



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

MAR 10 2000

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 Regulations to Implement a Cost Recovery Program for the Individual Fishing Quota Program off Alaska

LOCATION: Marine Waters off Alaska

SUMMARY: The Magnuson-Stevens Fishery Conservation and Management Act (section 304(d)(2)(A)) requires the Secretary of Commerce to collect a fee to recover the actual costs directly related to management and enforcement of any Individual Fishing Quota (IFQ) program. Such a fee shall not exceed 3 percent of the ex-vessel value of fish harvested under such a program. These regulations implement a cost recovery program for the IFQ fixed gear fishery for Pacific halibut and sablefish off Alaska.

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The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of not significant impact, including the environmental assessment, is enclosed for your information. Also, please send one copy of your comment to me in Room 5605, PSP, U.S. Department of Commerce, Washington, D.C. 20230.

Sincerely,

Susan Fruchter

Susan B. Fruchter
NEPA Coordinator

Enclosure



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1-18-00 IFQ PRM 72 pp
Forms: pg. 59

ENVIRONMENTAL ASSESSMENT, REGULATORY IMPACT REVIEW AND
FINAL REGULATORY FLEXIBILITY ANALYSIS
FOR
PROPOSED
INDIVIDUAL FISHING QUOTA COST RECOVERY PROGRAM

January 18, 2000

Lead Agency: National Marine Fisheries Service
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And the
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Abstract: This document analyzes a Cost Recovery Program for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Fees collected under the Cost Recovery Program would be limited to 3% of the ex-vessel value of IFQ landings and would be used to recover actual costs directly related to the management and enforcement of the IFQ Program.

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1.0 REGULATORY IMPACT REVIEW

1.1 Legal Basis

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands area (BSAI) are managed under the Fishery Management Plan (FMP) for Groundfish of the GOA and Groundfish Fishery of the BSAI. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act, P.L. 94-265, 16 U.S.C. 1801 (MSA). The GOA FMP was approved by the National Marine Fisheries Service (NMFS) under authority delegated by the Secretary of Commerce and became effective in 1978; the BSAI FMP became effective in 1982. The IFQ program is a limited access management system for the fixed gear Pacific halibut and sablefish fisheries in waters in and out of Alaska (IFQ Program). The IFQ Program was approved by NMFS in November 1993 and fully implemented beginning in March 1995. The IFQ Program sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone (EEZ) Off Alaska, under authority of the MSA.

The Northern Pacific Halibut Act of 1982 (NPHA), P.L. 97-176, 16 U.S.C. 773c(c) authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. waters, which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission. The halibut IFQ Program is implemented by Federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the MSA and the NPHA.

1.2 Management Objectives

As amended October 1996, the MSA requires NMFS to implement programs to recover the management and enforcement costs of the Alaska IFQ and Community Development Quota (CDQ) programs. MSA language concerning that requirement is presented in Appendix A. Relevant MSA language concerning the central registry program and the IFQ loan obligation and guarantee program also is included in Appendix A. The cost recovery, central registry and loan programs are three separate but related programs required by the MSA.

The proposed IFQ Cost Recovery Program was developed by NMFS with assistance from the Council, participants in the IFQ fisheries, and other interested parties. The Council's Cost Recovery Committee had an active roll in identifying alternatives and in providing information to assess the alternatives. The Council provided an effective forum for discussing the proposed elements

of the IFQ Cost Recovery Program. However, the Council was not required to take formal action on the regulatory amendment that would implement the program.

The objective of developing an IFQ Cost Recovery Program is to collect revenue from fishermen participating in the IFQ Program to help reduce the costs incurred by the Federal government as a result of the management and enforcement of the IFQ Program. NMFS intends to develop and implement an IFQ Cost Recovery Program that is equitable, effective, and efficient.

1.3 Document layout

The National Environmental Policy Act (NEPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA) require: 1) a description of the purpose and need for the proposed action; 2) a description of alternative actions which may address the problem; and 3) an evaluation of the impacts of the alternative actions. Section 1 contains a Regulatory Impact Review (RIR) which addresses the requirements of E.O. 12866. 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 addressed in that section. Section 3 contains the Initial Regulatory Flexibility Analysis (IRFA) in compliance with the RFA.

This document is the Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the implementation of the proposed IFQ Cost Recovery Program through a regulatory amendment to 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the MSA and NPHA.

1.4 Reason for an RIR

Executive Order 12866, "Regulatory Planning and Review", was signed on September 30, 1993 and established guidelines for promulgating new regulations and reviewing existing regulations. While the order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order describes the regulatory philosophy and principles that are to guide agency development of regulations. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches that maximize net benefits, where net benefits include potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity.

The regulatory principles in E.O. 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives, such as user fees or marketable permits, to encourage the desired behavior. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. Each agency shall assess both the costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.

Executive Order 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 impacts 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.

The Regulatory Impact Review (RIR) is intended to be responsive to E.O. 12866 in several ways. It provides information to determine whether the proposed regulation is likely to be "economically significant". It provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. It provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem. Therefore, it helps to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way.

1.5 Description of alternatives

1.5.1 Purpose of and need for the action to Implement a Cost Recovery Program for the IFQ Program

The IFQ Program will directly benefit many of those who own or use IFQs and others who are involved in harvesting and processing IFQ halibut and sablefish, but it has increased management and enforcement costs and it has made it more difficult for some to participate in the fixed gear halibut and sablefish fisheries. To address these issues, the MSA was amended to require NMFS to collect a fee to: 1) recover the actual costs directly related to the management and enforcement of the IFQ Program and 2) aid in financing both the purchase of IFQs by fishermen who fish from small vessels and the first-time purchase of IFQs by entry level fishermen.

Council and industry support for the concept of cost recovery was demonstrated during the development of the IFQ Program. The Council's final action on the initial IFQ Program included a commitment to implement a Cost Recovery Program as soon as such authority was added to the MSA. More recently, Council and industry support was important in having the cost recovery requirements included in the MSA and without the implementation delay required for some other IFQ Programs. That support was also reflected in their contributions to the development of Alternative B.

The proposed action is intended to address equity issues associated with the distribution of the costs and benefits of the IFQ Program by implementing a Cost Recovery Program as required by the MSA and as committed to by the Council and industry.

1.5.2 Alternatives considered

Alternative A: Status quo: no IFQ Cost Recovery Program would be implemented.

This alternative would require no action by NMFS but would not be in compliance with the MSA. The Federal government incurs all IFQ Program cost under the status quo alternative.

Alternative B: Implement a Cost Recovery Program by revising the pertinent regulations.

This alternative would implement a Cost Recovery Program that is defined by a specific set of elements. Options exist for many of the elements of the IFQ Cost Recovery Program. There are a broad number of possible alternatives depending on the mix of various options associated with different elements of the IFQ Cost

Recovery Program. Given the relatively large number of such potential combinations and subsequent alternatives, issues are addressed in the context of discussions regarding the identified elements and options where appropriate. By design, not all elements have options and therefore variations are not intended for consideration. Discussed below are the elements and options (when they exist). Where options are considered, the preferred option is identified and typically it is presented first.

The elements of the proposed IFQ Cost Recovery Program address the 17 topics listed below.

1. Scope of Cost Recovery Program (4 options)
2. Objectives of Cost Recovery Program (no options)
3. Identification of the IFQ fishery (2 options)
4. Annual determination of the fee percentage (2 options)
5. Catch subject to the IFQ cost recovery fee (3 options)
6. Determining ex-vessel values of IFQ halibut and IFQ sablefish landings (3 options)
7. Establishing standard ex-vessel prices for IFQ halibut and IFQ sablefish (2 options)
8. Accounting for post-season ex-vessel price adjustments and other corrections to ex-vessel value (2 options)
9. IFQ Buyer Report (3 options)
10. Recoverable IFQ Program costs (no options)
11. Limited Access System Administration Fund (LASAF) deposits and accounts (no options)
12. Treasury deposits for IFQ loan program (no options)
13. Annual IFQ Cost Recovery Program report (2 options)
14. IFQ fee collection and submission mechanisms and schedules (3 options)
15. Compliance incentives (2 options)
16. Dispute resolution process (2 options)
17. Implementation date (3 options)

With respect to who would be regulated under the proposed IFQ Cost Recovery Program and the basis of the fee liabilities, an initial summary is presented below for some of the main preferred options within their respective elements of Alternative B:

1. The fee collection and submission responsibility would reside with each IFQ permit holder (Option 1 in Element 14, preferred).
2. For all IFQ pounds landed and sold, the cost recovery fee would be based on either the actual ex-vessel value or the standard ex-vessel value of such an ex-vessel transaction (Option 3 in Element 6, preferred).
3. For all IFQ landed but not sold, the fee would be based on the standard ex-vessel value of the IFQ halibut and IFQ sablefish landings which would be calculated using NMFS standard ex-vessel prices (Option 3 in Element 6, preferred).
4. There would be an annual IFQ Registered Buyer Ex-vessel Value Report (IFQ Buyer Report) required from each IFQ registered buyer who operates as a shoreside processor and purchases IFQ halibut or IFQ sablefish. The information in these reports would be used to establish NMFS standard ex-vessel prices by species, month, and port or port-group (Option 1 in Element 7, preferred).

Typically, the appropriateness of an option for a specific element is dependent on the options selected for other elements. In some cases, not all of the options for one element have a consistent or corresponding option for each of the other elements. Therefore, if the preferred option for one element changes, the preferred option may change for other elements; and, in some cases, the selection of other than the preferred option for an element would require that additional options be developed for some other elements. In this way the potential range of alternatives under consideration is much broader than might be implied by the Alternative A versus Alternative B dichotomy presented at the outset of this section.

1.5.3 Elements and their respective options

Element 1: Scope of the IFQ Cost Recovery Program

Four options were considered in Element 1. They are initially to implement the Cost Recovery Program(s) for:

1. the IFQ Program (preferred option);
2. the IFQ Program and the halibut CDQ program;

3. the IFQ Program and the halibut and sablefish CDQ programs; and
4. the IFQ Program and the multi-species CDQ program, including BSAI halibut, sablefish, other groundfish, and crab.

Element 2: Program objectives

The objectives of the IFQ Cost Recovery Program are listed below and recognized as having trade-off attributes:

1. to meet the MSA requirements to implement a program to recover the management and enforcement costs of the IFQ Program;
2. to do so in a manner that is equitable, effective, and efficient; and
3. to avoid delays in implementing the program.

Element 3: Identification of the IFQ fishery

Two options were considered regarding identification of the fishery for the purpose of establishing the fee percentage and separate accounts in the Limited Access System Administration Fund (LASAF).

Option 1. The Alaska halibut fishery and the fixed gear sablefish fisheries in BSAI and GOA would be defined as one IFQ fishery (preferred).

Option 2. The Alaska halibut fishery, the BSAI fixed gear sablefish fishery, and GOA sablefish fisheries would be defined as three IFQ fisheries.

Element 4: Annual determination of the fee percentage

NMFS would set the fee percentage in regulations and annually determine if the fee percentage would be changed. The initial fee percentage would be 3% or less and any subsequent changes that year would be based on the following:

1. the catch subject to the IFQ cost recovery fee;
2. the projected ex-vessel value of that catch;
3. the costs directly related to the management and enforcement of the IFQ Program;

4. the projected IFQ Program balance in the LASAF; and
5. nonpayment of fee liabilities expected.

NMFS would publish any revised fee percentage in the Federal Register.

The fee percentage for the IFQ Cost Recovery Program would be set equal to the calculated fee percentage using the following equation or 3 percent.

$$\text{Calculated fee percentage} = [100 \times (\text{DPC} - \text{AB}) / \text{V}] / (1 - \text{NPR})$$

where DPC is the direct program costs for the IFQ fishery for the previous fiscal year, AB is the projected end of the year LASAF account balance for the IFQ Program, V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and NPR is the fraction of fee liabilities that is estimated to result in nonpayment. (NMFS plans to estimate NPR equal to zero for at least the first year or two of the program and will therefore have no effect on the fee percentage.)

Element 5: Catch subject to IFQ cost recovery fee

The following options were considered:

1. All halibut and sablefish IFQ landings would be subject to the fee (preferred option).
2. All halibut and sablefish IFQ catch, including landings and discards, would be subject to the fee.
3. All halibut and sablefish IFQ landings and all associated groundfish landings would be subject to the fee.

With Option 1 of Element 5, the IFQ fees would be based on the ex-vessel value of the retained catch of the IFQ species harvested under a Federal IFQ Program whether the catch is taken in the EEZ or State waters. And, for each IFQ species, the fee would be the product of the fee percentage and the ex-vessel value of the IFQ landings.

Element 6: Determining ex-vessel values of IFQ halibut and IFQ sablefish landings

The following three options were considered in Element 6:

1. Actual ex-vessel value (i.e., the total monetary sale amount fishermen receive for IFQ landings from IFQ

registered buyers operating as shoreside processors, including any retro-payments) would be required for use as the ex-vessel value for all landed IFQ pounds that result in such actual ex-vessel transaction; however, standard ex-vessel value (based on NMFS standard ex-vessel prices) would be the ex-vessel value for all other landed IFQ pounds (i.e., unsold pounds).

2. Standard ex-vessel value (based on NMFS standard ex-vessel prices) would be used as the ex-vessel value for all landed IFQ pounds.
3. Either actual ex-vessel value, when it exists, (i.e., the total monetary sale amount fishermen receive for IFQ landings from any IFQ registered buyer, including any retro-payments) or standard ex-vessel value (based on NMFS standard ex-vessel prices) could be used as the ex-vessel value of landed IFQ pounds. Standard price would be used when actual ex-vessel value does not exist for IFQ landings (preferred option).

Element 7: Establishing standard ex-vessel prices for IFQ halibut and IFQ sablefish

Two options were considered in Element 7. For clarity, they are defined below in terms of the fees that would be collected for 2000 IFQ landings.

1. By December 15, 2000, monthly standard ex-vessel prices would be established, by IFQ species and port-group, for each month. These NMFS standard prices would be based on value information provided once annually in the IFQ Buyer Report submitted to NMFS by October 15, 2000. NMFS standard prices for January through September 2000 would be calculated from values for the corresponding month in 2000 documented in the IFQ Buyer Report. NMFS standard prices for October through December 2000 would be calculated from values for the corresponding month in 1999 as documented in the IFQ Buyer Report, as well as estimated price changes for these months in 2000 (preferred option).
2. Standard ex-vessel prices for 2000 would be established late in 1999 based on actual ex-vessel prices for 1999 and expected price changes for 2000.

The standard ex-vessel prices would be established by IFQ species, landings period (month), and port (or port-group) when there are sufficient registered buyers and permit holders to ensure that such detailed standard prices do not reveal

confidential information of IFQ permit holders or IFQ registered buyers.

Element 8: Accounting for post-season settlements (retro-payments)

Two options were considered. They are defined below in terms of year 2000 and year 2001 IFQ landings to simplify the explanation of each option. With each option, the standard ex-vessel prices established in late 2000 would be the basis of fee payments due by January 31, 2001 for year 2000 IFQ landings.

1. For fees based on actual ex-vessel value for year 2000 IFQ landings, fee payments would be due January 31, 2001. If retro-payments for year 2000 landings are received by the IFQ permit holder in year 2001 (post-season settlements), fees for the ex-vessel value of those post-season settlements would be due January 31, 2002. For fees based on standard ex-vessel value for year 2000 landings, fee payments would be due January 31, 2001 based on standard prices for year 2000. Such standard prices would be published in the Federal Register and listed by landing port-group and month and calculated using data on the following: a) post-season settlements made in year 2000 for year 1999 landings as recorded on annual IFQ Buyer Reports in year 2000, and b) monthly value (including in-season retro-payments) and landing data as recorded on annual IFQ Buyer Reports in year 2000 for year 2000 landings (preferred option).
2. There would be no fee payment on post-season settlements.

Element 9: IFQ Buyer Report

Three options were considered by NMFS regarding the IFQ Buyer Report for the proposed IFQ Cost Recovery Program. They are as follows:

Option 1. Use existing Alaska Department of Fish and Game (ADF&G) data.

Option 2. Use New IFQ registered buyer reports: manual (Preferred Option).

Option 3. Use New IFQ registered buyer reports: electronic

In Option 2 (preferred), each IFQ registered buyer who is operating as a shoreside processor and purchases IFQ halibut or IFQ sablefish from an IFQ permit holder would be required to

submit an annual IFQ Buyer Report to NMFS. The report would be submitted by October 15 each year and contain the following information:

- a. January - September IFQ landings and ex-vessel value data for the current year by species, port, and month;
- b. October - December IFQ landings and ex-vessel value data for the previous year by species, port, and month;
- c. post-season settlement payments not reported in the previous annual IFQ Buyer Report.

These reports would provide the data used to estimate standard prices by species, month, and port-group. The feasibility of allowing or requiring electronic reporting of these data will be evaluated. The required information must be provided on a form supplied by NMFS.

Element 10: Recoverable IFQ Program costs

The recoverable costs for the IFQ Program include Federal management and enforcement costs that would not occur in the absence of the IFQ Program. They would not include either Federal overhead costs or stock assessment and observer program costs that would occur in the absence of the IFQ Program.

NMFS projections of recoverable costs and of the other variables that are used in determining the annual fee percentage would be available (e.g., annual report, Element 13) for review and comment by the Council, participants in the IFQ fisheries, and other interested parties prior to being used to establish or change the IFQ fee percentage. Further, the actual recoverable costs of the IFQ Program for each year would be included in an annual report by NMFS referred to below.

Element 11: Limited Access System Administration Fund (LASAF) deposits and accounts

LASAF deposits: With the exception of the IFQ fees that are deposited in the Treasury and available to cover the costs of the new IFQ loan obligations and loan guarantee program, all IFQ fees would be deposited in the LASAF, which would be established in the Treasury.

LASAF accounts: Within the common LASAF, separate accounts would be created to ensure that: 1) the funds from the IFQ fishery are used only to pay for the direct management and enforcement costs of the IFQ Program and 2) the funds from the permit registration

and transfer fees could be used to pay for the cost of administering the central registry system.

Element 12: Treasury deposits for IFQ loan program

The percentage of the IFQ fees, up to the 25 percent limit, to be deposited in the Treasury for the IFQ loan obligations and loan guarantee program would be approved and implemented by the Secretary based on Council recommendations. There are no options with this element.

Element 13: Annual IFQ Cost Recovery Program report

The annual report would provide information concerning the amount of the fees received by NMFS, the disposition of those fees, the status of the IFQ account in the LASAF, and the IFQ Program costs for the previous fiscal year. The annual report could be included with other reports on the performance of the IFQ Program. There are no options with this element.

Element 14: IFQ fee collection and submission mechanisms and schedules

Three options in Element 14 were considered with respect to who would collect the fees and submit them to NMFS. They are as follows:

1. The fees would be collected by IFQ permit holders for NMFS during the calendar year in which the fish are harvested. Fees would be submitted by the IFQ permit holders to NMFS by January 31 of the following year. These fees submitted by IFQ permit holders would be based on IFQ pounds landed (preferred option).
2. The fees would be collected from IFQ permit holders by the IFQ registered buyers at the time of the sale of the fish to the IFQ registered buyer and the collected fees would be submitted by the IFQ registered buyers to NMFS by January 31 of the following year. The fees collected by IFQ registered buyer from IFQ permit holders would be based on all IFQ pounds purchased.
3. The fees would be collected by the quota share (QS) holders for NMFS in the last quarter of the calendar year in which the fish are harvested and submitted by the QS holders to NMFS by January 31 of the following year. The fees collected and submitted by each QS holder would be based on all IFQs issued, not necessarily landed, for the QSs held by that person.

With each option, pre-payment of estimated fee liabilities would be permitted but not required.

In Option 1, IFQ permit holders would be allowed to calculate their fee liabilities for landed IFQ pounds using actual ex-vessel values or standard ex-vessel values. IFQ permit holders would be required (under Option 1 in Element 6) to use the appropriate NMFS' standard prices to calculate the fee liabilities for all IFQ pounds that are landed but not sold. During the fourth quarter of each year, NMFS would publish the standard price list in the Federal Register. The NMFS standard price list would identify prices by species, month, and port-group. By December 15, NMFS would also provide IFQ permit holders fee submission forms and a landing summary of IFQ pounds debited from their IFQ permit(s) during the fishing season. IFQ permit holders would be required to calculate their fee liabilities using the fee submission form, the NMFS' standard prices list, their annual landing summary, and their actual ex-vessel value information as appropriate. IFQ permit holders would be required to submit the fees to NMFS by January 31 of the following year. NMFS would evaluate these fee submissions by IFQ permit holders using information including the following:

1. the IFQ permit holder's IFQ halibut and IFQ sablefish landings by landing period and port group for the current year;
2. NMFS' standard prices by species, landing period and port group for the current year and the IFQ Buyer Report data from which they were derived;
3. the IFQ permit holder's documented post-season settlement income received in the current year for landings made during the previous year; and
4. the IFQ Buyer Report's documented post-season settlement payments issued in the current year for landings made during the previous year.

Element 15: Compliance incentives

Option 1 in Element 15 (preferred) would be used to motivate compliance among IFQ permit holders and IFQ registered buyers regarding their fulfilling the requirements associated with submitting fees (and forms) and IFQ Buyer Reports, respectively:

- Option 1. An IFQ permit is valid only if all IFQ fee has been paid that is due as a result of final agency action (FAA). Furthermore, transfers of IFQ or quota share would not be approved until NMFS has determined that the person applying to make or receive such transfer

has paid all IFQ fees that have become due as a result of an initial administrative determination (IAD) (preferred).

Option 2: No compliance incentives (rejected)

Element 16: Dispute resolution process

Two options were consider regarding the IFQ Cost Recovery Program dispute resolution process. The are as follows:

Option 1: Within 60 days of issuance of an IAD by the Regional Administrator concerning an IFQ permit holder compliance with the IFQ Cost Recovery Program, an IFQ permit holders could appeal an IAD to the Office of Administrative Appeal in the Alaska Regional Office of NMFS (preferred).

Option 2: No appeals mechanism would exist (rejected).

Element 17: Implementation date

Three alternative implementation dates are considered. They are:

1. March 15, 1999;
2. later in 1999; and
3. March 1, 2000 (preferred option).

1.6 Qualitative impact analysis

1.6.1 Economic implications of the IFQ Cost Recovery Program.

IFQ fishermen would be expected to bear the full amount of the fee in terms of decreased income after fees but before tax income for the vessel owners, skippers, and crew. Decreased income could potentially be offset by the fishermen expanding into entrepreneurial marketing of their IFQ fish (e.g., custom processing, direct marketing, etc.). This would be possible because under the preferred alternative, because the proposed Cost Recovery Program allows fee liability to be based on NMFS standard price (Option 3 of Element 6, preferred) rather than the potentially higher value add price. The proposed fee is intentionally designed not to penalize fishermen for performing marketing behavior that adds value to their IFQ fish. These results are not dependent on whether the fees are collected from the fishermen by IFQ registered buyers (and Option 2 of Element

14, rejected) or whether the IFQ permit holders directly submit the fees to NMFS (Option 1 of Element 14, preferred).

Because of the competitive nature of ex-vessel prices paid to fishermen by IFQ registered buyers and similar competitive market-based prices paid by consumers to IFQ registered buyers, the recordkeeping and reporting requirements incurred by IFQ registered buyers (i.e., Element 9, and Option 2 of Element 14) are not expected to be passed on to fishermen or consumers. Given this condition, IFQ registered buyers operating as shoreside processors that receive IFQ landings (approximately 80 entities) would incur the full cost of the fee collection administrative burden under Option 2 of Element 14 (rejected).

1.6.2 Economic impact analysis by element and option

Alternative A (rejected): Status quo: no IFQ Cost Recovery Program would be implemented.

This alternative would require no action by NMFS but would not be in compliance with the MSA (section 304(d)(2)). The Federal government would incur all IFQ Program costs under the status quo alternative. Under the status quo alternative, IFQ permit holders would continue to incur no cost recovery fee liabilities for their IFQ landings and IFQ registered buyers would incur no additional administrative costs associated with recordkeeping and reporting requirements associated with an IFQ Cost Recovery Program. Finally, under Alternative A, the IFQ Loan Program would not receive the additional annual funding associated with the 25% of IFQ fees collected under an IFQ Cost Recovery Program as stipulated in the MSA (section 303 d(4)).

Alternative B (preferred): Implement an IFQ Cost Recovery Program comprised of attributes described below as Elements and their subsequent options (when they exist).

Element 1 Scope of the IFQ Cost Recovery Program

Four options were considered in Element 1. They are initially to implement the Cost Recovery Program(s) for:

1. the IFQ Program (preferred option);
2. the IFQ Program and the halibut CDQ program;
3. the IFQ Program and the halibut and sablefish CDQ programs; and
4. the IFQ Program and the multi-species CDQ program, including BSAI halibut, sablefish, other groundfish, and crab.

Option 1 in Element 1 (preferred) would provide the most timely manner for the use of up to 25 percent of the IFQ fees to fund the IFQ loan program compared to other options considered in this element (2, 3, and 4, rejected). With this option as part of the proposed IFQ Cost Recovery Program, and if in place by March 2000 (Option 3 in Element 17, preferred), the IFQ loan program could receive up to 25% of such fees in the first quarter of calendar year 2001. Even with passage of the American Fisheries Act (AFA) in October 1998, which would potentially reduce deductible costs for participants subject to a CDQ cost recovery fee (MSA section 305(i)(3)), delays would still result from implementing the IFQ Cost Recovery Program with options that would include CDQ fees with this proposed rule (Options 2, 3, or 4, each rejected). Under current conditions (i.e., post-AFA), cost differences may exist between CDQ and non-CDQ participants in the fishery "in which the allocation to such program has been made" (MSA section 305(i)(3)). Such differences could be deductible costs for CDQ participants to legitimately reducing CDQ cost recovery fees as allowed by the MSA. Subsequently, selection of an option (i.e., 2, 3, or 4, each rejected) that includes any part of CDQ fee collection with an IFQ Cost Recovery Program would require determination of these heretofore undetermined deductible CDQ costs and would result in delaying the implementation of the IFQ Cost Recovery Program beyond the preferred implementation date of March 2000 (Option 3 in Element 17, preferred). Additional impacts of options 2, 3, and 4 (each rejected) are elaborated on below. If implemented as proposed by March 2000 (Option 3 in Element 17, preferred), Option 1 in Element 1 (preferred) would, in aggregate, reduce gross income to IFQ permit holders by approximately \$2.8 million (1998 IFQ program costs) and yield as much as \$700,000 for direct loans to the IFQ loan program.

Option 2 in Element 1 (rejected): Because the same method would be used to monitor both IFQ and CDQ halibut landings, there may be no additional reporting costs associated with including CDQ halibut in this Cost Recovery Program. Similarly, there may be no additional observer costs for CDQ halibut because the additional observer requirements are to monitor groundfish catch not halibut landings. Therefore, even in the absence of the AFA, a Cost Recovery Program could include CDQ halibut without having to address all of the unresolved issues concerning deductible costs (CDQ credits) for additional observer and reporting requirements. However, an Cost Recovery Program that included CDQ fees would still require a determination of State management and enforcement costs only associated with halibut CDQ. Determining cost on a CDQ species by species basis could add delays to implementing the proposed IFQ Cost Recovery Program (see discussion above in Option 1). Another negative impact of Option 2 in Element 1 (rejected) is that collecting cost recovery fees for CDQ halibut would raise equity concerns by imposing CDQ fees on CDQ halibut participants but not on participants that

target other CDQ species in the CDQ fishery. Since management and enforcement cost are not determined on a species by species basis, CDQ fees could potentially be distributed disproportionately among CDQ participants if Element 2 or 3 in Option 1 (both rejected) were adopted. Furthermore, NMFS estimates that a 3 percent fee on the ex-vessel value of CDQ halibut landings would result in only about \$55,000 of additional cost recovery fees and incurred solely by participants in the CDQ halibut portion of the CDQ fishery. NMFS estimates that this amount would be less than 12% of CDQ program costs. Therefore, Option 2 would require additional issues to be resolved (i.e., program costs by CDQ-species) and potentially impose inequitable fees on CDQ participants.

Option 3 in Element 1 (rejected): There are additional observer and reporting requirements for the CDQ sablefish fishery; therefore, the full range of the unresolved credit issues would have to be addressed and the implementation of the IFQ Cost Recovery Program probably would be delayed. Without the credits for the additional costs, the cost to the industry due to fees from the CDQ sablefish fishery would be about \$22,000 or less than 5% of the estimated CDQ program costs and incurred solely by participants in the CDQ sablefish portion of the CDQ fishery. The post-credit CDQ fees would be less depending on how the credit issue is resolved, including consideration of the AFA. Option 3 in Element 1 (rejected) would impose (similar to Option 2, rejected) potentially inequitable fees on CDQ participants because CDQ program cost are not distinguished on a species by species basis.

Option 4 in Element 1 (rejected): With this option, both unresolved issues concerning the determination of State CDQ program costs and deductible CDQ costs would have to be addressed and the implementation of the IFQ Cost Recovery Program would be subsequently delayed past the March 2000 implementation date (Option 3 in Element 17, preferred). If no credits would be allowed, the additional cost recovery fees with Options 4 in Element 1 (rejected) would be about \$1.3 million or approximately 47% of the estimated IFQ program cost. However, as a result of the stipulation under MSA for a 3% limit on the cost recovery fee percentage, only a small portion of this potential fee amount could be expected to be collected. Specifically, fiscal year 1998 CDQ program cost are approximately \$479,000 (State and Federal costs). Therefore, due to the time required to address the CDQ deductible cost issues (CDQ credits) and assuming CDQ program costs could be fully recovered, implementing Option 4 in Element 1 (rejected) would likely delay implementation of the IFQ Cost Recovery Program until March 2001. The impacts of this would be a loss of \$2.8 million in collections to NMFS for the 2000 IFQ season (conversely it would impact IFQ permit holders as an equivalent amount in retained income in 2000) and with an

expected impact of \$500,000 in additional fees submitted to NMFS in 2002 for the 2001 CDQ season (conversely this would impact CDQ participants as an equivalent amount in loss of income in 2001).

Element 2 Program objectives

The objectives of the IFQ Cost Recovery Program are listed below and recognized as having trade-off attributes:

1. to meet the MSA requirements to implement a program to recover the management and enforcement costs of the IFQ Program;
2. to do so in a manner that is equitable, effective, and efficient; and
3. to avoid delays in implementing the program.

There are no options associated with the IFQ fee program objectives (Element 2) and therefore no analysis presented here to compare alternatives with a preferred option.

The fundamental objective is to implement a program to recover the actual costs directly related to the management and enforcement of the IFQ Program. Council and industry support for the concept of cost recovery was demonstrated during the development of the IFQ Program. The Council's final action on the initial IFQ Program included a commitment to implement a Cost Recovery Program as soon as such authority was added to the MSA. More recently, Council and industry support was important in having the cost recovery requirements included in the MSA and without the implementation delay required for some other IFQ Programs.

The ability of the IFQ Cost Recovery Program to recover IFQ Program costs will be dependent on the design of the elements that address the following issues:

1. the definition of recoverable costs;
2. the quantity and value of the catch subject to the fee; and
3. the percent of the fees used for the IFQ loan program.

The equitable objective is to ensure that those who are regulated by the proposed action are treated fairly. The effective objective can be defined in terms of meeting the program requirements established by the MSA. The efficiency objective addresses the cost of the Cost Recovery Program to NOAA and the participants in the IFQ Program. The efficiency objective can in

part be met by making the program simple to understand and implement.

Element 3 Identification of the IFQ fishery

Two options were considered regarding identification of the fishery for the purpose of establishing the fee percentage and separate accounts in the Limited Access System Administration Fund (LASAF).

Option 1. The Alaska halibut fishery and the fixed gear sablefish fisheries in BSAI and GOA would be defined as one IFQ fishery (preferred).

Option 2. The Alaska halibut fishery, the BSAI fixed gear sablefish fishery, and GOA sablefish fisheries would be defined as three IFQ fisheries.

Option 1 in Element 3 (preferred) would identify the BSAI and GOA fixed gear sablefish fishery and the Alaska halibut fishery as one fishery for the IFQ Cost Recovery Program. In terms of IFQ Program management and enforcement costs, and sometimes in terms of fishing activities, it is difficult to differentiate between the IFQ halibut and IFQ sablefish fisheries. For purposes of an IFQ Cost Recovery Program, NMFS does not propose to define them as separate IFQ fisheries because they are part of the same IFQ Program. Therefore, treating them as a single fishery is important because they are currently managed under a common IFQ Program. Option 1 (preferred) would enable NMFS to implement a more cost effective IFQ Cost Recovery Program because a unified accounting system would be developed (for both NMFS and participants in the IFQ fishery) at a cost less than development of two independent IFQ fee programs (Option 2, rejected). Option 1 (preferred) would simplify the processes of annually setting the fee percentage and of keeping the funds in the correct LASAF account for the IFQ Program. However, it would eliminate the possibility of different fee percentages for IFQ halibut, and sablefish (BSAI and GOA). This would be a disadvantage to fishermen who would otherwise have a lower fee percentage but an advantage to the fishermen who would otherwise have a higher fee percentage. If the fee percentage were 3 percent in each of these three fisheries, such disadvantages and advantages would be eliminated. Option 1 (preferred) would also eliminate the possibility of establishing independent accounts in the LASAF for different fisheries.

Option 2 in Element 3 (rejected) would identify the fixed gear sablefish fishery (BSAI and GOA) and the Alaska halibut fishery as separate IFQ programs. This option would require an additional procedure for NMFS enforcement and management divisions to independently monitor IFQ program costs attributed

to aspects of each of the three proposed IFQ fisheries independently (Option 2, rejected). Option 2 would create the possibility for as many as three different IFQ fee percentages in effect within the same calendar year. This would be an advantage to fishermen who would otherwise have a lower fee percentage but a disadvantage to the fishermen who would otherwise have a higher fee percentage. The additional IFQ management expense associated revising the manner in which NMFS accounts for the cost of IFQ enforcement and management to distinguish between fisheries defined in Option 2(rejected), would increase the fee percentages for corresponding cost recovery efforts and would therefore not be expected to be a net economic gain for IFQ permit holders or NMFS.

Several IFQ fee percentages (result of Option 2, rejected) could create potentially significant confusion among IFQ permit holders and increase the possibility of inaccurate fee submissions (e.g., either under payment or overpayment) due to inadvertent use of a fee percentage that is in effect for another fishery but not applicable to the one in which their landings are attributed by NMFS. This disadvantage could be reduced if NMFS used standard prices to determine fee liability for all IFQ landed pounds (Option 2 in Element 6, rejected). Furthermore, IFQ registered buyers that operate in more than one of the three proposed IFQ fisheries (as defined in Option 2, rejected) would be burdened with greater recordkeeping and reporting requirements than would exist using the preferred IFQ fishery identification (Option 1 in Element 3, preferred). IFQ registered buyer would be more negatively impacted under Option 2 (rejected) than under Option 1 (preferred) because a more extensive documentation procedure would be required in the IFQ Registered Buyer reports (Option 2 in Element 9, preferred) for NMFS to determine standard prices in each of the separated IFQ fisheries. (As described in Element 6, NMFS standard prices must be established under each option in that element to accommodate for IFQ fish with no actual ex-vessel transaction.) However, Option 2 (rejected) would allow the possibility to create different accounts within the LASAF for collected fees and their subsequent use for "administering and implementing (the MSA) in the fishery in which the fees were collected" (MSA 305(h)(5)(B)). This ability could be an advantage to NMFS for the improvement of administrative monitoring of cost recovery collections on a more detailed fishery by fishery basis, but would likely have little economic effect on IFQ permit holders other than those effects described above (Option 2, rejected).

Element 4 Annual determination of the fee percentage

Under the proposed rule, NMFS would calculate the fee percentage based on a formula developed for the Research Plan Fee Collection

Program. The formula that would apply to the IFQ Cost Recovery Program would incorporate limits established in the MSA and is similar to the limits established for the previously implemented Research Plan. As a result, there are no options associated with the this element of the IFQ fee program and therefore no analysis presented here to compare alternatives with a preferred option.

The calculated fee percentage shall be determined based on the following relationship:

$$[100 \times (DPC - AB) / V] / (1 - NPR)$$

where:

- DPC is the direct program costs for the IFQ fishery for the previous fiscal year,
AB is the projected end of the year LASAF account balance for the IFQ program,
V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and
NPR is the fraction of the fee assessments that are expected to result in nonpayment.

A report describing the status of the IFQ Cost Recovery Program including the annual fee percentage shall be published annually and be made available to the public by NMFS.

Element 5 Catch subject to IFQ cost recovery fee

NMFS considered three options concerning which fish to consider "fish harvested under any such program" as referred to in the MSA as subject to IFQ cost recovery.

- Option 1. All halibut and sablefish IFQ landings would be subject to the fee (preferred option).
- Option 2. All halibut and sablefish IFQ catch, including landings and discards, would be subject to the fee.
- Option 3. All halibut and sablefish IFQ landings and all associated groundfish landings would be subject to the fee.

The options in this element address several issues. They are:

- A. the distinction between catch from the EEZ and State waters;
- B. whether only the IFQ species (halibut and sablefish) are subject to the IFQ fee; and

C. the distinction between total and retained catch.

The MSA provides the clearest guidance for Issue A and more regulatory discretion for Issues B and C.

Issue A: The MSA states that "Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program." Therefore, if it is determined that halibut or sablefish catch counts against a person's IFQ, the ex-vessel value of that catch is subject to the IFQ fee. The issue of what sablefish catch from State waters is harvested under the IFQ Program will be determined by the regulations for that program. This is not an issue for halibut because all commercial halibut catch in the EEZ and in State waters is under Federal jurisdiction.

Issue B: The MSA does not state whether other species that are harvested with the IFQ species are subject to the IFQ fee.

With the IFQ cost recovery proposed rule, NMFS proposes that if other groundfish harvested with the IFQ species are harvested under a groundfish FMP, but not under the IFQ Program, then only IFQ halibut and sablefish would be subject to the IFQ fee (Option 1 in Element 5, preferred).

The rationale for preferring this proposed alternative include the following:

1. The IFQ Program monitors the landed catch of IFQ species and not other groundfish species;
2. The IFQ Program principally addresses the harvest of IFQ species;
3. The additional management and enforcement costs principally are associated with the harvest of the IFQ species;
4. The additional management and enforcement costs principally are associated with the harvest of the IFQ species;
5. The benefits to participants in the IFQ Program principally are associated with the harvest of the IFQ species;
6. Imposing a fee on other species caught with IFQ species would provide an incentive to discard the other species and an even greater incentive to discard halibut and

sablefish when small amounts of the IFQ species are taken as bycatch in other groundfish fisheries; and

7. It may be difficult to define and account for the groundfish harvested under the IFQ fishery.

However, limiting the IFQ fee to only the IFQ species would decrease the fees that will be collected. No attempt has been made to estimate the decrease. The current data collection programs make it difficult to generate an accurate estimate.

Issue C: The justification for excluding discarded halibut and sablefish catch from the IFQ fee is that the IFQs are monitored in terms of landed weight (i.e., catch net of at-sea discards). For example, juvenile halibut must be discarded at-sea and such catch is not counted against a fisherman's halibut IFQ. Note that IFQ regulations prohibit the discard of sablefish unless the sablefish IFQ available to the vessel has been exhausted. This justification disqualifies Option 2 in Element 5 (rejected).

Adverse economic impacts on IFQ permit holders and registered buyers are reduced for each Issue under Option 1 (preferred) compared to Options 2 or 3 (rejected). Gross income would be higher (due to lesser fees) for permit holder under the Option 1 (preferred) compared to Options 2 and 3. In addition, recordkeeping and reporting burdens would be reduced for IFQ registered buyers under Option 1 (preferred) compared to Options 2 or 3.

Element 5 is the only element of the IFQ Cost Recovery Program containing options that could have negative environmental effects if selected (Option 2 or Option 3, both rejected). Imposing a fee on other species caught with IFQ species (Option 3 in Element 5, rejected) would provide an incentive to discard the other species and an even greater incentive to discard halibut and sablefish when small amounts of the IFQ species are taken as bycatch in other groundfish fisheries. These negative environmental consequences would be avoided by using Option 1 in Element 5 (preferred).

**Element 6 Determining ex-vessel values of IFQ halibut and
IFQ sablefish landings to determine fee
liabilities**

The following three options were considered in Element 6:

1. Actual ex-vessel value (i.e., the total monetary sale amount fishermen receive for IFQ landings from IFQ

registered buyers operating as shoreside processors, including any retro-payments) would be required for use as the ex-vessel value for all landed IFQ pounds that result in such actual ex-vessel transaction; however, standard ex-vessel value (based on NMFS standard ex-vessel prices) would be the ex-vessel value for all other landed IFQ pounds (i.e., unsold pounds).

2. Standard ex-vessel value (based on NMFS standard ex-vessel prices) would be used as the ex-vessel value for all landed IFQ pounds.
3. Either actual ex-vessel value, when it exists, (i.e., the total monetary sale amount fishermen receive for IFQ landings from any IFQ registered buyer, including any retro-payments) or standard ex-vessel value (based on NMFS standard ex-vessel prices) could be used as the ex-vessel value of landed IFQ pounds. Standard price would be used when actual ex-vessel value does not exist for IFQ landings (preferred).

Option 1 in Element 6 (rejected): For this option, actual ex-vessel transactions occur when unprocessed IFQ fish are sold by the IFQ permit holder to an IFQ registered buyer operating as a shoreside processor. Under Option 1 (rejected) such actual ex-vessel values must be used by IFQ permit holders when determining their fees. Permit holders would not have an option to choose either actual prices or standard prices for IFQ landings that had an actual ex-vessel transaction (Option 3 in Element 6, preferred). Under Option 1 (rejected), there is not an actual ex-vessel transaction for the part of any IFQ landing for which one of the following conditions is met: 1) the IFQ fish are not sold to an IFQ registered buyer before being processed; 2) IFQ landings are retained by the fishermen (IFQ permit holder) or returned to the fishermen after custom processing; 3) the first sale is to a restaurant or other retail outlet; or 4) the IFQ permit holder is the registered buyer. In this first option, "actual ex-vessel value" would be defined to exclude value added processing or direct marketing.

Option 2 in Element 6 (rejected): For this option all fees would be based on NMFS standard ex-vessel prices. The impact of this option on permit holders would be to benefit them economically (i.e., reduced fee) when actual ex-vessel prices are greater than the NMFS standard price. Conversely, negative economic impact of this option on permit holders would exist in those cases when the NMFS standard price were to be greater than the actual ex-vessel price of their IFQ landings. The degree of this impact on IFQ permit holders would depend on the monetary difference between

the NMFS standard price and the actual ex-vessel price for the IFQ landing in question and the quantity of that landing.

For Option 3 in Element 6 (preferred), actual ex-vessel transactions occur when IFQ fish are sold by the IFQ permit holder to any IFQ registered buyer. Option 3 (preferred) allows the IFQ permit holder to choose either the actual ex-vessel price or the NMFS standard ex-vessel price when determining fees for IFQ landings that have an actual ex-vessel transaction. This option allows IFQ permit holders to choose between the lower of the two possible prices. This option would allow IFQ permit holders to reduce the negative economic impact on them associated with price differences (however small the difference may be) as described above associated with Option 2 (rejected). The potential loss to NMFS due to such reduced fees is considered minimal to NMFS given the determination by NMFS that standard prices with closely reflect actual ex-vessel prices. However, this marginal difference in fees would be more significant to the IFQ permit holder than to NMFS. For this reason Option 3 in Element 6 (preferred) would minimize adverse impacts of the proposed IFQ Cost Recovery Program on IFQ permit holders.

For each option the ex-vessel value of IFQ fish, whether based on standard ex-vessel value or actual ex-vessel value, would be described in IFQ equivalent pounds (i.e., landed weight amount debited from IFQ permit).

Obviously, in all cases when IFQ fish are landed but not sold, there is no actual ex-vessel transaction. In such cases, under any of the three options, the bases for determining the ex-vessel value for such fish (i.e., no actual ex-vessel value) would be the standard ex-vessel value as determine by NMFS standard prices.

Because the M-SA links IFQ fees to ex-vessel value, NMFS must define ex-vessel value in order to quantify the fee amounts due. Under Option 1 in Element 6 (rejected), NMFS would define ex-vessel value of IFQ halibut and IFQ sablefish as what IFQ permit holders are paid or would be paid for selling their IFQ landings as unprocessed fish to IFQ registered buyers operating as shoreside processors. So defined, actual ex-vessel value exists for most landings of IFQ halibut and IFQ sablefish because most landings result in an ex-vessel transaction between an IFQ permit holder and a shoreside processor. Option 1 in Element 6 (rejected) would require this type of "actual" ex-vessel value to be used for most but not all landings. For all other IFQ landings that do not have an ex-vessel value, as defined above, NMFS would require the use of standard ex-vessel values based on standard ex-vessel prices developed by NMFS (Option 1 of Element 6, rejected). Under Option 2 in Element 6 (rejected), NMFS would define ex-vessel value for all IFQ landings as that determined

applying NMFS standard values. Under Option 3 in Element 6 (preferred), NMFS would allow definition of ex-vessel value of landed IFQ to be either the standard ex-vessel value of such landings (determined using NMFS standard prices) or their actual ex-vessel value (determined based on documented actual ex-vessel transaction sales of IFQ fish by an IFQ permit holder to an IFQ registered buyer).

With equity in mind toward the regulated entities, the proposed action establishes fee liability as a function of actual ex-vessel value, when it exists, or standard ex-vessel value as determined by NMFS standard prices (Option 3 of Element 6, preferred).

Under any of these three alternative options in Element 6, NMFS would have to generate an estimated fee liability for all landed IFQ pounds for which there does not exist a transaction determining actual ex-vessel value. This is proposed using the NMFS standard ex-vessel price based on average actual ex-vessel values for IFQ landings (by species, month, and port, or port-group) provided annually in the IFQ Buyer Reports provide by shoreside processors (Option 2 in Element 9, preferred). Assuming a fee liability of 3% of the ex-vessel value, the economic consequence of this proposed action is a potential difference in fees collected by the program equal to \$0.60 for every one cent difference (\$0.01) between actual and standard prices for every ton of IFQ landed and sold to the ex-vessel market.

(2,000 IFQ lbs. sold to ex-vessel market X \$0.01 Price difference) X 3% = \$0.60 Fee Change per ton of IFQ landed

How much revenue IFQ permit holders would lose (i.e. NMFS would receive in fees) as a result of the fee program would depend on whether the NMFS standard ex-vessel price was higher or lower than the actual ex-vessel price and which Option in Element 6 would be in effect. For example (Figure 1), in cases when actual price in the ex-vessel market were higher than the NMFS standard price, then Option 2 (rejected) and Option 3 (preferred) would result in NMFS receiving lower fee revenue compared to Option 1 (rejected). Correspondingly, in aggregate, under Option 2 (rejected) and Option 3 (preferred) IFQ permit holders would retain this amount as income from IFQ fishing (3% of shaded area in Figure 1). Under Option 1 (rejected), in such cases when actual ex-vessel price was higher than standard price (and assuming all IFQ landings were sold in an actual ex-vessel transaction), NMFS would receive more fee revenue from the permit holder compared to Options 2 (rejected) and Option 3 (preferred). Obviously, permit holders would correspondingly not retain this amount as income (3% of shaded area in Figure 1). Conversely, in cases when the actual ex-vessel price was lower than the NMFS

standard price (Figure 2), then NMFS would receive less fee revenue from the permit holder under Option 1 (rejected) and Option 3 (preferred) when compared to Option 2 (rejected). For Option 3 (preferred), these examples assume the permit holder would choose the lower of the two prices on which to base their fees.

In these examples, the amount of fee revenue in question would be 3% of the shaded area shown in Figure 1 and 2. Using the 1998 actual IFQ landings of halibut and sablefish and assuming a 1 cent price (\$/IFQ lb.) difference were to exist between actual ex-vessel price and NMFS standard price, and assuming also a fee percentage of 3%, the amount of fee revenue concerned would be \$23,737 (79,123,894 IFQ lbs. landed in 1998 X \$0.01 price difference) X 3%). In Figures 2 and 3, 3% of the shaded area (price difference multiplied by quantity) would represent this difference in potential fee collections.

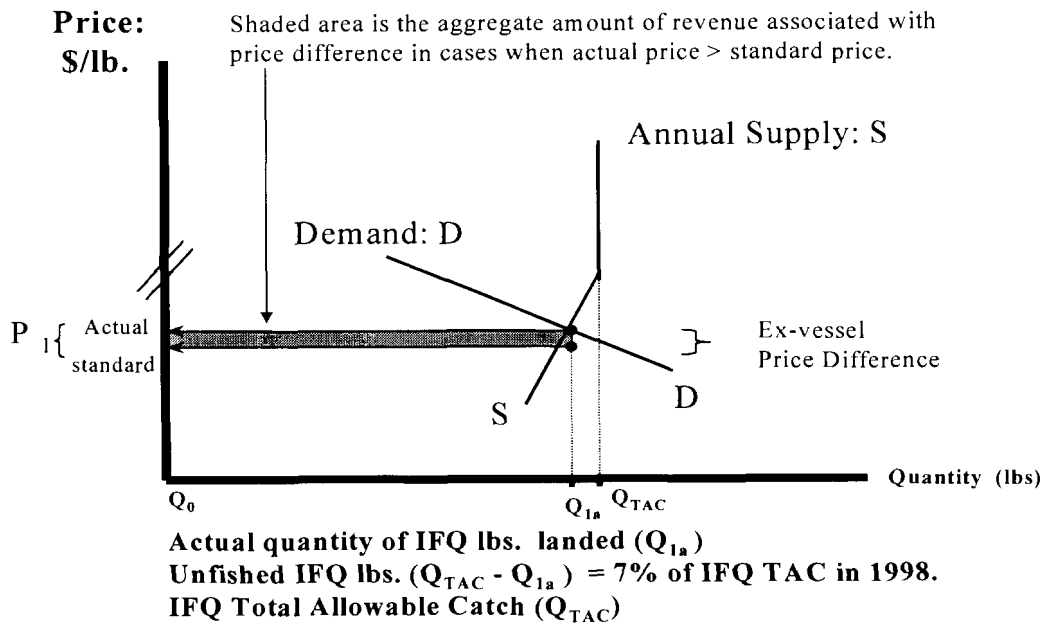


Figure 1. Effect of Price Difference on Collection Amount:
 Use of Standard vs Actual Price with Actual
 Ex-vessel Price is Higher than Standard.

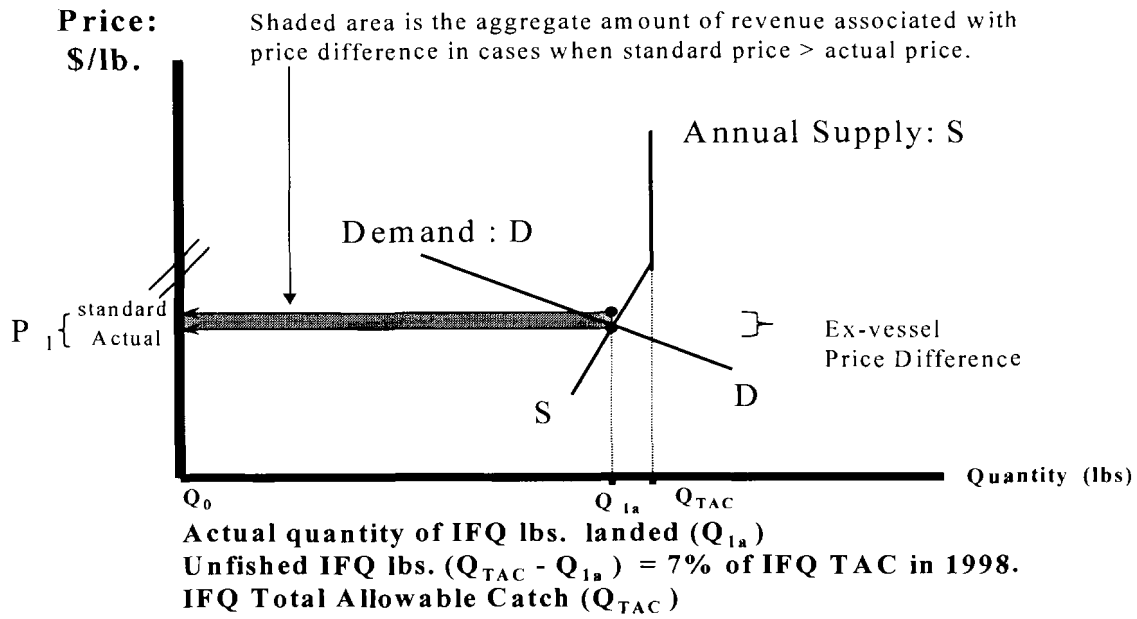


Figure 2. Effect of Price Difference on Collection Amount: Use of Standard vs Actual Price When Actual Ex-Vessel Price is Lower than Standard Price.

Shaded area is the aggregate amount of potentially reduced supply of IFQ landings when standard price > actual price and Option 2 in Element 6 (rejected) is used.

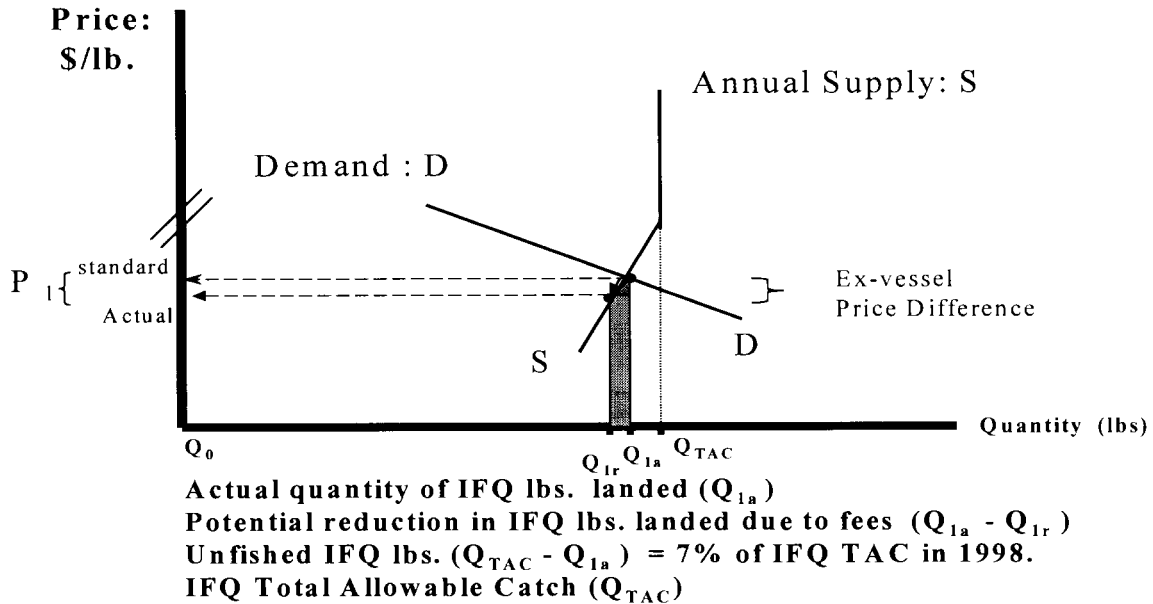


Figure 3. Potential Effect on Fee Collections on IFQ Supply: Use of Standard vs Actual Price when Actual Ex-Vessel Price is Higher than Standard.

Figure 3 attempts to graphically quantify the potential reduction in supply of IFQ landings due to fees under certain conditions. The example in Figure 3 describes a scenario if Option 2 in Element 6 (rejected) was used in the fee program and standard price (required as basis for fees under Option 2) was higher than actual ex-vessel price. In this case, the IFQ cost recovery fee could reduce the amount of supply of Alaska IFQ halibut and sablefish to the ex-vessel market. This relatively insignificant amount of potentially reduced IFQ landings is qualitatively estimated as the difference between IFQ landings before (Q_{1a}) and after (Q_{1r}) fees. The shaded area in Figure 3 represents the relative value of that reduced potential supply (price multiplied by reduced quantity). Assuming a competitive market for IFQ landings and permit holders are price takers, this reduced amount ($Q_{1a} - Q_{1r}$) of landed IFQ would be associated with IFQ permit holders who have the goal to maximize profits (net revenue) rather than maximize total revenue (i.e., fully harvest all of their allowable IFQ). In effect, the fee would result in

an equivalent reduction in "realized revenue" by IFQ permit holders (i.e., ex-vessel price minus the fee) for that portion of their income associated with IFQ fishing. The extent to which such a reduction in IFQ landings occurs would be a function of the elasticity of supply (i.e., slope of supply curve) of IFQ halibut and sablefish to the ex-vessel market and how many IFQ permit holders managed their fishing activity based on maximizing net profits (i.e., harvest IFQ until operation's marginal cost equal marginal revenue) or total revenue (i.e., harvest all their IFQ). This potential reduction in supply of IFQ landings due to fees (and the subsequent economic loss to permit holders) would be minimized if Option 3 in Element 6 (preferred) is used in this proposed fee program because it enables permit holders to choose to base their fees on the NMFS standard price or on their actual ex-vessel price (presumably whichever is lower).

It should be noted that in Figure 1, 2, and 3 the supply curve for IFQ landed pounds is positively sloped until Total Allowable Catch for IFQ is harvested (Q_{TAC}) and at that point the supply curve becomes perpendicular (inelastic). This is because no quantity of IFQ lbs. greater than the TAC (Q_{TAC}) may be legally landed in the IFQ fishery during a given year. Finally, the fact that not all IFQ is utilized each year (e.g., 7% less than Q_{TAC} in 1998) reflects the reality that some IFQ lbs. are not economically viable (e.g., small amounts of IFQ located in more distant fishing areas) and suggests that permit holders with those IFQ lbs. are cost conscience and do not operate with the sole goal to maximize their total revenue (i.e., harvest all IFQ at any cost).

The principal advantages of these Options in Element 6 are as follows:

1. Fluctuations in ex-vessel prices can be accounted for readily for most IFQ landings (Option 1 - rejected, and Option 3, preferred).
2. If the intent of the Program is to have the fee each fisherman pays be based on the ex-vessel value he or she is actually paid for IFQ fish, this option meets that intent whenever possible (Option 1 - rejected, and Option 3 - preferred).
3. There is a decreased incentive to high-grade (i.e., discard lower priced IFQ fish), but the decrease may be insignificant (Option 1 - rejected, and Option 3 - preferred).
4. If the fees are to be collected by IFQ registered buyers (Option 2 of Element 14, rejected), less

substantial changes to the accounting systems of the IFQ registered buyers would be required.

The principal disadvantages of these Options in Element 6 are as follows:

1. If the fee is considered a user fee based either on the amount of the IFQ quota used or on the cost of the IFQ Program, it may be more equitable to have the fee based on a standard price (Option 2, rejected).
2. There is an increased incentive to under-report the actual ex-vessel value; therefore, less accurate data may be available concerning the ex-vessel value of the IFQ fisheries. This incentive is expected to be minimal if the fees are submitted by the IFQ permit holders and the value information is provided by IFQ registered buyers (Option 1, rejected; and Option 3, preferred).
3. If fees are directly submitted to NMFS by IFQ permit holders (Option 1 of Element 14, preferred), the ability of NMFS to audit fee liability claims is limited to comparisons against average actual ex-vessel values (Option 1, rejected; and Option 3, preferred) based on the proposed IFQ registered buyer reports. This disadvantage would be eliminated if the proposed IFQ registered buyer reports, or other NMFS data programs, are extended to collect ex-vessel value data by landing or by IFQ permit holder (rejected due to high administrative cost to NMFS and buyers).
4. The basis for disputes concerning fee liabilities would be extended to include the actual ex-vessel prices. This could be expected to be a potential source of increased disputes if the fees are submitted by IFQ permit holders (Option 1, rejected). This disadvantage would be eliminated under Option 2 (rejected) and dramatically reduced under Option 3 (preferred).
5. There is an equity problem when actual ex-vessel value is used to determine the fee liability of some persons and standard ex-vessel value (i.e., based on NMFS standard price) is used for others if the standard ex-vessel prices are not equal to the average actual prices (Option 1, rejected). This disadvantage is eliminated under Option 3 (preferred).
6. Enforcement of the decision to choose actual ex-vessel price or standard ex-vessel price would be self imposed if fees were submitted by IFQ permit holders themselves

(Option 1 in Element 14, preferred option). Enforcement of this decision would be imposed by the buyer if fees were collected and submitted by IFQ registered buyers (Option 2 in Element 14). Given the fewer number of buyers, and assuming the economic incentive to under report by permit holders were to over-ride the risk of non-compliance, under Option 1 in Element 6 (rejected) NMFS would be expected to collect less revenue if fees were directly submitted by IFQ permit holders and more revenue if fees were collected and submitted by IFQ registered buyers.

7. There is another disadvantage regarding equity of Option 1 in Element 6 that is fisherman specific. If the standard prices approximate the average actual ex-vessel prices, fishermen who receive a higher than average price (due to market conditions or the value they add to the fish for example) would benefit from the use of standard prices. Conversely, fishermen who receive less than the average price would benefit from the use of actual prices. These disadvantages can be decreased by establishing standard ex-vessel prices by port and month and eliminated by the choice provide to fishermen with Option 3 (preferred).

The relative merits of Option 1, 2, or 3 in Element 6 depend on who would collect and submit the fees and the data collection programs NMFS would have in place (i.e., Element 14). The Council, its Cost Recovery Committee, and the Advisory Panel voiced a strong preference for the use of actual ex-vessel values when feasible (Option 3 in Element 6, preferred).

**Element 7 Establishing standard ex-vessel prices for IFQ
 halibut and IFQ sablefish**

Two options were considered in Element 7. For clarity, they are defined below in terms of the fees that would be collected for 2000 IFQ landings.

1. By December 15, 2000, monthly standard ex-vessel prices would be established, by IFQ species and port-group, for each month. These NMFS standard prices would be based on value information provided once annually in the IFQ Buyer Report submitted to NMFS by October 15, 2000. NMFS standard prices for January through September 2000 would be calculated from values for the corresponding month in 2000 documented in the IFQ Buyer Report. NMFS standard prices for October through December 2000 would be calculated from values for the

corresponding month in 1999 as documented in the IFQ Buyer Report, as well as estimated price changes for these months in 2000 (preferred option).

2. Standard ex-vessel prices for 2000 would be established late in 1999 based on actual ex-vessel prices for 1999 and expected price changes for 2000 (rejected).

Option 1 in Element 7 (preferred) establishes standard ex-vessel prices that would closely reflect the actual ex-vessel prices for the current year. The standard ex-vessel prices would be established by IFQ species, landings period (month), and port or port-group. When there are sufficient registered buyers and permit holders to ensure that the standard prices do not reveal confidential information of IFQ permit holders or IFQ registered buyers, the standard prices would be published by individual month and port, (or port-group).

Standard prices based on current year landings and sales (Option 1 in Element 7, preferred) would be an advantage to permit holders who seek to budget cost recovery fees into their annual operating costs with the understanding such fees are based on 3% or less of ex-vessel values that they experience in their current IFQ fishing year. This advantage is particularly important when standard prices must be used (as in all Options considered in Element 6) to determine fees and when substantial unexpected price fluctuations occur either during the year or between years. It is also an advantage if actual ex-vessel value is used to determine fees for some IFQ landings (e.g., Option 1 in Element 6 - rejected, and Option 3 in Element 6 - preferred) and there are substantial price fluctuations either during the year or between years. For example, it was quite clear in 1998 that both types of price fluctuations could be substantial. During the first 2 months of the 1998 halibut fishery, prices were about 40 percent lower than in 1997. If the actual prices were 50 percent lower, if the standard prices had been based solely on prices from 1997, and if a fee of 3% had been in place for 1998, the use of a standard ex-vessel price would have resulted in fees equal to 6% of the actual ex-vessel value of halibut.

There is a direct relationship between selection of the preferred options in Element 7 (use of standard price or actual price as the basis of fees) and selection of the preferred option in Element 14 (use of either registered buyers or permit holders as the responsible party for collecting fees). The following discussion of impacts on participants in the IFQ fishery under Element 7 is presented in this context.

Option 1 in Element 7 (preferred) would be feasible and reduce administrative burden on IFQ registered buyers, at the expense of more such burden on IFQ permit holders, if IFQ permit holders

initially collect fees from themselves based on actual ex-vessel prices and wait to submit fee payment to NMFS until the end of the year after the NMFS standard price list is published (Option in Element 14, preferred). Option 2 in Element 7 (rejected) could be less burdensome administratively to permit holders, but more burdensome to IFQ registered buyers, if IFQ registered buyers were legally responsible for collecting the fees from permit holders (Option 2 in Element 14, rejected). This rejected scenario (i.e., buyers collect fees from permit holders at time of landing based on standard prices derived from previous year prices) would, as it relates to fees, create more opportunities for otherwise unnecessary controversy over price between buyer and seller. A similarly awkward scenario with potential for creating unnecessary controversy in the market, would be for IFQ registered buyer to collect fees from permit holders (Option 2 in Element 14 - rejected) based on NMFS standard prices when the standard prices are not established until to the end of the fishing year (Option 1 in Element 7 - preferred). To operationalize this latter scenario, actual ex-vessel price would be required as the basis, at least initially, for determining fees. Such a scenario would create additional recordkeeping burden for both registered buyers and permit holders when attempting together to reconcile between fee amounts collected from IFQ permit holders based on initial actual price and the fee amounts potentially submitted by IFQ registered buyers based on NMFS standard prices.

In addition, for a variety of reason (e.g., take-home fish, quality concerns, etc.) not all IFQ landings are sold to the registered buyer associated with the landing port. This situation is not uncommon. At such times, under this latter scenario (i.e., fees collected by buyers from permit holders based on current year standard prices calculated at year's end), a fee program so designed would create a new opportunity for controversy between buyer and seller associated with collecting fees for fish landed but not sold to the registered buyer associated with the port of landing. This is because all IFQ landings are subject to the fee (Option 1 in Element 5, preferred). Therefore, permit holders with such IFQ fish landed but not sold would have a fee liability based on NMFS standard ex-vessel prices (Option 3 in Element 6, preferred). The latter scenario in conjunction with registered buyers as the party responsible for fee collection (Option 2 in Element 14, rejected) could increase the incentive for unreported landings associated with such fish that would otherwise be destined to be landed but not sold.

In summary, when in conjunction with certain options in other elements (e.g., Option 2 in Element 14, rejected), there are disadvantages of not establishing the NMFS standard prices prior to the start of the fishing year as proposed by the preferred

option (Option 1 in Element 7). Specifically, it would be difficult operationally for the IFQ registered buyer if they are required by NMFS to collect the fee (Option 2 in Element 14, rejected) from a permit holder based on standard prices that have not yet been established until year-end. Second, there would be increased uncertainty among permit holders about what total fee collections would be when the standard prices are not established prior to the start of the fishing year and when standard prices are the required basis for fees (to varying degrees of significance the latter is a condition in each Option in Element 6). This second disadvantage to IFQ permit holders is minimized by the provision in the proposed rule to allow fees base on actual ex-vessel value when it exists (Option 3 in Element 6, preferred).

Generally, ex-vessel value as defined in the proposed rule excludes the value added by processing or selling directly to a restaurant, another retail outlet or the final consumer. If it were included, the fee per pound of catch could be substantially higher for catch that is processed at sea or sold to other than an IFQ registered buyer operating as a shoreside processor. This disadvantage to entrepreneurial fishermen is eliminated by Option 3 in Element 6 (preferred).

Consideration was given to the use of standard prices generated by the State of Alaska (using fish tickets) for the State landings tax paid by at-sea processors (Option 1 in Element 9, rejected). However, because of the timing of the fee collections for the State's landings tax is not consistent with any of the four fee collection schedule options in the MSA, the State's standard ex-vessel prices for 1998, for example, would have to be used as the IFQ Cost Recovery Program standard prices in 1999. The MSA requires that the fees be collected:

1. at the time of the landing;
2. at the time the landing report is filed;
3. at the time of the sale of such fish during a fishing season: or
4. in the last quarter of the calendar year in which the fish are harvested.

Therefore, the use of the State's standard ex-vessel prices would not meet the objective derived at during the public involvement in the fee program's development stage regarding the establishment of standard prices that closely approximate the actual ex-vessel prices for the same year.

Element 8 Accounting for post-season settlement (retro-payments)

NMFS considered two options to account for retro-payments (post-season settlement). The preferred option (Option 1) is described below in terms of year 2000 and year 2001 IFQ landings to simplify the explanation of each option. With Option 1, the NMFS standard ex-vessel prices established in late 2000 could be the basis of fee payments due by January 31, 2001 for year 2000 IFQ landings. (Note the preferred option is comprised of both Option 1a and 1b.)

1. a. Actual value: For fees based on actual ex-vessel value for year 2000 IFQ landings, fee payments would be due January 31, 2001. When an IFQ permit holder receives retro-payments for year 2000 landings in year 2001 (post-season settlements), fees for the ex-vessel value of those post-season settlements would be due January 31, 2002 (preferred).
- b. Standard value: For fees based on standard ex-vessel value for year 2000 landings, fee payments would be due January 31, 2001 based on standard prices for year 2000. Such standard prices would be published in the Federal Register and listed by landing port-group and month and calculated using data on the following: I) post-season settlements made in year 2000 for year 1999 landings as recorded on annual IFQ Buyer Reports in year 2000, and II) monthly value (including in-season retro-payments) and landing data as recorded on annual IFQ Buyer Reports in year 2000 for year 2000 landings (preferred).
2. There would be no fee payment on post-season settlements.

Of the two options considered in this element, Option 1 best responds to the objectives described in Element 2 of this analysis. Establishing fee liability on post-season payments increases monetary collections from the IFQ Cost Recovery Program and increases the ability of NMFS to annually recover for U.S. taxpayers the management and enforcement cost associated with the IFQ Program. This option also equitably addresses IFQ permit holders by evenly treating persons receiving payment for their IFQ landings with or without the use of post-season settlement. Conversely, Option 2 (rejected) in this element would create a negative bias against IFQ permit holders receiving full payment for their IFQ landings within the year the fish were landed compared to those receiving some or all of their payments in the following year. An additional disadvantage of Option 2 (rejected) is that it would create an incentive among IFQ permit

holders to increase post-season adjustments. Option 2 would further reduce the IFQ Cost Recovery Program's monetary collection and the subsequent obligations of these resources not only to U.S. taxpayers but IFQ loan program applicants as well.

Option 1 (preferred) in this element does not provide a mechanism in the current year to correct for potential errors in fourth quarter standard prices.

Expectations concerning the relative importance of post-season settlements are important in determining the merits of Option 1 in Element 8 (preferred). A comparison of prices from fish tickets (which do not include post-season settlements) and prices from commercial operators' annual reports (which do include post-season settlements) suggests that the 1996 post-season settlements for sablefish were substantial for some port groups. For the four ports for which comparisons were made by the Alaska Commercial Fishery Entry Commission, the absolute differences in price per pound and the percent differences were as follows: 1) \$0.67 or 24%; 2) \$0.07 or 2%; 3) \$0.27 or 9%; and 4) \$0.02 or less than 1%. For halibut the differences were typically about \$0.02 or about 1%. Based on estimated 1999 landings and assuming 1998 prices, a 1% difference in ex-vessel price for IFQ sablefish and halibut would translate into approximately \$38,000 in potential fees. These price differences reflect the importance of establishing fee liability on post-season settlements.

Element 9 IFQ Buyer Report

Three options were considered by NMFS regarding the IFQ Buyer Report for the proposed IFQ Cost Recovery Program. They are as follows:

Option 1. Use existing Alaska Department of Fish and Game data.

Option 2. Use New IFQ registered buyer reports: manual (Preferred Option).

Option 3. Use New IFQ Registered buyer reports: electronic (rejected).

Option 1. Use ADF&G price data (rejected). Although ADF&G data reporting programs already in existence supply some of the necessary data while minimizing recordkeeping and reporting requirements, they are not adequate to meet the objectives of the proposed IFQ Cost Recovery Program and stated preferences of the public for prices based on current year data whenever practical. The ex-vessel price data from Alaska Department of Fish and Game (ADF&G) fish tickets is neither sufficiently complete nor timely enough to be used in establishing the initial standard prices or in adjusting the initial standard prices to reflect post-season

settlements. The fish tickets are incomplete in terms of not being available for all landings and in terms of not including post-season settlements. Although price is not a required field on fish tickets, the ex-vessel price information from the ADF&G commercial operators' annual reports are sufficiently complete. However, they are not available until several months after the end of a fishing year.

Option 2. IFQ Buyer Report annually submitted on paper (preferred). The information in the IFQ Buyer Reports would be used to estimate standard ex-vessel prices and value for landings without an ex-vessel transaction. NMFS estimates that 79 IFQ registered buyers operate as shoreside processors and therefore would be required to submit a IFQ buyers report annually. The IFQ registered buyers would be required to maintain landings data in terms of IFQ pounds. This would require a change in recordkeeping practices because many IFQ registered buyers keep track of landed weights not IFQ weights. Excluding the time associated with any required changes in recordkeeping practices, it is estimated that on average it will take each of these registered buyers 2.0 hours per year to prepare and submit the information required in the IFQ Buyer Report. It is estimated that 2.0 hours is needed for IFQ registered buyers to complete the recordkeeping and reporting requirement of the preferred alternative. At an estimated clerical wage rate of \$12/hr, this equates to approximately \$24.00 per year in costs imposed on IFQ registered buyers by the recordkeeping and reporting requirement for the preferred alternative.

Option 3. IFQ Buyer Report: electronic reporting (rejected at this time). NMFS also considered the option of allowing or requiring electronic reporting of the necessary data. Electronic data submission would be expected to increase the quality and timeliness of the data used to establish standard ex-vessel prices and to decrease data collection costs for the IFQ registered buyers and NMFS. Although NMFS has not yet fully evaluated the feasibility of this option, it will do so in the future. An electronic reporting system would have to balance the benefits of allowing flexibility in the format and methods of data submission (e.g., reduced cost to permit holders) against the need for comparable, easily interpreted information.

More timely and detailed electronic reporting of IFQ landings and value data would be desirable but is not practicable now due to current industry and NMFS operational constraints. Specifically, existing reporting requirements (electronic and manual) would be adversely affected by such an adjustment in procedures with a subsequent negative economic impact on IFQ registered buyers in the short-term. Preliminary investigations suggest additional investment in time and money for software development would be

required by NMFS, and potentially the industry, prior to initiating such an extended data collection initiative.

Element 10 Recoverable program costs

There are no options associated with IFQ recoverable IFQ program costs (Element 10) and therefore no analysis presented here to compare alternatives with a preferred option. The MSA requires the Secretary to collect a fee to recover the actual costs directly related to the management and enforcement of any IFQ Program. This seems to exclude Federal overhead costs as well as the cost of stock assessment that are not the direct effect of the IFQ Program. The former is not directly a cost of these programs. The latter is a cost that would occur without such programs and would not be considered a cost of these programs. NMFS is interpreting "directly related" to mean additional costs that occur due to these programs. This element attempts to be responsive to the MSA without creating an interpretation that is overly inclusive. The MSA is less specific in defining the recoverable costs for the IFQ Cost Recovery Program than it is in defining them for the Research Plan Fee Collection Program.

This interpretation would reduce cost recovery fees incurred by permit holders because it keeps the costs to be recovered lower and more likely to be under 3% of the ex-vessel value. However, there would be no difference if these costs exceeded 3% of the ex-vessel value of fish landed under the IFQ Program. In other words, provided IFQ enforcement and management costs remain relatively constant, permit holders would benefit (i.e., lower fees) from this interpretation except during years when prices for IFQ landings are relatively very low and result in recoverable cost equaling or exceeding 3% of ex-vessel value of fish landed under the IFQ program.

Listed below are the estimated IFQ Program cost for fiscal year 1998 that could have been partially reimbursed under the proposed action.

Table 1. Estimated Direct IFQ Program Costs in Management and Enforcement: Fiscal Year 1998.

Division, Section, or Entity	FY 1998 Costs
Restricted Access Management	1,244,800
Sustainable Fisheries	146,000
Office of Appeals	196,920
General Counsel	0
Enforcement	1,176,627
Alaska Fisheries Science Center	0

**North Pacific Fishery Management Council
International Pacific Halibut Commission
Total**

0
0

\$2,764,347

The direct management and enforcement cost identified in Table 1 are actual costs incurred by NMFS during fiscal year 1998 (October 1, 1997 to September 31, 1998) as a result of the IFQ Program. The government or quasi-government entities listed include those considered potentially eligible for cost reimbursement with funds collected by the IFQ Cost Recovery Program. Not all such entities currently have identified costs, but are listed for consideration regarding their potential for future reimbursements by the Cost Recovery Program. This cost will vary from year to year and subsequently would influence the IFQ cost recovery fee percentage imposed on fishermen. For example, due to the vacant status of some IFQ enforcement employee positions, the related IFQ enforcement costs reflected in Table 1 are estimated at only 50% of their full amount. As a result, in future years, the direct enforcement costs of the IFQ Program will increase.

Based on the 1998 direct cost associated with management and enforcement of the IFQ Program in fiscal year 1998, the cost of the fee program to the IFQ fishery would be approximately \$2.8 million.

**Element 11 Limited Access System Administration Fund
(LASAF) deposits and accounts**

There are no options associated with the LASAF deposit and accounts (Element 11) and therefore no analysis presented here to compare alternatives with a preferred option.

LASAF deposits: With the exception of the IFQ fees that are deposited in the Treasury and available to cover the costs of the new IFQ loan obligations and loan guarantee program, all IFQ fees would be deposited in the LASAF, which would be established in the Treasury.

LASAF accounts: Within the common LASAF, separate accounts would be created to ensure that: 1) the funds from the IFQ fishery are used only to pay for the direct management and enforcement costs of the IFQ Program and 2) the funds from the permit registration and transfer fees could be used to pay for the cost of administering the central registry system.

The first part of the language addressing this issue in the proposed rule is taken almost directly from the MSA. The Federal expenditures for the new IFQ loan obligations and loan guarantee

program are limited for direct loans. Currently, in the absence of the IFQ Cost Recovery Program, approximately \$5 million in annual direct loan authority exists for the IFQ Loan Program. The IFQ Loan Program would receive additional annual funding associated with the 25% of IFQ fees collected under an IFQ Cost Recovery Program as stipulated in the MSA (Section 303 d(4)). Assuming annual collections of IFQ fees equaled \$2.8 million (based on fiscal year 1998 IFQ Program costs), then an additional \$700,000 would be available to the IFQ Loan Program.

In the second part of the language, the proposed rule makes it explicit that separate account would be maintained for the IFQ fishery and for the central registry system. This language reflects NMFS' strict interpretation of the MSA with respect to the use of the funds from the IFQ fees and Central Registry fees and therefore no options associated with this element are analyzed.

Element 12 Treasury deposits for IFQ loan program

Section 303(d)(4)(A) of the MSA provides the Council discretion to reserve up to 25% of collected IFQ cost recovery fees for the IFQ loan program. Section 108(g) of the Sustainable Fisheries Act requires the Council to recommend to NMFS an IFQ loan program that uses the full amount of fees authorized. NMFS, based on Council recommendations, will use the full amount allowed if it is determined that the full amount is necessary to provide direct loans to all eligible applicants.

The fees that are diverted from the LASAF and deposited in the Treasury are not earmarked for the loan program, rather they are available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments. Therefore, diverting more of the fees than are necessary for the loan program would decrease the amount available to recover IFQ management and enforcement costs without necessarily benefitting the loan program. This language reflects NMFS' strict interpretation of the MSA with respect to the deposit of the fees in the U.S. Treasury and therefore no options associated with this element are analyzed.

Element 13 Annual IFQ Cost Recovery Program report

Two options exist in Element 13. They are as follows:

Option 1: NMFS will annually prepare, and make available to the public, a written report on the IFQ Cost Recovery Program (preferred).

Option 2: No written annual report on status of the IFQ Cost Recovery Program would be prepared.

Option 1 in Element 13 (preferred): The IFQ annual report, which could be included with other written reports on performance of the IFQ Program, would provide information concerning the amount of the fees received by NMFS, the disposition of those fees, the status of the IFQ account in the LASAF, the actual costs directly related to the management and enforcement of the IFQ Program for the previous year (Federal fiscal), and estimates of such costs in the current year. The annual report would provide another mechanism to ensure accountability with respect to fee collections, recoverable IFQ Program costs and the use of the IFQ fees. The annual report would be available in the first half of each year and therefore in sufficient time for participants in the IFQ fishery and other interested persons or entities to respond to NMFS regarding the previous fiscal year's actual IFQ Program cost and recovered fees and the estimated IFQ Program costs for the current fiscal year (October 1 - September 30). This would benefit participants in the IFQ fishery and other interested persons or entities by providing assurance that they have an on-going opportunity to provide NMFS with their informed opinions regarding the IFQ Cost Recovery Program.

Option 2 in Element 13 (rejected): The absence of an annual report describing the status of the IFQ Cost Recovery Program would negatively impact NMFS, IFQ fishery participants and other interested members of the general public by reducing the opportunity for all to be equally informed, in writing around the same time, of the IFQ Program annual costs and the amount of those costs that are or are not recovered annually by NMFS for the U.S. tax-payer. The benefits of no annual report on the status of IFQ fees would be limited to persons or entities, if any, whose interests would be better served by less, rather than more, disclosure of IFQ Program annual costs and the amount of those cost that are or are not recovered annually by NMFS for the U.S. tax-payer (Option 2, rejected).

Element 14 IFQ fee collection and submission mechanisms and schedules

NMFS considered three options with respect to who would collect the fees and how and when they would submit the fees to NMFS. They are as follows:

Option 1. The IFQ permit holders would collect the fees for NMFS during the calendar year in which the fish are harvested and submit these fees to NMFS by January 31 of the following year. The fees would be based on IFQ pounds debited (i.e., landed not

issued) from the IFQ permit holder's IFQ permit(s) (preferred option).

Option 2. The IFQ registered buyers would collect fees from fishermen at the time of the sale of the fish to the IFQ registered buyer and would submit the fees to NMFS by January 31 of the following year. The fees collected would be based on all IFQ pounds debited (i.e., landed not issued) from the IFQ permit holder's IFQ permit(s).

Option 3. The quota share (QS) holders collect the fees in the last quarter of the calendar year in which the fish are harvested and submit the fees to NMFS by January 31 of the following year. The fees collected would be based on all IFQs issued, not necessarily landed, for the QSs held by that person.

With each option, pre-payment of estimated fee liabilities would be permitted but not required.

Options 1 in Element 14 (preferred) and Option 3 in Element 14 (rejected) provide greater incentives for compliance with IFQ cost recovery submission requirements because the ability to invalidate IFQ permits or to deny requests for QS or IFQ transfers is a much more effective compliance tool than the non-issuance of an IFQ registered buyers permit.

Conflicting impacts could exist among IFQ participants when a comparison is made between the choice of Option 2 in Element 14 (rejected) using actual ex-vessel values (Option 3 in Element 6, preferred) and the choice of using Option 1 in Element 14 (preferred) with standard ex-vessel values (Option 2 in Element 6, rejected). Processors would benefit from Option 1 in Element 14 (preferred) because they would not be required to collect the IFQ cost recovery fees for NMFS but fishermen would benefit from Option 2 in Element 14 (rejected) because it better facilitated the use of actual ex-vessel value for most IFQ landings (Option 3 in Element 6, preferred). This mixture of benefits for shoreside processors and fishermen, would be addressed by incorporating those different attributes that benefit each group in the preferable manner described above. This would be accomplished by the proposed rule given that it combines Option 1 in Element 14 (preferred) with Option 3 in Element 6 (preferred) and establishes recordkeeping and reporting responsibilities that are shared between IFQ permit holders and IFQ registered buyers.

In the short-term, NMFS does not propose to expand its data collection programs to collect ex-vessel value data by landing or by IFQ permit holder. NMFS audits of the fee submissions

provided by individual IFQ permit holders would first be based on its own calculation of the standard ex-vessel value of the IFQ landings of each permit holder and if necessary on evidence provided later by individual IFQ permit holders. This could result in the following adverse consequences: 1) increase the fee collection and audit costs for NMFS and permit holders; 2) decrease the fees that would be collected; 3) create inequities between the permit holders who accurately reported ex-vessel values and those who calculated their fee liabilities based on standard ex-vessel prices when that was to their advantage; 4) inhibit a fully effective procedure to audit post-season settlements; and 5) provide an economic incentive for IFQ permit holders to understate the ex-vessel value of their landings when its actual price was higher than the NMFS standard price. If this occurred, it would be expected to lower fee income received by NMFS. However, it is possible that the difficulty this option has with respect to the various trade-offs associated with the effectiveness, efficiency, and equity objectives of the IFQ Cost Recovery Program would be more than offset by the attributes described below.

The attributes of Option 1 in Element 14 (preferred) include the following:

1. Beneficiaries that hold or use the IFQ Program's most tangible benefit, limited access harvesting privileges, would bear the direct responsibility of fee collection and submission requirements and possess the ex-vessel value of IFQ fish: the source from which fees are debited.
2. IFQ permit holders would retain the use of the money associated with the fee liability until the time it is due. However, self-managed year-end budgeting problems may offset or eliminate this benefit to some fishermen.
3. The proposed action of imposing fee liabilities on IFQ landings is less likely to influence prices issued by shoreside processors negatively, if administrative costs associated with additional recordkeeping are minimized among IFQ registered buyers.
4. It resolves the potential problem of collecting fees on IFQ fish that are landed but not sold to IFQ registered buyers.
5. It establishes an active role and incentive for IFQ fishermen to participate directly with NMFS when annually reviewing the IFQ Program's status.

6. The ability of NMFS to maintain a current and accurate database of contact addresses for IFQ permit holders will be improved with the requirement that they annually correspond with NMFS.
9. The incentive for fishermen to pay the fee and provide NMFS with related documentation is increased substantially when compliance is directly linked with their maintaining a valid IFQ fishing permit (Option 1 in Element 15, preferred).
10. This option establishes an approach that initially works on an honor system between IFQ permit holders and NMFS regarding fishermen accurately documenting the actual ex-vessel value of their IFQ landings, while providing a mechanism for verification.
11. It establishes a balanced approach to establishing the recordkeeping and reporting requirements of a Cost Recovery Program on both IFQ permit holders and IFQ registered buyer and does so in a manner that allows comparison of data submitted independently by these two groups.
12. This approach establishes no monetary incentive for IFQ registered buyers to under report ex-vessel value on the proposed IFQ Buyer Report and therefore may increase the accuracy and dependability of NMFS standard prices. However, it establishes among IFQ permit holders an economic incentive to under report ex-vessel value on their fee submission forms.
13. In this emerging practice of recovery of Federal fisheries management and enforcement costs, diversity in the implementation of such plans will provide NMFS with real-world comparisons against which to evaluate and judge development of future initiatives. This decision was made by the Acting Regional Administrator of NMFS, Alaska Region.
14. IFQ permit holders would be familiar with the practice of self with-holding of fees in a manner consistent with Federal income tax requirement for the self employed.

Option 2 in Element 14 (rejected) is considered one of the more cost effective methods for collecting fees and was used for collecting both the Research Plan fees and the State of Alaska raw fish tax. Cost effective benefits associated with this option for the IFQ Cost Recovery Program include the following: 1) it would minimize the number of persons who would calculate

and submit fees, 2) the IFQ registered buyers currently are required to submit IFQ landings data to NMFS; albeit not in a manner reflecting IFQ pound equivalents debited from IFQ permits as required by the proposed action, and 3) the State of Alaska ADF&G and Department of Revenue currently collect ex-vessel value data from processors that could be used to audit the ex-vessel value data that would be submitted by processors as part of their annual IFQ cost recovery fee submission process. Typically, when a fee (or tax) is based on an actual transaction, the fee or tax is collected at the point of transaction in the manner that minimizes the collection costs. The costs include recordkeeping and auditing costs and the costs are borne by those from whom the fee is collected, those who collect the fees, and the entity that receives the fees. In the case of the IFQ cost recovery fees, the aggregate cost and the costs to fishermen and to the agency would be expected to be lower if the fees were collected and submitted by IFQ registered buyers. However, the costs to IFQ registered buyers would be lower if the fees were submitted by IFQ permit holders.

An additional advantage of Option 2 in Element 14 (rejected) is that individual IFQ permit holders would not have to worry about making an annual payment to NMFS by January 31 in order to maintain a valid IFQ permit. For most fishermen, the fees would be collected by the processors at the time the fishermen are paid for their IFQ landings. This probably would be more of a benefit to IFQ permit holders who either were less aware of the IFQ fee collection program or who had more difficulty budgeting for an annual IFQ fee submission. Although at least the first may be more likely for either those with small IFQ holdings or those in more remote regions, the fee liability will also be relatively low for those with small IFQ holdings.

Among the disadvantages of Option 2 in Element 14 (rejected) is that in the case of take-home IFQ fish or sales of value-add IFQ fish, an IFQ registered buyer would be required to collect the fee from a fisherman based on the standard prices. For landings that occur in the first two-thirds of the IFQ season, such standard prices would not yet exist because NMFS standard prices would be established until the last quarter of the year (any Option in Element 6). Another disadvantage of this option (rejected) of fee collection and submission is that it would impose some additional costs on IFQ registered buyers. This cost to IFQ registered buyers could be offset, at least partially, by the interest they could earn on the fees between the time that they are collected and the time they would be submitted to NMFS. However, the fact that many shoreside processors would not welcome the responsibility for the fee collection and submission suggests the recordkeeping and reporting costs outweigh any potential interest income benefits that may be accrued by IFQ registered buyers as a result of Option 2 (rejected).

Option 3 in Element 14 (rejected) would have collected the fees directly from QS holders based on the following: 1) the IFQs by area and species they were issued to each QS holder; 2) the estimated ex-vessel value of IFQ landings by area and species; and 3) the resulting fee liability by area and species. This method of fee collection in effect would have been roughly comparable to the cost recovery fee collection program used in British Columbia. This option has advantages in terms of: 1) providing less of an incentive for either misreporting landings or highgrading; 2) decreasing the basis for disputing a fee liability; and 3) providing an effective compliance tools.

A principal disadvantage of Option 3 in Element 14 (rejected) is that it would impose on quota share holders a fee liability for an amount of IFQ fish attributed to an IFQ permit, whether or not the fish were harvested. Therefore, this option would have a negative economic impact on quota share holders who do not harvest all of the IFQ they are issued because this option bases the fee on IFQs issued as opposed to IFQs landed.

The efficiency and equity problems with Option 1 in Element 14 (preferred) probably would be reduced if NMFS calculated the fee liability for each permit holder based on standard ex-vessel prices and allowed each permit holder either to pay an amount equal to that calculated fee liability or submit to NMFS an amount based on actual ex-vessel value and evidence to support the claim of a lower fee liability. With this condition (Option 3 in Element 6, preferred), permit holders could determine if the saving associated with filing a fee based on actual ex-vessel values justified the additional cost of demonstrating a lower fee liability. However, this practice could result in additional decreases in the amount of fees collected.

With each option, annual submissions have several advantages compared to more frequent submissions. The cost to NOAA and to the IFQ registered buyers or IFQ permit holders would be increased by requiring more frequent submissions of fees. In addition, more frequent submissions would decrease the benefit, if any, IFQ registered buyers receive from interest earned on the fees. However, annual submissions delay the initial availability of the fees to support management and enforcement costs for the IFQ Program. They may also increase the non-payment problems. Allowing, but not requiring, more frequent payments would benefit those who prefer to pay as they go as opposed to having one large payment. This characteristic of an IFQ Cost Recovery Program could be done at a small cost to NMFS and is included in the proposed rule.

Element 15 Compliance incentives

Two options were considered regarding IFQ Cost Recovery Program compliance incentives. They are as follows:

Option 1: An IFQ permit is valid only if all IFQ fee has been paid that is due as a result of final agency action (FAA). Furthermore, transfers of IFQ or quota share would not be approved until NMFS has determined that the person applying to make or receive such transfer has paid all IFQ fees that have become due as a result of an IAD (preferred).

Option 2: No compliance incentives (rejected)

Using Option 1 in Element 15 (preferred) IFQ permit holders that have not paid all their IFQ fee that is due as a result of a FAA would incur reduced economic income from IFQ fishing equal to the value of the IFQ pounds they could have otherwise legally landed had their IFQ permit remained valid. The economic loss to IFQ permit holders associated with an invalid permit due to unpaid fees would depend on the following: a) the amount of such IFQ pounds that remained unharvested due to an invalid permit, b) the likely market prices for such IFQ pounds at the time when they would have otherwise been landed, and c) the time duration the permit remained invalid due to unpaid fees (i.e., NMFS determination of complete payment and form submission received later could once again establish a valid IFQ permit). The same negative economic impact would exist on persons seeking to receive IFQ or quota share by transfer but who were otherwise restricted from doing so due to unpaid IFQ fees. The likelihood of this economic loss due to a lack of awareness on the part of IFQ permit holders will be significantly reduced with the process in the proposed rule requiring they first be notified in writing by NMFS of the fee amount that is past due and the subsequent risk of permit invalidation. The chances of such an economic loss to IFQ permit holder is further reduced with their option to appeal such an IAD (Option 1, preferred). The risk of IFQ permit holders not being aware of these compliance incentive, and subject to these negative effects as a result of lack of information, will be dramatically reduced by an aggressive initiative intended by NMFS to inform all IFQ permit holders of these provisions several times during the first several years of the IFQ Cost Recovery Program.

For Option 2 in Element 15 (rejected) there would be no economic incentive for IFQ permit holders to collect and submit to NMFS their IFQ fees; sufficient or otherwise. Inequities would be created by Option 2 (rejected) between IFQ permit holders that submit to NMFS all of their IFQ fees compared to those IFQ permit holders that do not. IFQ permit holders who intentionally do not

comply with the proposed rule would benefit economically from Option 2 (rejected) because they would continue to harvest, land and sell their IFQ pounds while law-abiding IFQ permit holders that do comply with the proposed rule would do so at an economic disadvantage. For the latter type of IFQ permit holders, the monetary value of such an economic disadvantage created by Option 2 (rejected) would differ for each person but would be equal the ex-vessel value of their IFQ landings multiplied by the IFQ fee percentage in effect. Option 2 in Element 15 (rejected) would result in an economic loss to NMFS equal to the amount of unpaid fees and this economic loss would be greater than would be expected under Option 1 (preferred). Option 2 (rejected) would reduce the amount of IFQ fees submitted to NMFS and would the amount of funds available (up to 25% of IFQ fees) to the IFQ Loan Program (see Element 12). As a result, Option 2 (rejected) would be less likely to fully recover direct costs for enforcement and management of the IFQ Program as required by the MSA.

Element 16 Dispute resolution process

Two options were considered by NMFS regarding the IFQ Cost Recovery Program dispute resolution process. These are as follows:

Option 1: Within 60 days of issuance of an IAD by the Regional Administrator concerning an IFQ permit holder compliance with the IFQ Cost Recovery Program, an IFQ permit holders could appeal an IAD to the Office of Administrative Appeal in the Alaska Regional Office of NMFS (preferred).

Option 2: No appeals mechanism would exist (rejected).

Option 1 in Element 16 (preferred) would extend existing procedures for NMFS initial administrative determinations to include their issuance regarding an IFQ permit holders submission of insufficient fees or an incomplete fee submission form. These determinations by NMFS could be appealed to the Office of Administrative Appeals (OAA) within 60 days of the issuance of the IAD. Dispute over IFQ standard prices would not be grounds for an appeal. The proposed dispute resolution process would benefit IFQ permit holders because it would be similar to the process used for other aspects of the IFQ Program, which has been effective in resolving disputes. Most disputes have been resolved prior to being submitted to the OAA at the Alaska Region, and very few appeals have gone beyond that appeal procedures available in OAA. While staying within its current cost estimate for IFQ related expenses of approximately \$200,000 per year, this dispute resolution process is expected to be

equally successful in dealing with IFQ cost recovery fee disputes.

Option 2 in Element 17 (rejected) would negatively impact NMFS because it is contrary to the agency's policy on public process. Option 2 (rejected) would also negatively impact IFQ permit holders that question any IAD they receive regarding their IFQ fees because they would subsequently not have the NMFS appeals process available to them to assist them in their dispute.

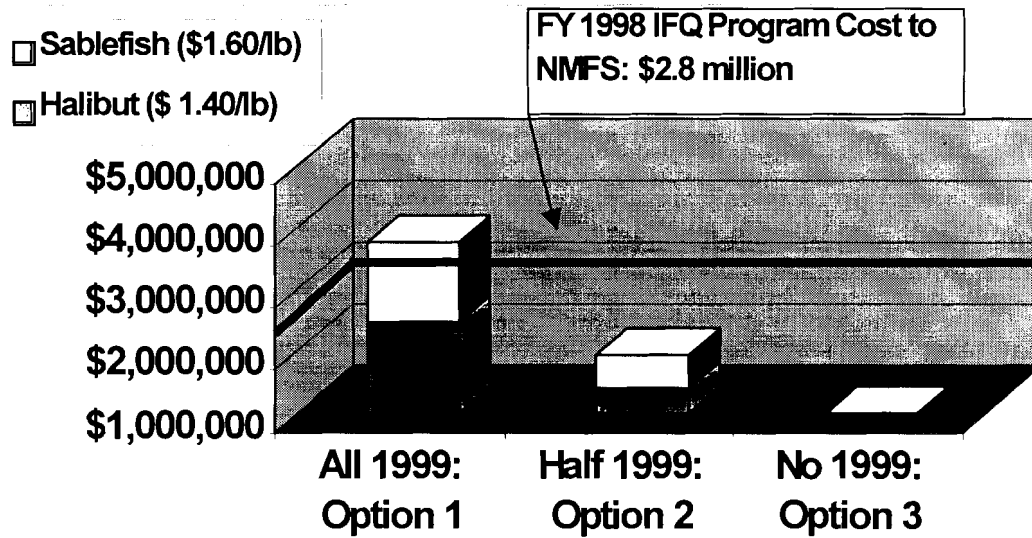
Element 17 Implementation date

Three alternative implementation dates are considered. They are:

- Option 1. March 15, 1999;
- Option 2. later in 1999; and
- Option 3. March 1, 2000 (preferred option).

The IFQ fisheries begin in March of each year. Therefore, implementation of the IFQ Cost Recovery Program is desirable at the beginning of the IFQ season (Option 1 or Option 3 in Element 17, preferred). Implementation by March 1, 2000, would be required to allow it to be in effect for the next entire fishing year. Mid-year implementation (Option 2 in Element 17, rejected) would raise potentially significant equity concerns for participants in the IFQ fishery and would provide an additional incentive to harvest fish early in the 1999 fishing season. However, the landings data required for a mid-year implementation would be available to NMFS. Given the IFQ Cost Recovery Program was not implemented in March 1999, mid-year (July) implementation of the proposed action could have collected approximately \$2 million in fees that could have been submitted to NMFS by January 31, 2000 (Figure 4). The same effect (Figure 4) of diminishing fee collections could be expected in 2000, assuming relatively similar conditions, if implementation were to occur under scenarios of March 2000, mid-2000, or March 2001.

Figure 4. Estimated Fee Collections Associated with IFQ Cost Recovery Program Based on Various Implementation Dates: Option 1, 2, and 3 in Element 17.



1.7 Conclusion

The proposed amendment to the regulations would implement an IFQ Cost Recovery Program. Such a program is required by the MSA. The proposed action meets the MSA compliance objective and presents an acceptable compromise with respect to the implementation objectives of being effective, efficient, equitable, and timely.

With regard to this action's potential impact to the Nation, a net benefit analysis would be required to determine such an effect conclusively. Cost information, including fixed and variable operating cost statistics, is a crucial element of an effective net benefit analysis. Cost data for the proposed action fishery's harvesting and processing sectors are not currently available to NMFS. For this reason, NMFS neither can complete a quantitative cost/benefit examination of the proposed action, nor derive comparative net benefit conclusions about the several competing sub-elements of the proposed IFQ Cost Recovery Program.

Changes in net benefits to the Nation cannot be determined with a gross revenue analysis. However, given that the total annual economic value of collections associated with the proposed IFQ Cost Recovery Program is approximately \$3 million, and this action will not eliminate the fishery or even reduce the annual TAC, we may reasonably conclude that the net benefits to the U.S. economy would not decrease by \$100 million annually once costs were included in the calculation. Similarly, the proposed IFQ Cost Recovery Program is not expected to create serious inconsistency with actions taken by another agency, or raise novel or policy issues arising out of legal mandates set forth in E.O. 12866, or materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligations of recipients. Therefore, the proposed IFQ Cost Recovery Program is not expected to constitute a significant action as defined under E.O. 12866.

There is basis for estimating a gross economic impact of the proposed IFQ fee program. Gross economic impacts of the proposed fee program on all IFQ permit holders in the fishery would equal approximately \$2.8 million. This estimate is based on the 1998 fiscal year IFQ Program direct management and enforcement costs; collection of which is the intention of the program as described in the MSA. Assuming such annual IFQ Program costs are relatively constant, the total annual economic impact of the proposed fee on the industry would equal approximately \$2.8 million in direct fees (incurred by permit holders) plus the administrative costs associated with proposed recordkeeping and reporting requirements (incurred by permit holders and IFQ registered buyers). This additional economic impact on IFQ

fishery participants associated with new proposed recordkeeping and reporting requirements is approximately \$100,000. Therefore, the total annual gross economic impact of this proposed cost recovery program on the IFQ fishery is approximately \$2.9 million during each year the IFQ fee program is in effect. NMFS concludes that the benefits of administering the IFQ Cost Recovery Program and complying with the MSA justify this cost.

2.0 ENVIRONMENTAL AND ECONOMIC CONSEQUENCES OF ACTIONS

An EA is required by NEPA to determine whether a proposed action will result in significant effects on the human environment. If the environmental effects of the action are determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact would be the final environmental documents required by NEPA. If this analysis concludes that the proposal is a major Federal action significantly affecting the human environment, an environmental impact statement must be prepared.

An EA must include a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action, a list of agencies and persons presumed interested in reviewing the document, and a list of preparers of the document. The purpose and need are discussed in Section 1.1.1. A description of the alternatives is in Section 1.5. Section 4 contains the list of agencies and persons contacted in the development of the document. Section 5 contains a list of document preparers. This section contains the discussion of the environmental impacts resulting from implementation of the action 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 that may result in changes in food availability to predators, changes in population structure of target fish stocks, and changes in community structure; (2) changes in the physical and biological structure of the benthic environment as a result of fishing practices (e.g., gear effects and fish processing discards); (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear; and (4) major shifts in the abundance and composition of the marine community as a result of disproportionate fishing pressure on a small set of species (also known as "cascading effects," National Research Council, 1996).

This EA tiers off the SEIS (NMFS 1998a), which analyzed the effects of groundfish fisheries being promulgated in the EEZ and

displayed fishery induced impacts on all aspects of the ecosystem. NMFS notes that in a July 8, 1999, order, amended on July 13, 1999, the court in Greenpeace, et al., v. NMFS, et al., Civ No. 98-0492 (W.D. Wash.) held that the SEIS did not adequately address aspects of the GOA and BSAI groundfish fishery management plans other than TAC setting, and therefore was insufficient in scope under NEPA. In response to the Court's order, NMFS is currently preparing a programmatic SEIS for the GOA and BSAI groundfish fishery management plans. Notwithstanding the less expansive scope of the 1998 SEIS, NMFS believes that the discussion of impacts and alternatives in the SEIS is directly applicable to the proposed action to be analyzed in this EA.

The proposed action and alternatives to it pertain to establishing a cost recovery program for the IFQ halibut and sablefish fishery. The proposed program would not alter the manner in which fish are harvested or the times or locations in which they were harvested, and therefore, would have no impact on biological parameters of the fisheries. Endangered Species Act and Marine Mammal Protection Act considerations are presented below to provide further background for this environmental analysis.

2.2 Endangered Species Act Considerations

2.2.1 ESA Listed Species

Species currently listed as endangered or threatened under the ESA and occurring in the GOA and/or BSAI groundfish management areas.

Common Name	Scientific Name	ESA Status
Northern Right Whale	<i>Balaena glacialis</i>	Endangered
Bowhead Whale ¹	<i>Balaena mysticetus</i>	Endangered
Sei Whale	<i>Balaenoptera borealis</i>	Endangered
Blue Whale	<i>Balaenoptera musculus</i>	Endangered
Fin Whale	<i>Balaenoptera physalus</i>	Endangered
Humpback Whale	<i>Megaptera novaeangliae</i>	Endangered
Sperm Whale	<i>Physeter macrocephalus</i>	Endangered
Snake River Sockeye Salmon	<i>Oncorhynchus nerka</i>	Endangered
Short-tailed Albatross	<i>Diomedea albatrus</i>	Endangered
Steller Sea Lion ²	<i>Eumetopias jubatus</i>	Endangered
Snake River Fall Chinook	<i>Oncorhynchus tshawytscha</i>	and Threatened
Snake River Spring/Summer Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Threatened
Spectacled Eider	<i>Somateria fishcheri</i>	Threatened
Steller Eider	<i>Polysticta stelleri</i>	Threatened

¹ The bowhead whale is present in the Bering Sea area only.

² Steller sea lions are listed as endangered west of Cape Suckling and threatened east of Cape Suckling.

Steller sea lion. The Steller sea lion range extends from California and associated waters to Alaska, including the Gulf of Alaska and Aleutian Islands, into the Bering Sea and North Pacific and into Russian waters and territory. In 1990, the species was listed as threatened under the Endangered Species Act (60 FR 51968). In 1997, NMFS reclassified Steller sea lions as two distinct populations (62 FR 24345). The population west of 144°W longitude (a line near Cape Suckling, Alaska) was changed to endangered status; the remainder of the U.S. Steller sea lion population is still listed as threatened.

2.2.2 Status of Section 7 Consultations

Section 7 consultations have been done for all the above listed species, some individually and some as groups. Below are summaries of consultations recently completed or currently

underway. See the FSEIS, section 3.8, for summaries of all previous section 7 consultations and Biological Opinions.

NMFS 1998 Biological Opinion, Authorization of the Pollock and Atka Mackerel Fisheries for 1999-2002 On December 3, 1998, NMFS issued its Biological Opinion on the 1999-2002 authorization of the BSAI Atka mackerel fishery, the BSAI pollock fishery, and the GOA pollock fishery under their respective groundfish fishery management plans (NMFS, 1998b). The opinion analyzes the effects of these actions on the endangered western population of Steller sea lions and its critical habitat. After reviewing (1) the 1998 status of ESA listed species, (2) the environmental baseline for the action area, (3) the effects of the proposed 1999-2002 fisheries, and (4) the recommendations of the NPFMC, NMFS' Biological Opinion concludes that the Atka mackerel fisheries will not jeopardize the continued existence of current ESA listed species or adversely modify their critical habitat if current proposed mitigation measures are effective in 1999 (see below). However, for the proposed 1999-2002 BSAI and GOA pollock fisheries, NMFS' Biological Opinion concluded that the action, as proposed, are likely to jeopardize the continued existence of the western population of Steller sea lions and adversely modify its critical habitat.

For the pollock fisheries, NMFS established reasonable and prudent alternatives (RPAs) to avoid jeopardizing Steller sea lions and presented those RPAs to the Council during its December 1998 meeting. Mitigation measures for the pollock fisheries were proposed by the Council and then modified by NMFS. These modified RPAs were issued by NMFS in a memorandum dated December 16, 1998, from Gary Matlock, Director, Office of Sustainable Fisheries (NMFS 1998c). NMFS has determined that these mitigation measures will allow the proposed fishery to occur without jeopardizing the continued existence of Steller sea lions and avoid adverse modification of its critical habitat. NMFS prepared an emergency rule to implement the RPA actions as proposed by the Council and modified by NMFS. This emergency rule was effective prior to the start of the 1999 pollock trawl fisheries, January 20, 1999. The emergency rule to implement the RPAs was accompanied by an EA that addressed the environmental and socioeconomic impacts of the proposed changes to the fishery. These changes disperse the fishery in time and space, distributing effort more evenly than the pulse fisheries of the past. The RPAs did not contain any changes to the 1999 annual TAC amounts.

NMFS 1998 Biological Opinion, Authorization of the BSAI and GOA Groundfish Fisheries for 1999 Pursuant to the ESA, NMFS prepared a section 7 consultation Biological Opinion on the 1999 BSAI and GOA groundfish fisheries (NMFS 1998d). The Biological Opinion examined the 1999 proposed TAC specifications for the BSAI and

GOA and the effect of this action on ESA listed species. The Biological Opinion concluded that mitigation measures recommended by the Council and modified by NMFS, for the BSAI and GOA pollock fisheries and the BSAI Atka mackerel fisheries, are sufficient to avoid jeopardizing the continued existence of the western population of Steller sea lions and avoid adverse modification to its critical habitat. This conclusion required that NMFS, implement the recommended revised reasonable and prudent alternatives before the scheduled regulatory start of the 1999 BSAI and GOA trawl fisheries. NMFS Biological Opinion concluded that implementation of the BSAI and GOA groundfish fisheries, as outlined under the FMPs and amended by the Steller sea lion mitigation measures for pollock and Atka mackerel, would not jeopardize the continued existence of Steller sea lions or other ESA listed marine mammals.

Biological Opinion on Potential Impacts of BSAI and GOA Groundfish Fisheries on ESA Listed Salmon In a letter dated December 1, 1998, Mr. William W. Stelle (NMFS, 1998e) concluded under an informal section 7 consultation that the continued implementation of the BSAI and GOA groundfish FMPs were unlikely to significantly impact endangered salmon species. Additional chinook and chum salmon have been proposed for listings, however, an assessment of impacts to these salmon will be better made once the listing decisions are known. NMFS must reinitiate this ESA consultation if new information becomes available or circumstances occur that may affect listed species or their critical habitat in a manner or to an extent not previously considered, or a new species is listed or critical habitat is designated that may be affected by the action.

Biological Opinion on the BSAI Trawl and Hook-and-Line Fisheries The Fish and Wildlife Service (USFWS), in a letter dated December 2, 1998 (USFWS, 1998), extended the 1997-1998 Biological Opinion on the BSAI hook-and-line groundfish fishery and the BSAI trawl groundfish fishery for the ESA listed short-tailed albatross until it is superseded by a subsequent amendment to that opinion. Based on current information available to the USFWS, it does not anticipate that the final Biological Opinion will determine that the 1999 BSAI groundfish fishery places the short-tailed albatross in jeopardy of extinction. The statutory receipt of a final BO and incidental take statement for the BSAI hook and line groundfish fishery is Friday, March 19, 1999.

2.2.3 Effects of the Alternatives on Marine Mammals and Species Listed as Threatened or Endangered Under the ESA

The effects of groundfish harvest on marine mammals is discussed in section 4.3.2 of the FSEIS (NMFS 1998a). No impacts, beyond those described, result from either of the alternatives or the options associated with Alternative B.

2.3 Marine Mammal Protection Act Considerations

Compliance of the groundfish fisheries with the Marine Mammal Protection Act is described in section 3.9 of the FSEIS (NMFS 1998a). No impacts, beyond those described, result from either of the alternatives or the options associated with Alternative B.

2.4 Coastal Zone Management Act

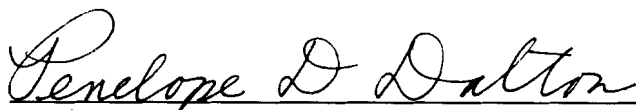
None of the alternatives would alter the extent to which the groundfish and halibut fisheries would continue to be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Zone Management Program within the meaning of section 307(c)(1) of the coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Essential Fish Habitat (EFH)

The consequences of adopting the preferred alternative or of maintaining the status quo would be economic and social in nature. No impacts to the benthic habitat in general or essential fish habitat in particular would result from the establishment of an IFQ Cost Recovery Program. Therefore, the proposed action, as an independent action and when considered in the context of the Alaska IFQ halibut and sablefish fishery as a whole, would not have an adverse impact on EFH.

FINDING OF NO SIGNIFICANT IMPACT

For the reasons discussed above, implementation of either Alternative would not significantly affect the quality of the human environment as defined by NEPA. Therefore, the preparation of an environmental impact statement is not required by section 102(2)(C) of NEPA or its implementing regulations.



Assistant Administrator for Fisheries, NOAA

Date 3/7/00

3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)

3.1 Requirements to prepare an IRFA

The objective of the Regulatory Flexibility Act (RFA) is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. An IRFA would identify the need for the proposed action, identify alternatives, estimate the number of small entities affected, describe recordkeeping requirements, and to the extent practicable the analysis would list any relevant Federal rules which may conflict with the proposed action (5 U.S.C. section 603(b)). To ensure a broad consideration of impacts and alternatives, NMFS has prepared an IRFA 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 substantial number of small entities. The IRFA is presented below in compliance with the RFA.

The Small Business Administration (SBA) 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 that are independently owned and operated and not dominant in their field, and government jurisdictions with a population of 50,000 or less are considered small entities.

The entities that would be affected by the proposed action or alternatives are small entities. An IRFA is presented here in compliance with the RFA.

3.2 Reason and objective for considering the proposed action

Section 1.1 of the RIR for this proposed action contains a brief discussion of the reasons the action is being considered, the need and objective for the proposed action, and the legal basis for the proposed action. In addition, Section 1.5 of the RIR contains descriptions of the alternatives considered. These discussions and descriptions are not repeated in this section.

3.3 Description of the entities to which the proposed rule would apply

The proposed rule would apply to persons who possess and use an IFQ Registered Buyer Permit or an IFQ Permit (fishermen). The proposed rule would not apply to IFQ registered buyer permit

holders who do not operate as shoreside processors having reported IFQ landings. It also would not apply to IFQ permit holders who do not have IFQ fish landings (i.e., unfished permits). In 1998, approximately 9% of IFQ pounds available remained unfished by the end of the season. As for IFQ registered buyers, generally, fewer than 40% of those who held IFQ Registered Buyer Permits actually reported landings (i.e., active buyer permit users).

The proposed rule could indirectly impact the income of IFQ crew members if IFQ permit holders reduce the income to members of their crew due to the cost recovery fees. Detailed figures for the number of IFQ crew members are not available.

3.4 Number of Small Entities affected

The actions being proposed could directly affect two types of regulated entities. They are:

- 1) IFQ registered buyers who are shoreside processors and purchase unprocessed IFQ halibut or sablefish from IFQ permit holders (approximately 80 persons) and
- 2) IFQ permit holders (approximately 4,000 persons).

IFQ permit holders are principally IFQ halibut and IFQ sablefish fishermen. By year-end 1998, there were 3,978 persons who held one or more IFQ permits (fishermen) and reported landing of at least one pound of IFQ catch.

In 1998, NMFS issued 859 IFQ registered buyer permits issued by NMFS for the IFQ Program. Of these, only 309 were actively operating as IFQ registered buyers. Only 79 of these actively operating IFQ registered buyers operated as shoreside processors that purchased unprocessed IFQ halibut or sablefish. These 79 IFQ registered buyers identified themselves in 1998 as shoreside processors, and are the only type of IFQ registered buyers regulated under the proposed action. The number of IFQ permits and IFQ registered buyer permits has diminished each year since 1995 when the program was initiated and is expected to stabilize near 1998 levels. For purposes of this IRFA, NMFS considers all of these 79 IFQ registered buyers small entities. Therefore, the total number of small entities, IFQ registered buyer and IFQ permit holders, that would be regulated by the proposed action would be expected to be equal to or less than 4,057.

The economic impact of the proposed rule would be equal or less than 3% of the IFQ permit holder's gross revenue associated with IFQ landings. The dollar amount of this percentage would vary for each permit holder depending on volume of IFQ landings.

Based on the 1998 average halibut ex-vessel price and a fee percentage of 3%, the average IFQ halibut permit holder (i.e., possessing one permit with 9,323 lbs. in attributed IFQ annual landings) would incur an IFQ fee of \$392 ($[9,323 \text{ lbs.} \times \$1.40] \times 3\%$). Similarly, based on an average sablefish ex-vessel price of \$1.60/lbs. And a 3% fee, the average IFQ sablefish permit holder (i.e., possessing one permit with 14,880 lbs in attributed IFQ annual landings) would incur an IFQ fee of \$714 ($[14,880 \text{ lbs.} \times \$1.60] \times 3\%$). The economic impact of the proposed fee on the all IFQ permit holders would equal approximately \$2.8 million. This estimate is based on the 1998 fiscal year IFQ Program direct management and enforcement costs. The total economic impact of the proposed fee on the industry would equal approximately \$2.8 million in direct fees (incurred by permit holders) plus the administrative costs associated with proposed recordkeeping and reporting requirements (incurred by permit holders and IFQ registered buyers).

3.5 Recordkeeping and reporting requirements

This proposed rule includes new recordkeeping and reporting requirements for IFQ permit holder and IFQ registered buyers operating as shoreside processors buying halibut or sablefish landed under the Alaska IFQ Program. Basic clerical service skills, available at an approximate wage rate of \$12/hr., are all that is expected necessary to satisfactorily complete these recordkeeping and reporting requirements. The estimated time for an IFQ permit holder to complete the IFQ payment submission form package is 2.0 hours per response. Approximately 3,978 IFQ permit holders would have an estimated single reporting response per year at an estimated cost of \$24.00 each. The estimated time for an IFQ registered buyer to complete an IFQ Buyer Report package is 2.0 hour per response. Approximately 100 IFQ registered buyers would be required to complete the IFQ Buyer Report. Each of these IFQ registered buyers would have an estimated single reporting response per year at an estimated cost of \$24.00 each. The estimated response times include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Only basic mathematical skills of multiplication and addition would be required of the IFQ permit holders and registered buyers to comply with the proposed new recordkeeping and reporting requirements for the IFQ Cost Recovery Program.

In summary, the proposed rule would impose additional recordkeeping and reporting requirements to the IFQ fishing industry at an estimated total cost of \$97,368 ($[3,978 \text{ permit holders} + 79 \text{ permit holders}] \times \24.00).

3.6 Relevant Federal rules

A description of the relevant Federal rules associated with an IFQ Cost Recovery Program is presented in Section 1.1 of this document. There are believed to be no Federal rules that may duplicate, overlap, or conflict with the IFQ Cost Recovery Program.

3.7 Description of alternatives to minimize impact on small entities

The public process for designing the proposed IFQ fee program created opportunity for NMFS to modify the program based on preliminary public suggestions. For example, initially NMFS proposed using standard ex-vessel prices to calculate the ex-vessel value of all IFQ landings and to establish the standard prices using actual ex-vessel prices from the previous year and projection of price changes (see the March 20 Draft Proposal). That proposal included establishing standard ex-vessel prices (Option 2 of Element 6, rejected) and is similar to what was done under the Research Plan Fee Collection Program.

In response to the preferences of the Council and Committee to use actual ex-vessel value when feasible, NMFS modified its initial proposal in two important ways by late May 1998. First, IFQ fees would be collected based on actual ex-vessel value whenever there was an ex-vessel transaction (Option 2 in Element 14 - rejected, and Option 1 in Element 14 - preferred). Second, the standard ex-vessel prices, to be used when an ex-vessel transaction did not occur, would be based on year to date average ex-vessel prices for the current year (Option 1 in Element 7, preferred).

Section 1.5 and Section 1.6 in the RIR for this proposed action describe and analyze the various alternative elements within an IFQ Cost Recovery Program and includes those that would minimize impacts on small entities. Listed below is a descriptive summary of some of the elements that were incorporated into the proposed action in order to minimize negative impacts on small entities.

The proposed IFQ Cost Recovery Program does the following:

1. Imposes a fee liability only on IFQ halibut and sablefish landings, and not on all species landed by IFQ fishermen.
2. Determines the IFQ fee percentage that is less than 3% when possible and justified by fee percentage calculation as described in proposed regulation.

3. Allows fishermen to use actual ex-vessel value of their IFQ landings whenever possible in determining the IFQ fee liability.

4. Establishes the use of standard prices, when necessary, that are primarily based on current year ex-vessel prices rather than previous year ex-vessel prices.

5. Establishes the use of standard prices, when necessary, that are refined to represent ex-vessel prices by species, by month, and by port-group.

6. Only requires registered buyers and IFQ permit holders to submit recordkeeping and reporting information once a year, rather than multiple mid-season submissions.

7. Implements the fee liability prior to the start of the IFQ fishing season and therefore avoids potential inequities among participating small entities that could arise from mid-season implementation.

Listed below are alternative options to those included in the proposed rule that could further minimize economic impact on small entities in the long-run.

1. Alternative A: status quo.

2. Alternative B using Option 3 in Element 9 (rejected) rather than Option 2 (preferred) as proposed. This alternative would provide IFQ registered buyers with electronic reporting as an option for submitting their IFQ Registered Buyer Report.

3. Alternative B using Option 2 in Element 8 (rejected) rather than Option 1 in Element 8 (preferred) as proposed. This alternative would not charge IFQ permit holders with cost recovery fees on their retro-payments.

3.8 Summary and Conclusions

There are several reasons why none of the alternatives, elements, and sub-options being considered are expected to significantly adversely impact a substantial number of small entities. First, the fees collected from the IFQ sablefish and halibut fishery cannot exceed 3 percent of the ex-vessel value of the IFQ fisheries. Second, most of the participants in this IFQ fishery participate to some degree in other fisheries; therefore, a fee of 3 percent or less of the ex-vessel value of the IFQ halibut and sablefish would likely be less than 3 percent of the gross earnings of most participants in the IFQ fishery. Third, the additional recordkeeping and reporting costs are expected to be much less than the fee liability for most participants in the IFQ fishery.

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6.0 LITERATURE CITED

National Marine Fisheries Service (NMFS). 1998a. "Final Supplemental Environmental Impact Statement for the Groundfish of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska." in National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802. 2 volumes + ROD.

NMFS. 1998b. Endangered Species Act. Section 7 Consultation-Biological Opinion on the Effects of the Walleye Pollock and Atka Mackerel Fisheries Conducted under the Bering Sea and Aleutian Islands and Gulf of Alaska Fishery Management Plans of the North Pacific Fishery Management Council. December 3, 1998. National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802.

NMFS. 1998c. Memorandum from the Director of the Office of Sustainable Fisheries to the Director of the Office of Protected Resources. December 16, 1998. NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802.

NMFS. 1998d. Endangered Species Act. Section 7 Biological Opinion-Fishery Management Plan for the Bering Sea and Aleutian Islands and Gulf of Alaska Groundfish Fisheries and the 1999 Total Allowable Catch Specification and its effects to Steller Sea lions. December, 24, 1998. National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802.

NMFS. 1998e. Memorandum for the Record from William W. Stelle, Jr. November 1, 1998. NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802.

USFWS. 1998. Memorandum for Steven Pennoyer, Administrator, Alaska Region, from the USFWS, Anchorage, Alaska, December 2, 1998. NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802.

APPENDIX A

Magnuson-Stevens Fishery Conservation and Management Act Language Concerning the IFQ And CDQ Cost Recovery Fee Programs and Relevant Language Concerning the Central Registry Program and the IFQ Loan Obligation and Guarantee Program

Section 304(d)(2)

(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

- (i) individual fishing quota program; and
- (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C) (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

Section 305(h)

(5) (A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of--

- (i) administering the central registry system; and
- (ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

Section 305(i)

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

Section 303(d)

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the--

- (i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and
- (ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

108(g) North Pacific Loan Program

(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.

FINAL REGULATORY FLEXIBILITY ANALYSIS
FOR THE
INDIVIDUAL FISHING QUOTA COST RECOVERY PROGRAM

January 18, 2000

Lead Agency: National Marine Fisheries Service
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Abstract: This document is the Final Regulatory Flexibility Analysis (FRFA) associated with action to establish cost recovery for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Cost recovery fees collected under the action will be limited to 3% of the ex-vessel value of IFQ landings and will be used to recover actual costs directly related to the management and enforcement of the IFQ Program. This FRFA is presented to comply with Regulatory Flexibility Act requirements associated with Federal promulgation of a final rule.

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1.0 BACKGROUND

1.1 Legal Basis

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands area (BSAI) are managed under two fishery management plans (FMPs). Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94-265, 16 U.S.C. 1801 (Magnuson-Stevens Act). The GOA FMP was approved by the Secretary of Commerce (Secretary) and became effective in 1978; the BSAI FMP became effective in 1982. The IFQ program is a limited access management system for the fixed gear Pacific halibut and sablefish fisheries in waters in and out of Alaska (IFQ Program). The IFQ Program was approved by the Secretary in November 1993 and fully implemented beginning in March 1995. The IFQ Program sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act.

The Northern Pacific Halibut Act of 1982 (NPHA), P.L. 97-176, 16 U.S.C. 773 c (c) authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. waters which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission. The halibut IFQ Program is implemented by Federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act and the NPHA.

1.2 Management Objectives

The objective of developing an IFQ Cost Recovery Program is to collect revenue from fishermen participating in the IFQ Program to help reduce the costs incurred by the Federal government as a result of the management and enforcement of the IFQ Program.

As amended October 1996, the Magnuson-Stevens Act requires the Secretary to implement programs to recover the management and enforcement costs of the Alaska IFQ and Community Development Quota (CDQ) programs. Magnuson-Stevens Act language concerning that requirement is presented in Appendix A. Relevant Magnuson-Stevens Act language concerning the central registry program and the IFQ loan obligation and guarantee program also is included in Appendix A. The cost recovery, central registry and loan programs are three separate but related programs required by the Magnuson-Stevens Act.

The IFQ Cost Recovery Program was developed by the National Marine Fisheries Service (NMFS) with assistance from the Council, participants in the IFQ fisheries, and other interested parties. The Council's Cost Recovery Committee had an active roll in identifying alternatives and in providing information to assess the alternatives. The Council provided an effective forum for discussing the elements of the IFQ Cost Recovery Program. However, the Council was not required to take formal action on the regulatory amendment that would implement the program.

1.3 Description of alternatives

1.3.1 Purpose of and need for the action to Implement a Cost Recovery Program for the IFQ Program

The IFQ Program will directly benefit many of those who own or use IFQs and others who are involved in harvesting and processing IFQ halibut and sablefish, but it has increased management and enforcement costs and it has made it more difficult for some to participate in the fixed gear halibut and sablefish fisheries. To address these issues, the Magnuson-Stevens Act was amended to require the Secretary to collect a fee to: 1) recover the actual costs directly related to the management and enforcement of the IFQ Program and 2) aid in financing both the purchase of IFQs by fishermen who fish from small vessels and the first-time purchase of IFQs by entry level fishermen.

Council and industry support for the concept of cost recovery was demonstrated during the development of the IFQ Program. The Council's final action on the initial IFQ Program included a commitment to implement a Cost Recovery Program as soon as such authority was added to the Magnuson-Stevens Act. More recently, Council and industry support was important in having the cost recovery requirements included in the Magnuson-Stevens Act and without the implementation delay required for some other IFQ Programs. That support was also reflected in their contributions to the development of Alternative B.

The action is intended to address equity issues associated with the distribution of the costs and benefits of the IFQ Program by implementing a Cost Recovery Program as required by the Magnuson-Stevens Act and as committed to by the Council and industry.

1.3.2 Alternatives considered

Alternative A: Status quo: no IFQ Cost Recovery Program would be implemented.

This alternative would require no action by NMFS but would not be in compliance with the Magnuson-Stevens Act. The Federal

government incurs all IFQ Program cost under the status quo alternative.

Alternative B: Implement a Cost Recovery Program by revising the pertinent regulations.

This alternative would implement a Cost Recovery Program that is defined by a specific set of elements. Options exist for many of the elements of the IFQ Cost Recovery Program. There are a broad number of possible alternatives depending on the mix of various options associated with different elements of the IFQ Cost Recovery Program. Given the relatively large number of such potential combinations and subsequent alternatives, issues are addressed in the context of discussions regarding the identified elements and options where appropriate. By design, not all elements have options and therefore variations are not intended for consideration. Discussed below are the elements and options (when they exist). Where options are considered, the preferred option is identified and typically it is presented first.

The elements of the IFQ Cost Recovery Program address the 17 topics listed below.

1. Scope of Cost Recovery Program (4 options)
2. Objectives of Cost Recovery Program (no options)
3. Identification of the IFQ fishery (2 options)
4. Annual determination of the fee percentage (2 options)
5. Catch subject to the IFQ cost recovery fee (3 options)
6. Determining ex-vessel values of IFQ halibut and IFQ sablefish landings (3 options)
7. Establishing standard ex-vessel prices for IFQ halibut and IFQ sablefish (2 options)
8. Accounting for post-season ex-vessel price adjustments and other corrections to ex-vessel value (2 options)
9. IFQ Buyer Report (3 options)
10. Recoverable IFQ Program costs (no options)
11. Limited Access System Administration Fund (LASAF) deposits and accounts (no options)
12. Treasury deposits for IFQ loan program (no options)

13. Annual IFQ Cost Recovery Program report (2 options)
14. IFQ fee collection and submission mechanisms and schedules (3 options)
15. Compliance incentives (2 options)
16. Dispute resolution process (2 options)
17. Implementation date (3 options)

With respect to who would be regulated under the IFQ Cost Recovery Program and the basis of the fee liabilities, an initial summary is presented below for some of the main preferred options within their respective elements of Alternative B:

1. The fee collection and submission responsibility would reside with each IFQ permit holder (Option 1 in Element 14, preferred).
2. For all IFQ pounds landed and sold, the cost recovery fee would be based on either the actual ex-vessel value or the standard ex-vessel value of such an ex-vessel transaction (Option 3 in Element 6, preferred).
3. For all IFQ landed but not sold, the fee would be based on the standard ex-vessel value of the IFQ halibut and IFQ sablefish landings which would be calculated using NMFS standard ex-vessel prices (Option 3 in Element 6, preferred).
4. There would be an annual IFQ Registered Buyer Ex-vessel Value Report (IFQ Buyer Report) required from each IFQ registered buyer who operates as a shoreside processor and purchases IFQ halibut or IFQ sablefish. The information in these reports would be used to establish NMFS standard ex-vessel prices by species, month, and port or port-group (Option 1 in Element 7, preferred).

Typically, the appropriateness of an option for a specific element is dependent on the options selected for other elements. In some cases, not all of the options for one element have a consistent or corresponding option for each of the other elements. Therefore, if the preferred option for one element changes, the preferred option may change for other elements; and, in some cases, the selection of other than the preferred option for an element would require that additional options be developed for some other elements. In this way the potential range of alternatives under consideration is much broader than might be implied by the Alternative "A" versus Alternative "B" dichotomy presented at the outset of this section.

1.3.3 Elements and their respective options

Element 1: Scope of the IFQ Cost Recovery Program

Four options were considered in Element 1. They are initially to implement the Cost Recovery Program(s) for:

1. the IFQ Program (preferred option);
2. the IFQ Program and the halibut CDQ program;
3. the IFQ Program and the halibut and sablefish CDQ programs; and
4. the IFQ Program and the multi-species CDQ program, including BSAI halibut, sablefish, other groundfish, and crab.

Element 2: Program objectives

The objectives of the IFQ Cost Recovery Program are listed below and recognized as having trade-off attributes:

1. to meet the Magnuson-Stevens Act requirements to implement a program to recover the management and enforcement costs of the IFQ Program;
2. to do so in a manner that is equitable, effective, and efficient; and
3. to avoid delays in implementing the program.

Element 3: Identification of the IFQ fishery

Two options were considered regarding identification of the fishery for the purpose of establishing the fee percentage and separate accounts in the LASAF.

Option 1. The Alaska halibut fishery and the fixed gear sablefish fisheries in BSAI and GOA would be defined as one IFQ fishery (preferred).

Option 2. The Alaska halibut fishery, the BSAI fixed gear sablefish fishery, and GOA sablefish fisheries would be defined as three IFQ fisheries.

Element 4: Annual determination of the fee percentage

NMFS would set the fee percentage in regulations and annually determine if the fee percentage would be changed. The initial

fee percentage would be 3% or less and any subsequent changes that year would be based on the following:

1. the catch subject to the IFQ cost recovery fee;
2. the projected ex-vessel value of that catch;
3. the costs directly related to the management and enforcement of the IFQ Program;
4. the projected IFQ Program balance in the LASAF; and
5. nonpayment of fee liabilities expected.

NMFS would publish any revised fee percentage in the Federal Register.

The fee percentage for the IFQ Cost Recovery Program would be set equal to the calculated fee percentage using the following equation or 3 percent.

$$\text{Calculated fee percentage} = [100 \times (\text{DPC} - \text{AB}) / \text{V}] / (1 - \text{NPR})$$

where DPC is the direct program costs for the IFQ fishery for the previous fiscal year, AB is the projected end of the year LASAF account balance for the IFQ Program, V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and NPR is the fraction of fee liabilities that is estimated to result in nonpayment. (NMFS plans to estimate NPR equal to zero for at least the first year or two of the program and will therefore have no effect on the fee percentage.)

Element 5: Catch subject to IFQ cost recovery fee

The following options were considered:

1. All halibut and sablefish IFQ landings would be subject to the fee (preferred option).
2. All halibut and sablefish IFQ catch, including landings and discards, would be subject to the fee.
3. All halibut and sablefish IFQ landings and all associated groundfish landings would be subject to the fee.

With Option 1 of Element 5, the IFQ fees would be based on the ex-vessel value of the retained catch of the IFQ species harvested under a Federal IFQ Program whether the catch is taken in the EEZ or State waters. And, for each IFQ species, the fee

would be the product of the fee percentage and the ex-vessel value of the IFQ landings.

Element 6: Determining ex-vessel values of IFQ halibut and IFQ sablefish landings

The following three options were considered in Element 6:

1. Actual ex-vessel value (i.e., the total monetary sale amount fishermen receive for IFQ landings from IFQ registered buyers operating as shoreside processors, including any retro-payments) would be required for use as the ex-vessel value for all landed IFQ pounds that result in such actual ex-vessel transaction; however, standard ex-vessel value (based on NMFS standard ex-vessel prices) would be the ex-vessel value for all other landed IFQ pounds (i.e., unsold pounds).
2. Standard ex-vessel value (based on NMFS standard ex-vessel prices) would be used as the ex-vessel value for all landed IFQ pounds.
3. Either actual ex-vessel value, when it exists, (i.e., the total monetary sale amount fishermen receive for IFQ landings from any IFQ registered buyer, including any retro-payments) or standard ex-vessel value (based on NMFS standard ex-vessel prices) could be used as the ex-vessel value of landed IFQ pounds. Standard price would be used when actual ex-vessel value does not exist for IFQ landings (preferred option).

Element 7: Establishing standard ex-vessel prices for IFQ halibut and IFQ sablefish

Two options were considered in Element 7. For clarity, they are defined below in terms of the fees that would be collected for 2000 IFQ landings.

1. By December 15, 2000, monthly standard ex-vessel prices would be established, by IFQ species and port-group, for each month. These NMFS standard prices would be based on value information provided once annually in the IFQ Buyer Report submitted to NMFS by October 15, 2000. NMFS standard prices for January through September 2000 would be calculated from values for the corresponding month in 2000 documented in the IFQ Buyer Report. NMFS standard prices for October through December 2000 would be calculated from values for the corresponding month in 1999 as documented in the IFQ

Buyer Report, as well as estimated price changes for these months in 2000 (preferred option).

2. Standard ex-vessel prices for 2000 would be established late in 1999 based on actual ex-vessel prices for 1999 and expected price changes for 2000.

The standard ex-vessel prices would be established by IFQ species, landings period (month), and port (or port-group) when there are sufficient registered buyers and permit holders to ensure that such detailed standard prices do not reveal confidential information of IFQ permit holders or IFQ registered buyers.

Element 8: Accounting for post-season settlements (retro-payments)

Two options were considered. They are defined below in terms of year 2000 and year 2001 IFQ landings to simplify the explanation of each option. With each option, the standard ex-vessel prices established in late 2000 would be the basis of fee payments due by January 31, 2001 for year 2000 IFQ landings.

1. For fees based on actual ex-vessel value for year 2000 IFQ landings, fee payments would be due January 31, 2001. If retro-payments for year 2000 landings are received by the IFQ permit holder in year 2001 (post-season settlements), fees for the ex-vessel value of those post-season settlements would be due January 31, 2002. For fees based on standard ex-vessel value for year 2000 landings, fee payments would be due January 31, 2001 based on standard prices for year 2000. Such standard prices would be published in the Federal Register and listed by landing port-group and month and calculated using data on the following: a) post-season settlements made in year 2000 for year 1999 landings as recorded on annual IFQ Buyer Reports in year 2000, and b) monthly value (including in-season retro-payments) and landing data as recorded on annual IFQ Buyer Reports in year 2000 for year 2000 landings (preferred option).
2. There would be no fee payment on post-season settlements.

Element 9: IFQ Buyer Report

Three options were considered by NMFS regarding the IFQ Buyer Report for the IFQ Cost Recovery Program. They are as follows:

Option 1. Use existing Alaska Department of Fish and Game data.

Option 2. Use New IFQ registered buyer reports: manual
(Preferred Option).

Option 3. Use New IFQ registered buyer reports: electronic

In Option 2 (preferred), each IFQ registered buyer who is operating as a shoreside processor and purchases IFQ halibut or IFQ sablefish from an IFQ permit holder would be required to submit an annual IFQ Buyer Report to NMFS. The report would be submitted by October 15 each year and contain the following information:

- a. January - September IFQ landings and ex-vessel value data for the current year by species, port, and month;
- b. October - December IFQ landings and ex-vessel value data for the previous year by species, port, and month;
- c. post-season settlement payments not reported in the previous annual IFQ Buyer Report.

These reports would provide the data used to estimate standard prices by species, month, and port-group. The feasibility of allowing or requiring electronic reporting of these data will be evaluated. The required information must be provided on a form supplied by NMFS.

Element 10: Recoverable IFQ Program costs

The recoverable costs for the IFQ Program include Federal management and enforcement costs that would not occur in the absence of the IFQ Program. They would not include either Federal overhead costs or stock assessment and observer program costs that would occur in the absence of the IFQ Program.

NMFS projections of recoverable costs and of the other variables that are used in determining the annual fee percentage would be available (e.g., annual report, Element 13) for review and comment by the Council, participants in the IFQ fisheries, and other interested parties prior to being used to establish or change the IFQ fee percentage. Further, the actual recoverable costs of the IFQ Program for each year would be included in an annual report by NMFS referred to below.

Element 11: Limited Access System Administration Fund deposits and accounts

LASAF deposits: With the exception of the IFQ fees that are deposited in the Treasury and available to cover the costs of the new IFQ loan obligations and loan guarantee program, all IFQ fees would be deposited in the LASAF which would be established in the Treasury.

LASAF accounts: Within the common LASAF, separate accounts would be created to ensure that: 1) the funds from the IFQ fishery are used only to pay for the direct management and enforcement costs of the IFQ Program and 2) the funds from the permit registration and transfer fees could be used to pay for the cost of administering the central registry system.

Element 12: Treasury deposits for IFQ loan program

The percentage of the IFQ fees, up to the 25 percent limit, to be deposited in the Treasury for the IFQ loan obligations and loan guarantee program would be approved and implemented by the Secretary based on Council recommendations. There are no options with this element.

Element 13: Annual IFQ Cost Recovery Program report

The annual report would provide information concerning the amount of the fees received by NMFS, the disposition of those fees, the status of the IFQ account in the LASAF, and the IFQ Program costs for the previous fiscal year. The annual report could be included with other reports on the performance of the IFQ Program. There are no options with this element.

Element 14: IFQ fee collection and submission mechanisms and schedules

Three options in Element 14 were considered with respect to who would collect the fees and submit them to NMFS. They are as follows:

1. The fees would be collected by IFQ permit holders for NMFS during the calendar year in which the fish are harvested. Fees would be submitted by the IFQ permit holders to NMFS by January 31 of the following year. These fees submitted by IFQ permit holders would be based on IFQ pounds landed (preferred option).
2. The fees would be collected from IFQ permit holders by the IFQ registered buyers at the time of the sale of the fish to the IFQ registered buyer and the collected

fees would be submitted by the IFQ registered buyers to NMFS by January 31 of the following year. The fees collected by IFQ registered buyer from IFQ permit holders would be based on all IFQ pounds purchased.

3. The fees would be collected by the quota share (QS) holders for NMFS in the last quarter of the calendar year in which the fish are harvested and submitted by the QS holders to NMFS by January 31 of the following year. The fees collected and submitted by each QS holder would be based on all IFQs issued, not necessarily landed, for the QSs held by that person.

With each option, pre-payment of estimated fee liabilities would be permitted but not required.

In Option I, IFQ permit holders would be allowed to calculate their fee liabilities for landed IFQ pounds using actual ex-vessel values or standard ex-vessel values. IFQ permit holders would be required (under Option 1 in Element 6) to use the appropriate NMFS standard prices to calculate the fee liabilities for all IFQ pounds that are landed but not sold. During the fourth quarter of each year, NMFS would publish the standard price list in the Federal Register. The NMFS standard price list would identify prices by species, month, and port-group. By December 15, NMFS would also provide IFQ permit holders fee submission forms and a landing summary of IFQ pounds debited from their IFQ permit(s) during the fishing season. IFQ permit holders would be required to calculate their fee liabilities using the fee submission form, the NMFS standard prices list, their annual landing summary, and their actual ex-vessel value information as appropriate. IFQ permit holders would be required to submit the fees to NMFS by January 31 of the following year. NMFS would evaluate these fee submissions by IFQ permit holders using information including the following:

1. the IFQ permit holder's IFQ halibut and IFQ sablefish landings by landing period and port group for the current year;
2. NMFS standard prices by species, landing period and port group for the current year and the IFQ Buyer Report data from which they were derived;
3. the IFQ permit holder's documented post-season settlement income received in the current year for landings made during the previous year; and
4. the IFQ Buyer Report's documented post-season settlement payments issued in the current year for landings made during the previous year.

Element 15: Compliance incentives

Option 1 in Element 15 (preferred) would be used to motivate compliance among IFQ permit holders and IFQ registered buyers regarding their fulfilling the requirements associated with submitting fees (and forms) and IFQ Buyer Reports, respectively:

Option 1. An IFQ permit is valid only if all IFQ fee has been paid that is due as a result of final agency action (FAA). Furthermore, transfers of IFQ or quota share would not be approved until NMFS has determined that the person applying to make or receive such transfer has paid all IFQ fees that have become due as a result of an initial administrative determination (IAD) (preferred).

Option 2: No compliance incentives (rejected)

Element 16: Dispute resolution process

Two options were consider regarding the IFQ Cost Recovery Program dispute resolution process. The are as follows:

Option 1: Within 60 days of issuance of an Initial Administrative Determination (IAD) by the Regional Administrator concerning an IFQ permit holder compliance with the IFQ Cost Recovery Program, an IFQ permit holders could appeal an IAD to the Office of Administrative Appeal in the Alaska Regional Office of NMFS (preferred).

Option 2: No appeals mechanism would exist (rejected).

Element 17: Implementation date

Three alternative implementation dates are considered. They are:

1. March 15, 1999;
2. later in 1999; and
3. March 1, 2000 (preferred option).

2.0 Requirements to prepare a FRFA

The objective of the Regulatory Flexibility Act (RFA) is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. The RFA requires an FRFA when an agency promulgates a final rule.

A FRFA succinctly describes the need and objective for the rule, describes the significant alternatives to the rule that would minimize significant economic impact on small entities, and summarizes issues (if any) raised by the public comments to the Initial Regulatory Flexibility Analysis (IRFA) for the previously published proposed rule. To ensure a broad consideration of impacts and alternatives, NMFS has prepared an FRFA pursuant to 5 USC 604, without first making the threshold determination of whether or not this action would have a significant economic impact on substantial number of small entities. This Final Regulatory Flexibility Analysis (FRFA) for the IFQ Cost Recovery Program is presented in compliance with the RFA.

The Small Business Administration (SBA) 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 that are independently owned and operated and not dominant in their field, and government jurisdictions with a population of 50,000 or less are considered small entities.

The entities that would be affected by the action or alternatives are small entities. An IRFA is presented here in compliance with the RFA.

2.2 Reason and objective for considering the action

Section 1 of this FRFA for the IFQ Cost Recovery Program contains a brief discussion of the reasons the action is being considered, the need and objective for the action, and the legal basis for the action. In addition, Section 1 of this document contains descriptions of the alternatives considered. These discussions and descriptions are not repeated in this section.

2.3 Description of the entities to which the rule would apply

The rule would apply to persons who possess and use an IFQ Registered Buyer Permit or an IFQ Permit (fishermen). The rule would not apply to IFQ registered buyer permit holders who do not operate as shoreside processors having reported IFQ landings. It also would not apply to IFQ permit holders who do not have IFQ fish landings (i.e., unfished permits). In 1998, approximately nine percent of IFQ pounds available remained unfished by the end of the season. As for IFQ registered buyers, generally, fewer than 40% of those who held IFQ Registered Buyer Permits actually reported landings (i.e., active buyer permit users).

The rule could indirectly impact the income of IFQ crew members if IFQ permit holders reduce the income to members of their crew due to the cost recovery fees. Detailed figures for the number of IFQ crew members are not available.

2.4 Number of Small Entities affected

The action would directly affect two types of regulated entities. They are:

- 1) IFQ registered buyers who are shoreside processors and purchase unprocessed IFQ halibut or sablefish from IFQ permit holders (approximately 80 persons) and
- 2) IFQ permit holders (approximately 4,000 persons).

IFQ permit holders are principally IFQ halibut and IFQ sablefish fishermen. By year-end 1998, there were 3,978 persons who held one or more IFQ permits (fishermen) and reported landing of at least one pound of IFQ catch.

In 1998, NMFS issued 859 IFQ registered buyer permits issued by NMFS for the IFQ Program. Of these, only 309 were actively operating as IFQ registered buyers. Only 79 of these actively operating IFQ registered buyers operated as shoreside processors that purchased unprocessed IFQ halibut or sablefish. These 79 IFQ registered buyers identified themselves in 1998 as shoreside processors, and are the only type of IFQ registered buyers regulated under the action. The number of IFQ permits and IFQ registered buyer permits has diminished each year since 1995 when the program was initiated and is expected to stabilize near 1998 levels. For purposes of this IRFA, NMFS considers all of these 79 IFQ registered buyers small entities. Therefore, the total number of small entities, IFQ registered buyer and IFQ permit holders, that would be regulated by the action would be expected to be equal to or less than 4,057.

The economic impact of the rule would be equal or less than 3% of the IFQ permit holder's gross revenue associated with IFQ landings. The dollar amount of this percentage would vary for each permit holder depending on volume of IFQ landings. Based on the 1998 average halibut ex-vessel price and a fee percentage of 3%, the average IFQ halibut permit holder (i.e., possessing one permit with 9,323 lbs. in attributed IFQ annual landings) would incur an IFQ fee of \$392 ($[9,323 \text{ lbs.} \times \$1.40] \times 3\%$). Similarly, based on an average sablefish ex-vessel price of \$1.60/lbs. And a 3% fee, the average IFQ sablefish permit holder (i.e., possessing one permit with 14,880 lbs in attributed IFQ annual landings) would incur an IFQ fee of \$714 ($[14,880 \text{ lbs.} \times \$1.60] \times 3\%$). The economic impact of the fee on the all IFQ permit

holders would equal approximately \$2.8 million. This estimate is based on the 1998 fiscal year IFQ Program direct management and enforcement costs. The total economic impact of the fee on the industry would equal approximately \$2.8 million in direct fees (incurred by permit holders) plus the administrative costs associated with these new recordkeeping and reporting requirements (incurred by permit holders and IFQ registered buyers).

2.5 Recordkeeping and reporting requirements

This rule includes new recordkeeping and reporting requirements for IFQ permit holder and IFQ registered buyers operating as shoreside processors buying halibut or sablefish landed under the Alaska IFQ Program. Basic clerical service skills, available at an approximate wage rate of \$12/hr., are all that is expected necessary to satisfactorily complete these recordkeeping and reporting requirements. The estimated time for an IFQ permit holder to complete the IFQ payment submission form package is 2.0 hours per response. Approximately 3,978 IFQ permit holders would have an estimated single reporting response per year at an estimated cost of \$24.00 each. The estimated time for an IFQ registered buyer to complete an IFQ Buyer Report package is 2.0 hour per response. Approximately 100 IFQ registered buyers would be required to complete the IFQ Buyer Report. Each of these IFQ registered buyers would have an estimated single reporting response per year at an estimated cost of \$24.00 each. The estimated response times include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Only basic mathematical skills of multiplication and addition would be required of the IFQ permit holders and registered buyers to comply with the new recordkeeping and reporting requirements for the IFQ Cost Recovery Program.

In summary, the rule would impose additional recordkeeping and reporting requirements to the IFQ fishing industry at an estimated total cost of \$97,368
([3,978 permit holders + 79 permit holders] X \$24.00).

2.6 Relevant Federal rules

A description of the relevant Federal rules associated with an IFQ Cost Recovery Program is presented in Section 1.1 of this document. There are believed to be no Federal rules that may duplicate, overlap, or conflict with the IFQ Cost Recovery Program.

2.7 Description of alternatives to minimize impact on small entities

The public process for designing the IFQ fee program created opportunity for NMFS to modify the program based on preliminary public suggestions. For example, initially NMFS proposed using standard ex-vessel prices to calculate the ex-vessel value of all IFQ landings and to establish the standard prices using actual ex-vessel prices from the previous year and projection of price changes. That proposal included establishing standard ex-vessel prices (Option 2 of Element 6, rejected) and is similar to what was done under the Research Plan Fee Collection Program.

In response to the preferences of the Council and Committee to use actual ex-vessel value when feasible, NMFS modified its initial proposal in two important ways by late May 1998. First, IFQ fees would be collected based on actual ex-vessel value whenever there was an ex-vessel transaction (Option 2 in Element 14 - rejected, and Option 1 in Element 14 - preferred). Second, the standard ex-vessel prices, to be used when an ex-vessel transaction did not occur, would be based on year to date average ex-vessel prices for the current year (Option 1 in Element 7, preferred).

Section 1 in this document describe the various alternative elements within an IFQ Cost Recovery Program and includes those that would minimize impacts on small entities. Listed below is a descriptive summary of some of the elements that were incorporated into the action in order to minimize negative impacts on small entities.

The IFQ Cost Recovery Program does the following:

1. Imposes a fee liability only on IFQ halibut and sablefish landings, and not on all species landed by IFQ fishermen.
2. Determines the IFQ fee percentage that is less than 3% when possible and justified by fee percentage calculation as described in regulation.
3. Allows fishermen to use actual ex-vessel value of their IFQ landings whenever possible in determining the IFQ fee liability.
4. Establishes the use of standard prices, when necessary, that are primarily based on current year ex-vessel prices rather than previous year ex-vessel prices.
5. Establishes the use of standard prices, when necessary, that are refined to represent ex-vessel prices by species, by month, and by port-group.

6. Only requires registered buyers and IFQ permit holders to submit recordkeeping and reporting information once a year, rather than multiple mid-season submissions.

7. Implements the fee liability prior to the start of the IFQ fishing season and therefore avoids potential inequities among participating small entities that could arise from mid-season implementation.

Listed below are alternative options to those included in the final rule that could further minimize economic impact on small entities in the long-run. Included is a brief statement of the reason why each such alternative was rejected.

1. Alternative A: status quo. This alternative was rejected by NMFS because it would not satisfy the Magnuson-Stevens Act requirements of establishing an IFQ Cost Recovery Program.

2. Alternative B using Option 3 in Element 9 (rejected) rather than Option 2 (preferred) as proposed. This alternative would provide IFQ registered buyers with electronic reporting as an option for submitting their IFQ Registered Buyer Report. This alternative was rejected by NMFS because it was not possible or economically feasible to establish such an electronic reporting procedure for IFQ registered buyers in sufficient time and manner that would enable the alternative to retain its minimizing effect on small entities. However, this alternative will be pursued during future years of the IFQ Cost Recovery Program if it remains a viable option for minimizing impacts on small entities.

3. Alternative B using Option 2 in Element 8 (rejected) rather than Option 1 in Element 8 (preferred) as proposed. This alternative would not charge IFQ permit holders with cost recovery fees on their retro-payments. The alternative was rejected because it would reduce the effectiveness of the IFQ Cost Recovery Program to comply with the Magnuson-Stevens Act objective to recovery actual enforcement and management costs associated with the IFQ Program.

2.8 Summary of Public Comment Issues to the IRFA

There where no public comments submitted to NMFS regarding the IRFA associated with the proposed rule for the IFQ Cost Recovery Program.

2.9 Summary and Conclusions

There are several reasons why none of the alternatives, elements, and sub-options being considered are expected to significantly adversely impact a substantial number of small entities. First, the fees collected from the IFQ sablefish and halibut fishery cannot exceed 3 percent of the ex-vessel value of the IFQ fisheries. Second, most of the participants in this IFQ fishery participate to some degree in other fisheries; therefore, a fee of 3 percent or less of the ex-vessel value of the IFQ halibut and sablefish would likely be less than 3 percent of the gross earnings of most participants in the IFQ fishery. Third, the additional recordkeeping and reporting costs are expected to be much less than the fee liability for most participants in the IFQ fishery.

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APPENDIX A

Magnuson-Stevens Fishery Conservation and Management Act Language
Concerning the IFQ And CDQ Cost Recovery Fee Programs
and Relevant Language Concerning the Central Registry Program
and the IFQ Loan Obligation and Guarantee Program

Section 304(d)(2)

(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

- (i) individual fishing quota program; and
- (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

Section 305(h)

(5) (A) Notwithstanding section 304(d)(1), the Secretary shall collect a reasonable fee of not more than one-half of one percent of the value of a limited access system permit upon registration of the title to

such permit with the central registry system and upon the transfer of such registered title. Any such fee collected shall be deposited in the Limited Access System Administration Fund established under subparagraph (B).

(B) There is established in the Treasury a Limited Access System Administration Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purposes of--

- (i) administering the central registry system; and
- (ii) administering and implementing this Act in the fishery in which the fees were collected. Sums in the Fund that are not currently needed for these purposes shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

Section 305(i)

(3) The Secretary shall deduct from any fees collected from a community development quota program under section 304(d)(2) the costs incurred by participants in the program for observer and reporting requirements which are in addition to observer and reporting requirements of other participants in the fishery in which the allocation to such program has been made.

Section 303(d)

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the--

- (i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and
- (ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

108(g) North Pacific Loan Program

(1) By not later than October 1, 1997 the North Pacific Fishery Management Council shall recommend to the Secretary of Commerce a program which uses the full amount of fees authorized to be used under section 303(d)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, in the halibut and sablefish fisheries off Alaska to guarantee obligations in accordance with such section.