

Draft for Secretarial Review

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

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Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) evaluates the costs and benefits, as well as the impacts on regulated small entities, of a proposed rule that amends regulations excluding tagged halibut and tagged sablefish from Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ). This action is a regulatory change to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction, and to expand to the CDQ program the exemption from quota deduction for halibut or sablefish tagged with an external research tag. This RIR/IRFA addresses the requirements of Presidential Executive Order (E.O.) 12866 and the Regulatory Flexibility Act.

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Executive Summary

This Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) was prepared to meet the requirements of Presidential Executive Order 12866 for an evaluation of the benefits and costs, and of the significance, of a regulatory action (the RIR) and to address the requirements of the Regulatory Flexibility Act (RFA). The RFA requires an evaluation of the impacts of certain federal actions on small businesses, small government jurisdictions, and small non-profit organizations.

The proposed action would revise regulations to specify that “*externally*” tagged halibut and sablefish can be excluded from Individual Fishing Quota (IFQ), and would add the same exclusion for Western Alaska Community Development Quota (CDQ).

Current Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Various types of internal and external tags are now used. The most common internal tag is a Passive Integrated Transponder tag, which is inserted into the head of the fish. These internal tags cannot be identified from any external marking and cannot be recovered by fishermen. Thus, only halibut and/or sablefish that are marked with external research tags need to be excluded from quota deduction, as an incentive for return of such tags for scientific purposes.

The benefits of this action are as follows: (1) regulatory consistency leading to the potential for fewer disagreements and lower transactions costs during halibut and sablefish landings, (2) potentially improved fisheries management via improved collection of scientific data, and (3) a potential, although very slight, benefit to CDQ groups that recover and turn in external halibut and/or sablefish tags for exemption from quota deduction.

This regulation appears to have no added direct costs. IFQ fishermen currently bear the burden of collecting and returning tags. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to exemptions for delivery of externally tagged fish, and would continue to enjoy this exemption. CDQ groups harvesting CDQ halibut and CDQ sablefish would now also enjoy this exemption.

The small entities that may be potentially directly regulated by this action are the 6 Western Alaska CDQ groups that annually receive halibut and sablefish quota, and the 1,524 vessel operations in the IFQ and/or CDQ fisheries.

The proposed action would have no known adverse impacts on the profitability or competitiveness of directly regulated small entities. The action would have a potential, although very slight, benefit for CDQ groups that recover and turn in external halibut and/or sablefish tags for exemption from quota deduction. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to exemption from quota for delivery of externally tagged fish, and would continue to enjoy this exemption.

1.0 REGULATORY IMPACT REVIEW

1.1 Introduction

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a proposed rule to amend regulations for excluding tagged halibut and tagged sablefish from Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ). This action is a regulatory change to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction and from CDQ deduction, and to expand to the CDQ program the exemption from quota deduction for halibut or sablefish tagged with an external research tag.

1.2 What is a Regulatory Impact Review?

An RIR is required under Presidential Executive Order (E.O.) 12866 (58 *FR* 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

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

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

1.3 Statutory authority

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

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

1.4 Background

IFQ and CDQ Programs

The International Pacific Halibut Commission (IPHC) develops halibut fishery management regulations pursuant to the Convention and submits those regulations to the U.S. Secretary of State for approval. NMFS publishes approved IPHC regulations in the *Federal Register* as annual management measures. NMFS published the IPHC’s current annual management measures on February 25, 2005 at 70 FR 9242. The Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop Pacific halibut fishery regulations in and off Alaska that are in addition to, but not in conflict with, the approved IPHC regulations (Halibut Act, section 773(c)). Regulations developed by the Council pursuant to the Halibut Act will be implemented only upon approval of the U.S. Secretary of Commerce (Secretary).

In December 1991, the Council adopted a limited access system for managing the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. The Council designed the IFQ program and CDQ halibut program to allocate specific harvesting privileges among U.S. fishermen and eligible western Alaska communities to resolve management and conservation problems associated with “open access” fishery management, and to promote the development of fishery-based economic opportunities in western Alaska. Acting on behalf of the Secretary, NMFS initially implemented the IFQ program and CDQ halibut program through regulations published in the *Federal Register* on November 9, 1993 (58 FR 59375) and fully implemented beginning in March 1995.

NMFS and the State of Alaska jointly manage the CDQ program that was created by the Council in 1991, as part of the inshore/offshore allocations of pollock in the BSAI. The CDQ program was implemented beginning in 1992. Since 1992, the CDQ program has expanded several times, and now includes allocations of groundfish, halibut, and crab, as well as allocations for bycatch of prohibited species (crab, halibut, and salmon). Currently, 65 communities, representing about 27,000 western Alaska residents, are eligible to participate in the CDQ program. These communities are located within 50 nautical miles of the Bering Sea coast or on an island in the Bering Sea and are predominantly populated by Alaska Natives. The eligible communities formed six non-profit corporations, known as CDQ groups, to manage and administer allocations, investments, and economic development projects.

Tagged Halibut

The IPHC tags Pacific halibut with external research tags to obtain general information on their life history. Tagging information also is used to improve the estimates of halibut incidental catch mortality rates, or to evaluate the survival of halibut released by longliners that use the prescribed “careful release techniques” (i.e., careful shaking, gangion cutting, and hook straightening). Over the years, the IPHC has used several types of external research tags. These tags include:

- Spaghetti-wire tags. The most common external tags are plastic-coated, spaghetti-wire tags that are looped through the dark-side cheek of the halibut.
- Metal- or plastic-tipped dart tags. The external metal-tipped dart tags are placed in the cheek while the plastic-tipped dart tags are inserted behind the fin rays above the head.
- Electronic Pop-up Satellite-transmitting Archival Tags (PSATs). The IPHC and the United States Geological Survey (USGS) began a joint tagging project during the summer of 2002, using PSATs. A PSAT is unique in appearance: the body of the tag is shaped like a microphone, is approximately 6-1/2 in. (17 cm) long, is attached to the fish by a 7 in. (18 cm) leader, and is secured by a titanium dart embedded in the flesh below the dorsal fin. A PSAT records the temperature and depth experienced by the fish. The tag is programmed to release from the fish on a pre-determined date, to float to the surface, and to emit a signal that indicates position and downloads all of the accumulated data to a satellite. The result is a record of the fish's location, along with environmental data throughout the time at liberty. After the tag body has released, the leader remains on the fish, serving as a conventional "spaghetti" tag.

In 2003, the IPHC also began the broad-scale use of internal tags called Passive Integrated Transponder (PIT) tags. A PIT tag is about the size of a grain of rice, composed of an integrated circuit chip and antenna coil encapsulated in glass, and is inserted under the skin in the head of the fish. Each tag has a unique alphanumeric code that can be transmitted and read, *in situ*, when scanned by an electronic reader. Tagged fish cannot be identified from any external marking. Once legally caught, halibut are landed and hired samplers use handheld electronic scanning devices to locate PIT tags in the heads of the halibut. These scan samplers work independently from IPHC port samplers.

Tagged sablefish

NMFS has been tagging and releasing sablefish in waters adjacent to Alaska since 1972, under the Sablefish Tag Program. Each year, thousands of fish are caught in the process of NMFS surveys. These fish are weighed and measured, their sex is determined, and they are tagged before being released. Fishermen and seafood processors subsequently find the tagged fish. Over 300,000 tagged sablefish have been released, of which nearly 26,000 have been recovered.¹ To be most cost effective, tagging of sablefish is usually accomplished onboard NOAA ships and NMFS chartered survey vessels, as one of many data collection tasks performed during the surveys. Additionally, the Alaska Department of Fish and Game has used PIT tags for sablefish studies off Alaska.²

Sablefish tagging has provided estimates of a number of important biological parameters used in stock assessment models; that is, models which are used to recommend harvest levels. Parameters include fishing and natural mortality, growth, and direction and rates of fish movement among management areas. These parameters are incorporated into population dynamics models, such as stock reduction analysis, stock synthesis, and more advanced methods incorporating likelihood functions and non-linear optimization functions. Information derived from tagging results in stock assessments that are more accurate, thereby increasing the credibility of the fishery management process and decreasing costs associated with under- and over-harvest of groundfish resources. Two general types of tags are used, both with external markings:

¹ Maloney, Nancy. AFSC Auke Bay Laboratory. 11305 Glacier Hwy. Juneau, AK 99801-8626. Personal communication 6-28-05.

² Sigler, Michael. AFSC Auke Bay Laboratory. 11305 Glacier Hwy. Juneau, AK 99801-8626. Personal communication. 6-27-05.

- Simple plastic tags (T-Bar tags). Printed with code numbers, plastic-coated tags are inserted just below the first dorsal fin, usually on the left side of the fish.³
- Electronic tags. In 1998, NMFS Auke Bay Laboratory began releasing a small number of sablefish with surgically implanted electronic tags. These fish also are marked with a 3-in. long fluorescent green and fluorescent pink tag located near the first dorsal fin of the fish that reads “Reward for Depth Sensor Inside Fish.”

The recovered tags are correlated with databases of released, tagged fish to reveal information about sablefish age, growth, and migration. Accurate tag recovery position information helps identify major migration routes. If recovery dates are available, it is possible to calculate movement rates as well as routes. Analysis of tag data is the primary method used to study sablefish movements.

1.5 Purpose and need for action

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

Administrative clarification

Current regulations governing the handling of tagged halibut are in the IPHC regulations published in the Federal Register on February 25, 2005, at 70 FR 9242. Section 21 of these regulations reads as follows:

21. Retention of Tagged Halibut.

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut

(a) May be retained for personal use; or

(b) May be sold only if the halibut is caught during commercial halibut fishing and it complies with the other commercial fishing provisions of these regulations.

(3) Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by state, provincial, or federal regulations.⁴

The exemption provided in paragraph 21(3) of the IPHC regulations is expressed in U.S. Federal regulations at 50 CFR 679.40(g). These regulations are as follows:

(g) Tagged halibut and sablefish.

³ Maloney, Nancy. AFSC Auke Bay Laboratory. 11305 Glacier Hwy. Juneau, AK 99801-8626. Personal communication 6-28-05.

⁴ Note that item 3 has been boldfaced for emphasis in this RIR and is not boldfaced in the IPHC regulations.

(1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture a research tag from any state, Federal, or international agency, provided that the halibut or sablefish is:

- (i) A Pacific halibut landed pursuant to 50 CFR 300.18; or
- (ii) A sablefish landed in accordance with the Tagged Groundfish Research Program.

(2) Tagged halibut or sablefish landed pursuant to paragraphs (1)(i) or (1)(ii) of this section shall not be calculated as part of an individual's IFQ harvest or be debited against an individual's halibut or sablefish IFQ.

The IPHC regulations specify, “***Externally tagged fish must count against commercial IVQs, CDQs, IFQs, or daily bag or possession limits unless otherwise exempted by state, provincial, or federal regulations.***” The Federal regulations exempt simply “tagged” halibut and sablefish landed in Federal commercial IFQ fisheries from counting against a person’s IFQ. The regulatory language currently contained in the Federal exemption is inconsistent with the regulatory language in the IPHC regulations because it does not specifically identify “external” tags for halibut.

Current Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Now, various types of internal and external tags are used. The proposed action would clarify Federal regulations so only halibut that are “externally” tagged and sablefish that are “externally” tagged may be excluded from quota deduction.

Exemption expansion

The exemption from quota deduction for tagged fish, currently provided in Federal regulations for IFQ halibut and IFQ sablefish, does not extend to CDQ halibut and CDQ sablefish. Halibut CDQ and sablefish CDQ are allocated to Western Alaska CDQ groups as fixed percentages of the annual total allowable catch of halibut and of sablefish. CDQ halibut and CDQ sablefish are caught in the same areas, with the same gear, and can be harvested with the same vessels, as IFQ halibut and IFQ sablefish harvested in the Western Alaska CDQ region. In other words, IFQ holders and CDQ groups operating in the Western Alaska CDQ region target essentially the same stock of fish and either may harvest externally tagged fish. However, CDQ groups do not currently receive the incentive of a deduction exemption for tagged fish from CDQ limits. Thus, to maximize the potential recovery of scientific information used to evaluate and manage the halibut and sablefish fisheries, the exemptions from deduction of harvested halibut and sablefish with attached external research tags would be extended to CDQ catches.

Market failure rationale

U.S. Office of Management and Budget guidelines for analyses under E.O. 12866 state that:

In order to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure. If the problem does not constitute a market failure, the analysis should provide an alternative demonstration of compelling public need, such as improving governmental processes or addressing distributional concerns. If the proposed action is a result of a statutory or judicial directive, that should be so stated.

This action will improve governmental processes. Externally tagged halibut and sablefish are not counted against a fisherman's IFQ allocation if reported upon landing of the catch. This is intended to give fishermen an incentive to report tagging information that is important to the management of the halibut and sablefish fisheries. The original tag exemption regulations were prepared prior to the introduction of internal tags. Self-reporting of internal tags is not readily possible for fishermen, because fishermen are unaware of the tags's presence prior to discovery by scan samplers. The exemption rationale, therefore, does not apply to halibut and sablefish with internal tags. This regulatory change would eliminate the potential for ambiguity and confusion over the exemption status of fish. Extension of the exemption to the CDQ fisheries will provide an incentive for fishermen operating in these programs to return tags.

1.6 Alternatives considered

Two alternatives were considered. Another alternative that would not include CDQ program fisheries in the proposed action was considered and rejected. This alternative would not encourage all fishermen that harvest halibut and sablefish in quota fisheries, to return tagged fish. Moreover, this alternative would provide less benefit to CDQ groups, which are small entities under Small Business Administration guidelines. This other alternative, therefore, would not accomplish the objectives of this action.

Alternative 1: Status quo

This is the no action alternative. Under this alternative the regulations would not be changed to eliminate the inconsistency between IPHC and Federal regulations, nor would CDQ groups be eligible for exemptions from quota deduction for halibut or sablefish tagged with external tags issued by any state, Federal, or international agency.

Alternative 2: Revise regulations regarding tagged halibut and sablefish for the IFQ and CDQ fisheries off the coast of Alaska.

NMFS proposes to revise regulations governing deduction of tagged Pacific halibut and tagged sablefish catch from IFQ and CDQ. The current regulations on tagging at 50 CFR 679.40(g) would be amended. [These regulations can be found on page 4 of this document.] The heading would be revised by removing "Tagged" and adding in its place "External research tags for." This action ensures that only halibut or sablefish bearing an external research tag issued by any state, Federal, or international agency, are excluded from program quota deduction.

Paragraph 679.40(g)(1) would be revised by removing "a research tag", and adding in its place "an external research tag", to ensure that only **external research tags** are exempt from quota deduction.

Paragraph 679.40(g)(1)(i) would be revised by removing "50 CFR 300.18", and adding in its place "50 CFR 300.62 and 50 CFR 679." The reference to 50 CFR part 300.18 is an artifact from when the IPHC regulations for annual management measures were codified in the Code of Federal Regulations (CFR). NMFS annually publishes the IPHC regulations for annual management measures in the *Federal Register*, but now does not codify them in the CFR.

Paragraph 679.40(g)(1)(ii) would be revised by adding regulatory text to require fishermen to comply with all sablefish regulations at 50 CFR 679, in addition to turning in a tagged sablefish.

Paragraph 679.40(g)(2) would be revised by removing "Tagged halibut and sablefish", and adding, "Halibut and sablefish bearing an external research tag from any state, Federal, or international agency"

in its place. In addition, the statement, “and in accordance with Section 679.5(l)”, would be added immediately after “paragraphs (1)(i) or (1)(ii)”. Section 679.5(l) describes the record keeping and reporting requirements for the IFQ program. Language specifying which quotas would not be debited by harvest of externally tagged halibut or externally tagged sablefish would be broken out into two separate paragraphs, (2(i), and 2(ii)). The first, 2(i), would address halibut IFQ and sablefish IFQ, while the second would address halibut CDQ and sablefish CDQ.

Additional language would be added to paragraphs 679.40(g)(1) and (g)(2) to improve the clarity of the regulations. The result of these changes and those listed above would be the following revised Section 679.40 (g):

(g) *External research tags for halibut and sablefish.*

(1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture an external research tag from any state, Federal, or international agency, provided that the halibut or sablefish is one of the following:

(i) A Pacific halibut landed pursuant to 50 CFR 300.62 and 50 CFR 679; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program, and in compliance with all sablefish requirements of 50 CFR 679.

(2) Halibut and sablefish bearing an external research tag from any state, Federal, or international agency, landed pursuant to paragraphs (1)(i) or (1)(ii) of this section, and in accordance with Section 679.5(l), shall be excluded from IFQ or CDQ deduction as follows:

(i) The fish shall not be calculated as part of a person’s IFQ harvest of halibut or sablefish and shall not be debited against a person’s halibut IFQ or a person’s sablefish IFQ, or

(ii) The fish shall not be calculated as part of the CDQ harvest of halibut or sablefish and shall not be debited against a CDQ group’s halibut CDQ or a CDQ group’s sablefish CDQ.

1.7 Costs and benefits of this action

This action would make it clear that only halibut or sablefish that are externally tagged with research tags would not be counted against IFQ or CDQ quotas. Fishermen can easily see external tags when the fish are pulled from the water, and can then record important scientific information about the fish, such as catch location. Exempting an externally tagged fish provides an economic incentive for fishermen to take the time to record such information and report tagged fish to IPHC port samplers upon unloading their catch. This information is important for sustainable management of the halibut and sablefish fisheries. This rule does not implement mandatory reporting requirements; that is, a fisherman can choose to ignore the tag and have the landed weight (headed and gutted) deducted from their IFQ or CDQ accounts.

This action may provide benefits to fisheries management that result from additional data being obtained from halibut and sablefish external research tags that are turned in as a result of CDQ fishing. Similarly, CDQ groups may receive small benefits from this action by returning external research tags and thereby earning exemption from quota deduction for the fish tagged with external research tags. These benefits

are expected to be small due to the relatively small numbers of halibut and sablefish external tag returns. Extending the incentive to CDQ groups is not expected to significantly change the number of external tag returns. Thus, this action would not significantly change the reporting burden.

The quota deduction exemption does not provide a similar incentive in the case of fish tagged internally with PIT tags. Fishermen, and processors, are unable to see PIT tags; they cannot know which fish have been tagged and which have not. Thus, they cannot readily provide any detailed information about the PIT tagged fish. The information about which fish are tagged, and the tagging information contained in the tags, is obtained as scan samplers use electronic equipment to determine which fish have PIT tags and which do not. As a result, under current rules, fishermen do not bear any cost associated with recovery or reporting of PIT tagged fish, and they receive no direct compensation for delivering a PIT tagged fish. This remains the case under the proposed rule.

The benefits of this action are as follows: (1) regulatory consistency leading to the potential for fewer disagreements and lower transactions costs during landings, (2) potentially improved fisheries management via improved collection of scientific data, and (3) a potential, although very slight, benefit to CDQ groups that recover and turn in external halibut and/or sablefish tags attributable to exemption from quota deduction. This regulation appears to have no added direct costs. IFQ fishermen currently bear the burden of collecting and returning tags. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to exemptions for delivery of externally tagged fish, and would continue to enjoy this exemption. CDQ groups harvesting CDQ halibut and CDQ sablefish would now also enjoy this exemption.

Incentives to return tagged halibut

Any vessel, even those that do not hold halibut IFQ or halibut CDQ, can land and retain a PSAT tagged fish, as long as the halibut with the tag leader still attached is reported to IPHC at landing. Similarly, any vessel, even those that do not hold halibut IFQ or halibut CDQ, can land and retain an externally tagged halibut of any size. These provisions are intended to promote the return of halibut tags, regardless of the fishery in which the tagged halibut were caught.

A commercial fisherman that catches a tagged halibut in a fishery other than the IFQ halibut or CDQ halibut fisheries should retain the halibut with the tag and/or leader still attached, and contact the IPHC at (206) 634-1838 or turn the tagged fish in to an IPHC port sampler. However, if IPHC staff are unavailable, fishermen should remove the tag, record whatever information is available, and forward the tag and information to the IPHC directly, to the offices of the Alaska Department of Fish and Game, or to NMFS. The fish may then be retained by the fisherman for personal use, but cannot be sold. Thus, personal use retention is an incentive to retain and turn in tagged halibut caught in commercial fisheries other than the IFQ halibut or CDQ halibut fisheries.

The IPHC has port samplers at the following ports during the halibut fishing season: Newport, Oregon; Bellingham, Washington; Vancouver, Port Hardy, and Prince Rupert, British Columbia, Canada; and Petersburg, Sitka, Juneau, Seward, Homer, Kodiak, Dutch Harbor, Adak, and Saint Paul, Alaska. Externally tagged halibut caught in IFQ or CDQ fisheries are to be turned in to an IPHC port sampler. The port sampler would redeem the tag for exception of the weight of the tagged halibut from deduction from quota. If there is not an IPHC port sampler available, the fish is weighed on delivery and reported on the fish ticket as a tagged fish and the tag(s) mailed to the IPHC to be redeemed for exception of the weight of the tagged halibut from deduction from quota, which is the incentive to report externally tagged halibut.

The IPHC estimates that it typically receives fewer than 100 external tag returns for quota share exemption, per year. In 2003, for example, IPHC received 44 such tag returns coast wide (California through Alaska) from commercial and sport fishermen combined. This is in contrast to over 2 million halibut harvested in 2003. IPHC reports that it had 14 external tags returned (12 from Alaska) in 2004, 60 external tags returned (56 from Alaska) in 2002, 72 external tag returns (61 from Alaska) in 2001, and 92 external tag returns (83 from Alaska) in 2000. The declining return rate in recent years indicates the declining use of external research tags, due to funding or other reasons.⁵

The burden associated with a respondent turning in a tagged fish to an IPHC port sampler is estimated to be ten minutes. The burden associated with a respondent returning the tag and information to the IPHC directly, to the offices of the Alaska Department of Fish and Game, or to NMFS is estimated to be 15 minutes.

Incentives to return tagged sablefish

Individuals at processing plants, individuals on fishing vessels, and state fishery agencies send tag recovery information as tagged sablefish are caught in state and federally managed groundfish fisheries. Tag recovery forms require five minutes to complete and are designed to be a minimal burden. Many fishing vessels and processors in the fisheries associated with these tagging programs carry NMFS observers. In the great majority of these instances, tagged fish would simply be handed to the observer for recovery of the tag and recording and forwarding of pertinent information, thereby minimizing public burden.

Submitting tag recovery information is voluntary and can be accomplished at any time. Most tag recovery information is submitted directly after a groundfish fishery closure because fishermen are interested in receiving the release information. Recovery information needs to be as accurate as possible, and fishermen are aware of this necessity. Some individuals return recovered tags quickly, while others accumulate many tags and return them on an annual or seasonal schedule. Less frequent transmittal of data (less than annually) delays processing of the information. Such a delay can make the information less valuable to the fishermen and reduce the temporal significance of the data for prediction of stock abundance by management area.

Existing data sets are used to match recovery and release information for each tag submitted. A letter generated by a series of computer programs and the existing tag release data set provides fishermen with release information for each tag recovery submitted, while providing researchers with information necessary to manage the groundfish fisheries.

The various tagging efforts within the groundfish tagging program offer a variety of rewards and incentives for participation (\$5 cash, a ball cap, a fleece vest for multiple returns, etc.). Participants also receive the release information (date, position, depth, and size) and data generated from each tag recovered (growth, miles traveled, and days at large). The data associated with the recovered tags are of great interest to fishermen and may be as much of an incentive as the small rewards.

In addition, for sablefish there is an annual drawing of the recovered tag numbers; the person who recovers the winning tag number receives \$1,000. Similarly, electronic tags (not PIT tags) from sablefish

⁵ Williams, Greg. IPHC Staff, Personal Communication, 8-27-04; and Geernaert, Tracee and Gilroy, Heather. IPHC Staff, Personal Communication, 6-27-05.

earn the participant \$200, if returned undamaged, reflecting the value of the data contained therein. These incentives are in addition to the exception from quota deduction for sablefish tagged with an external research tag.

The burden associated with a respondent returning a T-Bar tag is five minutes to complete the form. Since a business reply envelope is provided to the participant, no other burden is associated. The tagged sablefish form has approximately 700 responses per year (613 tags were returned by 321 respondents in 2004, 635 tags were returned by 370 respondents in 2003, and 820 tags were returned by 350 respondents in 2002). Typically, fewer than 20 electronic tags are returned per year,⁶ however the vast majority of these are simply handed over to on-site NMFS observers, thereby imposing no burden. It is estimated that approximately five respondents per year return tags themselves. The burden associated with a respondent returning an electronic tag is less than 20 minutes to remove the tag and record information.

1.8 Summary of the significance criteria

This action does not appear to have the potential to have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. NMFS has not identified any factors that appear to have the potential to (a) “Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency”; (b) “Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof”; or (c) “Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the executive order.”

2.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

2.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) evaluates the adverse economic impacts on small entities of a proposed rule to revise regulations for excluding tagged halibut and tagged sablefish from deduction from an Individual Fishing Quota (IFQ) account, or a Community Development Quota (CDQ) group’s account. This action is a regulatory change to ensure that exemption from quota deduction is allowed only for halibut and sablefish that are tagged with external research tags issued by any state, Federal, or international agency. This IRFA meets the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612).

2.2 The purpose of an IRFA

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

⁶ Maloney, Nancy. AFSC Auke Bay Laboratory. 11305 Glacier Hwy. Juneau, AK 99801-8626. Personal communication 6-28-05.

relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

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

In determining the scope, or 'universe', of the entities to be considered in an IRFA, the National Marine Fisheries Service (NMFS) generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in significant adverse economic impacts on a substantial number of small entities (as those terms are defined under RFA). Because, based on all available information, it is not possible to 'certify' this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

2.3 What is required in an IRFA?

Under 5 U.S.C., Section 603(b) and (c) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives (*of the proposed action*), consistent with applicable statutes, and which would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. The use of performance rather than design standards; and
4. An exemption from coverage of the rule, or any part thereof, for such small entities.

2.4 What is a small entity?

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

Small businesses. Section 601(3) of the RFA defines a ‘small business’ as having the same meaning as ‘small business concern,’ which is defined under Section 3 of the Small Business Act. ‘Small business’ or ‘small business concern’ includes any firm that is independently owned and operated and which is not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.... A (small) business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community

Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

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

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

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

2.5 The Proposed Rule

What is this action?

Regulations on tagging at 50 CFR 679.40(g) currently read:

(g) Tagged halibut and sablefish.

(1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture a research tag from any state, Federal, or international agency, provided that the halibut or sablefish is:

- (i) A Pacific halibut landed pursuant to 50 CFR 300.18; or
- (ii) A sablefish landed in accordance with the Tagged Groundfish Research Program.

(2) Tagged halibut or sablefish landed pursuant to paragraphs (1)(i) or (1)(ii) of this section shall not be calculated as part of an individual's IFQ harvest or be debited against an individual's halibut or sablefish IFQ.

NMFS proposes to amend regulations for excluding tagged Pacific halibut and sablefish catch from IFQ and from CDQ deduction. Section 679.40(g) would be amended. The heading would be revised by removing “Tagged” and adding in its place “External research tags for.” This action would ensure that

only halibut or sablefish bearing an external research tag issued by any state, Federal, or international agency, are excluded from program quota deduction.

Paragraph 679.40(g)(1) would be revised by removing “a research tag” and adding in its place “an external research tag” to ensure that only halibut and sablefish bearing **external research tags** are exempt from quota deduction.

Paragraph 679.40(g)(1)(i) would be revised by removing “50 CFR 300.18” and adding in its place “50 CFR 300.62 and 50 CFR 679.” The reference to 50 CFR part 300.18 is an artifact from when the IPHC regulations for annual management measures were codified in the Code of Federal Regulations (CFR). NMFS annually publishes the IPHC regulations for annual management measures in the *Federal Register*, but now does not codify them in the CFR.

Paragraph 679.40(g)(1)(ii) would be revised by adding regulatory text to require fishermen to comply with all sablefish regulations at 50 CFR 679 in addition to turning in a tagged sablefish.

Paragraph 679.40(g)(2) would be revised by removing “Tagged halibut and sablefish” and adding, “Halibut and sablefish bearing an external research tag from any state, Federal, or international agency,” in its place. In addition, the statement “and in accordance with Section 679.5(l)” would be added immediately after “paragraphs (1)(i) or (1)(ii)” Section 679.5(l) describes the recordkeeping and reporting requirements for the IFQ program. Language specifying which quotas would not be debited by harvest of externally tagged halibut or externally tagged sablefish would be broken out into two separate paragraphs (2(i), and 2(ii)). The first, 2(i), would address halibut IFQ and sablefish IFQ, while the second would address halibut CDQ and sablefish CDQ.

Additional language would be added to paragraphs 679.40(g)(1) and (g)(2) to improve the clarity of the regulations. The result of these changes and those listed above would be the following revised Section 679.40 (g):

(g) *External research tags for halibut and sablefish.*

(1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture an external research tag from any state, Federal, or international agency, provided that the halibut or sablefish is one of the following:

(i) A Pacific halibut landed pursuant to the annual management measures specified in 50 CFR 300.62 and 50 CFR 679; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program, and in compliance with all sablefish requirements of 50 CFR 679.

(2) Halibut and sablefish bearing an external research tag from any state, Federal, or international agency, landed pursuant to paragraphs (1)(i) or (1)(ii) of this section, and in accordance with Section 679.5(l), shall be excluded from IFQ or CDQ deduction as follows:

(i) The fish shall not be calculated as part of a person’s IFQ harvest of halibut or sablefish and shall not be debited against a person’s halibut IFQ or a person’s sablefish IFQ, or

(ii) The fish shall not be calculated as part of the CDQ harvest of halibut or sablefish and shall not be debited against a CDQ group's halibut CDQ or a CDQ group's sablefish CDQ.

2.6 Reasons for considering the proposed action

Current Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Now, various types of internal and external tags are used to identify fish for scientific purposes. This action revises Federal regulations so that only halibut that are “externally” tagged and sablefish that are “externally” tagged may be excluded from deduction from the quotas. This action is needed to eliminate the inconsistency between Federal and IPHC regulations, and to provide consistency between halibut and sablefish regulations. This action is also needed to extend quota deduction exemption to the CDQ program, in order to increase the potential for recovery of scientific information.

The quota deduction exemption does not provide a similar incentive in the case of fish tagged internally. In 2003, the IPHC began the broad-scale use of Passive Integrated Transponder (PIT) tags, which are about the size of grains of rice, and are inserted under the skin in the heads of fish. Fishermen are unable to see PIT tags; they cannot know which fish have been tagged and which have not. Thus, they cannot readily provide any detailed information about the PIT tagged fish. The information about which fish are tagged is obtained by scan samplers using electronic equipment. As a result, under current rules, fishermen do not bear any cost associated with recovery or reporting of PIT tagged fish, and they receive no direct compensation for delivering a PIT tagged fish. This remains the case under the proposed rule.

2.7 Objectives of, and legal basis for, the proposed action

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

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

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

The Magnuson-Stevens Act requires that the FMPs must specify the optimum yield from each fishery to provide the greatest benefit to the Nation, and must state how much of that optimum yield may be

harvested in U.S. waters. The FMPs must also specify the level of fishing that would constitute overfishing. Using the framework of the FMPs and current information about the marine ecosystem (stock status, natural mortality rates, and oceanographic conditions), the Council annually recommends to the Secretary total allowable catch specifications and prohibited species catch limits and/or fishery bycatch allowances based on biological and economic information provided by NMFS. The information includes determinations of acceptable biological catch and overfishing level amounts for each of the FMP established target species or species groups.

2.8 Number and description of small entities regulated by the proposed action

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

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

In 2004, 1,524 unique vessels harvested halibut and/or sablefish.⁷ A total of 1,304 unique vessels were used to harvest IFQ halibut, 199 to harvest CDQ halibut, and 1,489 to harvest IFQ halibut and/or CDQ halibut (i.e., 14 harvested both).⁸ A total of 396 unique vessels were used to harvest IFQ sablefish, 18 to harvest CDQ sablefish,⁹ and 403 to harvest IFQ and/or CDQ sablefish (i.e. 11 harvested both).⁷ Contractual arrangements, ownership information, and any resulting affiliations between such parties are proprietary. Though affiliation status for these entities is not well known, vessel operations are believed to be small entities and will be treated as such for the purposes of this action.

In 2004, a total of 3,371 individuals held halibut IFQ, 886 held sablefish IFQ, and 3,601 held halibut and/or sablefish IFQ (i.e., 656 individuals held both).⁸ Many IFQ holders may be partial owners of a vessel that they use to harvest their IFQ, or contract harvesting services from other vessel owners. In either case, the IFQ holder must be physically present on the vessel that is harvesting the IFQ at the time of harvest and delivery. For the purposes of this analysis, the number of active vessels has been used as a more meaningful measure of the number of directly regulated private entities than the number of IFQ holders. CDQ groups act on behalf of their member communities to harvest CDQ allocations.

2.9 Impacts on regulated small entities

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

⁷ Martin, Robin. IT Specialist. NMFS Alaska Region, 709 W. 9th Street, Juneau, AK 99801. Personal communication. 10-14-05.

⁸ Gharrett, Jessica. Restricted Access Data Manager. NMFS Alaska Region, 709 W. 9th Street, Juneau, AK 99801. Personal communication. 1-31-05

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

The benefits of this action are as follows: (1) regulatory consistency leading to the potential for fewer disagreements and lower transactions costs during landings, (2) potentially improved fisheries management via improved collection of scientific data, and (3) a potential, although very slight, economic benefit to CDQ groups, which recover and turn in external halibut and/or sablefish research tags, accruing from the exemption from quota deduction. The benefits to the CDQ groups are expected to be small due to the overall low numbers of halibut and sablefish external tag returns.

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

2.10 Recordkeeping and reporting requirements

This regulation does not impose new record keeping or reporting requirements on the directly regulated small entities. Affected small entities may choose to ignore external research tags, and are not under any obligation to report them. However, if affected small entities wish to avail themselves of the benefits this regulation imparts, they must report the presence of external research tags to IPHC port samplers, to the IPHC directly, to the Alaska Department of Fish and Game, or to NMFS as appropriate.

2.11 Federal rules that may duplicate, overlap, or conflict with proposed action

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

2.12 Description of significant alternatives

Alternative 1, the no action alternative, would have no direct impact on small entities. Under this alternative the regulations would not be changed to eliminate the inconsistency between IPHC and Federal regulations, nor would CDQ groups be eligible for exemptions from quota deduction for halibut or sablefish tagged with external tags issued by any state, Federal, or international agency. Therefore, Alternative 1 would not meet the objectives of this action to eliminate inconsistency in the regulations and to extend the exemption from quota deduction to the CDQ groups.

An alternative that would leave the CDQ program fisheries out of the proposed action was considered but was rejected. This alternative would not encourage all fishermen that harvest halibut and sablefish in quota fisheries to return tagged fish. Moreover, this alternative would provide less benefit to CDQ groups, which are small entities under SBA guidelines. This alternative, therefore, would not meet the objectives of this action.

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