

**Regulatory Impact Review and Final Regulatory Flexibility Analysis for
Regulations that Implement the Halibut IFQ Program**

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Abstract: This Regulatory Impact Review and Final Regulatory Flexibility Analysis evaluates a final action that amends the regulations that implement the Pacific Halibut Individual Fishing Quota (IFQ) program on the use of quota share (QS). This action allows processing of non-IFQ species on a fishing vessel that is otherwise authorized to process non-IFQ species when any amount of IFQ halibut resulting from QS assigned to vessel categories B, C, or D (catcher vessel QS) are held by fishermen onboard the vessel. This action also allows holders of vessel category A QS (catcher/processor QS) to process IFQ derived from catcher/processor QS, when unused IFQ derived from catcher vessel QS is onboard the vessel.

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REGULATORY IMPACT REVIEW/FINAL REGULATORY FLEXIBILITY ANALYSIS

1.0 Introduction

This document contains the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis for an amendment to the regulations for the Pacific Halibut Individual Fishing Quota (IFQ) fisheries in North Pacific Halibut Convention waters in and off Alaska. The proposed action is a result of two solicitations by the North Pacific Fishery Management Council (Council) for proposals from the public in 1999 and 2003 to amend the halibut IFQ program.

Management of the halibut fishery in and off Alaska is based on an international agreement between Canada and the United States and is given effect by the Northern Pacific Halibut Act of 1982. The Act provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council's actions are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC). Regulations implementing the commercial IFQ fishery for Pacific halibut are found at 50 CFR 679: Fisheries of the Exclusive Economic Zone off Alaska, Subpart D – Individual Fishing Quota Management Measures, Sections 679.40 through 679.45.

1.1 Requirements of a Regulatory Impact Review

The RIR is required under Presidential Executive Order (EO) 12866 (58 FR 51735; October 4, 1993). The requirements for all regulatory actions specified in EO 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 nonetheless 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.”

EO 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, 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.

1.2 Description of the Fishery

In 1991, the North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982, adopted an IFQ program. NMFS published implementing regulations in the Federal Register on November 9, 1993 (58 FR 59375). The IFQ program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) fisheries in the North Pacific Halibut Convention waters in and off Alaska. Fishing began under the program in 1995. The Council developed the halibut IFQ program to end the race for fish that resulted from the open access management system for the halibut fixed gear fisheries, during the 1980s. In designing the IFQ program, the Council expressed concern over the potential socioeconomic effects of a market-based allocation scheme on small Alaska fishing communities and the characteristic small-scale, owner-operator fishing businesses involved in these fisheries. Hence, the Council's IFQ policy included a variety of provisions to

prevent excessive consolidation of QS and economic protection of small-scale and entry-level fishermen. The Council and NMFS acknowledged these provisions created economic and operational inefficiencies, but considered them necessary in a rationalized fishery.

The Council chose the IFQ approach to provide fishermen the autonomy to decide how much and what type of investment to make to harvest the halibut resource. By guaranteeing access to a certain amount of the total catch at the beginning of the season, and extending the season over a period of eight months, those who held IFQ could determine where and when to fish, how much gear to deploy, and how much overall investment in harvesting they would make.

Nonetheless, the restrictions imposed are intended to prevent the fisheries from being dominated by any particular vessel class. Quota shares were initially assigned to vessel categories based on vessel size and kind of fishery operation. They are issued specifically to a vessel class and to an IFQ regulatory area. There are eight regulatory areas (Figure 1) and four vessel categories for distribution of halibut QS.

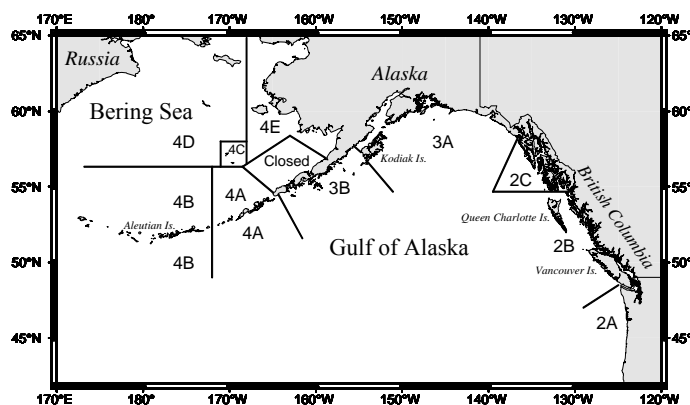


Figure 1 Pacific halibut regulatory areas.

In 2005, approximately 59 million pounds of halibut were allocated among halibut QS holders in the eight regulatory areas. Ninety-seven percent of the halibut quota was taken. Table 1 shows the number of unique QS holders, by regulatory area.¹ A total of 1,304 unique vessels participated in the halibut fishery in 2004. Table 2 illustrates the relative size of participating vessels in the halibut fishery, across regulatory areas. Less than 10 percent of the annual harvest in any regulatory area is allocated to vessels that are allowed to process onboard (i.e., those with category A QS).

¹ While 103 persons hold Area 4E halibut QS, no IFQs are awarded to this area, as the entire Area 4E allocation is made to the western Alaska CDQ Program.

Table 1 Persons holding halibut QS in 2004.

NOTE: Counts are not additive across areas. Data as of November 1, 2005. Source: NOAA Fisheries RAM.

Halibut	IPHC Area	# Persons
	2C	1,388
	3A	1,847
	3B	547
	4A	271
	4B	106
	4C	63
	4D	47
	4E	103
	TOTAL	3,292

Table 2 Vessels participating in the halibut fishery in 2004 by vessel size and area.

NOTE: Counts are not additive across areas. Data as of November 1, 2005. Source: NOAA Fisheries RAM.

Halibut	Area	Number of Vessels			
		0-35'	36-60'	61-125'	≥126'
	2C	236	405	24	0
	3A	173	406	85	2
	3B	36	189	71	4
	4A	28	44	29	3
	4B	2	14	20	2
	4C	6	1	2	0
	4D	0	13	16	1
	TOTAL	481	1,072	247	12

1.3 Problem in the fishery

The original IFQ program prohibited processing fish, other than IFQ halibut or IFQ sablefish, on board a catcher/processor vessel if IFQ halibut or IFQ sablefish catcher/vessel QS was present on board the vessel. The Council's intent in allowing the use of catcher vessel QS on catcher/processor vessels was to increase the fishing opportunities of crew members holding IFQ. The prohibition on processing non-IFQ species arose from a concern that owners of large, industrial processing vessels would harvest IFQ species with IFQ assigned to catcher vessel QS, while processed fish are on board, acquiring the majority of the catcher vessel QS that would normally be harvested by smaller boats, without processing capabilities. Smaller vessels typically use shoreside local processors in coastal communities, providing a significant source of revenue to those communities. Thus, the Council instituted the prohibition on processing fish, other than IFQ halibut or IFQ sablefish, on board a catcher/processor vessel, in an effort to retain the existing character of the fisheries and continue to sustain coastal communities through the revenue generated by small vessel deliveries of IFQ species.

The combination of allowing catcher vessel QS to be used on catcher/processor vessels, with the prohibition on processing non-IFQ species, resulted in unanticipated waste of non-IFQ species caught incidentally to IFQ sablefish. Persons are required to retain all Pacific cod and rockfish caught incidentally to IFQ halibut and IFQ sablefish. Pacific cod and rockfish have a shorter "shelf life" than halibut and sablefish, and a typical halibut or sablefish fishing trip is too long to maintain sufficient quality of incidentally caught non-IFQ fish. Without the ability to process non-IFQ species, the fish was often landed in poor condition, with a significantly reduced market value. BSAI/GOA Groundfish Plan Amendments 33 and 37 addressed only the lost revenue and waste that occurred in the IFQ sablefish fishery because fish other than IFQ halibut and IFQ sablefish were discarded, or if not discarded, became a low quality product due to the prohibition on processing them. The amendments were deemed necessary to allow fuller use of the sablefish fishery resources in and off of Alaska.

The same issues experienced in the sablefish fishery ten years ago, as described above, are now being addressed for the halibut fishery through this analysis. Regulations at §679.42(k) limit the processing of halibut harvested with IFQ derived from category A and non-IFQ groundfish species if any amount of IFQ derived from unharvested halibut catcher vessel QS is held by any harvester on board a vessel. An additional prohibition on QS use at §679.7(f)(15) further restricts processing fish on board a vessel on which a person aboard has unused IFQ derived from QS, thereby eliminating a catcher/processors ability to process halibut IFQ derived from catcher/processor QS when any amount of unused IFQ derived from catcher vessel QS remains on board.

While intended to maintain the small-boat nature of the IFQ halibut fishery, the regulations have had unintended consequences. The presence of catcher vessel QS may, in a sense, "pollute" a catcher/processor vessel for its intended use (i.e., "freezing") by the status of the halibut IFQ accounts held by crewmen aboard the vessel.

Authorization to harvest IFQs is no longer in effect if an IFQ account has a zero balance; however, it is very difficult to zero an IFQ account without exceeding the overage limit and facing subsequent penalties. Important to note is that the proposed regulatory change would not alter the prohibition on possessing processed and unprocessed IFQ species on board a vessel during the same trip, except when fishing exclusively with IFQ derived from catcher/processor QS. Therefore, QS holders still may not possess harvested catcher vessel QS and catcher/processor QS on board the same vessel, simultaneously.

1.4 Alternatives

The Council received two proposals that resulted in the analysis of this proposed action. One proposal would relieve restrictions that require all catcher vessel QS be completely harvested before freezer (“A”) QS can be fished and non-IFQ species can be processed i.e., 1 unit of unused QS held by any crew member would not stop a vessel from processing any fish, including halibut. A second proposal would allow frozen product of non-IFQ species to be onboard, while harvesting IFQ halibut catcher vessel QS. The two proposals are functionally the same, although intended to alleviate different operational restrictions. Under the preferred alternative, regulatory language at §679.7(f)(15) and §679.42(k) would be deleted, if approved by the Secretary of Commerce and implemented by NMFS, to address both proposals. The prohibition on possession of processed and unprocessed IFQ species found at §679.7(f)(15) would remain unchanged.

The objective of Action 1 is to reduce inefficiencies of harvest and landings among fishermen who currently are authorized to process (e.g., freeze) non-IFQ species (e.g., cod, rockfish, salmon). The proposed change would remove restrictions that require the harvest of all unused IFQ derived from catcher vessel QS that is held by any fisherman on board the vessel before processing of non-IFQ species is permitted. The change would also remove the restriction on processing halibut IFQ derived from catcher/processor QS when unused IFQ derived from catcher vessel QS is on board the vessel. It would not increase either the number of vessels authorized to process non-IFQ species, or increase the targeting of non-IFQ species by vessels currently authorized to process non-IFQ species.

Alternative 1. No action.

From implementation of the IFQ program in 1995 until the Secretary approved BSAI/GOA Groundfish FMP Amendments 33/37 (61 FR 33382) on June 13, 1996, a person authorized to use sablefish IFQ derived from QS

The following regulatory text is in effect.

§ 679.7 Prohibitions. (f) IFQ fisheries.

* * *

(13) Possess processed and unprocessed IFQ species on board a vessel during the same trip except when fishing exclusively with IFQ derived from vessel category A QS;

* * *

(15) Process fish on board a vessel on which a person aboard has unused IFQ derived from QS issued to vessel categories B, C, or D, except as provided in §679.42(k) of this part;

§ 679.42 Limitations on use of QS and IFQ. (k) Processing of fish other than IFQ halibut and IFQ sablefish. Fish other than IFQ halibut or IFQ sablefish may be processed on a vessel on which persons:

(1) Are authorized to harvest IFQ halibut or IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel category A; or

(2) Are authorized to harvest IFQ sablefish based on allocations of IFQ resulting from QS assigned to vessel categories B or C unless any person aboard the vessel is authorized to harvest IFQ halibut based on allocations of IFQ resulting from QS assigned to vessel categories B, C, or D.

Under § 679.2 Definitions:

Catcher/processor means:

(1) With respect to groundfish recordkeeping and reporting, a vessel that is used for catching fish and processing that fish.

(2) With respect to subpart E of this part, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Processing, or to process, means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor vessel means, unless otherwise restricted, any vessel that has been issued a Federal fisheries permit and that can be used for processing groundfish.

assigned to vessel categories B and C was not allowed to process any fish on board the harvesting vessel because the original definition of “freezer vessel” included the processing of any species, regardless of whether it was an IFQ species. The amendments allowed processing of non-IFQ species (i.e., any species of fish other than sablefish and halibut taken with longline gear off Alaska) on fishing vessels on which persons possess sablefish IFQ derived from QS in the non-processing or catcher vessel categories (i.e., categories B and C). It relieved a restriction and associated inefficiency imposed on catcher/processor vessels in the sablefish IFQ fixed gear fisheries only.

Amendments 33/37 did not extend to the halibut IFQ fishery. Hence, a person holding unused halibut catcher vessel IFQ on board a catcher/processor vessel would effectively prevent that catcher/processor vessel from processing any non-IFQ groundfish species, until the catcher/vessel IFQ is exhausted or the person leaves the vessel. As rationale for not extending the amendment to the halibut fishery, the distinction between the two fisheries was described as follows.

The Council declined to extend the IFQ sablefish exemption to IFQ halibut due to the socioeconomic differences between the fisheries. The halibut fishery characteristically is prosecuted by local vessels that do not have on-board processing capabilities. The Council does not intend to change this characteristic of the halibut fishery. Also, not extending the authorization to process fish other than IFQ sablefish and IFQ halibut [to holders of B, C, or D category IFQ] is consistent with one of the objectives of the IFQ Program, which is to maintain a diverse fleet where all segments, and the social structures associated with those segments, continue to exist.

The Council expressed concern that if the owners of large, industrial-type vessels that process their catch could harvest IFQ species with IFQ resulting from QS assigned to vessel categories B, C, or D while processed fish is on board, these owners could acquire the majority of the “catcher vessel” QS. The result would be an increase in harvesting IFQ species on large, industrial-type vessels that process their catch and a decrease in harvesting of IFQ species on small vessels that do not have processing capabilities. These small vessels that do not have processing capabilities are more likely to make landings at local coastal communities. The Council determined that phasing out small vessels that do not have processing capabilities, and which would not be able to compete with large, industrial-type vessels that process their catch..., would have a detrimental socioeconomic impact on coastal communities. This is especially true for halibut IFQ. Many coastal communities rely on the delivery of halibut harvested by persons operating small vessels that do not have processing capabilities as a source of revenue. (59 FR 14548).

The Council’s rationale for allowing the processing of non-IFQ species in the IFQ sablefish fishery recognized market value and product quality reasons for making the change, as follows.

Prohibiting the processing of fish other than IFQ halibut or IFQ sablefish on category B or C vessels resulted in the unanticipated waste of fish caught incidentally with IFQ sablefish, because sablefish can be preserved longer on ice than some incidentally-caught fish (e.g., Pacific cod). The longer “shelf life” of fresh sablefish allowed a typical sablefish longline trip to exceed the time period in which fish other than IFQ halibut or IFQ sablefish maintain sufficient quality to market as fresh fish. This often resulted in the discard of some or all incidentally caught fish. Also persons are required to retain Pacific cod and rockfish caught incidentally to IFQ sablefish. This forces persons authorized to harvest IFQ sablefish, based on an annual allocation of IFQ assigned to vessel categories B and C, to keep Pacific cod and rockfish caught incidentally with IFQ sablefish, even though the value of the Pacific cod and rockfish is diminished during a long sablefish trip. Amendments 33 and 37 will eliminate the lost revenue of discarding, or landing poor quality, fish other than IFQ halibut and IFQ sablefish due to the repealed prohibition on processing fish other than IFQ halibut and IFQ sablefish. (61 FR 33383-33384).

Preferred Alternative. Allow processing of non-IFQ species on a vessel that is otherwise authorized to process non-IFQ species when any amount of halibut IFQ resulting from QS assigned to vessel categories B, C, or D are held by fishermen on board a vessel in the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) areas. Remove the restriction on processing IFQ derived from catcher/processor QS when unused IFQ derived from catcher vessel QS is on board the vessel.

Two proponents recommended that the Council lift a prohibition restricting the sequence in which QS may be harvested based on vessel category and a prohibition on mixing frozen and unfrozen non-IFQ species on vessels that are already authorized to process those species. The proposed change is intended to increase economic efficiencies of participants in the IFQ fishery by increasing the value of harvested product by (1) allowing the product to be frozen, rather than turned into meal; and (2) allowing holders of catcher vessel QS and catcher/processor QS to fish IFQ derived from those shares in any sequence. It is not intended to alter the owner/operator nature of the halibut fleet, as some small boat operators have increased their processing capacity. Nor is it intended to provide an economic incentive to owners of catcher/processor vessels to increase their halibut catcher vessel QS holdings or that of their crew, at the expense of the catcher vessel sector.

Other Significant Alternatives. NMFS has not identified other significant alternatives to the no action and preferred alternatives. As noted at the start of Section 1.4 and in the preceding paragraph, the Council received two proposals on this issue, incorporated them both into the preferred alternative, and evaluated them jointly after a preliminary review found that they were functionally the same. The Council's action alternative would completely repeal the subject requirements. Repeal would remove a restriction from directly regulated entities and potentially lead to increased profits. Other alternatives might have been designed to limit the ability of this action to accomplish the objectives, by limiting the scope of the repeal to particular species or halibut QS classes, or by providing for a delayed effective date. However, these alternatives would not have been significantly different from the action alternative. They would not have involved substantively different approaches to addressing the problem that had been identified. These actions would have had the same environmental impacts, and, since this is an action to relax a restriction on directly regulated small entities, these alternatives would only have reduced the potential benefits of this action for these small entities or the classes of entities that might benefit from them.

1.5 Expected effects of Alternative 1

Under Amendments 33/37, the authorization to process fish, other than IFQ halibut or IFQ sablefish, was not extended to the halibut IFQ fishery due to the socioeconomic differences between the fisheries at that time. Local vessels that do not have on-board processing capabilities have characteristically prosecuted the halibut fishery. The Council did not intend to change this characteristic of the halibut fishery. Also, not extending the authorization was consistent with one of the objectives of the IFQ program, which is to maintain a diverse fleet where all segments, and the social structures associated with those segments, continue to exist. The prohibition was one method of accomplishing that objective. The Council expressed concern that owners of large industrial vessels would acquire the majority of the catcher vessel QS. The result would be an increase in harvesting of IFQ species on large industrial vessels that process their catch and a decrease in harvesting of IFQ species on small vessels that do not have processing capabilities. Small vessels that do not have processing capabilities are more likely to make landings at local coastal communities. The Council determined that phasing out small vessels that do not have processing capabilities, and which would not be able to compete with the large industrial vessels that process their catch of available IFQ, would have a detrimental socioeconomic impact on coastal communities. This was especially true for halibut IFQ. Many coastal communities rely on the delivery of halibut harvested by persons operating small vessels that do not have processing capabilities as a source of revenue.

Under the status quo, a prohibition on processing incidental catches of non-IFQ species, such as Pacific cod and rockfish, would remain in effect for holders of unused IFQ derived from catcher vessel QS. Not allowing processing of non-IFQ species makes it necessary to ice this portion of the catch, which can lead ultimately to delivering a lesser quality product since halibut retain quality in the hold longer than Pacific cod or rockfish. Because Alaska Department of Fish and Game (ADF&G) fish ticket records for halibut and groundfish are not recorded in the same database (halibut landings are recorded by IPHC staff and groundfish harvests are recorded separately by ADF&G staff), it was not possible to recreate trip landings to determine the amount of groundfish harvests associated with the halibut fishery.

1.6 Expected effects of Preferred Alternative

The prohibition on any form of processing of non-IFQ groundfish on catcher vessels results in the unanticipated waste of fish caught incidentally with IFQ halibut because halibut can be preserved longer on ice (up to two weeks) than some incidentally caught groundfish (e.g., Pacific cod). The longer “shelf life” of fresh halibut allows a typical halibut longline trip to exceed the time period in which groundfish maintains sufficient quality to market as fresh fish. IFQ regulations, however, require persons to retain Pacific cod and rockfish caught incidentally to IFQ halibut up to the maximum retainable allowance (MRA), and are not allowed to process them. Therefore, it has been reported that much of the non-IFQ species retained by these halibut vessels is rendered into meal, at a reduced profit to the QS holder.

The preferred alternative also would relieve a prohibition on catcher/processor QS holders from processing IFQ halibut while fishing their catcher/processor QS, if they have any unharvested catcher vessel QS held by anyone onboard the vessel. As noted in the problem statement, it is nearly impossible for QS holders to have zeroed their IFQ accounts. And it is operationally difficult for a vessel owner or master to verify that none of the fishermen aboard the vessel has any unused catcher vessel quota shares remaining on his/her account. Further, those sablefish catcher/processor QS holders who were provided relief under Amendments 33/37 are still constrained from processing IFQ halibut if they also hold catcher/processor QS.

Several categories of persons could be affected by the preferred alternative (Table 3). Any vessel on which a person holding IFQ derived from catcher vessel QS is fishing would be permitted to process non-IFQ catch. These persons could be on many different classes of vessels in a variety of IFQ and groundfish fisheries. Any vessel fishing for halibut using IFQ derived from catcher/processor QS would be able to process catches of Pacific cod, rockfish or other non-IFQ species, if unharvested IFQ derived from catcher vessel QS are held by those aboard the vessel. Also, participants in groundfish fisheries who hold IFQ derived from catcher vessel QS would be relieved of the restrictions. These include catcher/processors that hold groundfish processor permits and catcher vessels 60 feet or under that can process limited amounts (< 1 mt) of groundfish catch (under the License Limitation Program). These vessels could target Pacific cod or other groundfish during the halibut season. In addition, salmon fishermen who may process their catch who also have unused IFQ derived from catcher vessel QS would be restricted from processing their salmon catch. Since the prohibition applies if anyone on board these vessels has unused halibut IFQ catcher vessel shares, the current prohibition could apply to cases of crew holding IFQ that are employed on other vessels.

Table 3. Potentially Affected Persons

- Approximately 3,233 holders of B, C, or D QS
- Approximately 33 freezer/longliners
- Approximately 141 holders of groundfish trawl processor endorsed license limitation permits
- Approximately 1,312 vessels that hold LLP catcher vessel endorsements for vessels <60 feet (allowing limited processing of catch onboard)

While the lifting of the prohibition should allow persons with existing capacity to process fish onboard, no additional processing capacity is expected to be created. Only those vessels that are allowed already to process groundfish onboard, while harvesting vessel category A halibut QS would be affected. Those vessels that do process catch should expect quality of the product to improve, as compared with catch brought to shore for processing. However, the action does not create an offshore fishery. It simply recognizes that the use of incidentally caught groundfish should be optimized by those who already have the regulatory authority and processing capacity.

Data are not available for the catcher/processor portion of IFQ deliveries, which may be more likely to take advantage of the action. However, Table 4 shows the port of delivery—inside and outside of Alaska, respectively—for all IFQ deliveries of halibut. It shows that the proportion of IFQ halibut landed at ports outside Alaska has tended to decrease over time, from 12.23 percent in 1996 to 2.31 percent in 2005. Interviews with NMFS Office of Law Enforcement staff confirm this finding.

Since the MRAs are the same under both the alternatives, there is limited potential for intra-regional distributional changes for shifts in harvests of Pacific cod and other non-IFQ species. Vessels targeting IFQ halibut are required to retain bycatch of Pacific cod and rockfish (§ 679.7 (8)(i) (1) and (2)) , unless the species is under prohibited species status, or if the vessel has reached the MRA limit for that species. The upper limit of incidental harvests of rockfish and/or Pacific cod by IFQ halibut operations will remain the same under both alternatives. The MRA limits for bycatch species harvested while targeting halibut are set in the same regulation, but are listed in the category of “Aggregated amount of non-groundfish species.”

The BSAI MRA is 15 percent for aggregated rockfish. In the Gulf of Alaska, the MRAs for rockfish vary by species. For aggregated rockfish, the MRA is 15 percent of the targeted harvest. For shortraker and rougheye rockfishes, the MRA in the Eastern regulatory area is 7 percent of the targeted harvest (Federal Fisheries Regulation § 679, Tables 10 and 11). There are no MRAs for Pacific halibut. It is either a prohibited species or retained with IFQs, if the harvester holds halibut IFQ.

1.7 Benefit/Cost Analysis

The preferred alternative is expected to increase economic efficiency and operational flexibility for IFQ fishermen. The Council typically addresses the net national benefit of proposed amendments to the FMPs and/or regulations. For the preferred alternative, potential incremental effects on the net national benefit include the following:

- A potential increase in value of Pacific cod, rockfish and other non-IFQ species, which are harvested by catcher/processors as incidental to their targeted IFQ halibut catch, could occur. This improvement is likely to be accompanied by an increase in producer surplus, as catcher/processors are able to receive much greater prices for fish processed onboard, shortly after it is caught, than fish delivered onshore after a prolonged period in a fish hold, which is frequently processed into meal.
- There may also be some potential consumer effects. Generally, higher valued products would be derived from these incidentally caught groundfish, due to onboard processing shortly after catch. Absent this authority, these fish are converted to meal at onshore plants. Catcher/processors, however, may have a higher propensity to export their frozen products directly to Pacific Rim, or European countries. Whether the overall affect on U.S. consumer benefits is significant cannot be determined, but is likely to be small, since these products are largely “commodities,” traded in a common international marketplace, where substitutes are relatively abundant. No data are available to quantify this comparison.

Quantitative estimates of net benefit changes to the Nation are not possible, since cost data and models of consumer effects are unavailable.

Table 4. IFQ Landings of Halibut by area of Landing 1996-2005

Year	Alaska	Ports outside Alaska
2005 pounds	53,847,643	1,274,077
2005 percent	97.69%	2.31%
2004 pounds	55,595,900	1,670,720
2004 percent	97.08%	2.92%
2003 pounds	55,739,684	1,672,360
2003 percent	97.09%	2.91%
2002 pounds	55,975,405	2,146,934
2002 percent	96.31%	3.69%
2001 pounds	55,738,032	20,737
2001 percent	96.28%	3.72%
2000 pounds	49,870,240	1,925,913
2000 percent	96.14%	3.86%
1999 pounds	53,370,704	3,065,825
1999 percent	94.26%	5.74%
1998 pounds	46,735,735	4,711,741
1998 percent	89.92%	10.08%
1997 pounds	45,240,954	4,053,674
1997 percent	91.04%	8.96%
1996 pounds	31,692,342	3,875,345
1996 percent	87.77%	12.23%

Distributional impacts (which do not directly affect the net benefit to the Nation) are important to participants in the fisheries and the communities and regions involved. Concern over shifts of benefits from Pacific cod and rockfish fisheries was a large portion of the initial rationale for this regulation.

There is an unknown potential for inter-regional shifts of benefits from the catch, i.e. moving catch from the immediate area to another site of landing. Fish taxes ‘leak’ from the State of Alaska. Local city or borough taxes may accrue to a different location in the State, or not be captured at all. While some shift in landings (and loss of tax revenues) could occur under this action, the potential for a large shift in landings as a result of this action is limited for a few reasons. First, the non-IFQ catch that is currently landed unprocessed is thought to be relatively low value catch in its current form. Second, the potential for redistribution of landings to occur as a result of offshore processing is thought to be limited, as few vessels are thought to be positioned to engage in increase offshore processing and some vessels may not choose to redistribute landings once that change is made. Quantitative analysis of any redistribution is not possible. The Alaska Department of Revenue is responsible for capturing and monitoring fish taxes. They do not have available specific data on landings by species for different ports. In addition, any change in landings patterns depends on several factors including the operations of the vessels participating in the fisheries, relative prices and taxes in different locations, and costs of inputs, all of which are likely to vary over time.

There is also potential for loss of activity in onshore processing and a decrease in value added processing, to the extent that processing on board an IFQ catcher/processor adds less value, but as previously discussed, the catch at issue is destined for only fish meal, when delivered onshore. Therefore, processing this incidental catch at-sea, into any product form with a value above “fish meal” results in a net gain over the status quo.

Administrative, Enforcement, and Information Costs

The regulations implementing the original prohibition, the suspension of which is the subject of this analysis, were adopted to implement Council policy, and are not required for enforcement purposes. The current regulation is difficult to enforce, and neither NOAA Enforcement, nor USCG has reported an objection to the preferred alternative. Operators of many vessels are likely not aware of the prohibition on processing non-IFQ species, if anyone aboard holds unharvested halibut catcher vessel IFQs.

NMFS should not incur additional management costs under either alternative. It would represent no change to the monitoring of the targeted species of IFQ halibut. Catcher/processors can harvest halibut up to the limit of their IFQ holdings. Once they reach their IFQ limit, halibut becomes prohibited species. Under the status quo (Alternative 1) and preferred alternative, catcher/processors are ultimately limited by the MRAs for non-IFQ species. Minor administrative costs of the program would be recovered by annual cost recovery fees, already a component of the IFQ program.

Harvest records on the amount of groundfish harvested on vessels upon which Category A halibut IFQs were fished were not available. Landings data from ADF&G fish tickets are recorded separately for halibut by the IPHC and groundfish by ADF&G and it is extremely difficult to reconstruct the combined halibut and groundfish harvests that occurred on a trip.

The Council requested that NMFS, IPHC, and ADF&G identify a new data reporting process to address its concern that the preferred alternative could result in a reallocation of Pacific cod. As part of its preferred alternative, the Council announced that it will review the results of this action three years after its implementation, if approved by the Secretary; but the proposed review would not be implemented in the FMPs or regulations. The future Council inquiry would focus on two potential changes to the fisheries: (1) whether the fixed gear retention of Pacific cod and rockfish in IFQ fisheries by area will have increased; and (2) whether the amount of catcher vessel category (B, C, and D) halibut QS fished on vessels, upon which category A halibut QS have been fished, will have increased. The Council intended to ensure that the necessary data are readily available three years after implementation to gauge whether these two concerns have occurred. While RAM can easily report information on the vessels upon which different categories of QS is fished, matching halibut IFQ

landings with non-IFQ groundfish landings has been more problematic. Matching IFQ and non-IFQ harvest records could be extremely costly (in terms of staff time) for past fishing activity. NMFS implemented an electronic reporting system for the BSAI crab fisheries, with plans to expand the program to the groundfish fisheries in 2007. The IPHC reports that many processors are voluntarily using the electronic reporting system in the 2006 IFQ halibut fishery. When implemented for groundfish fisheries, this electronic reporting system would provide the information requested by the Council.

1.8 Final Regulatory Flexibility Analysis

Introduction

This Final Regulatory Flexibility Analysis (FRFA) evaluates the potential for adverse impacts on small entities, attributable to a regulatory amendment to allow vessels, upon which IFQ derived from catcher/processor QS are being fished, to process non-IFQ species harvested along with their targeted species.

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

The purpose of a FRFA

The RFA requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Major goals of the RFA are (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

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

What is required in a FRFA?

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

- a succinct statement of the need for, and objectives of, the rule;
- a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

What is a small entity?

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

Small businesses. Section 601(3) of the RFA defines a “small business” as having the same meaning as “small business concern,” which is defined under Section 3 of the Small Business Act (SBA). “Small business” or “small business concern” includes any firm that is independently owned and operated and which is not dominant in its field of operation. The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally, a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

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

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

Need for, and objectives of, the rule

This action will remove a prohibition on processing non-IFQ catch on vessels upon which halibut catcher vessel IFQ is fished and will remove the restriction on processing IFQ derived from catcher/processor QS when unused IFQ derived from catcher vessel QS is on board the vessel. The intent is to increase the value of the non-IFQ species harvested by increasing the quality of the product and eliminate IFQ harvest inefficiencies. As discussed in the RIR, the fleet is required to retain this catch, except under the conditions of the species being listed as a prohibited species, or when the Maximum Retainable Amount for that species has been reached.

Significant issues raised by public comments

The proposed rule for this action was published in the Federal Register on November 14, 2007 (72 FR 64034). An IRFA was prepared for the proposed rule, and described in the classification section of the preamble to the rule. The public comment period ended on December 14, 2007. NMFS received one public comment, and that was in support of the proposed rule. No comments were received in response to the IRFA, therefore, no changes were made from the proposed rule to the final rule.

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

NMFS has defined all IFQ halibut vessels as small businesses, for the purpose of this analysis. In 2004, 1,335 unique vessels made IFQ halibut landings. The number of small entities operating as fishing vessels in the IFQ program may be deduced from certain restrictions the program places on those vessels. The IFQ program limits the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to one half percent (0.5 percent) of all halibut IFQ TAC.

NMFS annually publishes “standard prices” for halibut that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating permit holder cost recovery fee liabilities. In 2005, these price data suggested that the prevailing prices might have been about \$3.01 per pound for halibut (headed and gutted weight) (70 FR 74208). These harvest limits and prices imply maximum ex-vessel revenues of about \$1.73 million for the 2005 halibut fishery.

While some of the operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut fisheries likely represent the largest single source of annual gross receipts for these operations. Based upon available data, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no vessel subject to these restrictions could have been used to land more than \$4 million in combined gross receipts in 2005 (the maximum gross revenue threshold for a “small” catcher vessel, established by SBA under RFA rules). Therefore all halibut vessels have been assumed to be “small entities,” for purposes of this FRFA. This simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

This action also will directly regulate approximately 3,233 persons holding category B, C, or D halibut QS, in addition to 33 catcher/processor vessels, and 1,312 vessels that hold catcher vessel endorsements for vessels less than 60 ft (18.6 m) length overall on their license limitation permits. NMFS does not possess sufficient ownership and affiliation information to determine the precise number of quota share holders considered small entities in the IFQ program or the number of small entities that will be adversely impacted by this action. NMFS assumes that all directly regulated entities have gross revenues less than \$4 million, and that they are thus small entities for the purposes of the Regulatory Flexibility Act.

Recordkeeping and reporting requirements

No additional recordkeeping and reporting requirements are associated with this action.

Potential adverse economic impacts on directly regulated small entities

The RIR reviewed the status quo (Alternative 1) and the preferred alternative, which became this final action. The status quo would have maintained the prohibition on processing of non-IFQ species or harvesting IFQ derived from catcher/processor QS when unused IFQ derived from catcher vessel QS is on board the vessel. Under the status quo, product values for the incidental harvest of non-IFQ species would have remained at their current levels. As reported in the RIR, retention of this alternative would have continued to impose needless and costly operational burdens on this industry. Furthermore, it would have perpetuated the waste of valuable food fish, diminishing the net benefit derived from this resource. The costs, which would have likely fallen disproportionately on small entities, would not have been offset by any attributable “benefit” from maintaining the status quo.

This action eliminates the prohibition on vessel operators wishing to process the incidental catch of non-IFQ species, regardless of whether a person on the vessel holds catcher vessels halibut IFQ. Additionally, this action will allow catcher/processor vessels to harvest IFQ derived from catcher vessel QS, at any time, regardless of whether unused IFQ derived from catcher/processor QS remained onboard. However, this action will continue to prohibit the retention of processed and unprocessed IFQ species together. The combination of provisions contained in this action will, based on the analysis presented in the RIR, eliminate an unnecessary and unanticipated operational burden on small entities, while enhancing the utilization of, and increasing the value derived from, the incidental catch of non-target groundfish.

Description of steps taken to minimize economic impact on small entities

The purpose of this action is to relieve a restriction on small entities. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of this action, the Magnuson-Stevens Act, and other applicable statutes and that would minimize the economic impact of the action on small entities. The

Council received two proposals on this issue, incorporated them into what became this final action, and evaluated them jointly after a preliminary review found that they were functionally the same. This action will completely repeal the subject requirements. Repeal will remove a restriction from directly regulated entities and potentially lead to increased profits. Other alternatives might have been designed to limit the ability of this action to accomplish the objectives, by limiting the scope of the repeal to particular species or halibut QS classes, or by providing for a delayed effective date. However, these alternatives would not have been significantly different from this action. They would not have involved substantively different approaches to addressing the problem that had been identified. Moreover, because this action relaxes a restriction on directly regulated small entities, these alternatives would have reduced the potential benefits of this action for these small entities or the classes of entities that might benefit from them.

1.9 Preparers

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