

Title: Final Regulatory Flexibility Analysis (FRFA) for a Rule to Revise Recordkeeping and Reporting Requirements for the Alaska Groundfish Fishery.

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Abstract: This Final Regulatory Flexibility Analysis (FRFA) analyzes a rule that would change implementing regulations for the Fishery Management Plans (FMPs) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) and the FMP for Groundfish of the Gulf of Alaska (GOA) by revising recordkeeping and reporting (R&R) requirements.

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Executive Summary

This Final Regulatory Flexibility Analysis (FRFA) analyzes proposed amendments to regulations at 50 CFR 679 which would revise recordkeeping and reporting (R&R) regulations for the Alaska groundfish fisheries and for the Individual Fishery Quota (IFQ) halibut and sablefish fisheries off of Alaska. It provides the analyses required under the Regulatory Flexibility Act (RFA). Seven classes of regulatory changes are analyzed:

- (1) Regulatory Housekeeping. Remove obsolete text, clarify and simplify existing text, and reorganize text to remove duplication. Add, revise, and remove definitions.
- (2) Buying Station Daily Cumulative Logbook (DCL). Remove the requirement to obtain, complete, and submit the DCL. Add a requirement to complete, maintain, and distribute a Buying Station Report (BSR).
- (3) Shoreside Processor Electronic Logbook Report (SPELR). Extend the requirement to use the SPELR for processors buying from AFA catcher vessels past January 16, 2001, and require shoreside processors or stationary floating processors that receive pollock harvested in a directed pollock fishery to use the SPELR.
- (4) Individual Fishing Quota (IFQ) Program. Proposals add reporting requirements to the Prior Notice of IFQ Landing Report, the IFQ Landing Report, the IFQ Shipping Report, the IFQ Transshipment Authorization, the IFQ Vessel Clearance Report and the IFQ Departure Report.
- (5) Product Transfer Report (PTR). Give processors a new option for calculating the PTR total fish product weight transferred. An option would be added to record total actual scale weights for each species/product.
- (6) Marking of gear. Extend the gear marking requirements to include hook-and-line, longline pot, and pot-and-line gear.
- (7) Seabird avoidance gear. Add a requirement for longline operations over 60 feet to record bird avoidance gear use in logbooks.

The seven regulatory changes identified in the introduction are independent of each other. Any one of them may be adopted in combination with any possible grouping of the others. Because of this the FRFA evaluates each of the seven proposals independently. Each of the proposals is evaluated against a “no action” alternative.

The analysis indicates that few of these proposals will impose costs on small entities. Only one proposal is identified as potentially significant. In this case a conservative approach to the analysis is taken given a lack of data, and the difficulty of estimating financial costs. The proposal in question requires the marking of pot gear for enforcement purposes. It may prevent vessels from sharing gear and may prevent vessels from retrieving gear set by another; the extent of these practices and the potential costs of restricting them are not known.

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

1.0 Introduction

This Final Regulatory Flexibility Analysis (FRFA) analyzes amendments to regulations at 50 CFR 679 which would revise recordkeeping and reporting (R&R) regulations for the Alaska groundfish fisheries and for the Individual Fishery Quota (IFQ) halibut and sablefish fisheries off of Alaska. It provides the analyses required under the Regulatory Flexibility Act (RFA).

The proposed R&R regulatory changes are summarized in the proposed rule “Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements” in *Federal Register* (August 8, 2001, 66 *FR* 41664). Analysis was provided in an RIR/IRFA dated January 11, 2001 (NMFS 2001). The suite of regulatory changes which are proposed have been divided into seven categories for analysis:

- (1) Regulatory Housekeeping. Remove obsolete text, clarify and simplify existing text, and reorganize text to remove duplication. Add, revise, and remove definitions.
- (2) Buying Station Daily Cumulative Logbook (DCL). Remove the requirement to obtain, complete, and submit the DCL. Add a requirement to complete, maintain, and distribute a Buying Station Report (BSR).
- (3) Shoreside Processor Electronic Logbook Report (SPELR). Extend the requirement to use the SPELR for processors buying from AFA catcher vessels past January 16, 2001, and require shoreside processors or stationary floating processors that receive pollock harvested in a directed pollock fishery to use the SPELR.
- (4) Individual Fishing Quota (IFQ) Program. Proposals add reporting requirements to the Prior Notice of IFQ Landing Report, the IFQ Landing Report, the IFQ Shipping Report, the IFQ Transshipment Authorization, the IFQ Vessel Clearance Report and the IFQ Departure Report.
- (5) Product Transfer Report (PTR). Give processors a new option for calculating the PTR total fish product weight transferred. An option would be added to record total actual scale weights for each species/product.
- (6) Marking of gear. Extend the gear marking requirements to include hook-and-line, longline pot, and pot-and-line gear.
- (7) Seabird avoidance gear. Add a requirement for longline operations over 60 feet to record bird avoidance gear use in logbooks.

2.0 The Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) first enacted in 1980 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 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.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act (SBREFA). Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

2.1 Requirement to prepare a FRFA

If it cannot be certified that a proposed rule “*will not* have a significant economic impact on a substantial number of small entities”, a final regulatory flexibility analysis (FRFA) must be prepared when an agency issues a final rule. To ensure a broad consideration of impacts and alternatives, NMFS has prepared a FRFA pursuant to 5 USC 603, without first making the threshold determination of whether or not this proposed action would have a significant economic impact on small entities.

The central focus of the FRFA should be on the economic impacts of a regulation on small entities and on the alternatives that might minimize the impacts and still accomplish the statutory objectives.

The level of detail and sophistication of the analysis should reflect the significance of the impact on small entities. Under 5 U.S.C., Section 604(b) of the RFA, each FRFA is required to address:

- 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, 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, record keeping and other compliance requirements of the 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;
- 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.

2.2 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.

2.2.1 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. “Small business” or “small business concern” includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49% participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the US 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 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 less 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 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small businesses if it employs 100 or less persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern,

with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

2.2.2 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.

2.2.3 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 less than 50,000.

3.0 Reason for Considering the Proposed Action

NMFS is proposing revisions to several sections of regulations that pertain to permits, recordkeeping, and reporting requirements for groundfish fisheries off Alaska. The proposed changes are necessary to remove obsolete text, clarify and simplify existing text, facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the fishery management programs for groundfish and of the halibut and sablefish IFQ programs.

4.0 Objectives of, and Legal Basis for, the Proposed Action

The objectives of the proposed actions are to: (a) clarify and simplify the regulations pertaining to the management of the groundfish fisheries and the IFQ halibut and sablefish fisheries in the waters of the BSAI and the GOA; (b) ease certain regulatory burdens to reduce the cost of operation for fishermen and increase compliance with regulations; (c) reduce the costs of enforcing fisheries regulations; (d) enhance the value of the pollock fisheries managed under the American Fisheries Act (AFA); (e) reduce the costs of compliance with pollock RPAs for Steller sea lion protection; (f) reduce the costs and increase the effectiveness of regulations to protect migratory birds identified as endangered or threatened under the Endangered Species Act (ESA).

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 (FMPs) were developed by the North Pacific Fishery Management Council (Council). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and

became effective in 1978 and the Bering Sea and Aleutian Islands Area (BSAI) FMP became effective in 1982.

5.0 Public comments on the IRFA

As noted in Section 2.1, a FRFA must include “a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, 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.”

An Initial Regulatory Flexibility Analysis (IRFA), dated January 11, 2001, was prepared prior to the publication of the proposed rule in the *Federal Register* on August 8, 2001 (66 *FR* 41664). A summary of the IRFA was included in the proposed rule.

NMFS received no comments on the IRFA.

6.0 Number and Description of Small Entities Affected by the Proposed Action

The groundfish fisheries off Alaska are an economically important segment of the U.S. domestic fishing industry. Commercial groundfish catches off Alaska totaled approximately 1.7 million tons (t) in 1999, compared to 1.9 million t in 1998. The value of the catch at ex-vessel, *excluding* the value added by processing, was \$483 million in 1999, an increase from \$416 million in 1998.

Groundfish accounted for the largest share of the ex-vessel value of all commercial fisheries off Alaska in 1999 (39%), while the Pacific salmon fisheries were second, at \$346 million (28% of the total value). The ex-vessel value of the shellfish catch amounted to \$271 million (22% of the total).

The value of the 1999 catch, after primary processing, was approximately \$1.2 billion. This estimate *includes* the “value added” by at-sea and shoreside processors, typically characterized as representing the “first wholesale” gross product value.

Alaska pollock has consistently been the dominant species in the commercial groundfish catch off Alaska. The 1999 pollock catch of 1.09 million t accounted for on the order of two-thirds of the total groundfish harvest (down approximately 13% from a year earlier). The next major species, Pacific cod, accounted for 242,500 t or almost 15% of the total 1999 groundfish catch in the EEZ off Alaska. The 1999 Pacific cod catch was also down, about 6%, from a year earlier.

Trawling accounts for, on average, about 90% of the total groundfish catch, with hook and line gear accounting for another 7.9%. Commercial landings of pollock are exclusively made by operators using trawl gear. Pacific cod is harvested by trawls (in 1999, 44% or 105,000 t); by hook and line gear (in 1999, 41% or 101,000 t); and by pots (in 1999, 15% or 35,000 t).

Over the last five years, catcher vessels took 43% of the total groundfish catch, while catcher processor vessels took the remaining 57%, for the BSAI and GOA as a whole. Catcher vessels took about 48% of the total, in 1999 (an increase due, in part, to AFA provisions which increased the share of the BSAI pollock TAC allocated to inshore processors).

The distribution of catch, between catcher vessels and catcher processor vessels, differs substantially by species and area. For pollock, in the GOA, 100% is landed inshore by catcher vessels. In the BSAI, in 1999, approximately 44% of the total pollock catch was harvested by catcher processors, with the balance caught by catcher vessels delivering either to shoreside plants or motherships. For Pacific cod, the pattern is more complex. In 1999, in the BSAI, 100% of the longline caught Pacific cod was reportedly taken by catcher processors; over 81% of the pot-caught cod was taken by catcher vessels; and the trawl-caught Pacific cod was more nearly evenly split, with catcher processors accounting for just over 47% of the total landings.

Alaska continues to lead all states in volume (4.5 billion pounds in 1999) and value (\$1.1 billion) of fisheries landings. (For perspective, Louisiana was second in both categories, at 1.5 billion pounds and \$302.7 million.) Unalaska/Dutch Harbor was the leading U.S. port in quantity of commercial landings. Pollock ranked number one, by quantity, and fifth in value, of all U.S. commercially landed species.

Three mother ships were in operation in 1999 (Northern Economics, 2000). All three have ownership or business affiliations with large Japanese-owned processing companies, and are further affiliated with some of their delivering catcher vessels. Taken together with their affiliated entities, none of these motherships meet the criteria for small entities (NMFS, 2000.).

There were 58 onshore processors operating in 1999. Large entities in the processing sector are those employing more than 500 persons (including employment in affiliated operations). In 1999 onshore processors fell into five groups. Six plants were Bering Sea Pollock Inshore Plants. These are assumed to be large processors. Similarly, there were 10 Alaska Peninsula and Aleutian Island Inshore Plants in 1999 and 10 Kodiak Island Inshore Plants in 1999. These have also all been assumed to be large entities. Eighteen plants were Southcentral Alaska Inshore Plants and 14 were Southeast Alaska Inshore Plants. These last two classes of plants have been assumed to be small entities. This gives a total of 32 small entities and 26 large entities among the onshore processing plants. This is a rough estimate of the numbers of large and small onshore processing entities. (The classification of onshore processors into different regional categories has been based on Northern Economics, 2000.) Small and large entity determinations are estimates based on anecdotal information.

Through the Community Development Quota (CDQ) program, the North Pacific Fishery Management Council and NMFS allocate a portion of the BSAI groundfish, prohibited species, halibut and crab TAC limits to 65 eligible Western Alaska communities. These communities work through six non-profit CDQ Groups to use the proceeds from the CDQ allocations to start or support commercial fishery activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ program began in 1992 with the allocation of 7.5% of the BSAI pollock TAC. The fixed gear halibut and sablefish CDQ allocations began in 1995, as part of the halibut and sablefish Individual Fishing Quota Program. In 1998, allocations of 7.5% of the remaining groundfish TACs, 7.5% of the prohibited species catch limits, and 7.5% of the crab guidelines harvest levels were added to the CDQ program.

The numbers of small entities differ for the different parts of the regulatory change. The estimates of the numbers affected by each part of the change are described in the following sub-sections. The information is summarized in a table at the end of the section.

Regulatory housekeeping

The regulatory housekeeping proposal will affect all groundfish fishing operations, and all buyers of groundfish. In 1999, 1,364 fishing operations participated in the groundfish fisheries. 1,254 of these were catcher vessels and 110 were catcher-processors (vessels which both caught and processed fish). All of the 1,254 catcher vessels are considered small entities. Forty-seven of the catcher-processors are also considered small entities. Small entities are those operations with Alaska groundfish ex-vessel value and product value of less than \$3,000,000. This approach probably overestimates the numbers of small entities for several reasons: (a) income from other fisheries and vessel activities is not considered; (b) data on affiliations between vessels and between vessels and processors is not available; (c) fish ticket data for inshore deliveries is not available for all deliveries. (NMFS 2000c) Three large motherships would be affected. Thirty-two small onshore processors and 26 large onshore processors would be affected. Six Community Development Quota (CDQ) groups will also be impacted. CDQ groups are considered to be small non-profit entities.

Substitute one-page Buying Station Report (BSR) for Daily Cumulative Logbook (DCL)

This proposal will affect buying stations. The total number of buying stations is unknown, as is the number which are small or large. There were 268 tender permits issued in 1999, although not all of these may have been associated with active tenders. In addition there were an unknown number of land based stations. The 268 tenders has been used as an estimate of the number of operations. All operations are assumed to be small. This may overestimate the number of small operations because many tenders may be affiliated with larger firms. Six Community Development Quota (CDQ) groups will also be impacted. CDQ groups are considered to be small non-profit entities.

Shoreside Processor Electronic Logbook Report

Nineteen firms are currently required to use the SPELR because they buy groundfish from AFA catcher vessels. Another two firms would be required to begin using the SPELR under the provisions of the proposed rule requiring that firms accepting deliveries of pollock from fisheries targeting pollock use the SPELR. On the basis of anecdotal information, 13 of these firms are believed to be large firms, employing or affiliated with firms that employ, more than 500 persons. The sizes of another eight of these firms are not known. For the purposes of this analysis, these have been treated as small firms, although this may overestimate the numbers of small firms. Six Community Development Quota (CDQ) groups will also be impacted. CDQ groups are considered to be small non-profit entities.

Individual Fishing Quota rule changes

These regulations would affect IFQ halibut and sablefish fishing operations and the registered buyers who buy from them. In 1999 1,613 unique vessels made IFQ halibut landings, and 433 unique vessels made sablefish landings. (NMFS 2000(b) Tables III-n and III-o, page 22).

Vessels in the IFQ programs are subject to caps on the amounts of QS that may be landed from them. A vessel may be used to land up to a half percent (0.5%) of all halibut IFQs or up to one percent (1.0%) of all sablefish IFQs. In 2000 these limits were 265,370 pounds of halibut (headed and gutted weight) and 299,261 pounds of sablefish (round weight). No vessels subject to these restrictions could have been used to land more than \$3,000,000 worth of halibut and sablefish combined in 1999. NMFS annually

publishes estimated “standard prices” for halibut and sablefish. These are estimates of the ex-vessel prices received by fishermen for their harvest. The prices are used for calculating permit holder cost recovery fee liabilities. In 2000, this price data suggests that the price of halibut might have been about \$2.50 per pound of halibut (headed and gutted weight) and \$2.50 per pound of sablefish (round weight). (NMFS, 2000(b)). These harvest limits and prices imply maximum vessel revenues for about \$1,400,000 for halibut and sablefish taken together. Therefore all halibut and sablefish vessels are treated as small entities. These estimates are likely to overestimate the numbers of small entities since they do not take account of income that might have been earned by the vessel in other fisheries or activities, and they do not take account of vessel affiliations.

Any person who receives IFQ halibut or IFQ sablefish from the person(s) that harvested the fish must have a Registered Buyer permit. In addition, a person who harvests IFQ halibut or sablefish must have a Registered Buyer permit if they sell it in a dockside sale, outside of an IFQ regulatory area, or outside of the State of Alaska. (§679.4(d)(2)). Registered Buyers, therefore, include persons accepting deliveries of fish from fishermen and includes the fishermen themselves if they dispose of the fish in certain ways.

In 1999 250 registered buyers reported landings of halibut and 121 registered buyers reported landings of sablefish. There was some overlap with many Registered Buyers reporting landings of both; in all, 271 separate Registered Buyers reported landings of either halibut or sablefish. Since 132 of the Registered Buyers in 1999 were classified as catcher-sellers and 19 were catcher-processors, there is considerable overlap between fishing operations and registered buyers. Only 120 of the Registered Buyers were not also catcher vessel operations. (NMFS 2000(b), Table II-i, page 11). To avoid double-counting, the analysis of large and small entities should be limited to the operations that did not also catch their fish.

Data on the revenues, employment, or affiliations of all of these 120 Registered Buyer operations are not currently available. Data is available for expenditures on fish purchases by 77 shoreside Registered Buyers. Because expenditures for raw fish should be less than revenues from the sale of fish, an expenditure cut-off of \$2,000,000 was used to separate large from small operations. Twenty-eight of these had expenditures greater than \$2,000,000. Therefore, no more than 92 Registered Buyers may have been small entities. For the purposes of this analysis these have been classified as small operations. This may overestimate the number of small entities since these estimates are based on expenditures to purchase fish rather than sales, do not take account of revenues from sources other than IFQ fish, and do not take account of affiliations between operations.

Revision to Product Transfer Report (PTR) regulations

This regulatory change could have an effect on the 171 operators of motherships, catcher/processors, or managers of shoreside processors or stationary floating processors who must currently file this report. Forty-seven catcher processors and 32 onshore processors are assumed to be small. The remaining operations are assumed to be large. Six Community Development Quota (CDQ) groups will also be impacted. CDQ groups are considered to be small non-profit entities.

Marking of gear

The regulation extends the marking requirement to vessels using pot gear to fish for groundfish. In 1999, 254 catcher-vessels caught groundfish with pot gear off of Alaska; 13 catcher-processors also used pot gear (NMFS, 2000(c)). In 1999, no pot vessels had Alaska groundfish landings with ex-vessel or product

value over \$3,000,000. (NMFS. 2000(d)) Thus all of these vessels are considered small for the purposes of the RFA. The numbers of small vessels may be overestimated for several reasons. Among them, the gross revenue guideline did not consider the vessel's or the vessel owner's revenues from other fisheries, and the analysis could not look at affiliations between vessels or between vessels and fish buying firms. Six Community Development Quota (CDQ) groups will also be impacted. CDQ groups are considered to be small non-profit entities.

Seabird avoidance gear reporting

In 1999, 129 catcher-vessels over 60 feet and about 44 catcher-processors over 60 feet caught groundfish with hook-and-line gear off of Alaska. None of the catcher vessels, and only six of the catcher-processors had Alaska groundfish landings with ex-vessel or product value over \$3,000,000. (NMFS. 2000(d)) Thus all 129 of the catcher-vessels and 38 of the catcher-processors are considered small for the purposes of the RFA. The numbers of small vessels are probably overestimated for several reasons. Among them, the gross revenue guideline did not consider the vessel's or the vessel owner's revenues from other fisheries, and the analysis could not look at affiliations between vessels or between vessels and fish buying firms. Six Community Development Quota (CDQ) groups will also be impacted. CDQ groups are considered to be small non-profit entities.

The details of this discussion of the numbers of affected entities are summarized in the table below.

Numbers of Small and Large Entities				
Component of Rule	Type of Entity	Small	Large	Total
Regulatory Housekeeping	Catcher vessels, catcher processors, fish buyers, CDQ groups	1,254 catcher vessels, 47 catcher processors, 32 onshore processors, 0 motherships, 6 CDQ groups	0 catcher vessels, 63 catcher processors, 26 large onshore processors, 3 motherships, 0 CDQ groups	1,254 catcher vessels, 110 catcher-processors, 58 onshore processors, 3 motherships, 6 CDQ groups
Substitute one-page Buying Station Report (BSR) for Daily Cumulative Logbook (DCL)	Buying stations; CDQ groups	268 buying stations; 6 CDQ groups	0	268 buying stations; 6 CDQ groups
Shoreside Processor Electronic Logbook Report	Shoreside processors accepting AFA fish or fish from directed pollock fisheries; CDQ groups	8 processors; 6 CDQ groups	13 processors	21 processors; 6 CDQ groups

Numbers of Small and Large Entities				
Component of Rule	Type of Entity	Small	Large	Total
Individual Fishing Quota rule changes	Persons fishing using halibut and sablefish individual quotas; Registered Buyers that were not also catcher vessels; CDQ groups	1,613 halibut fishing operations and 433 sablefish fishing operations; 92 Registered Buyers	0 fishing operations; 28 Registered Buyers	1,613 halibut fishing operations and 433 sablefish fishing operations; 120 Registered Buyers
Revision to Product Transfer Report (PTR) regulations	catcher processors, onshore processors, motherships; CDQ groups	79 processors; 6 CDQ groups	68 processors	171 processors; 6 CDQ groups
Marking of gear	pot catcher-vessels (CV) and pot catcher-processors (CP); CDQ groups	254 CV and 13 CP; 6 CDQ groups	0 CV and 0 CP	254 CV and 13 CP; 6 CDQ groups
Seabird avoidance gear reporting	Longline catcher-vessels over 60 feet (CV) and longline catcher-processors (CP) over 60 feet; CDQ groups	129 CV and 38 CP; 6 CDQ groups	0 CV and 6 CP	129 CV and 44 CP; 6 CDQ groups

7.0 Adverse Impacts on Small Entities

The impacts of these proposals were analyzed in the January 11, 2001 Regulatory Impact Review (RIR) that was prepared prior to the publication of the proposed rule. For more detailed analyses of these proposals the reader may refer to that document. Few of the proposals were expected to impose costs on small entities. Although of the alternatives were expected to provide benefits to small entities, a FRFA requires a focus on negative impacts. The following bulleted points summarize the potential negative impacts on small entities for each of the seven proposals:

- *Regulatory housekeeping.* This proposal was designed to make the regulations implementing the Groundfish Fishery Management Plans (FMPs) for the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) easier to understand. This proposal was not expected to have negative impacts on small entities.
- *Buying Station Daily Cumulative Logbook.* This proposal was designed to substitute a one-page “Buying Station Report” (BSR) for the current three-part “Buying Station Daily Cumulative Logbook” (DCL). This proposal was not expected to have negative impacts on small entities.
- *Shoreside Processor Electronic Logbook Report (SPELR).* This proposal extended a requirement for certain shoreside processing firms to continue using a Shoreside Processor Electronic Logbook Report system and imposed new requirements that would have required an estimated four additional firms to use the system. Three of the affected firms had already taken steps to adopt the system. The high end of the costs of adopting the program were estimated to be about

\$4,000/firm; these would have been less for firms that had already begun implementation of the SPELR system. Adoption of the SPELR system relieved adopting firms from other reporting requirements. The net result was an expected annual savings for each firm of about \$1,600/year. Under these circumstances, this proposal was not expected to impose significant costs on small entities.

- *Individual fishing quota changes.* This title refers to a set of eight changes to reporting requirements applicable to operations in the halibut and sablefish individual quota program. Only two of the eight changes were estimated to impose any costs. A requirement to add a question to the Prior Notice of IFQ Landing Report was estimated to impose an aggregate cost of about \$1,700 on the fishing operations. Since there were 1,613 halibut operations and 433 sablefish operations, this cost would only have been a less than a dollar per operation. The other change would have added a question to landings reports filed by registered fish buyers. This would have imposed an estimated aggregate cost of about \$3,400. In 1999, an estimated 120 separate registered buyers (other than IFQ QS holders operating as registered buyers) reported purchases of halibut or sablefish; the average cost would have been about \$28. Under these circumstances, this proposal was not expected to impose significant costs on small entities.
- *Groundfish Product Transfer Report (PTR).* The proposal would provide operators of motherships, catcher/processors, and shoreside processors with more flexibility in completing the Groundfish Product Transfer Report (PTR). It is not estimated to impose any costs on small entities.
- *Marking of gear.* This proposal would have required fishermen fishing groundfish with pot gear to mark their buoys with a vessel identification number in order to facilitate enforcement. A similar requirement already applies to longline fishermen. The actual cost of marking the buoys is expected to be small. Since the regulation duplicates a requirement for pot fishermen that has already been adopted by the state for vessels under its jurisdiction, many pot vessels probably already meet the requirement. For vessels that did not meet the requirement, however, there is a possibility of increased costs because of operational changes. The RIR noted, "Fishermen may share gear, or it may be convenient for one fisherman to retrieve gear for another operator...This rule would make this difficult or impossible." (NMFS 2001, page 19). It was impossible to estimate the size of any potential cost since (a) the extent to which pots are unmarked or these practices take place were unknown, and (b) even if known, models that would permit the costs to be estimated were unavailable. In order to proceed conservatively given the uncertainty, this cost element was listed in the IRFA as one of the two that could have a significant impact on small entities.¹ As noted in the table above, the rule might affect 254 small catcher vessels, 13 small catcher/processors, and 6 CDQ groups. Data from the 2000 Groundfish Economic SAFE document suggest that pot catcher vessels (which are all small entities) had average ex-vessel gross revenues of about \$73,000 in 1999. (Hiatt, pages 45 and 54). Data supplied by staff at the Alaska Fisheries Science Center suggest that 12 pot catcher/processors operating in 2000 averaged \$784,000 in gross revenues at the first wholesale level (Hiatt, pers. comm.). In 2000, the six CDQ groups grossed \$63 million in total revenues, or \$10.5 million on average (Bibb, pers. comm).
- *Seabird avoidance gear.* This proposal would have required operators of vessels using hook-and-line gear in the GOA and BSAI to record the type of bird avoidance gear they were using in

¹The other, a proposal to prevent the reinstatement of a federal groundfish permit in the same year in which it was surrendered, is discussed in Section 10.0 ("Description of significant alternatives") of this FRFA. This proposal was not part of the proposed rule and is not part of this final rule.

the Catcher Vessel Longline and Pot Daily Fishing Log (DFL). The RIR estimated the aggregate cost to the industry of this proposal at \$6,415/year. The proposal would have applied to 173 catcher vessels and catcher/processors; thus the average cost for these operations would have been \$37/year. One hundred and sixty-seven of these operations were considered small entities. Data from the 2000 Groundfish Economic SAFE document suggest that longline catcher vessels (which are all small entities) had average ex-vessel gross revenues of about \$70,000 in 1999. (Hiatt, pages 45 and 54).² Data supplied by staff at the Alaska Fisheries Science Center suggest that 14 longline catcher/processors operating in 2000 and grossing under \$3 million, averaged \$1.2 million in gross revenues at the first wholesale level (Hiatt, pers. comm.). In 2000, the six CDQ groups grossed \$63 million in total revenues, or \$10.5 million on average (Bibb, pers. comm). Under these circumstances, this proposal was not expected to impose significant costs on small entities.

8.0 Recordkeeping and Reporting Requirements

This is a recordkeeping and reporting action. A detailed analysis of the recordkeeping and reporting requirements associated with this action have been discussed in the RIR/IRFA (NMFS 2000). They have been briefly described in this document Sections 1.0 and 7.0. No additional Recordkeeping and reporting requirements are associated with this action.

9.0 Description of Significant Alternatives

The factual, policy, and legal reasons for selecting the alternative may be found in this FRFA in sections 1.0 (“Introduction”), 3.0 (“Reasons for Considering the Proposed Action”), 4.0 (“Objectives of, and Legal Basis for, the Proposed Action”), and in 7.0 (“Adverse Impacts on Small Entities”). The potential benefits of this action are described therein.

Regulations at §679.4(b) require owners of vessels being used as catcher-vessels, catcher-processors, motherships or tenders in the GOA or the BSAI fisheries targeting groundfish, or in fisheries in which operations are required to retain groundfish bycatch, to obtain a Federal fisheries permit for the vessel. Federal fisheries permits are issued on a three-year cycle. A permit is good from the time it is received until the end of the cycle in which it is received unless it is revoked, suspended or modified (§679.4(b)(4)(i)). A Federal fisheries permit may also be surrendered by returning the original permit to NMFS in Juneau (§679.4(b)(4)(ii)).

Early versions of this final rule, before it progressed to the proposed rule stage, contained a proposed regulatory change that would revise §679.4(b)(4)(ii) to change the requirement for surrendering the Federal fisheries permit. An operator who surrendered a permit would not be permitted to reinstate it during the current fishing year. The proposal was expected to make it more difficult for vessels required to have observers under the terms of a federal fisheries permit to avoid the observer requirements in State of Alaska waters.

²This overestimates the impact on small vessels. The rule only applies to vessels over 60 feet, while the gross revenues estimates in the SAFE document are not broken out by vessel length. This average is thus calculated including vessels under 60 feet, which presumably gross less on average. Thus, the average gross reported is probably low.

This proposal was evaluated in the RIR/IRFA in January, but was not included in the proposed rule published in August, and is not included in the final rule. Section 3.4 of the IRFA (“Number and Description of Small Entities Affected by the Proposed Action”) indicated that this was one of the two proposals most likely to impose costs on small entities, “The proposals that are most likely to increase the financial costs of small entities are ...and, the regulatory change that would prevent a vessel from surrendering its Federal fishery permit and then reinstating it in the same fishing year....The Federal fishery permit requirement would prevent a small number of vessels from fishing in state waters without observer coverage after fishing in Federal waters under Federal observer rules during the fishing year.” (IRFA, page 32).

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