

**Final Regulatory Flexibility Analysis
of a Regulatory Amendment to Revise Regulations Regarding
Tagged Halibut and Tagged Sablefish
for the Individual Fishing Quota Fisheries and
Western Alaska Community Development Quota Program
Fisheries off the Coast of Alaska**

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Abstract: This Final Regulatory Flexibility Analysis (FRFA) evaluates the adverse economic impacts on directly regulated small entities of a regulatory amendment to exclude tagged halibut and tagged sablefish catches from deduction from fishermen's Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ) accounts. This action is a regulatory change to clarify that only halibut and sablefish that are tagged with an external research tag may be excluded from IFQ deduction, and to expand to the CDQ program the exemption from quota deduction for halibut or sablefish tagged with an external research tag. This FRFA addresses the requirements of the Regulatory Flexibility Act.

FINAL REGULATORY FLEXIBILITY ANALYSIS

Introduction

This FRFA evaluates the potential for adverse economic impacts on small entities of a regulatory amendment to exclude tagged halibut and tagged sablefish from deduction from an IFQ account, or a CDQ group's account. This action is a regulatory change to ensure that exemption from quota deduction is allowed only for halibut and sablefish that are tagged with external research tags issued by any state, Federal, or international agency.

This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980 (Public Law 96-354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612). It specifically addresses the requirements at section 604(a).

The purpose of a FRFA

The RFA requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. 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.

In determining the scope, or "universe", of the entities to be considered in a FRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

What is required in a FRFA?

Under 5 U.S.C., Section 604(a) of the RFA, each FRFA is required to contain:

- a succinct statement of the need for, and objectives of, the rule;
- a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

- a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

What is a small entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a “small business” as having the same meaning as “small business concern,” which is defined under Section 3 of the Small Business Act (SBA). “Small business” or “small business concern” includes any firm that is independently owned and operated and which is not dominant in its field of operation. The SBA has established size criteria for all major industry sectors in the United States, 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 \$4.0 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, 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 \$4.0 million criterion for fish harvesting operations. Finally, 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.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

Need for, and objectives of, the rule

Current Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Various types of internal and external tags are now used. This action revises Federal regulations so that only halibut and sablefish bearing an external research tag may be excluded from deduction from the quotas. This action is needed to eliminate an inconsistency between Federal regulations (which specify quota deductions for tagged halibut) and International Pacific Halibut Commission (IPHC) regulations (which specify quota deductions for *externally* tagged halibut), and to provide consistency between halibut and sablefish regulations. This action is also needed to extend the quota deduction exemption to the CDQ program to encourage recovery of scientific information.

The quota deduction exemption does not provide a similar incentive in the case of fish tagged internally. The most common internal tag is a Passive Integrated Transponder (PIT) tag, which is about the size of a grain of rice and is inserted into the head of the fish. These internal tags cannot be identified from any external marking and cannot be recovered by fishermen. Under current rules, fishermen do not bear any cost associated with the recovery or reporting of PIT tagged fish, and they receive no direct compensation for delivering a PIT tagged fish. This remains the case under this rule. Thus, only halibut and/or

sablefish that are marked with external research tags need to be excluded from quota deduction as an incentive for the return of such tags for scientific purposes.

The objectives of this action are (1) to eliminate an inconsistency between Federal and IPHC regulations, and (2) to expand to the CDQ program the exemption from deduction of halibut and sablefish tagged with external research tags.

Significant issues raised by public comments

The proposed rule to revise regulations for excluding tagged halibut and tagged sablefish from deduction from an IFQ account, or a CDQ group's account was published in the Federal Register on March 29, 2006 (71 FR 15687). An IRFA was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on April 28, 2006. NMFS received no public comment on the proposed rule, and no changes were made in the proposed rule.

Description and estimate of number of small entities to which the rule will apply

The entities that will be directly regulated by this action are, (1) the Western Alaska CDQ groups that annually receive halibut and sablefish quota, and (2) those entities harvesting halibut and/or sablefish under the IFQ and CDQ programs.

There were six Western Alaska CDQ groups in 2004. Each of these groups is organized as a not-for-profit entity, and none is dominant in its field. Thus, for the purposes of this analysis, the six CDQ groups that may benefit from this action will be considered to be directly regulated small entities.

In 2004, 1,524 unique vessels harvested halibut and/or sablefish.¹ A total of 1,304 unique vessels were used to harvest IFQ halibut, 199 to harvest CDQ halibut, and 1,489 to harvest IFQ halibut and/or CDQ halibut (i.e., 14 harvested both).² A total of 396 unique vessels were used to harvest IFQ sablefish, 18 to harvest CDQ sablefish,³ and 403 to harvest IFQ and/or CDQ sablefish (i.e., 11 harvested both).¹ Contractual arrangements, ownership information, and any resulting affiliations between such parties are not well documented and are not currently available to agency analysts. Though affiliation status for these entities is not known, vessel operations are believed to be small entities and will be treated as such for the purposes of this action.

In 2004, a total of 3,371 individuals held halibut IFQ, 886 held sablefish IFQ, and 3,601 held halibut and/or sablefish IFQ (i.e., 656 individuals held both).² Many IFQ holders may be partial owners of a vessel that they use to harvest their IFQ, or contract harvesting services from other vessel owners. In either case, the IFQ holder must be physically present on the vessel that is harvesting the IFQ at the time of harvest and delivery. For the purposes of this analysis, the number of active vessels has been used as a more meaningful measure of the number of directly regulated small entities than the number of IFQ holders. CDQ groups act on behalf of their member communities to harvest CDQ allocations.

¹ Martin, Robin. IT Specialist. NMFS Alaska Region, 709 W. 9th Street, Juneau, AK 99801. Personal communication. 10-14-05.

² Gharrett, Jessica. Restricted Access Data Manager. NMFS Alaska Region, 709 W. 9th Street, Juneau, AK 99801. Personal communication. 1-31-05.

³ Bibb, Sally. CDQ Program Manager, NMFS Alaska Region, 709 W. 9th Street, Juneau, AK 99801. Personal communication. 2-25-05.

Recordkeeping and reporting requirements

This regulation does not impose new recordkeeping or reporting requirements on directly regulated small entities. Small entities targeting halibut and/or sablefish under the IFQ or CDQ programs, may choose to ignore external research tags, and are not under any obligation to report them. However, if these small entities wish to avail themselves of the benefits this regulation imparts, they must report the presence of external research tags to IPHC port samplers, to the IPHC directly, to the Alaska Department of Fish and Game, or to NMFS as appropriate.

Adverse economic impacts on directly regulated small entities

This action will amend regulations to provide that only halibut or sablefish that are externally tagged with research tags are exempt from deduction from IFQ or CDQ accounts. The exemption is believed to provide an economic incentive for fishermen to take the additional time to notify fishery managers about the tags and about the tagged fish they encounter during their fishing operations. This information is important for the conservation and management of the halibut and sablefish fisheries.

This regulation appears to impose no costs on directly regulated small entities. IFQ fishermen currently voluntarily bear the small burden of collecting and returning tags. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to exemptions for delivery of externally tagged fish, and will continue to enjoy this benefit, if they so choose. CDQ groups harvesting CDQ halibut and CDQ sablefish will now also have the opportunity to benefit from this exemption. CDQ groups will not be required to return tags, so no costs will be imposed on them. Overall, this action will have no known adverse impacts on the profitability or competitiveness of small, directly regulated entities.

Description of steps taken to minimize economic impact on small entities

According to the RFA, a FRFA should contain “a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

As stated above, this regulation appears to impose no adverse economic impacts on directly regulated small entities. Therefore no steps were taken to minimize the effects of this regulatory action on small entities.

This action was selected because it best accomplishes the objectives of eliminating an inconsistency between Federal and IPHC regulations, and expanding the exemption from quota deduction of halibut and sablefish tagged with external research tags to the CDQ program.

The groundfish fisheries (which include sablefish) of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Areas in the U.S. exclusive economic zone are managed by NMFS under the groundfish Fishery Management Plans (FMPs) for the respective areas. The FMPs were prepared by the North Pacific Fishery Management Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, and are implemented by regulations at 50 CFR part 679. General regulations governing U.S. fisheries also appear at subpart H of 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the “Convention Between the United

States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea” (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the “Protocol Amending the Convention,” signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Halibut Act. The directed commercial Pacific halibut fishery off Alaska is managed under an IFQ program, as is the “fixed gear” sablefish fishery. These IFQ programs are limited access management systems. Both species are also a part of the annual apportionment under the CDQ program. These programs are codified at 50 CFR part 679. One objective of this regulation is to improve consistency between the Federal and IPHC regulations.

The no action alternative, would have no direct impact on small entities. Under this alternative the regulations would not be changed to eliminate the inconsistency between IPHC and Federal regulations, nor would CDQ groups be eligible for exemptions from quota deduction for halibut or sablefish tagged with external tags issued by any state, Federal, or international agency. Therefore, the no action alternative would not meet the objectives of this action (i.e., to eliminate inconsistency in the regulations and to extend the exemption from quota deduction to the CDQ groups).

An alternative that would leave the CDQ program fisheries out of this action was considered but was rejected. This alternative would not encourage all fishermen that harvest halibut and sablefish in quota-share fisheries to return tagged fish, and, therefore, would not meet the objectives of this action.

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