers and support industries, and provide added structural stability to the “owner-on-board” program design.

According to NOAA Fisheries Service Restricted Access Management Division data, there are 3,519 halibut and sablefish QS holders overall (both individuals and non-individuals) as of November 1, 2005. Of those, 3,325 are individuals. Of those, 2,589 QS holders are between (and including) ages 17 and 60 (the ages of service for the National Guard). Additional criteria ensure that the QS holder is: 1) not an initial recipient (and thus allowed to use a Hired Master) or 2) an initial recipient but either holds only halibut Area 2C and/or sablefish Southeast QS and is prohibited from using a Hired Master; or 3) does not own a vessel. Application of these three criteria results in only 952 QS holders as potentially eligible for a Temporary Military Transfer if they also are: a) in the National Guard and b) are activated.

Since a list of National Guard personnel does not exist, an estimate of the number of persons who meet all of the above criteria was determined as follows. U.S. Census Bureau data reports: 1) that the U.S. population between ages 18 and 55 totaled 153,947,000 in 2003; and 2) there are 351,000 Army National Guard personnel and 108,000 Air National Guard personnel for a total of 459,000 National Guard personnel in the U.S. If the pool of potentially affected QS holders is assumed to be representative of the U.S. population between ages 18 and 55, and the per capita rate of National Guard personnel of 0.30 percent is applied to the pool of 952 QS holders, then it may be assumed that three of those may be National Guardsmen. If the activation rate of 20 percent for Alaska National Guardsmen is applied to those three QS holders, then none of the QS holders would be expected to be potentially affected under Alternative 2. Since we know that at least one QS holder has been affected, the minimum number estimated to be affected is one and the upper limit is unknown. Assuming that TMTs would occur between one transferor and one transferee, then at least one of the remaining 3,516 QS holders may benefit by being the recipient of a TMT. Twenty-one crew members who may acquire QS by lottery under proposed Action 3 may also be affected under Alternative 2.

#### Administrative, Enforcement, and Information Costs

Under Alternative 2, NOAA Fisheries will likely incur very minor additional management costs, associated with the number of temporary military transfers requested, associated cost of appeals, and the associated administrative costs of implementing the alternative. Enforcement costs are also likely to increase to a small degree under Alternative 2, since it will be necessary to verify the validity of the permit for the temporary QS holders encountered. The extent of actual additional management and enforcement costs are not known, since they will depend to a large extent on the number of TMT requests.

#### 5.5 Conclusions

Table 5.1 summarizes the benefits of the alternatives. Alternative 2 is expected to increase economic efficiency and operational flexibility for IFQ fishermen. It is expected to increase the likelihood of achieving optimum yield of halibut and sablefish by allowing additional IFQ allocations to be harvested, which under current rules could be

lost, due to military mobilization of active reservists that do not allow the QS holder to physically be aboard his or her fishing vessel. Lost fishing income of temporarily mobilized QS holders could be mitigated by income from temporarily transferred annual IFQ.

Beneficiaries of Alternative 2 could include those fishermen confronted with a military mobilization who are unable to physically board a fishing vessel to harvest their IFQs for the duration of the mobilization. Other beneficiaries of such a rule change may be those eligible recipients of transfers who would temporarily harvest those IFQs during the QS owner’s mobilization. In addition, processors may benefit by continuing to receive halibut and sablefish associated with the otherwise inactive IFQ, communities may benefit from the continued income stream generated by exercise of the IFQ, suppliers of fishing inputs (e.g., gear purveyors, fuel suppliers, boat yards) may benefit by the continued activity generated by use of the transferred IFQ, consumers may benefit by continued supply of product (associated with the otherwise inactive IFQ) to the marketplace, and the Nation may benefit to the extent that adoption of this action provides stability and support to the “owner-on-board” management objective that characterizes the halibut and sablefish QS program.

Table 5.1 Summary of the cost and benefit analysis of Action 4.

	<b>Alternative 1</b>	<b>Alternative 2</b>
<b>Who may be affected</b>	Status quo, baseline	A very small number of QS holders would be expected to request a TMT each year. The analysis estimated that there may be one individual QS holder who may be an active reservist and would receive relief under Alternative 2. An equal number of TMT recipients also would benefit.
<b>Impacts to the resource</b>	baseline	Adoption of this alternative may increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, consistent with sound management practices.
<b>Benefits</b>	baseline	The sanctioning of legal transfers of IFQs by IFQ permit holders who are active reservists could yield a number of direct and indirect benefits, proportionate to the number of TMTs issued. These include: (1) providing operational and economic flexibility to fishermen confronted with military mobilization orders; (2) an income stream to such fishermen that may sustain them economically and allow their future participation in the fishery (ies); (3) making raw fish available to processors, that would otherwise have gone unharvested; (4) sustaining demand for services and supplies from purveyors to prosecute the harvesting and processing of the transferred IFQ amounts; (5) assuring continued supplies of fisheries products derived from the IFQ fish, to consumers; and (6) all the associated jobs, value-added production, tax revenues, etc., attributable to the economic activity made possible by the temporary transfer of otherwise inactive IFQ. An unknown number of halibut and sablefish QS holders who serve in reserve forces may, at some point in their fishing careers, unexpectedly need to utilize these temporary transfer provisions. The number of requested transfers cannot be predicted, but are expected to be relatively few. This alternative may further promote stable, owner-operated businesses in the halibut and sablefish IFQ fisheries.
<b>Costs</b>	baseline.	There is very limited risk that this alternative may be inappropriately exploited to circumvent owner-on-board requirements. This risk will require expenditure of additional administrative and legal resources to adjudicate, monitor, and enforce the terms of this temporary transfer provision proportionate to the number of TMTs issued. Estimates of these costs cannot be provided, <i>a priori</i> .
<b>Net benefits</b>	baseline	Net benefits to the Nation are expected to increase in several ways (i.e. opportunity for attainment of halibut and sablefish OY, increased product availability to consumers, added stability and economic security for QS holders who are called to serve the Nation).
<b>Action objectives</b>	Does not address the objectives of the Council for this action.	Best meets the objectives of the proposed action.

Minor administrative costs of the program would be recovered by annual cost recovery fees, already a component of the IFQ program. Action 1, Alternative 2 best meets the objectives of the proposed action.

## 5.6 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing the use of medical transfers of IFQ. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

### Reason for action and objectives

An individual who stated he represented the interests of a QS holder sent an email to Senator Murkowski about the lack of flexibility in the IFQ regulations to allow temporary transfers of IFQ permits by reservists who are activated out of the State of Alaska. The email was ultimately forwarded to NOAA Fisheries Service by the Senator's staff. NOAA responded by detailing three options available in such circumstances and prompted staff to raise the issue at the June 2005 Council meeting. The specific inquiry was addressed through one of the three options and no emergency occurred. However, the Council expressed its interest in amending IFQ regulations to allow for a permanent solution. This interest follows a December 2004 recommendation to amend IFQ regulations to allow for temporary emergency medical transfers.

### Description and estimated number of small entities

This action has the potential to directly regulate at least one of the 3,519 halibut and sablefish QS holders as of 2005 (Table 1.2). At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of "small" entities in the IFQ program, or the number that would be adversely impacted by the present action.

Neither NOAA Fisheries nor the Council has been contacted directly by any active reservist for a transfer exemption under the IFQ program. And it is not possible to know how many QS holders would have requested a temporary military transfer of IFQs, had such a provision been available. For the reasons discussed in Section 1.3, this analysis assumes that all halibut and sablefish QS operations are small for RFA purposes.

### Alternatives considered and their potential adverse impact on small entities

This analysis reviews the status quo (no temporary transfers), and an alternative to allow military transfers. The alternatives are explained in Section 5.2, and the following summary of impacts on small entities is from the discussion in Sections 5.3 and 5.4.

Alternative 1 is the no action alternative and would continue any associated adverse economic impacts on directly regulated small entities. Under the status quo, halibut and sablefish QS holders would have no option for temporary transfer of their IFQ permits even if they are Federal (or State) reservists that are activated for active duty and unable to fish their IFQs as a result of such mobilization.

Alternative 2 would allow military transfers, but would require an applicant to document his/her military mobilization and its duration with NOAA Fisheries.

### Description of recordkeeping, reporting and other compliance requirements

Paperwork reduction Act requirements will be addressed by NOAA Fisheries in the final rule. To obtain the economic benefit of a military transfer under Alternative 2, a QS holder would be required to file a two part NOAA Fisheries application. The first part of the requirement would be a brief form from the applicant,

providing information to identify the shareholder, QS shares and identifying the duration of the mobilization. It is anticipated that an applicant seeking approval of a military transfer would forward a copy of his/her orders; therefore, the cost to the applicant should be *diminimus*.

As noted in Section 5.4, it is reasonable to assume that only a few QS holders would meet the criteria identified under the TMT policy elements under Alternative 2. An estimated six beneficiaries may serve as an upper limit for the projected number of annual applicants.

Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

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