

**Regulatory Impact Review and Final Regulatory Flexibility Analysis  
for  
Two Proposed Regulatory Amendments Affecting  
the Halibut and Sablefish Fisheries off Alaska to Allow:**

- 1. The use of longline pot gear in the fixed gear sablefish fishery in the Bering Sea during the month of June.**
- 2. Military reservists and National Guardsmen to temporarily transfer Individual Fishing Quota.**

**Date:** April 2008

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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 halibut and sablefish Individual Fishing Quota (IFQ) program and Community Development Quota (CDQ) program. This action allows (1) longline pot gear to be used in the Bering Sea sablefish IFQ and CDQ fisheries during June and (2) the temporary transfer of IFQ held by mobilized military reservists and guardsmen.

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## EXECUTIVE SUMMARY

The amendments to federal fishery regulations proposed by this action would address two issues associated with the Pacific halibut and sablefish fisheries in and off Alaska. In 2005, the North Pacific Fishery Management Council (Council) identified two proposed actions, as described below. In June 2006, the Council selected preferred alternatives for each action.

### **Action 1. Allow longline pot gear to be used in the Bering Sea sablefish fishery during June**

This action would remove a prohibition against the use of longline pot gear in the Bering Sea sablefish fishery during the month of June. Existing regulations prohibit deployment of longline pot gear during this month, due to past concerns about conflicts between vessel operators using other types of fishing gear than longline pot gear. Approximately 115 Bering Sea sablefish IFQ permit holders could be affected under Action 1. Implementation of the preferred alternative may increase the likelihood that the optimum yield would be achieved for the Bering Sea sablefish stock, consistent with established management practices. Revenues may be expected to increase, as Bering Sea sablefish harvests could be closer to the optimal yield. Economic efficiencies arising from reductions in sablefish fishing costs would be achieved because (1) fishing would not be interrupted for those vessel operators using longline pot gear, and (2) pot fishermen would not have to remove or store this type of fishing gear, as presently required, during the one month mid-season closure. There do not appear to be economic costs associated with this alternative, since there is no known gear conflict or fishing grounds pre-emption. Net benefits are expected to be positive. Based on public testimony in 2005, at least six vessels may be expected to use longline pot gear during June. No vessels from other target fisheries are expected to be negatively impacted by this action.

### **Action 2. Allow mobilized military reservists and National Guard members to temporarily transfer IFQ**

This action would allow mobilized military reservists and guardsmen to temporarily transfer their halibut or sablefish IFQ, if such quota share (QS) holders were ordered to active duty. Some of these QS holders may already be eligible to hire a master to fish IFQ on their behalf. For each QS holder eligible to transfer their annual IFQ by means of a temporary military transfer (TMT), an equal number of IFQ recipients also would benefit. The preferred alternative may increase the likelihood, relative to the aggregate amount of IFQ transferred through TMTs, that the optimum yield would be achieved for Pacific halibut and sablefish fisheries. Allowing transfers of IFQ by QS holders who are either in the National Guard or a member of a military reserve unit called to active duty, could yield a number of direct and indirect benefits, proportionate to the number of TMTs that are requested and approved.

An unknown number of halibut and sablefish QS holders who also are either a military reservist or in the National Guard may, at some point in their fishing careers, need to utilize these temporary IFQ transfer provisions. The number of requested transfers cannot be predicted, but would be expected to be relatively few. This alternative may further promote stable, owner-operated businesses in the halibut and sablefish IFQ fisheries. There is very limited risk that this alternative may be inappropriately exploited to circumvent IFQ owner-on-board requirements. This risk will require expenditure of additional administrative and legal resources to monitor, enforce, and adjudicate the terms of this temporary transfer provision proportionate to the number of TMTs issued. The extent of these costs is not known.

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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 (FRFA) for two proposed amendments to regulations that govern the Pacific halibut IFQ fisheries in North Pacific Halibut Convention waters in and off Alaska and sablefish IFQ fisheries in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Federal waters.

### 1.1 Management Authority

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 and sablefish may be found at 50 CFR part 679: Fisheries of the Exclusive Economic Zone off Alaska. Subpart B contains general Management Measures, including Section 679.23 Seasons. Subpart D contains Individual Fishing Quota Management Measures in Sections 679.40 through 679.45.

### 1.2 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.

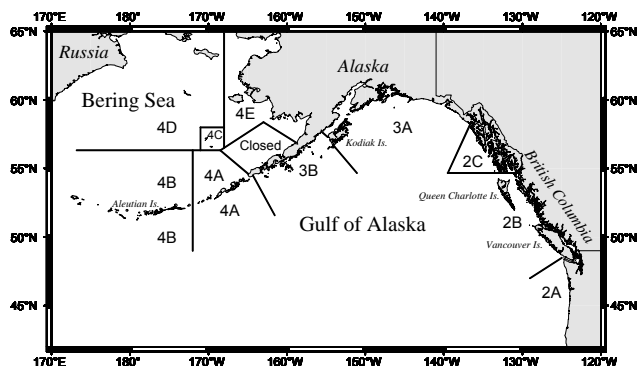
### 1.3 Design of the IFQ Program

The IFQ Program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) fishery in the North Pacific Halibut Convention waters in and off Alaska, and sablefish (*Anoplopoma fimbria*) fisheries in waters of the Exclusive Economic Zone off Alaska.

The Council, under authority of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982, adopted the IFQ Program in 1991, and implementing regulations were published in the *Federal Register* on November 9, 1993 (58 FR 59375). Fishing began under the program in 1995.

The program was designed to (1) reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based; (2) allocate specific harvesting privileges among U.S. fishermen; (3) resolve management and conservation problems associated with “open access” fishery management; and (4) promote the development of fishery-based economic opportunities in western Alaska. The IFQ approach was chosen to provide fishermen with the authority to decide how much and what type of investment they wished to make to harvest the resource. By guaranteeing access to a certain amount of the total catch at the beginning of the season, and by extending the season over a period of eight months, those who held the IFQ could determine where and when to fish, how much gear to deploy, and how much overall investment in harvesting they would make. The development and design of the halibut and sablefish IFQ fishery is described in Pautzke and Oliver (1997), Hartley and Fina (2001a, b), and the annual Report to the Fleet (NMFS 2003).

Regulatory restrictions are intended to prevent the fisheries from being dominated by large boats or by any particular vessel class. Quota shares (QS) were initially assigned to vessel categories based on vessel size and type of fishery operation (catcher vessel or catcher/processor). QS are issued specifically to a vessel class and to an IFQ regulatory area. There are four halibut vessel categories and three sablefish vessel categories. There are ten IPHC regulatory areas, eight of which are off Alaska (below left), and six sablefish management areas (below right).



## 1.4 Description of the Fishery

A detailed description of the halibut and sablefish IFQ fisheries can be found in reports prepared periodically by the Restricted Access Management (RAM) Program, a component of NMFS's Alaska Regional Office. The RAM Program also maintains a variety of IFQ-related reports and catch statistics on the Internet (<http://www.fakr.noaa.gov>). In 2006, approximately 52 million pounds of halibut were allocated among halibut QS holders in the eight halibut IFQ regulatory areas in and off Alaska. Thirty-five million pounds of sablefish were allocated among sablefish QS holders in the six sablefish IFQ regulatory areas that year. Ninety-eight percent of the halibut harvest and 89 percent of the sablefish harvest was landed across all areas combined in 2006. The information below is summary information derived from the RAM Program catch statistics and reports. Table 1.1 shows the number of unique QS holders, by regulatory area, for halibut and sablefish. 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.

In general, the directed fishery for sablefish primarily is a hook-and-line longline fishery. As described by Hanselman et al. (2006), "Longline gear in Alaska is fished on-bottom. In the 1996 directed fishery for sablefish, average set length was 9 km and average hook spacing was 1.2 m. The gear is baited by hand or by machine, with smaller boats generally baiting by hand and larger boats generally baiting by machine. Circle hooks usually are used, except for modified J-hooks on some boats with machine baiters. The gear usually is deployed from the vessel stern with the vessel traveling at 5-7 knots. Some vessels attach weights to the longline, especially on rough or steep bottom, so that the longline stays in place and lays on-bottom." Vessels fishing for sablefish typically deploy longline pot gear in depths of 200-250 fathoms. Halibut hook-and-line longline gear typically is fished at depths of 100 fathoms, and in different areas of the Bering Sea from the areas in which sablefish is fished (Gregg Williams, IPHC, personal communication). Pots are not a legal gear-type for halibut.

Use of longline pot gear in the sablefish fishery was banned in the Gulf of Alaska in the early 1980s, due to gear conflicts with traditional hook-and-line gear. The use of pots and longline pot gear in the Bering Sea has become more common since the late 1990s, when marine mammal depredation of sablefish being retrieved on hook-and-line gear increased.

A total of 1,267 unique vessels participated in the halibut fishery, 378 unique vessels participated in the sablefish fishery, and 1,293 unique vessels participated in both fisheries in 2006. Table 1.2 illustrates the relative size of participating vessels in the halibut and sablefish fisheries, across the regulatory areas. In the halibut fishery, 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). In the sablefish fishery, 38 percent to 56 percent of QS is allocated to freezer longliner vessels in the Bering Sea, Aleutian Islands, and western GOA, although in the central and eastern GOA, only 7 percent to 16 percent of sablefish IFQ may be processed onboard.

**Table 1.1 Number of persons holding halibut and sablefish QS in 2006.**

	Area	Number of persons
	<b>Halibut</b>	2C
3A		1,795
3B		526
4A		264
4B		107
4C		62
4D		47
4E		103
TOTAL		3,240
<b>Sablefish</b>		Area
	SE Outside	441
	West Yakutat	265
	Central GOA	406
	Western GOA	171
	Aleutian Is.	99
	Bering Sea	115
	TOTAL	869
<b>Total halibut and sablefish QS holders</b>		<b>3,467</b>

Note: Counts are not additive across areas. Data as of June 2007. Source: NMFS, RAM Program.

**Table 1.2 Number of vessels participating in the halibut and sablefish fisheries in 2006 by size and area.**

		Number of vessels (by length overall in feet)			
	Area	0-35'	36-60'	61-125'	≥126'
<b>Halibut</b>	2C	262	414	26	0
	3A	178	389	84	1
	3B	36	179	70	2
	4A	24	40	27	2
	4B	1	16	19	0
	4C	0	7	1	0
	4D	0	12	16	0
	TOTAL	502	1,057	243	5
<b>Sablefish</b>	Area	0-35'	36-60'	61-125'	≥126'
	SE Outside	8	180	37	2
	West Yakutat	0	83	43	1
	Central GOA	6	120	58	4
	Western GOA	2	41	27	4
	Aleutian Islands	0	13	13	4
	Bering Sea	2	17	14	8
TOTAL	17	454	192	23	

Note: Counts are not additive across areas. Data as of June 2007. Source: NMFS, RAM Program.



## **2.0 ACTION 1: ALLOW LONGLINE POT GEAR TO BE USED IN THE BERING SEA DURING JUNE**

This action would allow vessels to use longline pot gear in the Bering Sea sablefish IFQ and sablefish CDQ fisheries during the month of June. Existing regulations prohibit deployment of longline pot gear during this month, due to past concerns about conflicts between different fishermen using different types of fishing gear (described below).

In October 2004, a representative for longline pot vessels proposed that gear competition or fishing grounds pre-emption between the sablefish longline pot fleet and other fisheries has not occurred in June, and that the regulatory prohibition was unnecessary and burdensome. As a result, the Council initiated analysis of allowing the use of pot gear during June in all (IFQ and CDQ) Bering Sea fixed gear sablefish fisheries. Representatives of two CDQ managing entities originally proposed removal of the June longline pot prohibition to CDQ Program staff in October 1999, soon after the first full year of the multi-species CDQ fisheries (Sally Bibb, NMFS, personal communication). CDQ participation in the sablefish pot fishery has expanded since 2000. While vessel operators are required to report the type of gear used in a particular fishery, current reporting requirements do not allow NMFS to distinguish whether reported pot gear activity is longline pot gear or single pot gear.

Longline pot gear closures in the Bering Sea became an issue in 1991. The nature of longline pot gear and strategies used in fishing longline pot gear was once thought to deter fishermen from deploying longline hook-and-line gear on fishing grounds where longline pot gear is set. The groundline used with longline pot gear is heavier and stronger than that used for longline hook-and-line gear. If longline pot gear were to be set over previously deployed longline hook-and-line gear, the latter could be damaged during its retrieval. Due to concerns about potential conflicts between different gear types used on common fishing grounds, the Council recommended a prohibition on the use of longline pot gear in the Bering Sea subarea to prevent the pre-emption of fishing grounds in 1991. Final regulations prohibiting the use of longline pot gear were published on August 21, 1992 (57 FR 37906). That rule fully describes the rationale for implementing the prohibition.

In 1995, the IFQ Program for fixed gear sablefish fisheries extended the fishing season in Federal waters off Alaska to eight months. Since then, the season has expanded by several weeks. By allowing the fleet to spread its operations over time, the IFQ Program reduced the possibility of congestion and pre-emption of common fishing grounds. However, during the first IFQ season, commercial fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been underharvested due, in part, to fishery interactions with orcas and sperm whales.

Whales have learned to strip hooked fish from fishing gear, which reduces the amount of sablefish fishermen are able to land using hook-and-line gear. Attempts to deter whales by various non-lethal means from preying on fish caught on hook-and-line gear have proven unsuccessful. Research concluded that the only viable method for reducing whale interactions is to harvest sablefish with longline pot gear instead of hook-and-line gear, and thus deny whales the opportunity to take fish that are being hauled to the surface by fishermen. This led to a reconsideration of the ban on longline pot gear in the eastern Bering Sea sablefish fishery. On September 18, 1996, a Bering Sea closure to longline pot gear from June 1 through June 30 replaced the year-round gear prohibition (61 FR 49076). One instance of conflict has been identified and industry reports that the conflict was quickly resolved between the vessels (CAPT R. Brill, USCG to Eric Olsen, NPFMC, pers. comm.).

The reintroduction of longline pot gear into the Bering Sea fisheries posed less of a grounds pre-emption threat in 1996, compared to 1992, when longline pot gear was prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery allowed fishermen to use this gear and reduce interactions with whales. In recommending the lifting of the ban on longline pots, the Council expressed concern that, despite the decreased likelihood of grounds pre-emption, fishermen using traditional hook-and-line gear in relatively small boats may be pre-empted from grounds by fishermen in larger boats using longline pot gear. Thus, a June closure was retained for the benefit of small vessels using hook-and-line gear. June was chosen because it generally has fair weather in the Bering Sea, a safety advantage for small vessels.

Other Bering Sea fisheries that are open during June each year have been identified by NMFS staff and are listed below (Mary Furuness, NMFS, personal communication). There is no evidence of gear competition with the pot or longline pot fisheries.

- Pollock trawl fisheries open on June 10, but are prosecuted in different areas and depths than the fixed gear sablefish fishery.
- Greenland turbot hook-and-line fishing occurs in June, but no gear conflicts have been reported.
- Yellowfin sole trawl fishing occurs in June, but no gear conflicts have been reported.

The data in Table 2.1 suggest that few vessels used pot gear to target sablefish for 2002-2006 (recall that pot and longline pot gear are combined into the same code) (Terry Hiatt, AFSC, personal communication). The Council requested additional discussion about the potential groundfish bycatch that could be harvested in June under the Preferred Alternative, but actual catch and bycatch on a vessel by vessel basis cannot be reported, due to data confidentiality (i.e., fewer than three vessels reporting). However, in general, groundfish bycatch in the sablefish pot fisheries in June includes very small amounts of arrowtooth flounder, flathead sole, Greenland turbot, and rougheye rockfish.

**Table 2.1 Number of vessels that caught sablefish using pot gear in the Bering Sea by month and vessel type, 2002-2006**

Vessel type	Year	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Catcher vessel	2002	0	0	2	2	3	4	4	6	2	3	0	8
	2003	0	3	3	3	3	3	5	8	9	2	0	13
	2004	0	5	4	5	4	3	2	4	4	2	0	8
	2005	0	2	3	4	1	2	2	2	4	1	0	10
	2006	0	0	3	4	3	3	3	5	6	1	0	7
Catcher-processor	2004	0	1	1	1	0	0	0	0	0	0	0	2
	2005	0	0	0	1	0	0	0	0	0	0	0	1
	2006	0	0	1	0	0	0	0	0	0	0	0	1

Source: NMFS blend estimates, Catch Accounting System, fish tickets, federal permit file, CFEC vessel data.

## 2.1 Management objective for the action

The management objective for this action is to address the potential inefficiencies created by maintaining a mid-season gear closure by allowing longline pot gear to be fished in the Bering Sea during the month of June.

## 2.2 Alternatives

Two alternatives were considered for this action.

Alternative 1. No action. Regulations at 50 CFR part 679 associated with gear limitations in the fixed gear sablefish fishery would not be amended to remove a June longline pot gear closure.

Alternative 2. The preferred alternative. Allow use of longline pot gear in the Bering Sea sablefish IFQ and sablefish CDQ fisheries during the month of June.

Existing regulations at 50 CFR part 679 state:

**Section 679.24 Gear limitations.**

\* \* \* \* \*

**(b) Gear restrictions**

(1) \* \* \*

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea, except as provided in paragraph (c)(4)(ii) of this section.

\* \* \*

**(c) Gear restrictions for sablefish**

\* \* \*

(4) *BSAI.*

(i) Operators of vessels using gear types other than hook-and-line, pot, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

**(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.**

### 2.3 Expected effects of Alternative 1

Alternative 1 would maintain a regulatory prohibition on the use of longline pot gear in the Bering Sea sablefish IFQ and sablefish CDQ fisheries during June, each year. Sablefish fishermen who use this gear type would continue to incur the logistical and economic costs associated with a requirement to interrupt their fishing activities and stand down from sablefish fishing for the month of June, unless they switched to another gear type or target fishery.

NMFS notes that there is no restriction on storing gear in the water, or a requirement to remove pot gear from the fishing grounds. In effect, the potential for gear conflict, while perhaps reduced by not having the longline pot gear actively fished (e.g., moved about on the fishing grounds), has not been eliminated under the status quo.

### 2.4 Expected effects of the Preferred Alternative

The Preferred Alternative would address a problem in the IFQ sablefish and CDQ sablefish fisheries resulting from a previous Council action. The June longline pot gear prohibition in the Bering Sea sablefish fisheries is operationally inefficient, with respect to the constraints that are placed on fishermen using longline pot gear during the middle of the sablefish season. Because the sablefish fishery historically has not harvest the full BSAI sablefish TAC, elimination of the June closure may facilitate an increase in total landings and a reduction in fishing costs per unit of catch. As the demand for sablefish is likely relatively elastic, this suggests that increased supplies (over the range that could be anticipated from this action) would be expected to result in an increase in producer surplus, all others factors being equal. Changes in consumer surplus are uncertain, because of the lack of detailed information about domestic and international demand for sablefish. However, because the predominant volume of catch is sold into international markets, changes in domestic consumer surplus are likely to be small. Changes in consumer surplus of fish in the international markets do not enter into the required determination of “net benefits to

the Nation,” as specified under E.O. 12866.

Insufficient data are available to distinguish between landing and effort by single pot and longline pot, within the NMFS catch accounting system. Most gear reported as pots in the Bering Sea is assumed to be longline pots, despite the lack of a unique code for this gear type. Overall, more longline pot gear currently is being deployed in the Bering Sea, compared to the gear mix deployed at the initial implementation of the IFQ Program in 1995. This is due to whale predation of sablefish on hook-and-line longline gear. Single pots are rarely used in the Bering Sea, because sea conditions result in their more frequent loss.

Economic efficiency and operational flexibility are expected to increase under the Preferred Alternative for Bering Sea IFQ and CDQ sablefish fishermen, although this outcome can be assessed only qualitatively. Achieving the optimum yield for sablefish would be more likely by allowing the use of a more efficient gear for the entire season (i.e., without a mandatory mid-season month long stand-down). Theoretically, both the 115 Bering Sea IFQ sablefish permit holders and the six CDQ entities receiving sablefish CDQ could be affected by adoption of the preferred alternative. Practically, industry representatives reported to the Council in 2005 that perhaps six longline pot vessels may fish this gear type during June, if the prohibition is removed. June typically has better weather than during many of the other months in the sablefish season (March through November). The affected vessels may fish for sablefish CDQ, sablefish IFQ, or both.

This alternative may provide fishermen an opportunity to harvest additional amounts of the annual sablefish IFQ and sablefish CDQ allocations. For example, in 2006, only 65 percent and 39 percent, respectively, of the BS and AI sablefish IFQ allocations were harvested. This compares with 99 percent in most Gulf of Alaska regulatory areas, as portrayed in Table 2.1. The sablefish CDQ fisheries caught 68 percent and 55 percent of the BS and AI sablefish fixed gear allocations in this same year. NMFS does not have the information necessary to determine whether the current June gear prohibition results in completely foregone revenue, or whether sablefish fishing effort and harvests shift to other months of the sablefish fishing season.

**Table 2.1 2006 Sablefish IFQ and CDQ allocations and landings (in pounds).**

Program	Area	Catch	Allocation	Remaining	Percent landed
IFQ	AI	1,541,895	3,968,280	2,425,385	39
	BS	1,608,913	2,486,789	877,876	65
	CG	11,135,955	11,234,642	98,687	99
	SE	7,711,406	7,760,192	48,786	99
	WG	4,509,526	4,709,026	199,500	96
	WY	4,341,742	4,387,154	45,412	99
CDQ	AI	541,466	992,250	450,784	55
	BS	422,716	621,810	199,094	68

Note: AI—Aleutian Islands, BS—Bering Sea, CG—Central Gulf, SE—Southeast Outside, WG—Western Gulf, WY—Western Yakutat.

The standard ex-vessel price of sablefish in 2006 was \$2.46 per pound (<http://www.fakr.noaa.gov/ram/ifqfees.htm>). At this price, the unharvested amounts of sablefish IFQ and sablefish CDQ in the BS would have been valued at approximately \$2.16 million and \$490,000 for the IFQ and CDQ fisheries, respectively. Elimination of the longline pot gear prohibition in June could allow fishermen additional opportunities to more fully harvest sablefish allocations and realize the associated economic benefits of doing so.

Effects on Administrative and Enforcement Costs

Neither alternative would significantly affect administrative, nor enforcement costs. The Preferred Alternative would not change the catch monitoring and accounting practices in place for the sablefish IFQ and sablefish CDQ fisheries. Enforcement personnel would no longer have to monitor whether vessels fishing with longline pot gear in June were targeting sablefish, which currently is prohibited. Neither the NOAA Office for Law Enforcement, nor the U.S. Coast Guard has indicated that they have concerns about or objections to the removal of the gear prohibition proposed by the Preferred Alternative.

Table 2.3 summarizes the benefits of the respective alternatives considered for this action. No benefits due to the closure have been identified since gear competition or pre-emption issues have not been reported or documented, although some small vessels may prefer to maintain the prohibition during that month of relatively better weather conditions. No public testimony was received to that effect during the Council’s review of this action.

**Table 2.3 Summary of the cost and benefit analysis of Action 1.**

	<b>Alternative 1</b>	<b>Preferred Alternative.</b>
Who may be affected	Baseline	115 Bering Sea IFQ sablefish permit holders could be affected. Six of 44 longline pot vessels may fish this gear type in June. Six CDQ groups with BS fixed gear sablefish allocations also could be affected.
Impacts to the resource	Baseline. Unharvested sablefish presumably would continue to grow, reproduce, and contribute to a larger biomass	Increased likelihood of achieving optimum yield for sablefish stocks.
Benefits	Baseline. May contribute to avoidance of grounds pre-emption and gear conflict.	Net revenues could increase, if sablefish harvests increase towards optimal yield levels and economic efficiencies, arising from reductions in fishing costs, are achieved. Mandatory interruption of fishing (stand downs) would not be imposed during the month of June upon those using longline pot gear.
Costs	Baseline. Imposes some risk of foregone revenues, increased expenses, and fishing safety.	No immediate, additional costs identified. This action could constrain future expansion of small boat, hook-and-line sablefish fishery in BS during June, should conditions change to the degree that such a fishery is logistically and economically desirable.
Net benefits	Baseline	Net benefits are expected to be positive, since at least six vessels may be expected to use longline pot gear during June. No vessels from other fleets are believed to be negatively impacted because their fisheries are spatially and temporally separated.
Action objectives	Fails to address the objectives of the Council.	Meets objectives of the Council.

### **3.0 ACTION 2: ALLOW MOBILIZED MILITARY RESERVISTS AND NATIONAL GUARD MEMBERS TO TEMPORARILY TRANSFER IFQ**

Action 2 is a proposed exemption from restrictions that prohibit mobilized military reservists and National Guardsmen from transferring either halibut IFQ or sablefish IFQ to other eligible IFQ recipients. It would not apply to full-time military personnel.

During the June 2005 Council meeting, NMFS briefed the Council about the issue of a mobilized National Guard member who was reported to be unable to harvest his IFQ in the 2004 and 2005 halibut IFQ seasons. An individual, representing the interests of the National Guardsman and QS holder, sent an electronic mail message to Senator Lisa Murkowski's office in Washington, D.C. on February 5, 2005. The message expressed that current regulations did not allow the guardsmen to temporarily transfer his IFQ to the representative. Senator Murkowski's staff forwarded the message to NMFS on May 12, 2005. NMFS then drafted a response to the senator outlining the three options described in Section 3.2. The Council advised NMFS that it wished to address a long-term solution to situations where QS holders in the military reserves or National Guard are mobilized without any recourse except to leave their annual IFQ unharvested.

There were 5,638 Reserve and National Guard personnel in Alaska in 2003 (U.S. Census Bureau, Statistical Abstract of the United States 2006). Reserve and National Guard units can be activated at any time by presidential order to supplement regular armed forces, and upon declaration of a state of emergency by the governor of the state in which they serve. Unlike reserve members, National Guard members cannot be activated individually (except through voluntary transfers), but only as part of their respective units. Additionally, the Alaska State Defense Force contains 200 to 300 reservists. State reservists are not authorized to be activated out of the state, but may be sent to other areas of the state in response to state homeland security threats or national disasters (Captain Laura Caperton, Alaska State Defense Force, personal communication). The State Defense Force assumes the state mission of the Alaska National Guard in the event that guard units are mobilized.

#### **3.1 Management objective for the action**

Current Federal fishery regulations do not allow the temporary transfer of IFQs held by mobilized reservists and guardsmen who are not otherwise authorized to hire another individual to harvest their IFQ. The inability to temporarily transfer IFQs during their mobilization could constitute an economic hardship to affected service members and their dependents. Implementation of this proposed action potentially could alleviate this situation by allowing eligible military personnel to make temporary IFQ transfers while on active duty.

#### **3.2 Alternatives**

Alternative 1. No action.

Under current fishery regulations, there is no exemption from applicable IFQ transfer and landing requirements for guardsmen or military reservists that are deployed to active duty, as determined by NOAA General Counsel. Neither The Uniformed Services Employment and Reemployment Rights Act of 1994, nor the Servicemembers Civil Relief Act of 2003, applies in this situation. No Federal legislation has been introduced to effect such a change. Therefore, three options currently are available to all QS holders who are temporarily unable to fish their annual IFQ:

1. s/he may choose not to fish, and carry over 10 percent of his/her annual IFQ balance to the following year;
2. s/he may hire a master to fish his/her IFQ (provided s/he owns a minimum of 20 percent of the vessel upon which the hired master will be fishing); or
3. s/he may permanently transfer his/her QS to any eligible person.

Other temporary IFQ transfers are allowed under regulation. These transfers are associated with extreme personal emergencies during a fishing trip or acute medical conditions. First, IFQ regulations currently allow emergency waivers to IFQ landing requirements in very limited situations (i.e., emergency medical situations that occur at sea). An emergency waiver only allows the IFQ associated with a particular permit to be temporarily fished, and an IFQ landing made, by someone other than the permit holder or IFQ hired master. Typically, the exception applies to a situation requiring a medical evacuation or other rescue scenario where an IFQ permit holder must be transferred from the vessel during a fishing trip.

Halibut and sablefish QS holders may also request medical IFQ transfers. Such transfers originally were prohibited under the Halibut and Sablefish IFQ Program, due to the overarching policy of maintaining a fishing fleet of owner-operators. Initial proposals for a medical transfer provision were rejected based on the potential for abuse and the lack of technical expertise at NMFS to determine whether a medical condition warranted allowing a QS holder to temporarily transfer their IFQ. After numerous petitions since initial implementation of the IFQ Program, the Council recommended that medical transfers be allowed. In 2007, NMFS implemented a regulatory amendment that allows a halibut QS or sablefish QS holder to make medical transfers of his or her annual IFQ (72 FR 44795, August 9, 2007).

Alternative 2. Preferred Alternative. Allow reservists or guardsmen to temporarily transfer their IFQ if they are mobilized to active duty.

A temporary military transfer (TMT) would offer a means to exempt QS holders from the prohibition against temporarily transferring (i.e., leasing) their IFQ to other eligible IFQ recipients. This would allow mobilized reservists and guardsmen to temporarily transfer their IFQ to other eligible recipients. This could provide some financial benefit to the QS holder, even if they were unable to personally catch their IFQ due to a military mobilization or deployment. Such transfers could be modeled on the process used to allow medical transfers of IFQ.

This type of transfer would be limited to guardsmen and reservists deemed eligible to make such transfers, based on eligibility criteria established by NMFS. Such criteria would include demonstration of valid, pending mobilization orders that would preclude the QS holder from fishing his or her IFQ during a given time period. A TMT would be restricted one fishing year. Qualified applicants would have to request a TMT yearly, even if the length of deployment or mobilization exceeded one year.

A range of policy considerations were reviewed with respect to TMTs and the process by which such transfers might be allowed. This includes consideration of a variety of elements that would be necessary to implement these types of transfers. The general aspects associated with transferring IFQ through TMTs may include the following elements:

- Eligible transferors would be those United States military reservists, or members of the National Guard, who are halibut QS or sablefish QS holders and to whom one or more catcher vessel IFQ permit(s) have or will be been issued for a given year. Only those reservists or guardsmen who may not, under existing regulations, retain the services of a hired master to fish his/her annual IFQ permits would be able to apply for a TMT.
- NMFS would develop an application process associated with TMTs and establish the information necessary to confirm that a QS holder is eligible to use this type of IFQ transfer process. Such

evidence could include official military orders, or other official documentation, demonstrating that the QS holder is unable to participate in the IFQ fisheries because of a military mobilization.

- If NMFS approved a TMT application, the applicant and the transferee would be notified and the IFQ would be transferred to the approved recipient.
- A TMT would be valid for the duration of the military mobilization, with a requirement to reapply each calendar year, as necessary. There would not be a limit on the number of a TMTs associated with a given mobilization.
- If the application is not approved, the applicant would receive an Initial Administrative Determination (IAD) from the Regional Administrator or his or her designee, explaining the reason for the disapproval. An applicant whose application is denied by an IAD may appeal that determination.
- Appeals would be considered by the NMFS Office of Administrative Appeals using established procedures in effect for appeals of agency determinations associated with other IFQ-related transfers and permit applications.

Other IFQ transfer provisions could still apply in the event that a guardsman or reservist sustained injuries or was killed while on duty. In the event that the activated reservist is injured, then applicable medical transfer provisions would apply. If the reservist or guardsmen died, then her or his QS would be transferable under the surviving heir provisions of the IFQ Program. TMTs would not eliminate the ability for QS holder to use these other types of QS or IFQ transfers.

### **3.3 Expected effects of Alternative 1**

Alternative 1, the requisite No Action Alternative, would not allow for temporary transfers of halibut or sablefish IFQ by individual military reservists or guardsmen. If such an individual was called to active duty, he or she would have to either permanently transfer their QS, or forego the economic benefits associated with harvesting their annual IFQ allocations for the duration of their mobilization. Management costs associated with this alternative are expected to remain at existing levels.

NMFS notes that QS holders could make private arrangements to sell and then repurchase the “same” QS, following a mobilization or deployment. However, this may be viewed as circumventing the Council’s intent to prevent *de facto* IFQ leasing. These arrangements also could potentially place the seller and buyer at increased financial risk. These types of “private arrangements” are not sanctioned under the IFQ Program rules; thus, enforcement of the terms of such an agreement could be problematic. Furthermore, legal and/or administrative sanctions could be applied to these transfers, if evidence was presented to NMFS indicating that such an unauthorized temporary transfer had taken place.

Retention of the No Action Alternative would perpetuate an unintended financial burden and personal hardship on members of the Nation Guard and military reserves at a time when they are called to meet the military needs of the Nation. The Council’s original purpose for disallowing IFQ leasing (to encourage QS holders to actively participate in the IFQ fisheries) is not advanced by the imposition of these economic hardships on the individuals affected by this action.

### **3.4 Expected effects of the Preferred Alternative**

The Preferred Alternative addresses a problem that has been identified in the IFQ fisheries. This alternative would allow halibut and sablefish QS holders to request temporary IFQ transfers, if the applicant meets specified requirements related to eligibility, limits on other types of transfers, and evidence of military mobilization. An application and appeals process would be included in applicable regulations in 50 CFR part 679. This alternative would not jeopardize the Council’s policy of having an owner-operator IFQ fleet. The Council has modeled the policy elements of the Preferred Alternative on



emergency medical IFQ transfers. This alternative may further promote stable, owner-operated businesses in the halibut and sablefish IFQ fisheries.

The recipient of IFQ transferred via a TMT would presumably pay the QS holder an agreed upon amount of money for use of the IFQ, thus allowing the QS holder to recoup some portion of the potential economic loss associated with the inability of the QS holder to fish his/her IFQ in a given year due to a military mobilization. This arrangement would benefit the activated QS holder and the temporary recipient of the IFQ. Otherwise, the transaction would not occur. It would also result in a relatively small increase in use of the halibut or sablefish IFQ allocation compared to the *status quo*. This would, in turn, deliver more fisheries-products to the marketplace, with the associated supply and price benefits to consumers. Active use of annual IFQ that would otherwise be idle due to a guardsman's or reservist's mobilization also would promote economic activity among fishing support industry sectors, and provide structural stability to the Council's "owner-on-board" policy for the IFQ fisheries.

The general benefits associated with TMTs include (1) providing operational and economic flexibility to fishermen that are subject to military mobilization orders; (2) providing an income stream to such fishermen that may sustain them economically and allow their future participation in the IFQ fisheries; (3) making raw fish available to processors that would otherwise have gone unharvested; (4) sustaining demand for services and supplies from fishing industry support sectors; (5) ensuring continued supplies of fisheries products derived from the IFQ fish to consumers; and (6) ensuring that any associated jobs, value-added production, tax revenues, and other benefits attributable to the economic activity made possible by the temporary transfer of otherwise inactive IFQ are sustained.

The following information provides additional context about the number and type of QS holders that could be affected by this action. There were 3,467 halibut and sablefish QS holders on record as of June 2007. Of those, 3,325 were individuals, with the balance being legal entities such as corporations. Of the individual QS holders, 2,560 QS holders were between age 17 and 60 years old, inclusive (the age range of service for the National Guard). Several criteria are associated with determining which QS holders could take advantage of the provisions of this TMT action. These include whether (1) the QS holder is not an initial recipient of QS other than halibut Area 2C and/or sablefish in "SE Outside" waters (i.e., not allowed to use a Hired Master to fish their IFQ); (2) the QS holder is an initial recipient, but holds only halibut QS in Area 2C and/or sablefish QS in area Southeast Outside and, as such, is prohibited from using a Hired Master; or (3) the QS holder does not own a vessel. Based on these three criteria, 940 QS holders are potentially eligible for a TMT, if they also are in the reserves or National Guard and subsequently are mobilized. So, at most, 940 individuals could benefit by adoption of the Preferred Alternative, if all QS holders of military age were in a branch of the military reserves or the National Guard.

NMFS does not have sufficient information about which QS holders are military reservists or guardsmen to estimate the number of QS holders that may apply for TMTs. This may not represent a serious impediment to achieving the Council's goal for this action. Recall, the purpose here is to provide a "legally sanctioned mechanism" whereby a QS holder, who also is a member of a military reserve unit or the National Guard, may continue to benefit financially from their IFQ when mobilized to active military duty. The population of beneficiaries of this action will be self-identifying, through the TMT application procedures, and cannot be further characterized. The number of IFQ holders qualified and inclined to apply for a TMT will vary over time (e.g., depending on the strategic needs and demands on the active duty military forces of the United States). At the present time, testimony submitted to the Council and NMFS suggests that relief from the *status quo* prohibition on temporary transfers of QS would directly and immediately benefit current owners of halibut and/or sablefish QS, if such persons were subject to mobilization of their reserve or National Guard unit.

## Effects on Administrative, Enforcement, and Information Costs

Under the Preferred Alternative, NMFS would likely incur additional, minor management costs. These include the costs associated with reviewing and processing TMT applications, the costs associated with adjudicating any appeals of a TMT application denial (if any), and the associated, initial administrative costs of implementing the Preferred Alternative. There could be modest cost increases associated with verifying that an IFQ permit associated with a TMT is valid, but NOAA Office for Law Enforcement and U.S. Coast Enforcement personnel have this responsibility for all IFQ permits, regardless of whether they are derived from a TMT. The extent of actual additional management and enforcement costs are not known, since they will depend to a large extent on the number of TMT requests. NMFS notes that any additional, specific administrative costs associated with TMTs could be recovered through the annual cost recovery requirements associated with the IFQ Program.

### **Benefit/Cost Analysis**

Table 3.1 summarizes the benefits of the alternatives. The Preferred Alternative is expected to increase economic efficiency and operational flexibility for IFQ fishermen, and relieve an unintended financial burden that the *status quo* regulation imposes on military reservists and guardsmen called to active duty. Beyond lifting a restrictive regulatory burden imposed on a very small subset of QS holders, at a point in time when they are least able to absorb these impacts, the Preferred Alternative is expected to increase the likelihood of achieving optimum yield of halibut and sablefish, by allowing IFQ allocations to be more fully harvested.

Beyond the qualifying QS holder, the primary beneficiary of TMTs are those eligible IFQ recipients who would harvest the IFQ associated with these types of transfers during the QS holder's mobilization. In addition, conditional on the number of TMTs and the volume of IFQ they represent, other parts of society may benefit from TMTs. Fish processors may benefit, through efficiencies of scale, by continuing to receive halibut and sablefish associated with the otherwise inactive IFQ. Communities may benefit from the continued income stream and economic activity generated by the harvest of additional IFQ. Suppliers of fishing inputs (i.e., gear purveyors, fuel suppliers, and boat yards) may benefit directly by the continued activity generated by use of the transferred IFQ. Consumers may benefit by the continued supply of product and stable prices (associated with the otherwise inactive IFQ) to the marketplace. Finally, the Nation may benefit to the extent that adoption of this action provides institutional stability and support to the "owner-on-board" management objective that characterizes the halibut and sablefish QS program.

The scale, distribution, and duration of these benefits clearly vary directly with the number of reservists and guardsmen holding halibut and/or sablefish QS, but not otherwise authorized under the *status quo* to hire a skipper to fish their shares, who are called to active duty status in the U.S. armed forces. Such benefits also would vary based on the duration and frequency of such mobilizations.

**Table 3.1 Summary of the cost and benefit analysis of Action 2.**

	<b>Alternative 1. No Action</b>	<b>Preferred Alternative. Allow temporary IFQ transfers for mobilized reservists and National Guard members.</b>
<b>Who may be affected</b>	Baseline	An unknown number of QS holders, who are not otherwise authorized to use a hired master, would be expected to request a TMT each year. This number is expected to be very low. An equal number of IFQ recipients also could benefit.
<b>Impacts to the resource</b>	Baseline. Less halibut or sablefish caught if IFQ not fished; corresponding increase to biomass.	Increased likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks.
<b>Benefits</b>	Baseline	The sanctioning of temporary IFQ transfers by QS holders who are either military reservists or guardsmen called to active duty could yield a number of direct and indirect benefits to these QS holders, other IFQ recipients, the fishing industry, and the general public.
<b>Costs</b>	Baseline: may impose unintended burden on a small group of QS holders	Minor costs associated with implementing and administering TMTs. Limited risk that these transfers may be inappropriately exploited to circumvent owner-on-board requirements, but estimates of the administrative costs associated with detecting and enforcing inappropriate transfers is not known.
<b>Net benefits</b>	Baseline	Net benefits to the Nation are expected to increase in several ways (i.e., added stability and economic security for QS holders who are reservists or National Guard members called to serve the Nation in the active duty military, opportunity for attainment of halibut and sablefish OY, increased product availability to consumers).
<b>Action objectives</b>	Fails to address the objectives of the Council	Meets the objectives of the Council.

## **4.0 FINAL REGULATORY FLEXIBILITY ANALYSIS**

### **4.1 Introduction**

This FRFA evaluates the impacts on directly regulated small entities of the proposed action to remove the longline pot gear closure applicable to the Bering Sea sablefish fishery and to allow mobilize military reservists and guardsmen to temporarily transfer their IFQ. This FRFA addresses 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).

### **4.2 The Purpose of a FRFA**

The Regulatory Flexibility Act, 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 each agency's awareness and understanding of the impact of its regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and considering 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 (adverse) economic impacts 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 a FRFA, 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 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 FRFA has been prepared and is included in this package for Secretarial review.

### **4.3 What is Required in a FRFA?**

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

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) 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;
- (4) 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
- (5) 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.

#### **4.4 What is this Action?**

This action would revise Federal regulations in 50 CFR part 679 to address two separate action items. The first action item would remove a prohibition to allow the use of longline pot gear in the Bering Sea during the month of June. The second action item would allow military reservists and members of the National Guard to temporarily transfer their IFQ if mobilized to active duty.

#### **4.5 Reason for Considering this Proposed Action**

The reason for considering the proposed action is described in detail in Section 2.0 and 3.0 of the RIR. In summary, this action is being considered because it would relieve an operational restriction currently imposed on vessel operators in the Bering Sea sablefish fishery. This restriction is no longer considered necessary, as the operational characteristics of this fishery have changed since the time this seasonal closure was put in place.

The action also is being considered because the action would provide the means for military reservists and guardsmen to temporarily transfer their IFQ to other fishermen to fish on their behalf, should a reservist or guardsmen be ordered to active duty. This would allow such halibut and sablefish quota share (QS) holders to economically benefit from their annual IFQ to other eligible fishermen, even if unable to fish it because of military obligations.

#### **4.6 Objectives and Legal Basis for the Proposed Action**

The objectives of this action are fully described in Section 1.0 of the RIR. The objective for this action is to remove a seasonal gear restriction imposed on the IFQ and CDQ sablefish fishery and to allow certain members of the military temporarily transfer their annual IFQ under certain circumstances.

The legal basis for this action falls under the BSAI FMP prepared by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 et seq., and implemented by regulations at 50 CFR part 679. Further, the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773-773k; Pub. L. 97-176, as amended) authorizes the Secretary of Commerce to enforce the

terms of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea. The Secretary promulgates regulations pursuant to this goal at 50 CFR Part 300. Regulations specific to seasonal and area closures may be found at 50 CFR 679.24; those associated with halibut and sablefish IFQ transfers may be found at 50 CFR 679.41.

#### **4.7 Public Comment**

The proposed rule for this action was published in the Federal Register on March 5, 2008 (73 FR 11851). An Initial Regulatory Flexibility Analysis was prepared for the proposed rule, and described in the classifications section of the preamble to the proposed rule. NMFS received four public comments about the proposed rule prepared for this action. None of the comments contained specific comments about the economic effects of this action.

#### **4.8 Description and Number of Small Entities to which the Proposed Action would apply**

##### **4.8.1 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 Title 5 of the USC defines a “small business” as having the same meaning as “small business concern” which is defined under Section 3 of the Small Business Act. “Small business” or “small business concern” includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor... A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the 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 U.S., 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 (i.e., a catcher-processor) 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 also may be based on stock ownership: (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 control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor or subcontractor is treated as a participant in a joint venture 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. 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. 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.

#### **4.8.2 Description and Estimate of the Number of Small Entities Directly Regulated by the Proposed Action**

NMFS has defined the vessels that fish for halibut and sablefish IFQ as small businesses for the purpose of this analysis. This was done using a methodology that incorporates (1) the number of vessels participating in the IFQ fisheries, (2) restrictions on the use of IFQ, and (3) standard ex-vessel IFQ prices. The number of small entities operating fishing vessels in the IFQ Program may be deduced from certain restrictions the program places on those vessels.

The number of vessels participating in the IFQ fisheries was derived from NMFS's IFQ landing data. In 2006, 1,807 unique vessels made IFQ halibut landings, and 686 unique vessels made sablefish landings. Furthermore, the IFQ Program limits the amount of annual IFQ that may be landed by any individual vessel. A vessel may be used to land up to one-half percent (0.5 percent) of all annual halibut IFQ, or up to one percent (1.0 percent) of all annual sablefish IFQ.

Ex-vessel pricing information is readily available for the halibut and sablefish IFQ fisheries. NMFS annually publishes “standard prices” for halibut and sablefish IFQ that are estimates of the ex-vessel prices received by IFQ fishermen. NMFS uses these prices for calculating cost recovery fee liabilities for IFQ permit holders. The 2006 estimated price per pound for halibut was \$3.71(headed and gutted weight) and \$2.46 per pound for sablefish (round weight), (71 FR 78383, December 29, 2006). In combination, the annual IFQ harvest limits and prices imply maximum ex-vessel revenues of about \$270 million for the halibut IFQ and sablefish IFQ fisheries combined.

While some of the operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and/or sablefish IFQ fisheries are assumed to 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 these IFQ fisheries, no vessel subject to these restrictions could have been used to land more than \$4 million in combined gross receipts in 2006 (the maximum gross revenue threshold for a “small” catcher vessel, established by SBA under RFA rules). Therefore all halibut and sablefish vessels that would be directly regulated by the proposed action have been assumed to be “small entities,” for purposes of the FRFA. This simplifying assumption likely overestimates the true number of small entities, because it does not consider vessel affiliations due to the lack of data on the existence and nature of these relationships.

#### Remove the June longline pot gear closure

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that could face adverse economic impacts attributable to the proposed action. This action has the potential to directly regulate approximately 115 sablefish quota share holders in the BS regulatory area (as of 2006) and six CDQ groups. Testimony from participants in this fishery suggests that approximately six vessels may be expected to use longline pot gear to fish for sablefish in June, if the prohibition is lifted. Vessels engaged in the sablefish fishery may participate in either the IFQ or CDQ sablefish fisheries. They also may concurrently harvest IFQ and CDQ allocations on the same trip.

The proposal to remove the June longline pot gear closure also could affect six CDQ groups. These entities would be directly regulated by this proposed action. The groups are non-profit corporations that manage the CDQ fisheries allocations and other business matters for communities participating in the CDQ Program. The CDQ groups include Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen’s Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. As noted, each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a “small entity” under the RFA.

#### Temporary military IFQ transfers

The number of reservists or guardsmen that hold the category of QS that may not be legally fished by a hired master under current rules cannot be determined with available information. The number of these “citizen soldiers” who both hold such restricted QS and who may be mobilized to active duty status during their fishing career cannot be estimated. Given these uncertainties, it is not possible to know how many QS holders in this class of owners can be expected to request a temporary military transfer of IFQ, should such a provision be made available.



#### **4.9 Recordkeeping and Reporting Requirements**

There are no recordkeeping or reporting requirements associated with removing the seasonal closure that prohibits using longline pot gear during the month of June.

There would be recordkeeping requirements associated with the action to allow temporary IFQ transfers by military reservists and guardsmen. Qualifying QS holders would be required to submit an IFQ transfer application to NMFS. This application would include general identifying information about the proposed IFQ transferor, characteristics of the IFQ to be transferred, the type and duration of mobilization or deployment, and identifying information for the proposed transferee. This application would be similar to other IFQ transfer applications currently in use. Each IFQ transfer application is estimated to take approximately two hours to complete, at a cost to the applicant of approximately \$50. Requisite skills or documentation associated with the completion of such applications include the following:

- The ability to read, write, and understand English.
- Knowledge of NMFS's IFQ transfer procedures.

#### **4.10 Comparison of Alternatives**

A FRFA must include 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 small entities was rejected.

##### Remove the June longline pot gear closure

The two alternatives considered for this action are described in detail in Section 2.2 of the RIR. The economic impacts on regulated small entities are addressed in Section 2.5. Alternative 1, *status quo*, would maintain the June closure for longline pot gear for the fixed gear sablefish fishery in the Bering Sea. As such, it imposes adverse economic impacts on small entities in these fisheries, without offsetting benefits. Alternative 2, the preferred alternative, would amend regulations to remove the June closure, per the request of affected industry members. This latter alternative would yield reductions in economic and operational burdens on those small entities that use longline pot gear in the Bering Sea sablefish fisheries, while not adversely impacting any other user group, including operators of small, fixed gear vessels that also are small entities.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed action on small entities. The objective for this action was to relieve an operational restriction, and associated adverse economic effects, by eliminating a one month fishery closure that is specific to longline pot gear vessels. The original impetus for this closure has been superseded by ongoing changes in the characteristics of the sablefish IFQ and CDQ fisheries.

##### Temporary military IFQ transfers

Two alternatives were considered for this action item. Under Alternative 1, mobilized military reservists or guardsmen would not be able to temporarily transfer their IFQ. This would impose a financial burden on these QS holders, while contributing nothing to attainment of the Council's purpose in adopting the original temporary transfer constraints. Alternative 2, the preferred alternative, would amend regulations to explicitly allow temporary IFQ transfers for mobilized guardsmen and reservists. This would decrease the likelihood that such QS holder would suffer economic hardship due to being unable to harvest their

halibut or sablefish IFQ.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the adverse economic impact of the proposed action on small entities. The objective of this action is to relax the policy of requiring halibut and sablefish QS holders to be onboard a vessel when associated IFQ is caught and landed for a specific class of QS holders.

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## 7.0 REFERENCES

- Hanselman, D.H., C.R. Lunsford, M.F. Sigler, and J.T. Fujioka. 2005. Alaska Sablefish Assessment for 2006 *In: Stock Assessment and Fishery Evaluation Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Regions.* pp. 331-401. NPFMC, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska 99501.
- Hartley, Marcus and Mark Fina. 2001a. "Allocation of individual vessel quota in the Alaskan Pacific halibut and sablefish fisheries." Case studies on the allocation of transferable quota rights in fisheries. FAO Fisheries Technical Paper 411. Rome. pp 251-265.
- Hartley, Marcus and Mark Fina 2001b. "Changes in fleet capacity following the introduction of individual vessel quotas in the Alaskan Pacific halibut and sablefish fishery." Case studies on the effects of transferable fishing rights on fleet capacity and concentration of quota ownership. FAO Fisheries Technical Paper 412. Rome. pp 186-207.
- NMFS. 2003. Report to the Fleet. Alaska Region, National Marine Fisheries Service, Restricted Access Management Program, Juneau, AK.
- Pautzke, Clarence and Chris Oliver. 1997. Development of the Individual Fishing Quota Program for Sablefish and Halibut Longline Fisheries off Alaska. North Pacific Fishery Management Council, Anchorage, AK. 22p. [www.fakr.noaa.gov/npfmc/sci\\_papers/ifqpaper.htm](http://www.fakr.noaa.gov/npfmc/sci_papers/ifqpaper.htm).

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odavis: 3/24/08; 3/28/08; 4/6/08  
4/11/08 per J. Scheurer