

DRAFT FOR PUBLIC REVIEW

Regulatory Impact Review and Initial Regulatory Flexibility Analysis for Four Proposed Amendments to Regulations that Implement the Halibut and Sablefish IFQ Program

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Lead Agency: NOAA Fisheries Service
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Abstract: This document is a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for four proposed actions to amend halibut and sablefish Individual Fishing Quota (IFQ) regulations and the Groundfish Fishery Management Plans for the Gulf of Alaska and Bering Sea/Aleutian Islands under the authority of NOAA Fisheries Service. The proposed alternatives would: (1) allow 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 quota share assigned to vessel categories B, C, or D are held by fishermen on board a vessel; (2) allow the use of pot longline gear in the Bering Sea sablefish IFQ and CDQ fisheries during June; (3) withdraw inactive halibut and sablefish QS from initial recipients and after written notice, award inactive halibut (only) QS to certain qualified crewmen; and (4) allow temporary transfer of IFQs held by mobilized reservists and guardsmen.

Comment Due Date: Public comments may be provided prior to and during the June 2006 Council meeting. A formal comment period will be announced in the proposed rule.

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Acronyms and Abbreviations

ABC	acceptable biological catch
AD	Administrative Determination
AI	Aleutian Islands
BS	Bering Sea
BSAI	Bering Sea and Aleutian Islands
CDQ	Community Development Quota
CFEC	State of Alaska Commercial Fisheries Entry Commission
CFR	Code of Federal Regulations
Council	North Pacific Fishery Management Council
EEZ	exclusive economic zone
EO	Executive Order
FMP	Fishery Management Plan
FR	Federal Register
ft	Feet
GOA	Gulf of Alaska
IFQ	Individual Fishing Quota
IPHC	International Pacific Halibut Commission
IRFA	Initial Regulatory Flexibility Analysis
lb	pound(s)
LOA	length overall
MRA	maximum retainable allowance
mt	metric ton(s)
NMFS	National Marine Fisheries Service
RAM	Restricted Access Management Program
NOAA Enforcement	National Oceanic and Atmospheric Administration, Office of Law Enforcement
NPFMC	North Pacific Fishery Management Council
QS	Quota share
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
TAC	total allowable catch
VMS	vessel monitoring system

Executive Summary

Proposed amendments to the halibut and sablefish fishery regulations would address four issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. In 2005, the North Pacific Fishery Management Council identified four proposed actions as follows. Plan and regulatory amendments to the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Groundfish FMPs would be needed for Action 1, and regulatory amendments would be needed for Actions 2, 3, and 4.

Action 1. Use of catcher vessel QS

Alternative 1. No action

Alternative 2. Allow processing of non-IFQ species on a vessel that is otherwise authorized to process non-IFQ species when any amount of IFQ halibut resulting from quota share assigned to vessel categories B, C, or D are held by fishermen on board a vessel in the Gulf of Alaska, Bering Sea, and Aleutian Islands.

Action 2. Sablefish pots

Alternative 1. No action

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

Action 3. Inactive IFQ permits

Alternative 1. No action

Alternative 2. All withdrawn QS will be removed from the QS pool.

Alternative 3. All withdrawn halibut QS will be redistributed through a lottery if the amount of withdrawn QS is more than the number of QS units equivalent to 50,000 lb for all IPHC regulatory areas in the year of the lottery, as follows:

1. Lotteries would allocate 5,000 lb per recipient; the final recipient would receive the remaining QS units; QS will be awarded to a single lottery recipient if the amount of QS is less than 5,000 lb in an area.
2. QS retains species and management area designations.
3. All lottery QS would be reissued as blocked, "B" Category.
4. Applicants are limited to applying for QS for one area.
5. Entry level crewmen would be required to provide an affidavit stating that they have the ability and intent to harvest the lottery QS for which they applied and who NMFS can verify that they:
 - have a transfer eligibility certificate to hold QS
 - were not an initial recipient of halibut or sablefish QS
 - do not own QS units equivalent to more than 5000 lb in the year of the lottery
6. Lottery QS recipients will be considered second generation QS holders.
7. Lottery QS must be fished within the first full season after issuance, or it would be withdrawn from the QS pool.
8. Before transfer, lottery QS recipients must fish their QS twice (two seasons).

Action 4. Military exemption for activated mobilized reservists and guardsmen

Alternative 1. No action.

Alternative 2. Allow mobilized reservists and guardsmen to temporarily transfer IFQs for the duration of their deployment.

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REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS

1.0 Introduction

This document contains the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for four proposed amendments to regulations that describe management of Pacific halibut Individual Fishing Quota (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.

The proposed actions are the result of two solicitations by the North Pacific Fishery Management Council (Council) for proposals from the public in 1999 and 2003. Proposals were reviewed by the IFQ Implementation Team in 1999 and 2003, and the Team recommended seven proposals to the Council. Seven proposed actions to amend the halibut and sablefish IFQ program, referred to as “Omnibus IV,” were adopted by the Council in December 2004 and forwarded to NOAA Fisheries Service for Secretarial review in October 2005. Two of the four current proposals were not included in Omnibus IV due to their lack of clarity; they were resubmitted and adopted by the Council for consideration. Two proposals were initiated by the Council as a result of public testimony and a discussion with NOAA Fisheries Service staff in 2005. Each action is addressed individually, by chapter, with the RIR analysis preceding the IRFA.

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 679: Fisheries of the Exclusive Economic Zone off Alaska, Subpart D – Individual Fishing Quota Management Measures, 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 Requirements of a Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 601, et. seq., was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, 1) “certify” that the action would not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a “factual basis”, demonstrating this outcome, or, 2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

Based upon a preliminary evaluation of the seven proposed IFQ actions, it appears that “certification” would not be appropriate. Therefore, an IRFA has been prepared for each action. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
 - c. The use of performance rather than design standards;
 - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The “universe” of the entities to be considered in an IRFA generally includes only those small 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 of the industry, or portion thereof, (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis. In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general, descriptive statements if quantification is not practicable or reliable.

Definition of Small Entities

The RFA recognizes and defines three kinds of small entities: 1) small businesses; 2) small non-profit organizations; and 3) and small government jurisdictions. Only small businesses are directly regulated by any of the four proposed actions.

Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and does not dominate in its field of operation. The U.S. Small Business Administration (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 \$3.5 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 (including its affiliates) 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 \$3.5 million criterion for fish harvesting operations. 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.

NOAA Fisheries Service has defined all halibut and sablefish vessels as small businesses, for the purpose of this analysis. In 2004, 1,335 unique vessels made IFQ halibut landings, and 389 unique vessels made sablefish 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, or up to one percent (1.0 percent) of all sablefish TAC.

NOAA Fisheries Service annually publishes “standard prices” for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NOAA Fisheries uses these prices for calculating permit holder cost recovery fee liabilities. In 2003, these price data suggested that the prevailing prices might have been about \$2.92 per pound for halibut (headed and gutted weight), and \$2.36 per pound for sablefish (round weight) (68 FR 71036). In combination, these harvest limits and prices imply maximum ex-vessel revenues of about \$1.68 million (for halibut and sablefish taken together).

While some of the operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and/or sablefish 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 these IFQ fisheries, no vessel subject to these restrictions could have been used to land more than \$3.5 million in combined gross receipts in 2003 (the maximum gross revenue threshold for a “small” catcher vessel, established by SBA under RFA rules). Therefore all halibut and sablefish vessels have been assumed to be “small entities,” for purposes of the IRFAs. 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.

1.4 Structure of the IFQ Program

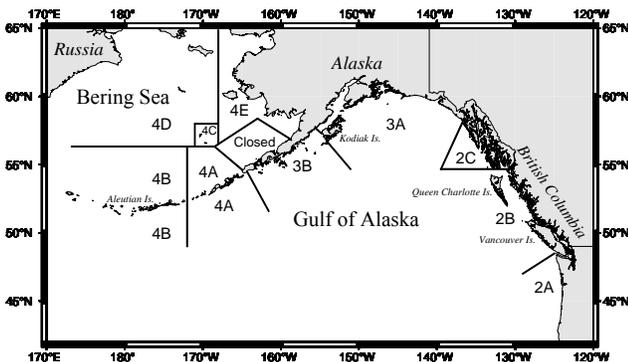
The IFQ Program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) in the North Pacific Halibut Convention waters in and off Alaska, and sablefish (*Anoplopoma fimbria*) fisheries in waters of the Exclusive Economic Zone off Alaska.

The 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 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 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; to allocate specific harvesting privileges among U.S. fishermen; to resolve management and conservation problems associated with “open access” fishery management; and to promote the development of fishery-based economic opportunities in western Alaska. 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 (NOAA Fisheries 2003a, in prep.).

Design of the IFQ Program

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 kind of fishery operation. QS are issued specifically to a vessel class and to an IFQ regulatory area. There are eight areas and four vessel categories for halibut (below left), and six areas and three vessel categories for sablefish (below right).



The Council also designed a “block program,” to further guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. The block program reduced the amount of QS consolidation that could have occurred under the IFQ program, and slowed consolidation by restricting QS transfers. The following are provisions of the block program.

- All initial QS allocations for both halibut and sablefish, which would have yielded less than 20,000 lb of IFQ in 1994, were placed permanently in a QS block. Blocks are not divisible and can only be bought or transferred in their entirety.
- A sweep-up provision allows very small blocks to be combined into a fishable amount. For halibut, blocks could be combined if the sum total would not exceed an amount of QS equal to 1,000 lb of IFQ in 1994. The same provision applies to sablefish, except that the poundage cap was set at 3,000 lb. In 1996, the sweep-up consolidation levels for small QS blocks were increased to 3,000 lb for Pacific halibut, and 5,000 lb for sablefish. The base year for determining the pound equivalents was revised to 1996 and the poundages were fixed as QS unit equivalents. This was to eliminate any confusion as to the appropriate sweep up level in pounds, which otherwise would fluctuate with changes in the annual TAC.

- Block restrictions limit a QS holder to hold up to two blocks of QS each for halibut and sablefish per IFQ regulatory area. However, if a QS holder holds any amount of unblocked QS for an area, he or she may hold only one block of QS for that area.

An amendment to the IFQ program in 1996, relaxed the restrictions on using QS across vessel categories. The ‘fish down’ amendment, as it was termed, allowed QS deriving from larger catcher vessels to be fished on smaller vessels, with an exception in Southeast Alaska:

Category B	authority to harvest IFQ species on a vessel of any length (except in halibut Area 2C or sablefish Southeast Outside District, unless the IFQ derives from blocked QS units that result in less than 33,321 halibut, or 33,271 sablefish QS units)
Category C	authority to harvest IFQ species on a vessel less than or equal to 60 ft LOA
Category D	authority to harvest IFQ halibut on a vessel less than or equal to 35 ft LOA

In 2004, the Council made five recommendations for changes to the block program; these are under Secretarial review.

- increase the number of QS blocks that may be held by a person in each regulatory area to three blocks, unless unblocked QS is held, in which case the limit is one block.
- divide all QS blocks in halibut Areas 3B and 4A which yield more than 20,000 lb, based on the 2004 TACs, into one block of 20,000 lb with the remainder as unblocked QS. This proposed exception to the current block limits would no longer be in effect for a QS holder once one of his/her two blocks is transferred.
- increase the Areas 2C and 3A halibut sweep-up level to a 5,000 lb equivalent in 1996 QS units.
- allow category D QS to be fished on vessels less than or equal to 60-ft LOA in Areas 3B and 4C only
- allow category B QS to be fished on a vessel of any length.

Another design feature of the IFQ program is to require that, for the most part, holders of IFQ be onboard at the time of harvest. To maintain this predominantly “owner-operated” nature of the fishery, the program provides that:

- Only QS holders who received their quota upon initial issuance may hire skippers to fish the resulting IFQ. In Southeast Alaska (for halibut, Area 2C and for sablefish, east of 140 degrees west longitude), only corporations or partnerships that received their QS on initial issuance may hire masters.
- When QS is transferred, it may only be transferred to an entity that received an initial award of QS or to an individual who is a qualified crew member. If QS is transferred to an individual, that individual must be on board while the IFQ is being fished.

The Council has amended the program a number of times to tighten the hired skipper provision. In 2004, the Council recommended further limits on the use of hired skippers. In addition to the current regulatory requirement that QS holders must demonstrate at least a 20 percent ownership interest in a vessel to use a hired skipper on that same vessel, the preferred alternative would require an abstract of title that documented continuous ownership in the vessel, upon which the hired skipper is used, for the previous 12 months.

1.5 Description of the Fishery

A detailed description of the fishery can be found in the Report to the Fleet, prepared regularly by the Restricted Access Management Program (NOAA Fisheries 2003a, in prep.). In 2005, approximately 59 million pounds of halibut were allocated among halibut QS holders in the eight halibut IFQ regulatory areas. Also, 38 million pounds of sablefish were allocated among sablefish QS holders in the six sablefish IFQ regulatory areas. Ninety-three percent of the halibut harvest and 89 percent of the sablefish harvest was harvested across all areas as of the end of October 2005. The information below is taken from these reports. Table 1.1 shows the number of unique QS holders, by regulatory area, for halibut and sablefish. While 102 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 1-1 Number of Persons holding halibut and sablefish QS in 2004.

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

Halibut	Area	Persons
	2C	1,388
	3A	1,847
	3B	547
	4A	271
	4B	106
	4C	63
	4D	47
	4E	103
	TOTAL	3,292
Sablefish	Area	Persons
	Southeast Outside	451
	West Yakutat	276
	Central GOA	414
	Western GOA	173
	Aleutian Islands	100
	Bering Sea	117
	TOTAL	874
TOTAL	H&S QS	3,519
HOLDERS		

Table 1-2 Number of Vessels participating in the halibut and sablefish fisheries in 2004 by 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
Sablefish	Area	Number of Vessels			
		0-35'	36-60'	61-125'	≥126'
	SE Outside	8	184	39	2
	West Yakutat	0	84	44	1
	Central GOA	7	116	60	6
	Western GOA	2	39	28	7
	Aleutian Isl.	0	11	16	6
	Bering Sea	2	20	15	7
	TOTAL	19	454	202	29

A total of 1,304 unique vessels participated in the halibut fishery, 396 unique vessels participated in the sablefish fishery, and 1,335 unique vessels participated in both fisheries in 2004. 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, 38-56 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 7-16 percent of sablefish IFQ may be processed onboard.

2.0 Action 1. Use of catcher vessel QS

The Council received two proposals that resulted in the analysis of this action. One proposal would relieve restrictions that necessitate that all halibut catcher vessel QS be completely harvested before halibut freezer (“A” shares) can be fished and non-IFQ species can be processed. A second proposal would allow for frozen product of non-IFQ species to be onboard while harvesting halibut catcher (“B,” “C,” or “D”) shares. The two proposals are functionally the same, although intended to alleviate different operational restrictions. Under Alternative 2, regulatory language at § 679.7(f)(13), § 679.7(f)(15), and § 679.42(k) would be deleted, if approved by the Secretary of Commerce and implemented by NOAA Fisheries Service, to address both proposals.

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 catcher vessel IFQs that are held by the skipper (i.e., Master) or any fishermen on board the vessel before processing of non-IFQ species is permitted. The Council does not intend to 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. The BSAI and GOA Groundfish FMPs could be amended and specific regulatory language in §679.7(f)(13), §679.7(f)(15), and §679.42(k) could be deleted or modified under Action 1.

2.1 Problem in the fishery

Regulations at §679.7(f)(13), §679.7(f)(15), and §679.42(k) prohibit the processing of halibut harvested with category A IFQs and non-IFQ groundfish species if unharvested halibut catcher vessel (B, C, or D) IFQs (any amount greater than zero) are held by any harvester on board a vessel. While intended to maintain the small-boat nature of the IFQ longline halibut fishery, the regulations have had unintended consequences. They 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. It is very difficult to zero an IFQ account without exceeding the overage limit and subsequent penalties.

The original intent of this prohibition on mixing processed and fresh IFQ halibut and non-IFQ groundfish was to maintain the small boat, owner-operator nature of the halibut fleet; however, the social or economic conditions that existed at initial implementation of the IFQ program may no longer be in effect. Landings from all vessel classes have shifted due to improved fresh market conditions and longer fishing seasons since the prohibition was relieved for sablefish only under BSAI/GOA Groundfish Plan Amendments 33/37 to the IFQ program in 1996. Increased retention and utilization of groundfish species would be further enhanced by the proposed

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.

§ 679.7 Prohibitions (f) IFQ fisheries (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 § 679.42 Definitions:

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.

action because unfrozen Pacific cod that now primarily goes to meal due to poor quality could be frozen. More small boats have freezer capacity and increased prices would result from freezing non-IFQ species.

2.2 Alternatives

Alternative 1. No action.

In 1991, 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 demonstrated a deep concern for the potential social and economic effects of a market-based allocation scheme especially 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 rules to prevent excessive consolidation of QS, and economic protection of small-scale and entry-level fishermen. These rules were acknowledged to create inefficiencies in the fisheries but were considered necessary in a rationalized fishery.

The Secretary of Commerce implemented the Council's preferred alternative for an IFQ program (59 FR 28281) on November 9, 1993. From its implementation 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 assigned to vessel categories B and C was not allowed to process any fish on board the harvesting vessel because the 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 processor vessels in the sablefish IFQ fixed gear fisheries only. That amendment did not extend to the halibut IFQ fishery. **Hence, a person holding halibut IFQ in any of these categories would effectively prevent a vessel used by the person from processing any non-IFQ groundfish species, until the 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 socio-economic 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 socio-economic 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 (e.g., freezing) of non-IFQ species in the 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).

Alternative 2. Allow processing of non-IFQ species on a vessel that is otherwise authorized to process non-IFQ species when any amount of IFQ halibut resulting from quota share assigned to vessel categories B, C, or D are held by fishermen on board a vessel in the Gulf of Alaska, Bering Sea, and Aleutian Islands.

Amendments 33/37 allowed sablefish IFQ holders assigned to vessel categories B or C to process non-IFQ species. Changes to the regulatory text of the IFQ Program included removing the definitions of “freezer vessel” and “catcher vessel” and adding a definition of “processing” was added. Vessel category A, previously described as “freezer vessels of any length,” was changed to “vessels of any length authorized to process IFQ species.” A provision was added to allow the processing of fish, other than IFQ halibut and IFQ sablefish, onboard vessels on which persons are harvesting IFQ sablefish based on an annual allocation of IFQ resulting from sablefish QS assigned to vessel categories B and C. Revised regulations describe vessel categories in terms of: (1) vessel length; (2) specific species designations (i.e., vessel category D for IFQ halibut only); and (3) authorization to process IFQ species. Under Alternative 2, the same provision to allow the processing on non-IFQ species would be extended to the halibut IFQ fishery, and all halibut QS may be fished in any sequence.

2.3 Expected effects of Alternatives 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 socio-economic differences between the fisheries at that time. The halibut fishery characteristically has been prosecuted by local vessels that do not have on-board processing capabilities. 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-type vessels would acquire the majority of the “catcher vessel” QS. The result would be an increase in harvesting of 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 the large, industrial-type vessels that process their catch for available IFQ, would have a detrimental socio-economic 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 unutilized B, C, or D category IFQ. 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. If caught incidentally to halibut or sablefish, this catch would likely be lower quality since halibut and sablefish retain quality in the hold longer than Pacific cod or rockfish. It is unknown how many persons or the volume of groundfish may be affected by this prohibition. Groundfish (e.g., sablefish) and

halibut landings are not recorded together in the same database and harvests can not be linked without a major staff effort to recreate all such harvests. In addition, it is probable that not all persons would take advantage of the lifting of the prohibition to freeze their catch of non-IFQ species.

2.4 Expected effects of Alternative 2

The prohibition on processing non-IFQ groundfish on category B, C, or D vessels has been reported to result 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. This often results in the discard of some or all incidentally caught fish. Also, IFQ regulations require persons to retain Pacific cod and rockfish caught incidentally to IFQ halibut. This often results in the discard of some or all incidentally caught groundfish. Also, since persons are required to retain Pacific cod and rockfish caught incidentally to IFQ halibut (up to the limit under the maximum retainable allowance standards), they are not allowed to process (or freeze) them. This results in diminished quality and lower value. In fact, much of the non-IFQ species retained by these halibut vessels is rendered into meal, at the expense of the QS holder. Additionally, those sablefish category A QS holders who were provided relief under Amendments 33/37 are still constrained from processing non-IFQ species if they also hold halibut A shares.

Another Category A halibut QS holder proposed relief from the prohibition for a different reason. In this situation, Category A QS holders are prohibited from processing non-IFQ species while fishing their Category A halibut shares, if they have any unharvested catcher vessel QS held by anyone onboard the vessel. As noted above in the problem statement, it is difficult for QS holders to have zeroed their IFQ accounts. And it is operationally difficult for a vessel owner or Master to know that none of the fishermen aboard the vessel has any unused catcher vessel remaining on his/her account.

Several categories of persons could be affected by the proposed alternative (Table 2.1). Under Alternative 2, any vessel on which a person holding B, C, or D catcher vessel IFQ is fishing would be permitted to freezing 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 freezer shares would (under this alternative) be able to process (freeze) catches of Pacific cod, rockfish or other non-IFQ species, if unharvested halibut catcher vessel IFQ shares are held by those aboard the vessel. Also, participants in groundfish fisheries who hold halibut catcher vessel IFQ would be relieved of the restrictions under Alternative 2. 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 (with a freezing operation) who also have unutilized B, C, or D category halibut IFQ shares would be restricted from freezing their salmon catch. Since the prohibition applies if anyone on board these vessels has unutilized halibut IFQ catcher vessel shares, the current prohibition could apply to cases of crew holding IFQ that are employed on other vessels.

Table 2.1 Potentially Affected Persons

- Approximately 3,233 holders of B, C, or D halibut QS
- Approximately 33 freezer/longliners targeting halibut
- Approximately 141 holders of groundfish trawl processor endorsed LLPs licenses
- Approximately 1,312 vessels hold catcher vessel endorsed LLP licenses for vessels 60 feet or under (allowing limited processing of catch onboard)

While the lifting of the prohibition should allow persons with existing capacity to freeze fish onboard, no additional processing capacity is expected to be created under this alternative. Those vessels that do process catch under the proposed change should expect quality of the product to improve to the extent that participants take advantage of proposed action, because catch could be processed (i.e., frozen) relatively quickly onboard rather than brought to shore for processing. As described by proponents of this action, the quality and value of non-IFQ species caught incidentally would increase.

Data are not readily available just for the freezer/longliner portion of IFQ deliveries, which may be more likely to take advantage of the lifting of the prohibition. However, Table 2.2 shows the respective port of delivery – inside and outside of Alaska – for all IFQ deliveries of halibut and sablefish. 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 several NOAA Fisheries enforcement personnel yielded the opinion that IFQ vessels are making fewer deliveries out of the region, compared with the early years of the program.

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

Since the maximum retainable allowances (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. Retention of these incidentally caught non-IFQ species is required, 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 will remain the same under both alternatives. Vessels targeting IFQ halibut are required to retain bycatch of Pacific cod and rockfish (§ 679.7 (8)(i) (1) and (2)). The exceptions to this requirement occur when: a) either Pacific cod or rockfish are on prohibited species catch (PSC) or b) the bycatch of Pacific cod or rockfish for a specific trip has exceeded the MRA. 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 varies by species. For aggregated rockfish, the MRA is 15 percent of the targeted harvest. For shortraker and roughey 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.

2.5 Benefit/Cost Analysis

Table 2.4 summarizes the benefits of the respective alternatives. Alternative 2 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 Alternative 2, 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 that are harvested by freezer/longliners as bycatch during their targeted halibut/sablefish catch. This improvement is likely to be accompanied by an increase in producer surplus, as freezer/longliners are able to receive much greater prices for fish processed onboard shortly after it is caught than fish delivered onshore, which is frequently processed into meal.
- A potential decrease in value-added expenditures for Pacific cod, rockfish and other species processed on-board freezer/longliners. Generally, non-IFQ species processed by freezer/longliners receive less processing than they could receive at a shore plant. To the extent that such value-added processing does not occur economic benefits to the nation from utilization of this resource could be diminished.

- There may also be some consumer effect of this proposed change. As a generalization, higher valued products will be available as a result of the product improvement. Freezer/longliners, however, may have a higher propensity to export their frozen products directly to Pacific Rim or European countries than the shore plants that current process this catch. Whether the overall affect on consumer benefits is positive or negative cannot be determined. The effect of these differences in product distribution on net national benefits is likely to be small, since substitutes for these products are relatively abundant. No data are available to quantify this comparison.

If this amendment were to result in a shift of Pacific cod, rockfish and other non-IFQ species from domestic markets to export markets, consumers could be affected by reduced choice or increased prices. As noted by the SSC, this effect is likely relatively small, as the production of the few vessels affected by this action is relatively small given the large market for fish and general availability of substitutes. In any case, the increase in producer surplus from increased returns from higher quality fish is likely to exceed any loss to U.S. consumers from the loss of supply of fish, if the production is exported. In any case, the generation of quantitative estimates of net benefits is not possible since cost data are unavailable and models of consumer effects are unavailable.

Distributional impacts (which do not directly affect the net benefits to the Nation) are important to participants in the fisheries and the communities and regions involved. Concern over intra-regional shifts of benefits from Pacific cod and rockfish was a large portion of the initial rationale for this regulation. Intra-regional shifts that may occur from this amendment include the following:

There is an unknown potential for intra-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 freezer/longliner adds less value.

The determination of changes in net national benefits hinge on the relative elasticities of demand and supply (market allocation) for each species. Developing reliable estimates of elasticities, especially for Alaska groundfish, has repeatedly been identified by the SSC as a high priority for economic research.

Administrative, Enforcement, and Information Costs

The regulations implementing the prohibition subject to this analysis were adopted to implement Council policy and are not required for enforcement purposes. The current regulation is difficult to enforce. Neither NOAA Enforcement nor USCG has indicated that they would object to the removal of the processing prohibition with Alternative 2. NOAA Fisheries should not incur additional management costs under either alternative. It would represent no change to the monitoring of the targeted species of IFQ halibut and sablefish. Freezer/longliners can harvest both halibut and sablefish on the same trip, up to the limit of their IFQ holdings. Once they reach their IFQ limit, both sablefish and halibut become prohibited species. Vessels can offload halibut and sablefish separately, but they have to offload all of the IFQ species at the same time, (including frozen, and non-frozen). Under the status quo (Alternative 1) and Alternative 2, freezer/longliners are ultimately limited by the MRA limits 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.

2.6 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing vessels with IFQ halibut and IFQ sablefish to process (freeze) non-IFQ species harvested along with their targeted species. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

Reason for action and objectives

Alternative 2 would remove a prohibition on processing (freezing) of non-IFQ catch by vessels with halibut catcher vessel IFQ. The intent of the proposed action is to increase the value of the non-IFQ species harvested by increasing the quality of the product. 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 MRA limit for that species had been reached.

Description and estimated number of small entities

The proposed action directly regulates the approximately 3,233 persons holding B, C, or D halibut quota shares and the vessels on which those persons fish. NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that would be adversely impacted by the present action. It is likely that most quota share holders are small entities and many of the vessels on which they fish are small entities.

Alternatives considered and their potential adverse impacts on small entities

The analysis reviewed the status quo (Alternative 1) which would maintain the prohibition on processing of non-IFQ species. Under the status quo, product values for the incidental harvest of non-IFQ species would remain at their current levels.

Alternative 2 would eliminate the prohibition vessels to process (freeze) the harvest of non-IFQ species regardless of whether person on the vessel held catcher vessels halibut IFQ.

Description of recordkeeping, reporting and other compliance requirements

Paperwork Reduction Act requirements will be addressed by NOAA Fisheries in the final rule. Implementation of this amendment would remove a regulatory impediment rather than impose a new regulatory situation. Therefore, it is likely that the proposed action would require minimal recordkeeping, reporting or compliance requirements in excess of the status quo (Alternative 1).

Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries 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 rule on small entities.

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

	Alternative 1.	Alternative 2. Allow processing of non-IFQ species on a fishing vessel when any amount of IFQ halibut resulting from quota share (QS) assigned to vessel categories B, C, or D are held by fishermen on board a vessel
Who may be affected	Baseline	There are 33 freezer/longline vessels that participate in the IFQ halibut fishery that are the primary group that would potentially be affected by this amendment. Since this amendment would potentially benefit this fleet, it is likely that most of them would take advantage of the opportunity to process (freeze) non-IFQ species. Other potentially affected groups include an unknown number of halibut IFQ holders who crew on catcher/processors (including the salmon fisheries) and approximately 1,300 fixed gear catcher vessels and 90 catcher/processors.
Impacts to the resource	Baseline	There should be no resource impacts associated with Alternative 2. Bycatch limits are regulated under MRA and would remain unchanged
Benefits	Baseline	There are likely to be benefits from increased value of processed Pacific cod, rockfish and other non-IFQ species by a few vessels in the IFQ halibut freezer/longliner fleet, the directed cod longline fleet, and in the salmon fishery. This will benefit freezer/longliners and could benefit U.S. consumers (to a small extent), if this catch is sold into U.S. markets.
Costs	baseline.	There is an unknown potential for diminished value added contribution for non-IFQ species, primarily Pacific cod and rockfish because of a relatively lower level of processing, versus the existing situation. Some minor loss in U.S. consumer surplus could occur, if production is sold into foreign markets. The availability of substitutes will mitigate this effect.
Net benefits	Baseline	Because of the costs and benefits are largely unquantified, the respective ratio of benefits and costs are unknown with certainty. As the SSC notes, the benefits to producers from being able to process a more valuable product onboard are likely to be larger than any consumer loss resulting from potential shifting of product to foreign markets.
Distributional Effects	Baseline	There is a potential for intra-regional shifts of benefits through changes in delivery patterns, or capture of regional and/or local tax benefits from the proposed change.
Action objectives	Fails to address the objectives.	Meets the objectives of the proposed action.

3.0 Action 2: Allow use of longline pot gear in the Bering Sea sablefish IFQ and CDQ fisheries during June

3.1 Problem and management objectives for the action

Potential gear conflicts that were thought to have been occurring at the time of implementation of the prohibition on the use of longline pots in the Bering Sea were undocumented then and now. If gear conflicts were occurring, then additional gear limits would have been implemented. In fact, there are no limits on the number of pots that may be strung together and longline pots are allowed to be stored on the fishing grounds when not being fished; pot gear can not all be stacked on the fishing vessel for transport off the fishing grounds. The one month stand down in June is disruptive to the sablefish and creates economic inefficiencies.

3.2 Alternatives

Alternative 1. No action.

The nature of longline pot gear and strategies used in fishing longline pots deter fishermen from deploying hook-and-line and trawl gear on fishing grounds where longline pot gear is set. This effectively pre-empts common fishing grounds. Despite the natural separation of gear types, the Council recommended a prohibition on the use of longline pot gear in the Bering Sea subarea groundfish fisheries to prevent the pre-emption of fishing grounds in 1991. Final regulations were published by the Secretary on August 21, 1992 (57 FR 37906).

In 1995, the Individual Fishing Quota (IFQ) Program for fixed gear sablefish fisheries extended the fishing season in Federal waters off Alaska to 8 months. Since then, the fishery has expanded by a few weeks at the start of the season. By allowing the fleet to spread its operations over time, the IFQ Program greatly reduced the possibility of congestion and pre-emption of common fishing grounds. 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 killer and sperm whales. Sablefish consumed by whales represent undocumented fishing mortality. Even though the sablefish quota may be underharvested by fishermen, overall fishing mortality could actually be higher than the specified quota, resulting in undetected overharvests. Attempts to deter whales by various non-lethal means have proven unsuccessful. Research concluded that the only viable method for reducing whale interactions is to harvest with longline pot gear instead of hook-and-line gear, and thus deny whales the opportunity to take fish being hauled to the surface.

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 pots were 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 killer whales. In recommending the lifting of the ban on longline pots, the Council expressed concern that, despite the decreased likelihood of grounds preemption, 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. Therefore, a Bering Sea closure to longline pot gear from June 1 through June 30 replaced the year-round gear prohibition on September 18, 1996 (61 FR 49076).

Alternative 2. Allow use of longline pot gear in the Bering Sea sablefish fisheries during June

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(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) * * *

(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.

In October 2004, a representative for longline pot vessels proposed that gear competition or fishing grounds preemption between the sablefish pot longline 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 pot gear during June in all (IFQ and CDQ) Bering Sea sablefish fisheries.

3.3 Expected effects of Alternative 1

Alternative 1 would maintain a regulatory prohibition on the use of longline pot gear in the Bering Sea IFQ and CDQ sablefish fisheries during June each year. Sablefish QS holders would continue to interrupt their fishing activities and stand down for the month. There is no restriction on storing gear in the water or requirement to remove them from the fishing grounds. Mortality of fish or crabs in these unbaited pots left untended on the grounds is unknown.

3.4 Expected effects of Alternative 2

Alternative 2 would address a problem in the IFQ and CDQ sablefish fisheries, which remained after a previous Council action. Due to a prohibition on the use of longline pot gear in the Bering Sea sablefish fisheries during June, inefficient harvesting practices were required as vessels using the prohibited gear must stand down during June of each year. The Council noted in 2005 that if gear conflicts did occur on the fishing grounds, then a number of issues regarding the handling of pot longline gear in the sablefish IFQ fishery would have arisen previously. These include: (1) lack of other regulations that limit gear (i.e., regulations do not limit the number of pots that may be strung together on a longline); (2) operational efficiencies (i.e., longline pot gear can not all be stacked on a vessel in one trip for transport off the fishing grounds), which may have led to: (3) lack of other regulations that limit gear (i.e., regulations do not prohibit the storage of pot longline gear on the grounds when they are not being fished). There is no evidence of these issues occurring in the fisheries.

The directed fishery primarily is a hook-and-line fixed gear 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.”

Pots and pot longlines are more common since the late 1990’s, when marine mammal predation increased. And due to this predation, as well as higher fixed costs related to distances to the fishing grounds, the sablefish IFQ and CDQ allocations have not been attained since implementation of the IFQ program in 1995. In 2005, only 57 and 60 percent, respectively, of the BS and AI sablefish IFQ allocations were harvested compared with 99 percent in most Gulf of Alaska regulatory areas (Table 3.1). The CDQ fisheries attained 74 and 88 percent of the AI and BS sablefish fixed gear allocations.

During its initial review of the draft analysis in December 2005, the Council clarified that the proposed action includes the CDQ sablefish fisheries. Removal of the June pot longline prohibition was proposed to CDQ Program staff by representatives of two CDQ groups originally in October 1999, soon after the first full year of the multi-species CDQ fisheries (S. Bibb, pers. commun.). CDQ participation in the sablefish pot fishery (single and longline pots can not be distinguished) has expanded since 2000. At approximately \$2.00/pound

	Area	Catch Pounds	Allocation Pounds	Remaining Pounds	Percent Landed
IFQ	AI	2,086,603	3,465,631	1,379,028	60
	BS	1,227,693	2,151,690	923,997	57
	CG	12,597,455	12,786,680	189,225	99
	SE	7,796,182	7,870,422	74,240	99
	WG	4,185,407	4,479,747	294,340	93
	WY	4,984,406	5,011,056	26,650	99
CDQ	AI	652,003	886,172	234,169	74
	BS	475,670	537,776	62,106	88

standard ex-vessel value (<http://www.fakr.noaa.gov/ram/2004ifqfees.pdf>), the entire CDQ sablefish fishery is worth approximately \$940,000. It is unknown whether the June gear prohibition results in foregone revenue, or whether harvests occur in the remaining months of the fishing season.

There are few small boats commercial fishing in the Bering Sea in June; much of the NMFS data is confidential. Industry representatives report that as many as 7 pot longline vessels may fish during June if the gear prohibition was removed, as that month typically has good weather (CAPT R. Brill to E. Olsen, pers. commun.). These vessels fish on both sablefish CDQ and IFQ allocations. They typically deploy the pot longline gear in depths of 200-250 fathoms. Halibut longline gear typically is fished at depths of 100 fathoms in different areas of the Bering Sea subarea (G. Williams, pers. commun.). One instance of conflict has been identified and industry reports that the conflict was quickly resolved between the vessels (CAPT R. Brill to E. Olsen, pers. commun.). NMFS data in Table 3.2 report very few vessels using pot gear to target sablefish for 2000-2004 (recall that pot and pot longline gear are combined into the same code) (Terry Hiatt, pers. commun.). Table 3.3 reports the number of weeks targeting sablefish by vessel class. The Council requested additional discussion about the potential groundfish bycatch that could be harvested in June under Alternative 2, but catch and bycatch can not be reported due to confidentiality of the data due to the small number of vessels (< 3) reporting bycatch by species by month by gear type; however, groundfish bycatch in the sablefish pot fisheries in June includes very small amounts of arrowtooth flounder, flathead sole, Greenland turbot, and rougheye rockfish.

Other fisheries that are open during June each year have been identified by NMFS staff and are listed below (M. Furuness, pers. commun.). Public testimony may provide additional information on gear conflicts or grounds preemption, although there is no evidence of gear competition with the sablefish pot or pot longline fisheries.

- Pacific cod summer allocation occurs later in the summer, typically August 15.
- Trawl flatfish typically runs out of halibut prohibited species catch limits by June.
- Pollock trawl fisheries open on June 10, but in different areas and depths.
- Greenland turbot hook-and-line fishing occurs in June, but no gear conflicts reported.
- Yellowfin sole trawl fishing occurs in June, but no gear conflicts reported

Table 3.2. Number of vessels that caught sablefish using pot gear in the BS by month and vessel type, 00-2004

			Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year	
Bering Sea	Catcher- vessels (excluding C/Ps)	Pot	2000	1	0	1	2	1	0	1	1	0	0	0	4
			2001	0	1	1	4	4	2	1	2	1	1	1	7
			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
	Catcher/ Processors	Pot	2000	0	1	1	1	0	0	0	0	0	0	0	2
			2004	0	0	0	1	0	0	0	0	0	0	0	1

Note: These estimates include only vessels fishing part of federal TACs.

Source: Blend estimates, Catch Accounting System, fish tickets, Norpac data, federal permit file, CFEC vessel data. National Marine Fisheries Service, P.O. Box 15700, Seattle, WA 98115-0070.

Table 3.3 Catcher vessel (excluding catcher-processors) weeks targeting sablefish in the Bering Sea by gear, vessel-length class (feet), and month, 2000-2004.

			Bering Sea										
			Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Year	
Hook & line	length: <60	2000	-	4.0	5.0	3.0	11.0	6.0	3.0	4.0	4.0	40.0	
		2001	-	1.0	7.0	9.0	13.0	9.0	8.0	3.0	1.0	51.0	
		2002	-	5.0	6.0	13.0	13.0	14.0	8.0	2.0	-	61.0	
		2003	-	3.0	6.0	10.0	8.0	18.0	12.0	9.0	3.0	69.0	
		2004	-	-	4.0	3.0	9.0	12.0	9.0	8.0	3.0	48.0	
	length: 60-124	2000	-	1.0	2.0	4.0	2.0	4.0	3.0	1.0	-	17.0	
		2001	1.0	-	2.0	3.0	3.0	3.0	2.0	-	1.5	15.5	
		2002	-	1.0	2.0	3.0	-	2.0	1.0	1.0	-	10.0	
		2003	-	-	1.0	2.0	-	2.0	1.0	2.0	-	8.0	
		2004	-	-	2.0	5.0	-	-	1.0	-	-	8.0	
	length: >=125	2002	-	-	-	1.0	-	-	-	-	-	1.0	
		2004	1.0	-	-	-	-	-	-	-	-	1.0	
	Pot	length: <60	2001	-	-	1.0	1.0	1.0	-	-	-	-	3.0
			2002	-	-	-	-	3.0	5.0	3.0	-	2.0	13.0
2003			2.0	3.0	5.0	1.0	-	1.0	1.0	-	-	13.0	
length: 60-124		2000	-	1.0	6.0	2.0	-	1.0	4.0	-	-	14.0	
		2001	1.0	2.0	3.0	5.0	4.0	3.0	3.0	2.0	.5	23.5	
		2002	-	3.0	7.0	6.0	9.0	7.0	4.0	3.0	6.0	45.0	
		2003	4.0	5.0	6.0	2.0	5.0	10.0	12.0	9.0	1.0	54.0	
length: >=125		2004	9.0	9.0	14.0	6.0	8.0	5.0	9.0	5.0	2.0	67.0	
		2001	-	-	1.0	1.0	-	-	-	-	-	2.0	
		2004	3.0	2.0	2.0	-	-	-	-	-	-	7.0	

Note: A vessel that fished more than one category in a week is apportioned a partial week based on catch weight.

Source: Blend estimates (2000-02), Catch Accounting System (2003-04), fish tickets, Norpac data, federal permit file, CFEC vessel data, National Marine Fisheries Service, P.O. Box 15700, Seattle, WA 98115-0070.

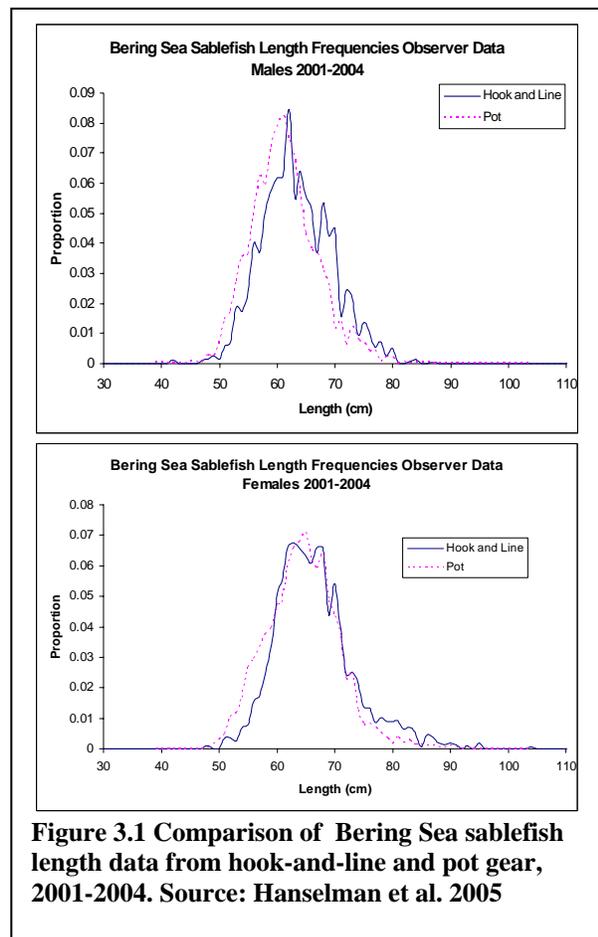
Hanselman et al. (2005) have examined gear selectivity for sablefish to determine if pot gear catches smaller fish than longline gear. The authors compared the length frequencies recorded by observers from the 2001-2004 longline and pot fisheries (Figure 3.1). The lengths of sablefish in the Aleutian Islands and in the Bering Sea were smaller for pot caught sablefish than longline gear, but the difference was minor. In all years the difference between the two gear types was greatest in the Aleutian Islands. They do not believe that the difference in lengths is significant enough to effect population recruitment and did not see any indication that undersized fish were being selected by pots.

Also, along with the “mothers matter” hypothesis that suggests that older females contribute more viable eggs to a population, Beamish et al. (in prep.) suggest that removal of older fish from a population may further jeopardize a population in exceeding its OFL. Therefore, removing more, smaller fish may provide a double advantage to the population. However, the size difference of sablefish removed by different gear types does not appear to significantly affect the population.

3.5 Benefit/ Cost Analysis

Table 3.5 summarizes the benefits of the respective alternatives. No benefits due to the closure have been identified since gear competition or preemption 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 (J. Knutsen, pers. commun.).

Because the sablefish fishery does not harvest the full BSAI TAC, elimination of the June closure may facilitate an increase in total landings and a reduction in fishing costs. As the demand for sablefish is likely elastic, this will result in an unambiguous increase in producer surplus. 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 and changes in consumer surplus of fish sold into the international market are irrelevant in the determination of net benefits to the nation. Specifically, the summary of cost and benefit analysis in Table 3.5, under Benefits, needs to include a statement about the potential benefits of harvesting closer to the optimal yield in addition to the discussion of economic efficiencies arising from reductions in fishing costs.



Insufficient data is available to distinguish between single pot and longline pot landings and effort in the NOAA Fisheries Service catch accounting system. It is known that more pot longlines and fewer hook-and-line longlines are being deployed in the Bering Sea currently, now than at initial implementations (1995), due to whale depredation of sablefish on hook-and-line longline gear. It is also known whether single pots are not much used in the Bering Sea because sea conditions result in their loss. One may assume that most gear reported as pots in the Bering Sea, are longline pots, despite the lack of a code for this gear type. Alternative 2 is expected to increase economic efficiency and operational flexibility for Bering Sea IFQ sablefish fishermen, although they can be assessed only qualitatively. It is expected to increase the likelihood of achieving optimum yield of sablefish by allowing the use of a more efficient gear for the entire season.

Beneficiaries of the proposed action include those fishermen who would use longline pot gear during June, if allowed to do so. While 117 Bering Sea IFQ sablefish permit holders could be affected by the preferred alternative, industry members identified that approximately six pot longline vessels out of a total of 44 total vessels participating in the fishery (in 2005) may be expected to fish in June.

Administrative, Enforcement, and Information Costs

Either alternative would have no effect on administrative, enforcement or information costs. Alternative 2 would represent no change to the monitoring of the targeted IFQ species. Neither NOAA Enforcement nor USCG has indicated that they would object to the removal of the gear prohibition under Alternative 2.

Table 3.4 Summary of the cost and benefit analysis of Action 2.

	Alternative 1	Alternative 2. Allow the use of pot longline gear in the Bering Sea IFQ sablefish fishery.
Who may be affected	Baseline	One hundred seventeen Bering Sea IFQ sablefish permit holders could be affected. Public testimony indicated that perhaps six pot longline vessels out of a total of 44 total vessels participating in the fishery may be expected to fish in June.
Impacts to the resource	Baseline	May increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, consistent with sound management practices.
Benefits	Baseline	Revenues would increase, as sablefish harvests would be closer to the optimal yield. Economic efficiencies arising from reductions in fishing costs would be achieved as: 1) fishing would not be interrupted for those using pot longline gear; and 2) pot fishermen would not have to remove or store gear during the one month mid-season closure.
Costs	Baseline	There do not appear to be costs associated with this alternative, since there is no known gear conflict or grounds preemption. Groundfish bycatch could increase, but only up to maximum permissible limits.
Net benefits	Baseline	Net benefits are expected to be positive since at least six vessels may be expected to use pot longline gear during June, and no vessels from other fleets are believed to be negatively impacted. These fleets are separated in either space and/or time.
Action objectives	Fails to address the objectives of the Council.	Best meets the objectives of the Council by increasing economic efficiency of the IFQ sablefish pot longline fleet.

3.6 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing the use of medical transfers of IFQ. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

Reason for action and objective

The Council believed that gear conflicts and grounds preemption may still be occurring in the Bering Sea sablefish fixed gear fishery. It, therefore, recommended and NOAA Fisheries Service implemented a prohibition the use of longline pots in the Bering Sea during June, so that small hook-and-line longline vessels would have one month of good weather to fish on the grounds free of pot longline gear. Since then, pot longline vessels have reported that no gear conflicts or grounds preemption are occurring and have requested removal of the regulatory prohibition.

Description and estimated number of small entities

This action has the potential to directly regulate perhaps approximately 117 persons who hold sablefish QS in the Bering Sea regulatory area, as of 2005 (Table 1.2). Perhaps six pot longline vessels may use their gear in June, if the prohibition is lifted. At present, NOAA Fisheries Service does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that would be adversely impacted by the present action.

Alternatives considered and their potential adverse impact on small entities

This analysis reviews the status quo and an alternative to relieve a regulatory prohibition on the use of pot longline gear in the Bering Sea during June. The alternatives are explained in Section 2.2, and the following summary of impacts on small entities is from the discussion in Sections 2.3 and 2.4.

Alternative 1 is the no action alternative and would continue any associated adverse economic impacts on directly regulated small entities. Under the status quo, pot longline gear is prohibited in the Bering Sea during June.

Alternative 2 would remove a prohibition on the use pot longline gear in the Bering Sea during June each year.

Description of recordkeeping, reporting and other compliance requirements

No Paperwork Reduction Act requirements have been identified as part of this proposed action.

Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries Service is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries Service 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 rule on small entities.

4.0 Action 3: Inactive initial recipients

4.1 Problem and management objectives for the action

Numerous initial recipients of halibut and sablefish QS have never fished, transferred, or leased any of their QS/IFQ, which has resulted in inactive IFQ permits. The QS held by these inactive permit holders, however, is miniscule. Some of these individuals have requested to be removed from the program, but Federal regulations do not clearly provide for the voluntary removal of QS other than through transfer.

4.2 Alternatives

Alternative 1. No action

There is no clear regulatory authority for NMFS to void QS; therefore, a QS (permit) holder may surrender his/her holdings. Instead, a QS holder may voluntarily transfer (by sale or gift) his/her QS or fish the associated IFQ, neither one of which is apparently happening for a substantial number of holders of very small holdings. Private brokerages maintain listings, and NMFS/RAM updates several files of QS holders and transfer-eligible persons daily to facilitate transfers and for general public information. All files include descriptions of the QS held (e.g., species, area, category, block type, fish down, CDQ compensation QS), number of QS units held, and include business mailing addresses of QS holders. These can be made available to the general public to allow for voluntary transfers and consolidation.

Alternative 2. Withdraw all inactive initial halibut and sablefish QS held by initial recipients from the QS pool.

Under Alternative 2, QS held by “inactive persons,” defined as persons who have neither fished nor transferred even 1 QS unit or 1 IFQ lb since initial issuance, would be forfeited (with no compensation) under a “use it or lose it” provision. Only persons who activated neither halibut nor sablefish QS/IFQ would be affected by the proposed action; a person fished some or all of his/her halibut QS/IFQ, but never fished a single unit of sablefish QS would not be subject to the proposed action.

Alternative 2 is modeled after voter registration rolls that are “purged” periodically to remove those who don’t exercise their right to vote. Inactive QS would be eliminated from the program. This would result in diminutively smaller halibut and sablefish QS pools and diminutively larger IFQ allocations to active IFQ participants, proportionate to their holdings.

Alternative 3. Withdraw all inactive initial halibut and sablefish QS held by initial recipients from the QS pool. Redistribute halibut QS through a lottery, if the amount of withdrawn QS exceeds the number of QS units equivalent to 50,000 lb for all IPHC regulatory areas in the year of the lottery, as follows:

1. Lotteries would allocate QS equivalent to 5,000 lb per recipient; the final recipient would receive the remaining QS units; QS will be awarded to a single lottery recipient if the amount of QS is equivalent to less than 5,000 lb in an area.
2. QS retains species and management area designations.
3. All lottery QS would be reissued as blocked, “B” Category.
4. Applicants are limited to applying for QS for one area.
5. Entry level crewmen would be required to provide an affidavit stating that they have the ability and intent to harvest the lottery QS for which they applied and who NMFS can verify that they:
 - have a transfer eligibility certificate to hold QS
 - were not an initial recipient of halibut or sablefish QS
 - do not own QS units equivalent to more than 5000 lb in the year of the lottery
6. Lottery QS recipients will be considered second generation QS holders.
7. Lottery QS must be fished within the first full season after issuance, or it would be withdrawn from the QS pool.
8. Before transfer, lottery QS recipients must fish their QS twice (two seasons).

During initial review of the draft analysis, the Council dropped redistribution of unused sablefish QS from Alternative 3 because only 57,522 units held by 7 permit holders are estimated to be inactive (Table 4.1). The Council deemed that the administrative costs of a lottery for sablefish exceeded the benefits.

The Council also stated its intent that NOAA Fisheries Service contact inactive halibut and sablefish QS holders by certified letter and indicate that these QS holders will need to affirmatively act by notifying NOAA in writing of their desire to retain inactive QS or this QS will be redistributed through lottery. In addition, NOAA will give broad public notice of their intent to distribute QS held by inactive QS holders. All QS held by inactive QS holders that do not respond in writing, affirming their desire to retain inactive QS, within 60 days of notice, will be redistributed as described.

4.3 Expected effects of Alternative 1

Alternative 1 would not revise the IFQ regulations to grant the agency the authority to either: 1) remove QS and IFQ permits held by inactive permit holders, or 2) accept voluntary relinquishment of the same. Under the status quo, RAM will continue to send annual paperwork related to annual IFQ permits and other program to 537 initial recipients who hold halibut and sablefish QS and have not fished, transferred, or leased even one unit of their QS holdings between initial implementation of the IFQ program in 1995 and the end of the 2005 IFQ fishing year. Management costs are expected to remain unchanged.

4.4 Expected effects of Alternative 2

Alternative 2 addresses a problem that staff has identified in the IFQ fisheries since initial implementation. In 1995, more than five hundred persons were issued QS in amounts that were and remain too small to fish, lease, or transfer and there is no clear regulatory authority for NOAA Fisheries Service to accept relinquishment of these allocations that are impractical or uneconomical to fish. Some QS allocations amounted to less than an average sized fish.

While many initial recipients dropped out of the program by transfer (i.e., “selling”), 537 inactive halibut and/or sablefish QS holders remain. More than 11 percent of inactive initial recipients would be affected under

Alternative 2. RAM data indicate that the sum of inactive QS units is miniscule (< 1 percent of all QS) (Table 4.1). Inactive QS holdings have no economic value at the individual holding because there is no market for very small QS allocations and the relatively high cost and burdensome paperwork involved in transfers of small holdings (evidenced by their lack of transfer). But if they are reallocated, the foregone value of halibut QS could be captured by active participants. Inactive halibut QS would yield roughly 280,000 lb and \$840,000 annually if reallocated to active participants and completely fished (based on the 2005 halibut quota and market, and \$3.00 per pound ex-vessel value). Inactive halibut QS, if transferred (i.e., sold) at current market value, would be worth \$7.7 million. Sablefish QS held by inactive persons would yield roughly 16,000 lb and \$32,000 annually, if reallocated to currently active QS holders and completely fished, (based on the 2005 halibut quota and market, and \$2.00 per pound ex-vessel value). The total sablefish QS held by inactive persons, if transferred at current market value, would be worth \$123,000 (Source: <http://www.dockstreetbrokers.com/ifqs.php?type=Halibut>).

Table 4.1 Halibut and Sablefish QS holdings under proposed option to Alternative 2

	Halibut		Sablefish		Halibut and Sablefish	
	Persons	Units	Persons	Units	Persons	Units
Initial Recipients and their holdings	4,829	332,585,547	1,054	317,844,583	4,867	650,430,130
Active Initial Recipients and their holdings	2,213	244,076,358	581	242,910,646	2,342	486,987,004
Inactive Initial Recipients and their holdings	534	865,586	7	57,522	537	923,108

The IFQ Implementation Team noted the following, in its report to the Council in December 2004.

- The IFQ program is a privilege and not a right and the legal aspect of a “taking” is not applicable to this proposal.
- Only active QS holders pay the IFQ recovery fee (which is based on landings) to compensate the Federal Government for the costs of the IFQ program and inactive QS holders are free riders on that program.
- Initial recipients are allowed to hire a Master, except for halibut Area 2C and sablefish Southeast Outside.
- The Magnuson-Stevens Act mandates full utilization and reallocating QS after 11 years of inactivity would address National Standard 1.
- Inactivity of some QS holders during the 11 years of the program has led to economic inefficiencies.

4.5 Expected effects of Alternative 3

The Council modified Alternative 3, as presented in the initial review draft, by: 1) deleting the voluntary component of relinquishing inactive QS and 2) specifying an opportunity for inactive QS recipients to notify NOAA Fisheries of their interest in maintaining their holdings. This opportunity accommodates inactive QS holders who do not wish to fish, lease, or transfer even 1 QS unit but still wish to hold their inactive initial QS allocation. The same number of initial recipients and QS units would be affected under Alternative 3, as is identified under Alternative 2. This was deemed to be more effective at purging the roles of inactive participants because of the requirement to notify NOAA in writing of their interest in maintaining their holdings. Such application would be deemed evidence of activity. This proposed application is expected to increase the likelihood of attaining optimal yield of the halibut and sablefish resource, of purging hundreds of inactive QS

holders from the IFQ Program with minor savings in mailings to these persons, while maintaining whatever social or economic benefits may be perceived by these inactive QS holders in the privilege of holding such QS.

Alternative 3 also provides for a lottery of the remaining inactive halibut QS, after inactive halibut and sablefish QS holders have been provided an opportunity to indicate their interest in “activating” their holdings via written notice to NOAA. This remainder cannot be quantified until after such notice has been filed. Lottery entrants are limited to individuals who were not initially issued halibut QS, who are eligible to hold QS as proven by the possession of a Transfer Eligibility Certificate¹ (TEC), and do not hold more QS than is equivalent to 5,000 lb in the year in which the lottery is conducted. The details of how the lottery will be run will be left to the Restricted Access Management Division.

More than 2,700 IFQ crew members hold transfer eligibility certificates or TECs. Of those, more than 1,100 or 41 percent currently hold QS for one or more species in one or more regulatory areas (Table 4.2). The number of TECs by regulatory area is provided in Table 4.3. The size of their holdings was not readily available, but the tables provide a maximum number of potential lottery entrants for each area. The number would be further reduced since an entrant must choose only one area for the lottery.

Using the 2005 halibut and sablefish TACs, blocked and unblocked QS held by inactive permit holders are shown in Table 4.4. Note that the Area 2C and 3A winnings would be divided among 4 and 10 winners, respectively. And according to the proposed lottery rules all the blocked shares would be transferred as unblocked shares, and presumably remain unblocked upon subsequent transfer. Table 4.4 lists the amount of blocked and unblocked QS that would be awarded under Alternative 2. Much less would be available to be awarded under Alternative 3, proportionate to the amount of QS voluntarily forfeited.

A hypothetical example is presented in Table 4.4, assuming that no inactive permits are retained. In this case, approximately 27 TEC holders would be awarded approximately 865,000 halibut QS units, roughly equivalent to 130,000 lb of halibut and worth more than \$2.2 M. On average, lottery winners would be awarded approximately 4,700 lb of halibut, worth more than \$80,000.

4.6 Benefit Cost Analysis

Table 4.5 summarizes the benefits of the respective alternatives. Alternative 2 would reduce the number of unfished halibut and sablefish IFQ quota shares through voluntary or administrative actions. While this action could lead to increased target catches of halibut and sablefish, current management strategies assume that these harvests will occur, thus this proposed action is not expected to have a measurable effect on halibut or sablefish stocks. However, this action can be expected to lead to additional bycatches of rockfish and Pacific cod although

Table 4.2. U.S. Citizens who did not receive QS by initial issuance but who have demonstrated their eligibility to receive QS by transfer (as IFQ Crew Members) and to whom “IFQ Crewmember” Transfer Eligibility Certificates have been issued and who currently hold QS.

	Individuals	QS holders
Alaskans	1,391	833
Non-Alaskans	788	294
Total	2,719	1,147

Designation of “Alaskan” or “non-Alaskan” is premised on self-reported business mailing address.

Table 4.3. "IFQ Crewmembers" who have received halibut QS by transfer since the start of the program in 1995 and their holdings by area.

Area	Persons	QS Units
2C	742	18,515,581
3A	951	41,411,741
3B	297	13,403,035
4A	255	4,929,917
4B	67	2,658,181
4C	33	1,110,170
4D	25	1,026,750

¹ Only those who have 150 or more days of experience working as part of a harvesting crew in any U.S. commercial fishery are eligible to receive a TEC. Work in support of harvesting but not directly related to it is not considered harvesting crew work.

limited to the MRAs. Based on recently completed analyses of the demand for Pacific halibut (Herrmann and Criddle 2006), the additional halibut landings resulting from the proposed action will lead to increases in consumer and producer surplus. While the lack of a concurrent reliable model of supply and demand for sablefish precludes definitive prediction of the magnitude of direction of changes in net benefits to the nation from the proposed action, the volume of the potential increase in landings is small and serves an international market. Thus, the increase in benefits to US harvesters is likely to be greater than any potential the change in consumer surplus to US citizens (whether positive or negative). Under the lottery option, the value of the halibut quota to be distributed in the lottery could be quite large for the individual lottery winners.

Table 4.4 Hypothetical halibut lottery winnings under proposed option to Alternative 2

Area	Block size (in 2005 lb equivalents)	Blocks	QS units	in 2005 lb	Asking Price	Value	winners	per winner lb	\$ value
2C	<= 5,000	148	187,921	34,487	20.00	689,740			
	unblocked		7,743	1,424	21.00	29,900			
	Total	148	195,664	35,911		719,640	7	5,000	102,806
3A	<= 5,000	336	575,334	79,249	16.00	1,267,984			
	unblocked		22,878	3,151	21.00	66,171			
	Total	336	598,212	82,400		1,334,155	16	5,000	83,375
3B	<= 5,000	15	23,666	5,736	16.50	94,644			
	unblocked		6,861	1,661	15.00	24,915			
	Total	15	30,527	7,397		119,559	1.5	5,000/30,000	60,000/30,000
4A	<= 5,000	7	9,609	2,266	10.50	23,793			
	unblocked		1,728	406	10.50	4,263			
	Total	7	11,337	2,672		28,056	1	2,672	28,056
4B	<= 5,000	3	5,116	996	5.50	5,478	1	996	5,478
4C	<= 5,000	1	578	131	5.50	700	1	131	700
4D			0	0	0	0	0	0	0
4E	<=5,000	39	23,906	0	0	0	0	0	0
HALIBUT TOTAL		549	865,340	129,507		\$2,207,588	27.5	4,700	\$80,275

Potential beneficiaries of the proposed alternatives would include all active QS holders, some halibut TEC holders, and some inactive fishermen who are faced with unwanted mailings from the Federal government. In addition, (1) processors may benefit by continuing to receive halibut and sablefish associated with the otherwise inactive IFQ; (2) communities may benefit from the continued income stream generated by exercise of the IFQ; (3) suppliers of fishing inputs (e.g., gear purveyors, fuel suppliers, boat yards) may benefit by the continued activity generated by use of the transferred IFQ; (4) consumers may benefit by continued supply of product (associated with the otherwise inactive IFQ) to the marketplace; and (5) the Nation may benefit to the extent that adoption of this action provides stability and support to the “owner-on-board” management objective that characterizes the halibut and sablefish QS program.

Minor administrative costs of the program would be recovered over a 1-2 year period, by annual cost recovery fees, already a component of the IFQ program. Action 1, Alternative 2 best meets the objectives of the proposed action.

Administrative, Enforcement, and Information Costs

There is no additional enforcement cost associated with this action. Additional short term administration costs may be borne by the RAM Division from developing and posting a database of inactive QS holdings for one

year, for processing transfers that may result from identifying those willing to transfer their holdings on its website under Alternative 2, and for developing, printing, and processing applications to either retain inactive QS under Alternative 3. Some long term savings will accrue from reducing the number of recipients for annual IFQ mailings and other communications by the RAM Division. Administration and information costs are recovered to some extent by the cost recovery fee paid by active QS holders. However, implementing a lottery for nearly 3,000 IFQ crew members would be very time, money and labor intensive for only a few QS holdings. The costs of implementing the lottery would be difficult to separate from other IFQ costs.

Table 4.5 Summary of the cost and benefit analysis of Action 3.

	Alternative 1	Alternative 2. Withdraw inactive halibut and sablefish QS	Alternative 3. Withdraw inactive halibut and sablefish QS and hold lottery for inactive halibut QS
Who may be affected	Baseline	Approximately 570 inactive initial recipients of QS would forfeit their halibut and sablefish QS, if they did not activate their IFQ permits by fishing, leasing, hiring a Master, or transferring at least 1 QS unit during the year following implementation. The remaining 1,800 active QS holders would benefit proportionate to the QS holdings from the reduction in the QS Pool. Approximately 1,800 current (active) QS holders would have their allocations minutely increased.	Alternative 3 has the same effects as Alternative 2 for sablefish; however, inactive QS units would be awarded to selected crewmen instead of being reallocated to all active QS holders. Approximately 27 crewmen would share 1,100,000 halibut QS units. These shares would generate \$840,000 ex-vessel annually and \$7.7 million if transferred. Individual awards would range between 0 lb in Area 4D to 36,000 lb in Area 3A.
Impacts to the resource	Baseline	May increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, consistent with sound management practices.	Optimal yield of halibut and sablefish would be more likely to be achieved. Groundfish bycatch in these fisheries would increase, but these are capped.
Benefits	Baseline	Additional landings are expected to lead to increases in consumer and producer surplus. Halibut held by inactive persons would yield roughly \$880,000 annually. The total inactive halibut QS, if transferred at current market value, would be worth \$7.7 million. Inactive sablefish QS would yield roughly \$32,000 annually, if reallocated to currently active QS holders and completely fished. The total inactive sablefish QS, if transferred at current market value, would be worth approximately \$123,000. Additional benefits include circulating increased revenues within support industries.	Benefits would be the same as Alternative 2. Benefits for the halibut fishery would be distributed to entry level crewmen, rather than to all active QS holders.
Costs	baseline.	Nominal costs would likely be incurred due to administrative and information costs. Estimates of these costs cannot be provided, a priori. However, most or all of these costs would be recovered by the IFQ fee that would now be applied to formerly unharvested landings.	Lottery costs could be high.
Net benefits	Baseline	Net benefits to the Nation are expected to increase via increased opportunity for attainment of halibut and sablefish OY and product availability to consumers.	Same as Alternative 2, and would enhance entry level opportunities for 23 crewmen.
Action objectives	Fails to address the objectives.	Meets the objectives of the proposed action.	Meets the objectives of the proposed action.

4.7 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing the use of medical transfers of IFQ. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

Reason for action and objectives

Removal of inactive QS from the QS Pool would result in a diminimus increase in the attainment of the optimal yield for halibut and sablefish but would enhance recordkeeping and economic efficiency by removing inactive IFQ permits.

Description and estimated number of small entities

This action has the potential to directly regulate perhaps approximately 570 of the 3,519 halibut and sablefish QS holders, as of 2005 (Table 1.2) and 27 crewmen. At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that would be adversely impacted by the present action.

Alternatives considered and their potential adverse impact on small entities

This analysis reviews the status quo (no relinquishment of inactive halibut or sablefish QS), and two alternatives to withdraw inactive QS. The alternatives are explained in Section 4.2, and the following summary of impacts on small entities is from the discussion in Sections 4.3 and 4.4.

Alternative 1 is the no action alternative and would continue any associated adverse economic impacts on directly regulated small entities. Under the status quo, inactive QS holders would have no option to relinquish their halibut or sablefish QS.

Alternative 2 would provide clear regulatory authority to require withdrawal of inactive halibut and sablefish QS.

Alternative 3 would provide clear regulatory authority to require withdrawal of inactive halibut and sablefish QS. Alternative 3 would require written notification requirements of pending withdrawal of inactive permit holders, allow an application to activate a permit, require that all remaining inactive QS be withdrawn, and institute a one-time lottery for withdrawn halibut QS.

The Council decided that Alternatives 2 and 3 addressed the problem of numerous inactive QS holdings better than the following rejected approaches.

- Amend the regulations to provide NOAA Fisheries Service with clear authority to accept voluntarily relinquished QS. Only a few inactive QS holders would be expected to file the paperwork to relinquish small holdings, although results might be more reasonably effective if NOAA Fisheries solicits QS surrender by sending forms to inactive QS holders. Therefore, additional rulemaking or OMB approval to notify or survey QS holders might be necessary to make this approach effective.
- Amend the regulations to withdraw QS from inactive IFQ permits after a 2-year notice.
- Implement a fee system on inactive permit holders to continue to hold their unused QS (modeled after the CFEC system on salmon permits). It would recover program costs that could reduce the cost recovery fees of active permit holders. The fee was proposed as voluntary method for inactive fishermen to opt in or out of the program in the future; that is, an inactive QS holder could be deemed active by the payment of an annual fee.
- Canvas inactive permit holders for their consent to be included in an on-line database of inactive permits and associated QS to facilitate transfers. This would assist those QS holders to extract rent from their

unharvested QS, increase fishery efficiencies for achieving the quotas and increase opportunities for new entrants.

Description of recordkeeping, reporting and other compliance requirements

Paperwork Reduction Act requirements will be addressed by NOAA Fisheries in the final rule. NOAA Fisheries would notice inactive QS holders of the potential for them to forfeit the inactive QS if they do not activate their IFQ permit in the fishing year following implementation or by written notice to the RAM Division. NOAA Fisheries may offer inactive QS holders an opportunity to post their QS holdings on a NOAA Fisheries website to assist them in transferring inactive QS. To obtain the social or economic benefit of retaining inactive QS under Alternative 3, a QS holder would be required to file a NOAA Fisheries application. To obtain the economic benefit of being awarded inactive QS in a lottery under an option, a crewman would be required to file a NOAA Fisheries application under Alternative 3. The cost to the applicant would be limited to the cost of administering the application.

It is unknown how many of the nearly 600 inactive QS holders would apply to list their holdings on a website to assist them in transferring their inactive QS, a priori. As noted in Section 4.4, it is reasonable to assume that only a few inactive QS holders would be expected to apply to keep their QS holdings under Alternative 3. It is reasonable to assume many of the more than 2,700 crewmen eligible for the lotteries would be expected to apply for the lottery.

Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries 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 rule on small entities.

5.0 Action 4: Exemption for use of IFQs by mobilized reservists and guardsmen

Action 4 addresses a blanket exemption to limits on transfer of halibut and sablefish IFQs for mobilized reservists and guardsmen. It would not apply to active duty military personnel.

The Alaska Regional Administrator briefed the Council during the June 2005 Council meeting on the issue of a mobilized reservist who was reported to be unable to harvest his QS in the 2004/2005 halibut IFQ season. An individual sent an email on February 5, 2005, to Senator Lisa Murkowski's office in Washington, D.C. He represented the interests of a National Guardsman who was mobilized overseas. The email addressed the inability to temporarily transfer the Guardsman's IFQ to him. On May 12, 2005, Sen. Murkowski's staff forwarded the email to NOAA. On May 13, 2005, NOAA Alaska Region drafted a response to Sen. Murkowski, which outlined three options described below. During its June 2005 discussion, the Council advised NOAA Fisheries Service that it wished to address a long term solution to situations where QS holders are mobilized.

5.1 Problem and management objectives for the action

Federal fishery regulations do not provide for the temporary transfer of IFQs held by mobilized reservists and guardsmen, who are not otherwise authorized to hire a skipper to harvest their QS. The inability to temporarily transfer IFQs during their mobilization constitutes an economic hardship to them and their families.

5.2 Alternatives

Alternative 1. No action.

The IFQ regulations at 50 CFR 679.42(d) currently allow an emergency waiver in only a very narrow application for the transfer of QS in an emergency medical situation that occurs at sea during a fishing trip. An emergency transfer only allows the permit to be temporarily fished, and the landing made, by someone other than the permit holder or Hired Master. Typically, the exception applies to a situation requiring a medical evacuation or other rescue scenario, where an IFQ cardholder must be transferred from the vessel during fishing. Emergency medical transfers (EMT) were originally prohibited, due to the overarching IFQ 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 NOAA Fisheries to determine medical disability. After numerous petitions since initial implementation of the IFQ program in 1995, the Council selected a preferred alternative in December 2004 to allow emergency medical transfers. The proposed rule is being prepared by NOAA Fisheries Service.

Contrary to what many people believe, no exemption for military service by activated reservists under current fishery regulations exists, 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. And no Federal legislation has been introduced to effect such a change. Therefore, three options are available to all QS holders who are temporarily unable to fish their IFQs:

1. s/he may choose not to fish, and may carry over 10% of his 2005 annual IFQ account to 2006;
2. s/he may hire a Master to fish his IFQ (provided he owns a minimum of 20% of the vessel upon which his hired Master will be fishing); or
3. s/he may transfer his shares to any eligible person.

Alternative 2. Allow reservists or guardsmen to temporarily transfer IFQs for the duration of their deployment.

There were 5,638 Reserve and National Guard personnel 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. The Alaska State Defense Force is authorized for 254 reservists. Current enrollment is approximately 300 due to those who have transferred out of state. 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 (CAPT Laura Caperton, pers. commun.).

An exemption for reservists who are activated is modeled after the December 2004 preferred alternative to allow temporary transfers of IFQs for medical emergencies, which is currently under review by NOAA Fisheries Service. A Temporary Military Transfer (TMT) (see below) would exempt successful applicants from the basic prohibition on the leasing of catcher vessel IFQ. As such, the “eligibility” description could apply to: (a) those that have military orders, and (b) otherwise would be prevented from leasing their IFQs. The “limitation” description would specify that “eligibility” would continue during the length of the military deployment but that an application to lease would have to be submitted and approved by NOAA annually, and would not automatically be in effect for the length of the mobilization. In the event that the activated reservist is injured, then EMT provisions would apply. If the reservist dies in service, then her or his QS and IFQ would be transferable under surviving heir provisions.

TEMPORARY MILITARY TRANSFER

Policy Element
Eligibility for Exemption: Only individual halibut or sablefish QS holders to whom one or more catcher vessel IFQ permit(s) have been issued for any given fishing year, and only those who may not retain the services of a Master (hire a Master) to fish his/her annual IFQ permits, may apply for a Temporary Military Transfer (TMT).
Nature of Exemption: Upon approval of an application to receive a TMT, an eligible individual QS/IFQ permit holder may transfer his/her annual IFQ permit to an eligible recipient; i.e., only an individual who is otherwise eligible to receive catcher vessel QS/IFQ by transfer (individuals who received QS upon initial issuance and individuals who are “IFQ Crew members”).
Limitation: Approval of an application for a TMT will be valid for the duration of the military mobilization, with a requirement to reapply each calendar year. There is no limit on the number or duration of a TMT.
Justification for a TMT: An application for a TMT will not be approved unless the applicant demonstrates that she or he is unable to participate in the IFQ fishery(ies) for which she or he holds IFQ permit(s) because of a military mobilization. Council should clarify if they want this exemption for any military or just activated reservists.
Evidence of Military Mobilization: An application for a TMT must contain information required by NOAA Fisheries Service and be submitted on a form provided by NOAA Fisheries Service. NOAA Fisheries Service will not approve an application unless it is accompanied by a copy of the military mobilization order.
Consideration of Applications: Applications for TMTs, together with appropriate evidence (described above), must be submitted to the Regional Administrator (RA) or his/her designee on a form provided by the RA. The RA/designee may request additional information before taking action on the application. If the application is approved, the applicant and the transferee will be so notified and the IFQ permit(s) will transfer. If the application is not approved, the applicant will receive an Initial Administrative Determination (IAD) that sets out the reason(s) the application is not approved. An applicant whose application is denied by an IAD may appeal that denial.
Consideration of Appeals: Any time a TMT application is denied by the Restricted Access Management Division, such denial would be formally set out in an Initial Administrative Determination. As with all such determinations, it could be appealed to the NOAA Fisheries Service Office of Administrative Appeals (OAA). If the applicant fails to appeal, or an appeal is not accepted, the IAD becomes Final Agency Action (FAA). If an appeal is accepted by OAA, OAA will produce a formal Decision on the case. An appellant may request for OAA reconsideration of a Decision. An OAA Decision becomes FAA unless by the effective date, the Regional Administrator orders a review of the Decision. In this case, FAA occurs after RA review.

5.3 Expected effects of Alternative 1

Alternative 1 would not allow for temporary transfers of halibut or sablefish IFQs made necessary due to mobilization of reservists or guardsmen. Under the status quo, QS holders would either sell their QS, or forego the economic benefits of those QS for the duration of their mobilization. However, private arrangements to sell and then repurchase the “same” QS may be viewed as circumventing Council intent to prevent de facto leasing, and could potentially place the “seller” and “buyer” at increased financial risk (e.g., because the “private arrangement” is not sanctioned under the IFQ Program rules, enforcement of the terms of such an agreement could be problematic. Furthermore, legal and/or administrative sanctions could be applied if evidence was presented to NOAA Fisheries indicating this unauthorized temporary transfer had taken place). Management costs would remain at their current levels.

5.4 Expected effects of Alternative 2

Alternative 2 addresses a problem that has been identified recently in the IFQ fisheries. It would allow temporary military transfers of an IFQ permit to be granted, if the applicant meets specified requirements related to eligibility, limit on transfers, and evidence of activation. An application and appeals process would be outlined in the regulations. It would not jeopardize the Council's policy of having an owner-operated IFQ fleet. The Council has modeled the policy elements of Alternative 2 on the preferred alternative for emergency medical transfers, which is under NOAA Fisheries Service review.

The recipient of temporary military transfer, presumably, would pay the original QS holder an agreed upon amount of money for that privilege, thus allowing the QS holder to recoup some portion of the potential economic loss which would be associated with the inability of the activated QS holder to fish that year. This allowance would benefit the activated QS holder and the temporary recipient. Otherwise, the transaction would not occur. It would also result in a diminimus increase in utilization of the halibut or sablefish IFQ allocation than under the status quo, delivering more products to the marketplace, with the associated benefits to consumers and support industries, and provide added structural stability to the "owner-on-board" program design.

There are 3,519 halibut and sablefish QS holders overall (both individuals and non-individuals) as of November 1, 2005. Of those, 3,325 are individuals. Of those, 2,589 QS holders are between (and including) ages 17 and 60 (the ages of service for the National Guard). Additional criteria ensure that the QS holder is: 1) not an initial recipient (and thus allowed to use a Hired Master) or 2) an initial recipient but either holds only halibut Area 2C and/or sablefish Southeast QS and is prohibited from using a Hired Master; or 3) does not own a vessel. Application of these three criteria results in only 952 QS holders as potentially eligible for a temporary military transfer if they also are: a) in the Reserves or National Guard and b) are mobilized. So at most, 952 individuals could be affected if all QS holders of military age were in the reserves or guard.

The following attempts to estimate the number of potentially affected individuals since a list of mobilized reservists and guardsmen is not available. U.S. Census Bureau data reports: 1) that the U.S. population between ages 18 and 55 totaled 153,947,000 in 2003; and 2) there are roughly 5,900 reservists². If the pool of potentially affected QS holders (952) is assumed to be representative of the U.S. population of military age, and the per capita rate of Alaska³ reservists of 0.0038 percent is applied to the pool of 952 QS holders, then it may be assumed that at most one of those is a reservist. If the activation rate of 20 percent (for Alaska National Guardsmen) is applied to that one QS holder, then none of the QS holders would be expected to be potentially affected under Alternative 2. For the purpose of this analysis, the minimum number of individuals estimated to be affected is zero and the upper limit is 952. Assuming that TMTs would occur between one transferor and one transferee, then at least one of the remaining 3,516 QS holders may benefit by being the recipient of a TMT. Twenty-seven crew members who may acquire halibut QS by lottery under proposed Action 3 may also be affected under Action 4, Alternative 2.

Administrative, Enforcement, and Information Costs

Under Alternative 2, NOAA Fisheries will likely incur very minor additional management costs, associated with the number of temporary military transfers requested, associated cost of appeals, and the associated administrative costs of implementing the alternative. Enforcement costs are also likely to increase to a small degree under Alternative 2, since it will be necessary to verify the validity of the permit for the temporary QS holders encountered. 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.

² including National Guard and State forces

³ Although, QS holders may reside in any State, Alaska is used as an example

5.5 Benefit Cost Analysis

Table 5.1 summarizes the benefits of the alternatives. Alternative 2 is expected to increase economic efficiency and operational flexibility for IFQ fishermen. It is expected to increase the likelihood of achieving optimum yield of halibut and sablefish by allowing IFQ allocations to be harvested, which under current rules could be lost, due to military mobilization of reservists and guardsmen.

Beneficiaries of Alternative 2 could include those fishermen confronted with a military mobilization who are unable to physically board a fishing vessel to harvest their IFQs for the duration of the mobilization. Other beneficiaries of such a rule change may be those eligible recipients of transfers who would temporarily harvest those IFQs during the QS owner's mobilization. Lost fishing income of temporarily mobilized QS holders could be mitigated by income from temporarily transferred annual IFQ, under the proposed alternative. In addition, processors may benefit by continuing to receive halibut and sablefish associated with the otherwise inactive IFQ, communities may benefit from the continued income stream generated by exercise of the IFQ, suppliers of fishing inputs (e.g., gear purveyors, fuel suppliers, boat yards) may benefit by the continued activity generated by use of the transferred IFQ, consumers may benefit by continued supply of product (associated with the otherwise inactive IFQ) to the marketplace, and the Nation may benefit to the extent that adoption of this action provides stability and support to the "owner-on-board" management objective that characterizes the halibut and sablefish QS program.

Table 5.1 Summary of the cost and benefit analysis of Action 4.

	Alternative 1	Alternative 2
Who may be affected	Baseline	Very few of 952 QS holders who are not otherwise authorized to hire a skipper would be expected to request a TMT each year. An equal number of TMT recipients also would benefit.
Impacts to the resource	Baseline	May increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, by the amount of IFQs transferred under a TMT.
Benefits	Baseline	The sanctioning of legal transfers of IFQs by IFQ permit holders who are mobilized reservists could yield a number of direct and indirect benefits, proportionate to the number of TMTs issued. These include: (1) providing operational and economic flexibility to fishermen confronted with military mobilization orders; (2) an income stream to such fishermen that may sustain them economically and allow their future participation in the fishery (ies); (3) making raw fish available to processors, that would otherwise have gone unharvested; (4) sustaining demand for services and supplies from purveyors to prosecute the harvesting and processing of the transferred IFQ amounts; (5) assuring continued supplies of fisheries products derived from the IFQ fish, to consumers; and (6) all the associated jobs, value-added production, tax revenues, etc., attributable to the economic activity made possible by the temporary transfer of otherwise inactive IFQ. An unknown number of halibut and sablefish QS holders who serve in reserve forces may, at some point in their fishing careers, unexpectedly need to utilize these temporary transfer provisions. The number of requested transfers cannot be predicted, but are expected to be relatively few. This alternative may further promote stable, owner-operated businesses in the halibut and sablefish IFQ fisheries.
Costs	Baseline	There is very limited risk that this alternative may be inappropriately exploited to circumvent owner-on-board requirements. This risk will require expenditure of additional administrative and legal resources to adjudicate, monitor, and enforce the terms of this temporary transfer provision proportionate to the number of TMTs issued. Estimates of these costs cannot be provided, a priori.
Net benefits	Baseline	Net benefits to the Nation are expected to increase in several ways (i.e., opportunity for attainment of halibut and sablefish OY, increased product availability to consumers, added stability and economic security for QS holders who are called to serve the Nation).
Action objectives	Fails to address the objectives of the Council for this action.	Meets the objectives of the proposed action.

Minor administrative costs of the program would be recovered by annual cost recovery fees, already a component of the IFQ program. Action 1, Alternative 2 meets the objectives of the proposed action.

5.6 Initial Regulatory Flexibility Analysis

This IRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for allowing the use of medical transfers of IFQ. A complete description of the requirements of the Regulatory Flexibility Act is set out in Section 1.3.

Reason for action and objectives

An individual who stated he represented the interests of a QS holder originated a request to allow temporary transfers of IFQ permits by reservists who are activated out of the State of Alaska. The specific inquiry was addressed through one of the three options currently available to QS holders and no emergency occurred. However, the Council expressed its interest in amending IFQ regulations to allow for a permanent solution, should a situation occur that can not be accommodated through current regulations.

Description and estimated number of small entities

Neither NOAA Fisheries nor the Council has been contacted directly by any mobilized reservist or guardsman for a transfer exemption under the IFQ program. This action has the potential to directly regulate at least one of the 3,519 halibut and sablefish QS holders as of 2005 (Table 1.2). Neither the number of mobilized reservists or guardsmen may hold QS that cannot be fished by a hired master can not be determined by available information. And it is not possible to know how many QS holders would have requested a temporary military transfer of IFQs, had such a provision been available. For the reasons discussed in Section 1.3, this analysis assumes that all halibut and sablefish QS operations are small for RFA purposes. At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of “small” entities in the IFQ program, or the number that would be adversely impacted by the present action.

Alternatives considered and their potential adverse impact on small entities

This analysis reviews the status quo (no temporary transfers), and an alternative to allow temporary military transfers. The alternatives are explained in Section 5.2, and the following summary of impacts on small entities is from the discussion in Sections 5.3 and 5.4.

Alternative 1 is the no action alternative and would continue any associated adverse economic impacts on directly regulated small entities. Under the status quo, halibut and sablefish QS holders would have no option for temporary transfer of their IFQ permits even if they are Federal (or State) reservists that are activated for active duty and unable to fish their IFQs as a result of such mobilization.

Alternative 2 would allow military transfers, but would require an applicant to document his/her military mobilization and its duration with NOAA Fisheries.

Description of recordkeeping, reporting and other compliance requirements

Paperwork reduction Act requirements will be addressed by NOAA Fisheries in the final rule. To obtain the economic benefit of a military transfer under Alternative 2, a QS holder would be required to file a two part NOAA Fisheries application. The first part of the requirement would be a brief form from the applicant, providing information to identify the shareholder, QS shares and identifying the duration of the mobilization. It is anticipated that an applicant seeking approval of a military transfer would forward a copy of his/her orders; therefore, the cost to the applicant should be diminimus.

As noted in Section 5.4, it is reasonable to assume that only a few QS holders would meet the criteria identified under the TMT policy elements under Alternative 2. An estimated six beneficiaries may serve as an upper limit for the projected number of annual applicants.

Identification of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule

NOAA Fisheries is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Description of significant alternatives that minimize adverse impacts on small entities

NOAA Fisheries 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 rule on small entities.

6.0 Preparers

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7.0 Individuals Contacted

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Heather Gilroy		
Rachel Baker	ADF&G Commercial Fisheries Division	Anchorage, Alaska
Mike Mayo	Commercial IFQ fisherman	Sitka, Alaska
Jack Knutsen	Commercial IFQ fisherman	Washington
Eric Olson	Bristol Bay Economic Development Corporation	Anchorage, Alaska

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