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UNITED STATES DEPARTMENT OF COMMERCE
Office of the Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

OCT 24 1997

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

TITLE: Environmental Assessment of a Regulatory Amendment Providing Standard Allowances for Ice and Slime Found on Pacific Halibut and Sablefish Under the Individual Fishing Quota (IFQ) Program

LOCATION: Exclusive Economic Zone off Alaska

SUMMARY: Regulations implementing the IFQ program provided that the accurate scale weight of Pacific halibut and sablefish should be reported at the time of landing. Information provided by the fishing industry indicated that inaccurate reporting was occurring under the guise of allowances for ice and slime. This action provides for a standard 2 percent allowance for unwashed halibut and sablefish based on long-standing industry convention.

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The environmental review process led us to conclude that this action will not have a significant impact in the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact, including the environmental assessment, is enclosed for your information. Also, please send one copy of your comment to me in Room 5805, PSP, U.S. Department of Commerce, Washington, D.C. 20230.

Sincerely,

Susan Fischer
Acting NEPA Coordinator

Enclosure



ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW
FOR A REGULATORY AMENDMENT
PROVIDING STANDARD ALLOWANCES FOR ICE AND SLIME
FOUND ON PACIFIC HALIBUT AND SABLEFISH
UNDER THE INDIVIDUAL FISHING QUOTA PROGRAM

Prepared by

National Marine Fisheries Service
Alaska Regional Office

OCTOBER 1997

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Executive Summary

Accurate accounting methods are important to individual transferable quota (ITQ) management programs because specific allocations of a limited resource are granted to participants. Improper accounting of a participant's quota not only affects that participant, but it also affects all other participants in the quota pool for that resource, as well as the resource itself. More quota through improper accounting for one participant means less quota available for all other participants and *vice versa*.

The individual fishing quota (IFQ) program for Pacific halibut and sablefish is an ITQ management program. The IFQ program currently is deficient in its accounting methods by not providing a standard allowance for ice and slime found on IFQ species delivered fresh. A standard allowance for ice and slime would prevent inaccurate accounting of harvests caused by the lack of any codified standard. This deficiency would be corrected by the proposed Alternative 2. Alternative 2 for this issue would provide 0 and 2 percent allowances for ice and slime for IFQ halibut delivered fresh, which is the industry standard currently used by Canada's Department of Fisheries and Oceans. This industry standard is also recognized by the International Pacific Halibut Commission. Alternative 2 would also provide 0 and 2 percent allowances for ice and slime for IFQ sablefish delivered fresh. These specified allowances would provide a consistent standard to be used by all purchasers of IFQ product.

These proposed changes to the IFQ accounting procedure would assist resource managers in their task of allocating IFQ accurately and equitably. These changes can be considered as one more step in the process of making the IFQ program for halibut and sablefish a more responsive and viable program for fishery management.

1.0 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan for the Groundfish Fisheries of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area. Both fishery management plans (FMP) were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and become effective in 1978 and the Bering Sea and Aleutian Islands Area (BSAI) FMP become effective in 1982.

The Northern Pacific Halibut Act of 1982 (Halibut Act), authorizes the Council to develop regulations governing the Pacific halibut catch in U.S. waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). The individual fishing quota (IFQ) program for Pacific halibut and sablefish is implemented by Federal regulations at 50 CFR part 679 that were issued under the authority of the Magnuson-Stevens Act and the Halibut Act.

Actions taken to amend FMPs or implement other regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

NEPA, E.O. 12866 and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals are also addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered. Section 4 specifically addresses the impacts of the proposed action on small businesses.

This Environmental Assessment/Regulatory Impact Review (EA/RIR) addresses (1) including a standard allowance for ice and slime in the IFQ program and (2) revising the procedure for making adjustments to the annual allocation of IFQ.

1.1 Purpose of and Need for the Action

To meet management and conservation goals of the Magnuson-Stevens Act and the Halibut Act, the Council developed the IFQ program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries. NMFS approved the IFQ program in November 1993, and fully implemented the program beginning in March 1995. The Magnuson Act and the Halibut Act authorize the Council to recommend to NMFS changes to the IFQ program as necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

One of the important features of any individual transferable quota (ITQ) program, of which the IFQ program is a type, is the accounting method for harvest of the managed species. The first issue addressed by this analysis, a standard allowance for ice and slime, is being proposed to prevent

inaccurate accounting of harvests caused by the lack of any standards on the allowances for ice and slime for IFQ halibut and sablefish. NMFS, in an effort to obtain the most accurate information available for harvest accounting, did not include a standard allowance for ice and slime for the IFQ program. Instead, the regulations provided that the initial accurate scale weight at the time of landing should be reported. Although this seemed to be a workable solution at the time, numerous reports from the fishing industry pointed to widespread variations in the allowances for ice and slime. Allowances that varied from 0 - 9 percent were reported.

The range of this variation was considered insupportable by NMFS. First, it was apparent from the range of variation that NMFS was not receiving an accurate account of the actual amount of halibut and sablefish harvested by participants. Second, reports indicated that some purchasers of IFQ product used allowances as a method to induce participants to deliver their harvest to them. For instance, if a purchaser of IFQ product uses a larger percentage allowance for ice and slime, a smaller amount of halibut or sablefish is reported for debit from the participant's IFQ account. This method of "capturing" a participant's business is unfair to other purchasers of IFQ product, who use a smaller, more accurate percentage for the allowance, and to the resource, of which a portion is being harvested but not accounted for because it is considered "ice and slime" by the purchaser. Setting a standard allowance for ice and slime would "level the playing field" for IFQ purchasers and participants.

1.2 Alternatives Considered

1.2.1 Alternative 1: No Action--no provision for standard allowances for ice and slime

The IFQ program currently does not provide for a standard allowance for ice and slime. Instead, the landing report must contain the initial accurate scale weight at time of landing for halibut and sablefish (see 50 CFR 679.42(c)(3)(i) and (ii)). NMFS contemplated that recording IFQ landings in this manner would provide a uniform method for all participants.

1.2.2 Alternative 2: (Preferred Alternative) 0 and 2 percent standard allowances for ice and slime for IFQ halibut and 0 and 2 percent standard allowance for ice and slime for IFQ sablefish

This alternative would provide a 0 standard allowance for halibut without ice and slime, a 2 percent standard allowance for IFQ halibut with ice and slime, a 0 percent standard allowance for sablefish without ice and slime, and a 2 percent allowance for IFQ sablefish with ice and slime. This allowance would occur through the use of product codes, the IFQ landing report would still need to contain the initial accurate scale weight at time of landing. Recording any amount on the IFQ landing report that is different than the initial accurate scale weight at time of landing would be a violation subject to penalty. For IFQ halibut, if ice and slime are present on the landed species, then the product code with the 2 percent standard allowance would be used; if ice and slime are not present, then the product code with a 0 percent standard allowance would be used. The same standard allowances would be used for IFQ sablefish.

The 2 percent standard allowance for ice and slime for IFQ halibut is based on long-standing industry convention. For example, the Canadian Department of Fisheries and Oceans (DFO), uses a 2 percent standard allowance for ice and slime on their Halibut Validation Log. This standard allowance used by the DFO is accepted by the IPHC, the international body entrusted with primary responsibility for managing halibut. Processors in the United States have also used the 2 percent allowance when

purchasing halibut with ice and slime. Therefore the 2 percent standard allowance for IFQ halibut with ice and slime was considered an acceptable alternative by NMFS.

On the other hand, there was neither a long-standing industry convention, nor any scientifically based study, for a 2 percent standard allowance for ice and slime for IFQ sablefish. Therefore, the preamble to the proposed rule will specifically request public comment on the efficacy of using a 2 percent standard allowance for ice and slime found on IFQ sablefish. NMFS intends these standard allowances for ice and slime found on IFQ halibut and sablefish to "level the playing field" for all purchasers of IFQ product, and thereby eliminate the potential of some purchasers offering other allowances for ice and slime to gain market advantage.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives were discussed in Sections 1.1 and 1.2, and the list of preparers is in Section 8. This section contains the discussion of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices (e.g., effects of gear use and fish processing discards); and (3) entanglement or entrapment of non-target organisms in active or inactive fishing gear.

A summary of the effects of the annual groundfish total allowable catch amounts on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the final environmental assessment for the annual groundfish total allowable catch specifications.

No biological or environmental changes will occur by adopting the preferred alternatives.

2.2 Impacts on Endangered, Threatened or Candidate Species

Endangered and threatened species under the ESA that may be present in the GOA and BSAI include:

Endangered

Northern right whale	<i>Balaena glacialis</i>
Sei whale	<i>Balaenoptera borealis</i>
Blue whale	<i>Balaenoptera musculus</i>
Fin whale	<i>Balaenoptera physalus</i>
Humpback whale	<i>Megaptera novaeangliae</i>
Sperm whale	<i>Physeter macrocephalus</i>
Snake River sockeye salmon	<i>Oncorhynchus nerka</i>
Short-tailed albatross	<i>Diomedea albatrus</i>

Threatened

Steller sea lion	<i>Eumetopias jubatus</i>
Snake R. spring and summer chinook salmon	<i>Oncorhynchus tshawytscha</i>
Snake R. fall chinook salmon	<i>Oncorhynchus tshawytscha</i>
Spectacled eider	<i>Somateria fischeri</i>

Candidate

Steller's eider	<i>Polysticta stelleri</i>
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The status of the ESA section 7 consultations required to assess the impact of the groundfish fisheries on endangered, threatened, or candidate species is updated annually.

This rule will merely change the method of accounting and will not affect the fishing practices of fisherman managed under the IFQ program. Therefore, fishing activities conducted under this rule would not affect endangered or threatened species or critical habitat in any manner not already considered in prior consultations on this fishery.

2.3 Impacts on Marine Mammals

Marine mammals not listed under the Endangered Species Act that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

This rule will merely change the method of accounting and will not affect the fishing practices of fisherman managed under the IFQ program. Therefore, none of the alternatives are expected to have a significant impact on marine mammals.

2.4 Coastal Zone Management Act

Implementation of the preferred alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Finding of No Significant Impact

None of the alternatives is likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

Deeth Evans

OCT 20 1997

3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES

This section provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade offs between qualitative and quantitative benefits and costs.

The requirements for all regulatory actions specified in E.O. 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 nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This section also addresses the requirements of both E.O. 12866 and the Regulatory Flexibility Act to provide adequate information to determine whether an action is "significant" under E.O. 12866 or will result in "significant" impacts on small entities under the RFA.

E. O. 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:

- (1) 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, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

3.1 Management Alternatives

3.1.1 Alternative 1: No Action--no provision for standard allowances for ice and slime

Under Alternative 1 (no action), the regulations would not be revised. Therefore, there will be no change in the impacts to affected persons under this alternative.

3.1.2 Alternative 2: (Preferred Alternative) 0 and 2 percent standard allowances for ice and slime for IFQ halibut and 0 and 2 percent standard allowance for ice and slime for IFQ sablefish

Under Alternative 2 (preferred alternative), the regulations would be revised to allow a 0 percent allowance for IFQ halibut or sablefish without ice and slime and a 2 percent allowance for IFQ halibut and sablefish with ice and slime. This revision would affect all persons harvesting and delivering for market halibut and sablefish with IFQ resulting from QS issued to vessel categories "B", "C", or "D". Further, this revision would affect all persons harvesting and delivering to market fresh (unprocessed) halibut and sablefish with IFQ resulting from QS issued to vessel category "A".

Although this revision would affect the majority of persons delivering IFQ halibut and sablefish, this affect would not be of a magnitude to significantly alter their socio-economic position. In fact this revision would level the "playing field" by ensuring that all persons would receive a similar allowance for IFQ product delivery. Misuse of ice and slime allowances, which have been used in the past to provide unfair incentives, would no longer be permitted.

Furthermore, this revision would bring the IFQ program more in line with the industry standard of allowing a 2 percent allowance for ice and slime for halibut. This industry standard is recognized by Canada's DFO and by the IPHC, the international organization charges with halibut management.

3.2 Administrative, Enforcement, and Information Costs

Alternative 1 for standard allowances for ice and slime (status quo alternatives) will not affect administrative, enforcement, or information costs. Alternative 2 for standard allowances for ice and slime (2 percent for unwashed IFQ halibut and IFQ sablefish) are also not expected to affect administrative, enforcement, or information costs.

3.3 Economic Impact on Small Entities

The objective of the RFA is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

As analyzed above in the regulatory impact review, none of the alternatives reviewed will have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be affected by this action (i.e., all small entities that harvest and deliver fresh IFQ halibut or IFQ sablefish, or all small entities that receive fresh IFQ halibut or IFQ sablefish), the action will not result in any of the negative economic impacts established by the RFA. A standard 2 percent allowance for unwashed halibut and sablefish would provide a benefit to all IFQ halibut fishermen. The annual gross revenues of the IFQ halibut and sablefish fishery would be increased by an estimated 2 percent with no change in production or compliance costs. The 0 percent standard allowance for IFQ washed halibut and sablefish would have no effect on total revenue or costs of compliance or production. These allowances would "level the playing field" for all participants by formalizing and codifying an existing industry standard, but would not affect the revenues or costs of small entities that receive fresh IFQ halibut or fresh IFQ sablefish. Therefore, an IFRA was not prepared.

4.0 SUMMARY AND CONCLUSIONS

This document analyzes alternatives to the accounting methods used for the IFQ program through standard allowances for ice and slime for IFQ product. Alternative 1 would maintain the status quo (i.e., no standard allowances for ice and slime). Alternative 2 would allow standard allowances of 0 and 2 percent for IFQ halibut, an industry standard recognized by the IPHC, and a standard allowance of 0 and 2 percent for IFQ sablefish. The wide variations used for ice and slime allowances under the current regulations prompted the proposal of Alternative 2. Alternative 2 is the preferred alternative for this issue.

None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866 or have a significant economic impact on a substantial number of small entities under the RFA .

5.0 AGENCIES AND INDIVIDUALS CONSULTED

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