

Draft Magnuson-Stevens Fishery Conservation and Management Act Considerations

for

A Final Rule to Prohibit the Use of Hired Masters for Sablefish Catcher Vessel Quota Shares Received by Transfer after February 12, 2010

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Abstract: This document was prepared in response to a November 16, 2016, order from the United States District Court, Western District of Washington, regarding a 2014 Final Rule issued by NMFS (Fairweather Fish, Inc. et al. vs. Pritzker et al., Case No. 3:14-cv-05685-BHS). The Final Rule prohibits initial quota share recipients from using a hired master to harvest individual fishing quota derived from catcher vessel quota share received by transfer after February 12, 2010. NMFS has determined that the Final Rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act National Standards, subject to further consideration after public comment. This document describes the factors NMFS considered in this determination.

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List of Acronyms and Abbreviations

Acronym	Full text
BSAI	Bering Sea and Aleutian Islands
CFR	Code of Federal Regulations
Council	North Pacific Fishery Management Council
EIS	Environmental Impact Statement
FMP	fishery management plan
FR	<i>Federal Register</i>
FRFA	Final Regulatory Flexibility Analysis
GOA	Gulf of Alaska
IRFA	Initial Regulatory Flexibility Analysis
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service

Acronym	Full text
NOAA	National Oceanic and Atmospheric Administration
NPFMC	North Pacific Fishery Management Council
PSEIS	Programmatic Supplemental Environmental Impact Statement
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SAFE	Stock Assessment and Fishery Evaluation
Secretary	Secretary of Commerce
TAC	total allowable catch
TLAS	Trawl limited access sector
U.S.	United States
USCG	United States Coast Guard

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Executive Summary

This document was prepared in response to a November 16, 2016, order from the United States District Court, Western District of Washington, regarding a 2014 final rule (Final Rule) issued by NMFS (Fairweather Fish, Inc. *et al.* vs. Pritzker *et al.*, Case No. 3:14-cv-05685-BHS). NMFS published the Final Rule to prohibit initial quota share recipients from using a hired master to harvest individual fishing quota (IFQ) derived from sablefish and halibut catcher vessel quota share received by transfer after February 12, 2010 (NMFS 2014a). The Final Rule is intended to promote a fishery management objective identified by the North Pacific Fishery Management Council (Council). The Council recommended the Final Rule to maintain progress toward predominantly owner-onboard sablefish and halibut IFQ fisheries.

The Court remanded the Final Rule to NMFS for further consideration of the National Standards in section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS completed this consideration after evaluating the information used to prepare the Final Rule, information presented to the United States District Court, and the best available information relevant to the impacts of the Final Rule. NMFS has determined that the Final Rule is consistent with the National Standards as required by the Magnuson-Stevens Act, subject to further consideration after public comment. This document describes the factors NMFS considered in making this determination. This determination and the factors described herein are consistent with the information NMFS presented to the United States District Court for Fairweather Fish, Inc. *et al.* vs. Pritzker *et al.*

1 Background

1.1 The IFQ Program

The IFQ Program for the sablefish fishery is implemented by the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP; NPFMC 2017a) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP; NPFMC 2017b), and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*). The Council recommended and NMFS approved the GOA FMP in 1978 and the BSAI FMP in 1982. Regulations implementing the FMPs and general regulations governing the IFQ Program appear at 50 CFR part 679.

The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679 under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Fishing for Pacific halibut is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-recommended regulations may be implemented by NMFS only after approval by the Secretary of Commerce (Secretary).

NMFS implemented the IFQ Program for the management of the fixed gear (hook-and-line and pot gear) sablefish and halibut fisheries off Alaska in 1995 (NMFS 1993). The Council and NMFS designed the IFQ Program to allocate harvest privileges among participants in the commercial sablefish and halibut fisheries to reduce fishing capacity that had led to an unsafe “race for fish” as vessels raced to harvest their annual catch limits as quickly as possible before the annual limit was reached. A central objective of the IFQ Program was to support the social and economic character of the fisheries and the coastal fishing communities where much of the fisheries activities are based.

Under the IFQ Program, access to the fixed gear sablefish and halibut fisheries is limited to those persons holding quota share. NMFS issued separate quota share for sablefish and halibut to qualified applicants based on their historical participation during a set of qualifying years in the sablefish and halibut fisheries. Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of either the total allowable catch in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, quota share is designated for specific geographic areas of harvest, a specific vessel operation type, catcher vessel or catcher/processor, and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut. These provisions are intended to maintain the historical diversity in the size and type of operations that participate in the fisheries.

NMFS annually issues IFQ permits to each quota share holder based on their quota share holdings and the amount of sablefish and halibut available for harvest. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. IFQ is expressed in pounds and is based on the amount of quota share held in relation to the total quota share pool for each regulatory area with an assigned catch limit.

The Council intended for the IFQ catcher vessel fleet to be composed primarily of quota share holders that actively participate in the fisheries by being on the vessel used to fish their IFQ. To achieve this objective, NMFS implemented requirements that individual holders of catcher vessel quota share be on board the vessel during all IFQ fishing to ensure that quota share remain largely in the hands of active fishermen. Section 5 of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis; NMFS 2014b) prepared for the Final Rule describes that this owner-onboard requirement was intended promote stewardship by providing active fishermen with a vested interest in the long-term productivity of the sablefish and halibut resources. The Council and NMFS also intended for the owner-onboard requirement to provide entry level opportunities for new fishermen as initial quota share recipients transferred their quota share to new entrants and left the fishery.

Section 1.2.4.4.2 of the Twenty-Year Review of the Pacific Halibut and Sablefish Individual Fishing Quota Management Program (IFQ Program Review; NPFMC 2016) describes that at the outset of the IFQ Program, the Council intended for catcher vessel quota share to be held by owner-onboard operations. However, the Council and NMFS allowed initial quota share recipients to use a hired master – a person designated by the quota share holder to land their IFQ – in order to provide initial recipients of quota share with the flexibility to continue in the business practices that they had had prior to the implementation of the IFQ Program and minimize disruption to existing business arrangements. Eligibility to use a hired master is tied to the quota share holder and not the quota share, so initial recipients could use a hired master on quota share that they acquired over time.¹

Section 1.2.4.4.2 of the IFQ Program review describes that the Council and NMFS have amended the hired master use provision several times since implementation of the IFQ Program to further restrict the use of hired masters and ensure that quota share holders remain vested participants in the IFQ fisheries. In 1999, the Council specified that quota share holders must have at least a 20 percent ownership interest in the vessel upon which their IFQ is harvested (NMFS 1999). In 2007 and 2014, the Council and NMFS amended the IFQ Program to further restrict the use of hired masters. The first amendment specified the formal, government-issued documents that quota share holders must use to demonstrate that they have a 20 percent vessel ownership interest in the vessel upon which a designated hired master will harvest their IFQ (NMFS 2007). The second amendment added a 12-month requirement for the minimum 20 percent vessel ownership interest (NMFS 2014a). The Council recommended and NMFS implemented these IFQ Program amendments in response to increasing evidence of overall reliance on hired masters by quota share holders, many of whom had ownership interest in vessels only for the duration of the fishing trip during which their IFQ was being harvested (NPFMC 2016).

¹ In Southeast Alaska (the Southeast Outside District of the sablefish fishery), the Council limited hired master use to only non-individual entities that received an initial quota share allocation in order to maintain what had historically been an owner-onboard fleet in this area.

1.2 The Final Rule

The Council recommended the Final Rule in 2011 and NMFS published the Final Rule in 2014 (79 FR 43679, NMFS 2014a). The Final Rule further restricted the use of hired masters by prohibiting initial quota share recipients from using a hired master to harvest IFQ derived from catcher vessel quota share received by transfer after February 12, 2010. The Final Rule is a limited amendment to the IFQ Program that specifies which quota share yields IFQ that can be fished by a hired master instead of the quota share holder.

The preamble to the Final Rule describes the need for further restrictions on the use of hired masters in the IFQ Program, and a brief summary is provided here. In February 2010, the Council received testimony that some quota share initial recipients were increasingly using hired masters rather than continuing to be personally on board their vessels when fishing with quota share. Increased use of hired masters was attributed to initial recipients purchasing increasing amounts of quota share, and the IFQ derived from that quota share was being fished by hired masters. The Council was concerned that initial recipients were consolidating quota share to be fished by hired masters and were reducing opportunities for new entrants to the fishery. The Council determined that the transition to a predominately owner-onboard fishery has been unreasonably delayed because the ability to hire a master applies to the quota share holder and not the quota share itself. This allowed initial recipients to hire masters to harvest IFQ derived not only from their initially issued quota share, but also IFQ derived from any quota share received by transfer after initial issuance. As a result, quota share had become consolidated among fewer initial recipients of quota share that use hired masters. Quota share are remaining in the hands of initial recipients who hire masters to fish the resulting IFQ instead of being transferred, which delays the progress toward the Program objective of an owner-onboard fishery and decreases opportunities for new entrants to the IFQ fishery.

Beginning in 2010, the Council examined IFQ Program data detailing the use of hired masters, changes in quota share holdings of initial recipients, quota share transfers, and the rate of new entry into the fishery. The data showed that the use of hired masters has increased above levels that existed at the start of the IFQ Program. This is demonstrated by increases in the numbers of individual initial recipients who hire masters in the halibut and sablefish IFQ fisheries and the number of landings made in these fisheries by hired masters. Section 5 of the Analysis describes that quota share are being consolidated among fewer initial quota share recipients who hire masters to fish the resulting IFQ. In addition, some initial quota share recipients that had not previously hired a master are now doing so, and some that had previously hired a master have increased the amount of quota share they hold for use by a hired master or are using masters for a higher percentage of their landings. Finally, the rates at which initial recipients of halibut and sablefish quota share are divesting themselves of quota share and exiting the fishery declined from 2005 through 2009, the most recent data available at the time the Council considered this action.

After receiving public testimony and reviewing the Analysis at its April 2011 meeting, the Council determined it is likely that several factors are inhibiting new entrants from acquiring quota share and slowing progress toward a predominantly owner-onboard fishery. These factors include the increased use of hired masters, increased holdings of quota share by initial recipients who may use a hired master to harvest the resulting IFQ, and decreased numbers of initial quota

share recipients divesting their quota share holdings. The Council determined that evolution to an owner-onboard program is occurring at a slower pace than was originally envisioned and is therefore inhibiting achievement of the Council's goals for the IFQ Program. The Council determined that the absence of a limitation on the use of hired masters could further delay this progress. To address this problem, the Council recommended and NMFS implemented the Final Rule to prohibit the use of a hired master to fish IFQ sablefish and halibut derived from catcher vessel quota share received by transfer after February 12, 2010, with some exceptions described in the Final Rule. Sections 3 and 5.2 of the Analysis prepared for the Final Rule provide additional detail on the need for the Final Rule and the anticipated impacts of the Final Rule on affected fishery participants (NMFS 2014b).

1.3 The November 16, 2016, Court Order in *Fairweather Fish, Inc. et al. vs. Pritzker et al.*

On November 16, 2016, the United States District Court, Western District of Washington found that NMFS did not properly assess the Final Rule in light of the National Standards in the Magnuson-Stevens Act. The Court remanded the Final Rule to NMFS for further consideration of the National Standards (*Fairweather Fish, Inc. et al. vs. Pritzker et al.*, Case No. 3:14-cv-05685-BHS). NMFS prepared this document (National Standards Analysis) in response to the November 16, 2016, Court Order. This National Standards Analysis is designed only to respond to the court's remand to NMFS to further consider the Final Rule with respect to the National Standards, and does not open up the remainder of the Final Rule or the Analysis prepared for the Final Rule (NMFS 2014b). This National Standards Analysis also addresses National Standards that the United States District Court upheld against the Plaintiff's challenges, such as National Standards 1 and 4. This National Standards Analysis incorporates, and is consistent with, the Final Rule analysis of National Standards 1 and 4.

NMFS submitted an analysis to the Court on April 1, 2016, to evaluate the consistency of the Final Rule with respect to National Standards 9 and 10 in response to the Plaintiff's challenges (NMFS 2016). NMFS prepared this analysis with an abundance of caution in consideration of the Plaintiff's challenges and the Court's review of the Final Rule. This National Standards Analysis incorporates and is consistent with the analysis NMFS offered to the Court in April 2016.

2 Consideration of the Magnuson-Stevens Act National Standards

The Final Rule provisions affecting the halibut IFQ fishery were implemented under the authority of the Halibut Act. The Final Rule provisions for the sablefish IFQ fishery were implemented under the authority of the Magnuson-Stevens Act. Therefore, the November 16, 2016, Court Order requires NMFS to consider the Final Rule provisions for the sablefish IFQ fishery for consistency with the 10 National Standards in the Magnuson-Stevens Act. NMFS' considerations are presented below in sections 2.1 through 2.10.

2.1 National Standard 1

National Standard 1 of the Magnuson-Stevens Act specifies that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. 16 U.S.C. 1851(a)(1).

Sablefish stocks in the BSAI and GOA are assessed annually through the North Pacific Fishery Management Council Plan Team process. The sablefish assessment is based on a statistical model that incorporates fishery data and fishery independent data from domestic and Japanese-US cooperative longline surveys and the NMFS GOA trawl survey. Based on the best available scientific information in the most recent sablefish stock assessment, overfishing of the sablefish stock in Alaska is not occurring, the stock is not overfished, and the stock is not approaching a condition of being overfished (Hanselman et al. 2016 and NMFS 2016).

The Council and NMFS use the most recent stock assessment information to establish catch limits for the sablefish fisheries through the annual harvest specifications process (50 CFR 679.20(c)). In establishing these catch limits, the Council and NMFS consider the biological condition of the stock and socioeconomic considerations, consistent with the Magnuson-Stevens Act requirement and the BSAI and GOA groundfish FMPs to achieve optimum yield for the sablefish fisheries.

As described in the National Standard 1 guidelines promulgated by NMFS at 50 CFR 600.310(e)(3), optimum yield is the long-term average amount of desired yield from a stock, stock complex, or fishery. The term “optimum,” with respect to the yield from a fishery, means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. Optimum yield is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery (16 U.S.C. 3(33)).

NMFS determined that the IFQ Program was consistent with National Standard 1 when it was implemented (NMFS 1993). NMFS notes that although the Final Rule may have distributional effects among participants, the Final Rule is not a measure related to bringing the IFQ Program into compliance with National Standard 1. The Final Rule does not modify the process through which the sablefish stock in Alaska is assessed and fishery catch limits are determined. The Council and NMFS considered the effects of the Final Rule to limit the harvest of sablefish by hired masters on total harvest of sablefish IFQ and determined that it would not impede harvest of the total allowable catch. Specifically, NMFS considered a public comment on the proposed rule asserting that the proposed action would likely prevent achievement of optimum yield and violate National Standard 1 of the Magnuson-Stevens Act because initial recipients of quota share would be prevented from transferring quota share to address IFQ Program harvest limitations resulting from vessel use caps and allocations by geographic area. NMFS responded to this comment in the Final Rule (see Comment 11), noting that the Council and NMFS determined that harvesting activities will not significantly change under the Final Rule. Section 5.2 of the Analysis notes that while it is unknown what portion of sablefish IFQ pounds would not be harvested by hired masters, those IFQ pounds may be harvested and landed by (1) the

current individual quota share holder; (2) another individual initial recipient upon transfer of the quota share; (3) a crew member upon transfer of the quota share; or (4) a new entrant quota share holder upon transfer of the quota share.

The Council and NMFS recognized that the Final Rule will reduce the use of hired masters and prevent initial recipients of quota share from acquiring additional quota share for harvest by hired masters. As a result, the Final Rule will have distributional effects on both quota share holders who use hired masters and persons who work as hired masters. Given the number of options for initial quota share recipients to maintain active and viable businesses in the halibut and sablefish fisheries, however, NMFS does not anticipate that the Final Rule will prevent participants from fully harvesting IFQ or the sablefish fisheries from achieving optimum yield. This determination is supported by harvest data following implementation of the Final Rule, which shows that sablefish harvests as a portion of total allowable catch are consistent with harvests prior to implementation of the Final Rule (see NMFS Landing Reports at <https://alaskafisheries.noaa.gov/fisheries-catch-landings?tid=287>).

The Final Rule is also consistent with the optimum yield that is specified as fixed ranges in Section 3.2.2.2 of the GOA and BSAI FMPs and specified in regulation at 50 CFR 679.20(a)(1). As long as the total TAC for groundfish are within the OY ranges specified in the FMPs and regulation: 116,000 to 800,000 mt for the GOA, and 1.4 to 2.0 million mt for the BSAI, then the OY requirement of NS1 is met. Even if no sablefish were harvested, NMFS would still meet its NS1 obligations to achieve OY on a continuing basis under the current levels of TACs specified for the GOA and BSAI as shown in the final harvest specifications for the GOA and BSAI (NMFS 2017a, NMFS 2017b). Therefore, NMFS has determined that the IFQ Program and the Final Rule are consistent with National Standard 1 of the Magnuson-Stevens Act.

2.2 National Standard 2

National Standard 2 of the Magnuson-Stevens Act specifies that “conservation and management measures shall be based upon the best scientific information available” (16 U.S.C. 1851(a)(2)).

The Council and NMFS used the Analysis to analyze the effects of the Final Rule. The Analysis included the best available biological, ecological, environmental, economic, and sociological scientific information, including the sablefish stock assessment and fishery evaluation report, historical and recent catch of sablefish and other species in the sablefish IFQ fishery, and the use of hired masters in the sablefish IFQ fishery.

Section 5 of the Analysis includes information that NMFS used to develop the Final Rule, including the conditions that led to the development of the Final Rule and analysis of the expected impacts of the Final Rule on affected quota share holders and other participants in the IFQ Program. NMFS received public comment on the proposed rule indicating that NMFS did not provide sufficient evidence to support the need to further restrict the use of hired masters. In the response to comments 5 and 6 in the Final Rule, NMFS described that the Council and NMFS evaluated the best available scientific information on the IFQ Program during development of the Final Rule. Tables 9 – 11 and 17 - 20 in the Analysis include the number of individual halibut and sablefish quota share holders from 1995 to 2009, the number of non-individual quota share holders over those years, and their use of hired masters to fish their IFQ.

Tables 21 - 22 in the Analysis include the number of IFQ halibut and sablefish pounds held by persons who may hire masters. In addition, Tables 33 - 40 in the Analysis include information on annual prices for quota share and transfer rates for quota share.

Data from Tables 9 and 11 in the Analysis show that, although the number of initial recipients holding quota share decreased from 1995 through 2009, the number of individual initial recipients who hire masters in the halibut fishery increased from 110 in 1998 to 210 in 2009 (a 91 percent increase), while in the sablefish fishery the number increased from 46 to 91 (a 98 percent increase). Table 16 in the Analysis shows the percentage of halibut IFQ landed by hired masters increased from 7.9 percent of the total IFQ landings in 1998 to 19.3 percent in 2009. Similarly, the percentage of sablefish IFQ landed by hired masters increased from 7.7 percent of the total IFQ landings in 1998 to 15.0 percent in 2009.

The data showed that the use of hired masters had increased significantly above levels that existed at the start of the IFQ Program. This was demonstrated by significant increases in the numbers of individual initial recipients who hired masters in the halibut and sablefish IFQ fisheries and the number of landings made in these fisheries by hired masters from 1995 through 2009. Data analysis also showed that QS were being consolidated among fewer individual and non-individual initial recipients who hired masters to fish the resulting IFQ. In addition, the data showed that some initial recipients that had not previously hired a master were doing so, and some that had previously hired a master had increased the amount of QS they held for use by a hired master or were using masters for a higher percentage of their landings. Finally, the rates at which initial recipients of halibut and sablefish QS were divesting themselves of QS and exiting the fishery declined from 2004 through 2009.

After reviewing this information, the Council and NMFS recognized that without a change in regulations, initial recipients of quota share could continue to increase their holdings of quota share that were exempt from the owner-onboard requirement up to the quota share ownership use caps in current regulation. This potential for increased consolidation of quota share for harvest by hired masters was the crux of the problem the Council faced. The Council and NMFS developed the Final Rule to limit the potential for increased consolidation of quota share relative to 2009 levels. The responses to comments 1 and 2 in the Final Rule describe that the Council has supported the objective of an owner-onboard fishery since the inception of the IFQ Program. The Final Rule furthers that objective by preventing initial recipients from acquiring more quota share that can be fished without the quota share holder being on board the vessel during the harvest of the IFQ.

The Council and NMFS also considered the best available data to estimate the impacts of the Final Rule on affected fishery participants. The Analysis included a significant amount of information to help the Council determine the likely economic impacts of the action, including discussions of (1) the kinds of business models and relationships that have developed around the use of the hired master provision; (2) changes in the way IFQ is harvested by all types of quota share holders over time relative to the program goal of progress towards an owner-onboard fleet; (3) IFQ Program elements and factors outside the program that provide incentives or disincentives for quota share holders to retire from the fishery; (4) changes in quota share held over time by different types of share holders; and (5) transfers of catcher vessel quota share after February 12, 2010.

As noted in Section 5.2 of the Analysis and in the response to Comment 12 in the Final Rule, it is not possible to quantify the economic impacts or predict the outcomes of this action with certainty because the response of each quota share holder to the action will be different. The Council acknowledged that this action could have negative economic impacts on some IFQ fishery participants, particularly for quota share holders who use hired masters and persons who work as hired masters. The Analysis notes that while this action will require some businesses to change their business models, a number of options remain for initial recipients to maintain active and viable businesses in the halibut and sablefish fisheries without significant disruptions to existing business models. As described in the response to Comment 6 in the Final Rule, after reviewing the Analysis and receiving public testimony, the Council and NMFS determined that this action is necessary to balance the interests of initial recipients of sablefish quota share against the interests of new entrants to the fisheries and meet the original goals of the IFQ program to move towards an owner-onboard catcher vessel fishery.

NMFS reconsidered these public comments in the development of this National Standards Analysis and determined that the information in the Analysis represented the most current, comprehensive set of information available to NMFS in developing the Final Rule, recognizing that some information, such as operational costs, is unavailable. NMFS has not identified additional information that was available for consideration by the Council and NMFS during development of the Final Rule. Therefore, NMFS has determined that the Final Rule is consistent with National Standard 2.

2.3 National Standard 3

National Standard 3 of the Magnuson-Stevens Act specifies that “to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination” (16 U.S.C. 1851(a)(3)).

Sablefish are assessed as a single population in Federal waters off Alaska because of their high movement rates. Sablefish are managed by discrete regions to distribute exploitation throughout their wide geographical range. There are four management areas in the GOA: Western, Central, West Yakutat, and East Yakutat/Southeast Outside; and two management areas in the BSAI: Bering Sea and Aleutian Islands (Hanselman et al. 2016).

NMFS determined that the Final Rule to implement the IFQ Program was consistent with National Standard 3 (NMFS 1993). The range of the sablefish stock in Alaska extends from the northern limits of the Bering Sea and Aleutian Islands, north and south of the Aleutian peninsula and islands, and throughout the Gulf of Alaska to the U.S.-Canada boundary at Dixon Entrance. Sablefish are found also inside State of Alaska (territorial sea and internal) waters and in the Exclusive Economic Zone. They are found also in Canadian waters and in and off of the States of Washington and Oregon, which are outside the jurisdiction of the Council. With respect to sablefish, the IFQ program applied to all fishing with fixed gear in the Exclusive Economic Zone off Alaska and, with limited exception, to fishing with fixed gear in State of Alaska waters by fishermen with IFQ permits. The sablefish fishery occurs predominately in the Exclusive Economic Zone. Several relatively small and distinct sablefish fisheries (i.e., Prince William Sound, Chatham Strait, and Clarence Strait) within State of Alaska waters are managed by the State of Alaska. The IFQ program does not apply to these fisheries. The IFQ program also does

not apply to other sablefish fishing with fixed gear that is entirely within State of Alaska waters by persons fishing without IFQ permits. Such fishing produces insignificant harvests of sablefish. The Council included halibut and sablefish in the same IFQ program because these species are interrelated. The IFQ program also requires other species (i.e., Pacific cod and rockfish) to be retained, if caught in association with the IFQ species, to the extent such retention does not violate other State or Federal catch limitations. This management measure purposely recognizes the interrelated nature of the IFQ species with other stocks of fish. Therefore, NMFS determined that the IFQ program was consistent with National Standard 3.

NMFS reviewed the Final Rule with respect to its impacts on the IFQ Program with respect to management of sablefish throughout its range and interrelated stocks of fish. The Final Rule does not change the IFQ Program with respect to the amount of quota share available to the sablefish IFQ fishery or the process used to establish fishery catch limits. The Final Rule does not change current fishing practices or the overall management of the fisheries as a single population in Federal waters off Alaska as managed under the IFQ Program. NMFS prepared a Categorical Exclusion memorandum for the Final Rule to describe the effects of the Final Rule on the natural or physical environment for purposes of determining compliance with the National Environmental Policy Act. NMFS determined that the Final Rule would not change current fishing practices (e.g., season and gear types), overall harvest limits of sablefish, harvest of non-target species, or regulations protecting habitat and important breeding areas (NMFS 2014c) and therefore was categorically excluded from the requirement for an environmental assessment. The Categorical Exclusion memorandum describes that the Final Rule does not modify the assessment or stock management structure for sablefish established in the FMPs. Under the Final Rule, sablefish continues to be assessed as a single population in Federal waters off Alaska and harvest continues to be managed by the established GOA and BSAI management areas. NMFS considered this information in the development of this National Standards Analysis and determined that the Final Rule did not impact the IFQ Program with respect to management of sablefish throughout its range and interrelated stocks of fish, consistent with the finding in the Categorical Exclusion memorandum. Therefore, NMFS has determined that the Final Rule is consistent with National Standard 3.

2.4 National Standard 4

National Standard 4 of the Magnuson-Stevens Act specifies that “conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be; (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges” (16 U.S.C. 1851(a)(4)).

As described in response to Comment 10 in the Final Rule, National Standard 4 provides that conservation and management measures shall not discriminate between residents of different states. The Final Rule does not discriminate between residents of different states. Section 1 of the Analysis and the response to Comment 2 in the Final Rule describes that the owner-onboard requirement applies to all quota share holders, regardless of their state of residence. The Final Rule does not discriminate between residents of any states nor was the Final Rule developed to further restrict the hired master exemption based on the quota share holder’s state of residence.

The Final Rule is designed such that quota share remains largely in the hands of active fishermen rather than absentee owners or investment speculators in order to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. As previously noted, the Council and NMFS determined the Final Rule was necessary to prevent initial recipients of quota share from continuing to acquire additional quota share for harvest by hired masters, thereby prolonging the transition to an owner-onboard fishery.

National Standard 4 further provides that if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. National Standard 4 guidelines promulgated by NMFS and found at 50 CFR 600.325 help to illustrate why the Final Rule meets the statutory requirement. NMFS has determined that this action is not subject to the statutory provisions regarding the fair and equitable allocation of fishing privileges because it is not a direct and deliberate distribution of the opportunity to participate in the fishery among identifiable discrete user groups or individuals. Any management measure can have incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of National Standard 4. (50 CFR 600.325(c)(1)).

This action does not result in the direct distribution of fishing privileges held by quota share holders. Rather, the Final Rule restricts quota share holders' use of hired masters by prohibiting initial quota share recipients from using a hired master to harvest IFQ derived from catcher vessel quota share received by transfer after February 12, 2010. Any distributional effect of this rule on IFQ fishermen and hired masters is an incidental allocative effect. Even if this action could be construed as resulting in direct distribution of fishing privileges, NMFS implemented this rule in furtherance of a legitimate objective. As described in the response to Comment 6 in the Final Rule, the Council and NMFS have articulated a legitimate objective for this action—decreasing the use of hired masters by quota share holders over time in order to hasten progress toward a predominantly owner-onboard catcher vessel sablefish IFQ fishery.

Further, the guidelines to National Standard 4 (50 CFR 600.325(c)(3)(i)(A)) acknowledge that inherent in an allocation is the advantaging of one group to the detriment of another. The motive for any particular allocation should be justified in terms of fishery management objectives; otherwise, the disadvantaged user groups or individuals will suffer without cause. The fishery management objective of a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS starting with the 1995 implementation of the IFQ Program and continuing through the Final Rule. As described above, the owner-onboard requirement is designed such that quota share remains largely in the hands of active fishermen rather than absentee owners or investment speculators in order to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. The Council and NMFS determined the Final Rule was necessary to prevent initial recipients of quota share from continuing to acquire additional quota share for harvest by hired masters, thereby prolonging the transition to an owner-onboard fishery.

The guidelines to National Standard 4 state that an allocation may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. “An allocation need not preserve the status quo in the fishery to qualify as ‘fair and equitable,’ if a restructuring of fishing privileges would maximize overall benefits” (50 CFR 600.325(c)(3)(i)(B)). The Council and NMFS found that the total benefits to the IFQ sablefish fishery resulting from the Final Rule would be increased relative to the status quo as the Final Rule should result in additional quota share placed on the market for purchase by new entrants (see Section 5.2 of the Analysis).

NMFS received a public comment on the proposed rule asserting that NMFS’ analysis of the costs of the proposed rule on the initial recipients of quota share that are directly affected by the Final Rule were not adequately considered when determining the benefits of further restricting the use of hired masters. As described in the response to Comment 12 in the Final Rule, and Section 5.2 of the Analysis, it is not possible to quantify the economic impacts or predict the outcomes of the Final Rule with certainty because the response of each quota share holder to the action will be different. The Council acknowledged that this action could have negative economic impacts on some IFQ fishery participants, particularly for quota share holders who use hired masters and persons who work as hired masters. The Analysis notes that while this action will require some businesses to change their business models, a number of options remain for initial recipients to maintain active and viable businesses in the sablefish fisheries without significant disruptions to existing business models. As described in the response to Comment 6 in the Final Rule, after reviewing the Analysis and receiving public testimony, the Council and NMFS determined that the Final Rule is necessary to balance the interests of initial recipients of sablefish quota share against the interests of new entrants to the fisheries and meet the original goals of the IFQ program to move towards an owner-onboard catcher vessel fishery. NMFS reconsidered these public comments in the development of this National Standards Analysis and did not identify any additional information available following implementation of the Final Rule that would change its determination that the Final Rule is consistent with National Standard 4. Therefore, NMFS determined that the Final Rule is consistent with National Standard 4.

2.5 National Standard 5

National Standard 5 of the Magnuson-Stevens Act specifies that “conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose” (16 U.S.C. 1851(a)(5)).

Section 1.2.4.1 of the IFQ Program Review describes that in developing the IFQ Program, the Council intended to balance goals of economic and operational efficiency with social goals to broadly distribute the benefits of the fishery among participants and promote active participation in the fishery by persons holding quota share (NPFMC 2016). Sections 1 and 5.2 of the Analysis include information on the relative importance of economic efficiency in the IFQ fisheries versus other considerations, such as maintaining an owner-onboard fleet, increasing opportunities for new entrants, and promoting coastal community participation in the IFQ fisheries.

The Final Rule was developed to promote the owner-onboard character of the IFQ fleet, consistent with the goals of the IFQ Program for active participation in the fishery by persons

holding quota share. The Council and NMFS recognized that while the Final Rule would remove the option for some quota share holders to hire a master, these quota share holders can receive economic benefits from the fishery by going onboard the vessel to fish IFQ or by transferring the affected quota share to another qualified participant who will be onboard the vessel to fish IFQ. In addition, the Final Rule does not alter the IFQ program's allowance that participants can use more overall efficient fishing techniques that reduce harvest costs compared to a non-IFQ system. Further, the Final Rule does not distribute fishery resources among fisherman, much less based on economic factors. NMFS has determined that the Final Rule is consistent with National Standard 5 because it results in as efficient a fishery as is practicable or desirable given the objectives for the fishery established by the Council and NMFS.

2.6 National Standard 6

National Standard 6 of the Magnuson-Stevens Act specifies that "conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." (16 U.S.C. 1851(a)(6)).

The final rule implementing the IFQ Program (NMFS 1993) describes that a primary goal of the IFQ Program was to provide an exclusive harvest privilege that allows fishermen to decide how and when to catch their allocation of IFQ, preferably when weather, markets, and business conditions are most favorable. Allocations of quota share were intended to allow fishermen to set their own pace and adjust their fishing effort. Exclusive harvest privileges reduced the premium that was traditionally placed on speed, allowing fishermen to pay more attention to efficiency and product quality. In addition, the BSAI and GOA FMPs specify that the catch limits for the sablefish IFQ fishery are established annually following a review of the most recent stock assessment and fishery evaluation, which considers any known variations in the fishery resource.

The Final Rule preamble describes that the rule only modifies the IFQ Program by limiting the ability of some quota share holders to hire a master to harvest IFQ. The Categorical Exclusion Memorandum prepared for the Final Rule (NMFS 2014c) describes that it does not revise the FMP process for annually specifying catch limits. In addition, the Final rule does not change the process for allocating IFQ or the management structure of the fishery in terms of an IFQ holder's ability to set their own pace and adjust their fishing effort. The Final Rule does not change the process for determining the amount of quota share available to the fishery or the harvest level of the associated IFQ. Finally, the Final Rule does not change current fishing practices (e.g., season and gear types) or the overall harvest limits of sablefish. Therefore, NMFS has determined that the Final Rule is consistent with National Standard 6.

2.7 National Standard 7

National Standard 7 of the Magnuson-Stevens Act specifies that "conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication". 16 U.S.C. 1851(a)(7).

The Final Rule would provide measurable progress towards the Council and NMFS goal of having an owner onboard fleet for IFQ sablefish. The preamble to the Final Rule describes that it results in minimal administrative costs for NMFS to redesignate some quota share with regard to

its eligibility to be fished by a hired master. The designation task will not delay timely IFQ issuance by NMFS or the ability of participants to fish IFQ. This change in quota share designation will not affect the recordkeeping and reporting burden for IFQ fishery participants or the process NMFS uses to collect data from the fleet.

The Final Rule would require participants who choose to transfer quota share not fishable by a hired master to another eligible participant to complete a transfer application to NMFS, but this is a minor administrative burden that is required for all transfers of quota share under the IFQ Program. Sections 5.2 and 6 of the Analysis describe that the Final Rule does not change enforcement costs, industry compliance costs, or fleet operating and maintenance costs because it does not change the harvest level associated with the sablefish IFQ fishery or current fishing practices. The Final Rule minimizes costs and avoids unnecessary duplication because it does not alter the annual administration of the IFQ Program or the IFQ Program's allowance that participants can use more overall efficient fishing techniques that allow participants to minimize harvest costs compared to a non-IFQ system.

The Final Rule may result in additional costs for participants who can no longer hire a master and choose to be onboard the vessel to harvest their quota share. As described in the response to Comment 12 in the Final Rule, and Section 5.2 of the Analysis, it is not possible to quantify the economic impacts or predict the outcomes of the Final Rule with certainty because the response of each quota share holder to the action will be different. The Council acknowledged that this action could have negative economic impacts on some IFQ fishery participants, particularly for quota share holders who use hired masters and persons who work as hired masters. The Analysis notes that while this action will require some businesses to change their business models, a number of options remain for initial recipients to maintain active and viable businesses in the sablefish fisheries without significant disruptions to existing business models. The Final Rule minimizes costs to the extent practicable for affected participants while achieving the objective to move towards an owner-onboard catcher vessel fishery. Section 3 of the Analysis notes that in developing the Final Rule, the Council and NMFS considered requests from stakeholders and its IFQ Implementation Committee to eliminate the hired master exemption for all quota share holders. The Final Rule adopted a balanced approach to meeting the owner-onboard objective by prohibiting transfer of quota share received after a specific date (February 12, 2010) for use by hired skippers, rather than eliminating the hired skipper provision for all quota share.

The response to Comment 6 in the Final Rule describes that after reviewing the Analysis and receiving public testimony, the Council and NMFS determined that the Final Rule is necessary to balance the interests of initial recipients of sablefish quota share against the interests of new entrants to the fisheries and meet the original goals of the IFQ program to move towards an owner-onboard catcher vessel fishery. Section 5.2 of the Analysis describes that the Final Rule is expected to benefit quota share holders who are not initial recipients and new entrants to the IFQ fisheries by releasing more quota share in the market place that would be available for these participants to purchase. In addition, the Analysis noted that the practice of hiring skippers keeps quota share prices higher than they would be if quota share held by inactive initial recipients was placed in the market. Therefore, NMFS has determined that the Final Rule is consistent with National Standard 7.

2.8 National Standard 8

National Standard 8 of the Magnuson-Stevens Act specifies that “conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of National Standard 2, in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities” (16 U.S.C. 1851(a)(8)).

Section 1.2.4.1 of the IFQ Program Review describes that the program was, in addition to other objectives, intended to reduce excessive fishing capacity in the commercial halibut and sablefish fixed-gear fisheries while maintaining the social and economic character of the fixed-gear fisheries and the coastal communities where these fisheries are based. Many of the coastal communities in Alaska and the Pacific Northwest participate in the sablefish IFQ fishery, such as homeport to participating vessels, the location of processing activities, the location of support businesses, the home of employees in the various sectors, or as the base of ownership or operations of various participating entities. As the IFQ Program developed, the Council recommended and NMFS implemented, provisions such as quota share use caps, vessel use caps, and blocks of quota share to limit quota share acquisition and keep specific portions of quota share accessible for purchase by small operators and new entrants. These provisions were intended to maintain a diverse owner-onboard fleet and to prevent excessive consolidation of quota share as a means to protect the participation of the communities that historically had participation in the sablefish IFQ fishery (NPFMC 2016).

Section 5.2 of the Analysis describes that the Final Rule supports the evolution of an owner-onboard fleet for the sablefish IFQ fishery, which also supports the Council’s goal to provide entry-level opportunities for new fishermen as initial recipients of catcher vessel quota share leave the fishery. The preamble to the Final Rule notes that it reduces the incentive for initial quota share recipients who use hired masters to purchase additional quota share, which could alleviate some of the upward pressure on quota share price and provide more opportunities for new entrants and active fishermen— including fishermen currently employed as hired masters— to purchase quota share. Providing opportunities for new entrants is an important component of providing for the sustained participation of communities in the fishery. For these reasons, NMFS determined that the Final Rule is consistent with National Standard 8.

2.9 National Standard 9

National Standard 9 of the Magnuson-Stevens Act specifies that fishery “conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch” (16 U.S.C. 1851(a)(9)).

Section 1.2.4.1 of the IFQ Program review and the analysis NMFS submitted to the Court on April 1, 2016 (NMFS 2016) describe that one of the primary program objectives was to address biological management issues for the halibut and sablefish fisheries that had existed under the previous race for fish management regime. Prior to IFQ Program implementation, shortened

seasons and overcapacity in the fisheries had led to bycatch and discard issues as well as mortality of fish caught in lost gear (deadloss) from lost or abandoned gear. In addition, season length restrictions were not always effective at maintaining harvests within the area-specific catch limits. The Council and NMFS anticipated that implementation of the IFQ Program would reduce bycatch in the sablefish and halibut fisheries. (NMFS 1993).

The IFQ Program was anticipated to increase the retention of other groundfish bycatch for the sablefish IFQ fleet. In the previous open access regime, there were high bycatch discard rates of groundfish bycatch. Sablefish vessels generally discarded non-sablefish groundfish because there was a high cost for retaining other groundfish bycatch during the short fishing seasons. Sablefish has a higher market value than most other species of groundfish, therefore, vessel operators would choose to maximize revenues by filling limited vessel hold space with sablefish during the short season and discarding other groundfish species. Under the IFQ Program, NMFS anticipated vessel operators would reduce the rate of harvest with the guarantee of an IFQ allocation and the prolonged fishing season. As a result, NMFS anticipated the IFQ fleet would retain more of its groundfish bycatch, resulting in less uncertainty about the total fishing mortality for the species taken as bycatch in the IFQ fisheries. Under the IFQ regime, the sablefish fleet was anticipated to retain more of its bycatch, but the benefits of increased retention for the sablefish IFQ fleet were expected to be less than that in the halibut IFQ fleet, as the latter was more of an intensive fishery with shorter fishing seasons.

From 1992 to 1994—the two years prior to IFQ Program implementation—non-sablefish discards averaged 5,477 metric tons for the GOA and BSAI combined (Hanselman et al. 2016). Since then, discards have been lower, averaging 2,608 metric tons between 1995 and 2015. Non-sablefish discards, and therefore bycatch loss from non-target species, decreased following implementation of the IFQ Program as anticipated (NPFMC 2016 and NMFS 2016).

NMFS considers the bycatch rate, or the amount of bycatch caught as a portion of sablefish in the IFQ fishery, to be very low compared to groundfish fisheries such as Pacific cod and flatfish, particularly for halibut bycatch. NMFS exempts the sablefish IFQ fishery from halibut bycatch limits that have been established for other groundfish fisheries because of the relatively low rate of bycatch and the low level of mortality for halibut caught on longline gear and discarded. Typically, longline harvests in the fishery consist of a high proportion of sablefish, 90 percent or more. In addition, NMFS applies a 10 percent discard mortality rate for halibut caught and discarded in the sablefish IFQ fishery versus a 59 percent discard mortality rate for halibut caught as bycatch with trawl gear (NMFS 2017a and NMFS 2017b).

The Council and NMFS considered the impacts the Final Rule would have on the amount and type of bycatch and bycatch mortality in the sablefish IFQ fishery. The Council and NMFS determined that the Final Rule meets the Council's objective to promote an owner-onboard fishery by limiting further increases in the amount of quota share fished by hired masters. The Final Rule does not change the IFQ Program requirements that have been implemented to minimize bycatch and bycatch mortality in the sablefish IFQ fisheries to the extent practicable and does not change the level of bycatch or bycatch mortality in the fishery. Specifically, the Final Rule does not change the areas in which the sablefish IFQ fishery takes place, the management measures currently in place to minimize bycatch and the mortality of bycatch in the fishery (e.g., bycatch limits), or vessel operations (e.g., gear deployment or retrieval, release of

bycatch) in the fishery. Consistent with National Standard 9 of the Magnuson-Stevens Act, the Council and NMFS manage groundfish fisheries and establish bycatch limits in the groundfish fisheries to minimize bycatch and bycatch mortality to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries as required by National Standard 1 of the Magnuson-Stevens Act. The bycatch limits in the groundfish fisheries provide an additional constraint on bycatch mortality and promote conservation of the halibut resource.

The Final Rule continues the IFQ Program's incentives to minimize bycatch and bycatch mortality of non-target species. The IFQ Program creates a structure for halibut and sablefish IFQ fishery participants to efficiently manage harvesting activities that minimize bycatch and optimize use of target fisheries. The IFQ Program also provides a management structure that minimizes the mortality of non-target species caught as bycatch in the IFQ fisheries. Exclusive harvesting privileges and extended seasons provide fishermen with sufficient time to release carefully those non-target species to maximize their survival. Under the IFQ Program, fishermen can adjust their fishing operations according to weather conditions, market prices, and other factors that are discounted in a race for fish during relatively short fishing seasons. The IFQ Program has decreased fishing mortality compared to the derby fishery due to discards and bycatch because fishermen have an incentive to minimize their costs. Fishermen have an opportunity to land halibut and sablefish that they catch in other fixed gear fisheries (e.g., Pacific cod) that would otherwise be discarded. In addition, the IFQ Program provides an incentive for fishermen to land a premium product that will maximize market value. This occurs as a result of a greater ability for fishermen to coordinate their landings with market variables throughout the season, and more time while fishing to clean and properly preserve their catch. Hence, the overall yield, in terms of volume and value, from the halibut and sablefish resources is optimized.

NMFS evaluated the effects of the Final Rule on bycatch and bycatch mortality for the sablefish IFQ fishery overall, rather than at an individual operation level, because information is not available to determine specific impacts at the operational level. Although some initial recipients may have used transfers of quota share to "cover" halibut bycatch in the sablefish IFQ fishery before the Final Rule, NMFS has no information to suggest that this was a common practice among quota share holders or that this would result in an increase in bycatch or bycatch mortality in the fishery. Therefore, NMFS has no information to suggest that the Final Rule has increased the amount of halibut bycatch to the extent practicable in the sablefish IFQ fishery overall because all sablefish fishermen have options to adjust fishing operations to maximize the value of their IFQ. While it is possible that the Final Rule may result in some quota share holders having a reduced amount of halibut IFQ available to cover halibut bycatch in the sablefish IFQ fishery Under the Final Rule, NMFS notes that hired masters fishing have the same options as other fishery operators to reduce bycatch: avoid known areas of high bycatch rates, move to areas with lower bycatch rates if they encounter high rates, or hire crew who hold halibut quota share to supplement the quota share holder's halibut IFQ to cover halibut bycatch.²

² IFQ regulations at 50 CFR 679.7(f) require that all legal-size halibut caught on that vessel must be retained up to the cumulative amount of IFQ held by all persons on board the vessel.

In summary, the IFQ Program is consistent with the requirements of National Standard 9 because it results in fishing practices that minimize bycatch and bycatch mortality to the extent practicable halibut and sablefish IFQ fisheries. Nothing in the Final Rule changes regulations on the amount of permissible bycatch or the regulations governing bycatch in the sablefish IFQ fishery. Because the Final Rule does not allow more bycatch in the sablefish fisheries than the established limits or provide incentives for participants to fish in a manner that leads to greater bycatch in the fishery overall, it is consistent with National Standard 9 while achieving the established objective to promote an owner-onboard fishery.

2.10 National Standard 10

National Standard 10 of the Magnuson-Stevens Act specifies that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea (16 U.S.C. 1851(a)(10)).

The original Environmental Impact Statement prepared for the IFQ Program identified safety as one of the primary problems with the open access management regime in the fixed-gear sablefish and halibut fisheries (NMFS 1992). The IFQ Program was expected to provide safety improvements in the halibut and sablefish fisheries by providing IFQ participants with an exclusive privilege to harvest a portion of the fishery catch limit, which would eliminate the derby-style fishery and congestion on the fishing grounds and allow IFQ participants to decide when and where to fish.

The IFQ Program slowed the race for fish by, among other things, extending the fishing season. A longer fishing season allowed vessels to fish more slowly, avoid conflicts with other vessels, and avoid fishing in unsafe weather conditions. The IFQ Program replaced short intensive fishing seasons with longer, predictable seasons. The IFQ Program was intended to increase safety at sea and reduce the cost of human capital and equipment invested in the production of halibut and sablefish products. In addition to the IFQ Program provisions that promote safe operations in the IFQ fisheries, the U.S. Coast Guard has promulgated numerous, detailed regulations designed to promote fishing vessel safety. The Final Rule does not change the vessel safety requirements established by the U.S. Coast Guard that are applicable to vessels in the sablefish IFQ fishery (NMFS 2016).

Section 2.8 of the IFQ Program review and the analysis NMFS submitted to the Court on April 1, 2016, describe that the National Institute for Occupational Health and Safety (NIOSH) examined changes in the safety conditions in the sablefish and halibut fixed-gear fleets following IFQ implementation. The NIOSH safety assessment for the IFQ Program concluded that there has likely been some decrease in hazards as a result of the program, although fatalities have continued to occur in the fisheries. In the six years immediately following IFQ Program implementation, the rates and number of fatalities, the number of vessel losses, and the number of search and rescue missions decreased significantly. In addition, analysts for the IFQ Program review surveyed vessel captains and IFQ permit regarding safety and the majority of those surveyed believed that the IFQ Program made fishing safer (see Section 2.4.1.2 of NPFMC 2016). Based on a full evaluation of available information, the IFQ Program Review noted that the program may reduce risks associated with short, competitive fishery derbies, but other risks

associated with fisheries activities outside of specific management policies (e.g., the Final Rule) may still exist. (NPFMC 2016).

NMFS evaluated the Final Rule with respect to the National Standard guidelines at 50 CFR 600.355 and determined that the Final Rule is consistent with National Standard 10 while meeting the objective to promote an owner-onboard fishery.

The Council and NMFS carefully considered the impacts on vessel safety when it developed the IFQ Program. The program was specifically designed to provide individual operators with flexibility to avoid situations requiring fishing in unsafe locations or conditions. The Final Rule does not change any provisions of the IFQ Program that promote vessel safety, nor does it result in a change to the vessel safety requirements implemented by the U.S. Coast Guard.

The Council and NMFS determined that the Final Rule is necessary to meet the specified objective to promote an owner-onboard fishery by limiting the amount of quota share that can be harvested by hired masters. The Council and NMFS acknowledge that the Final Rule cannot achieve this objective without impacting quota share holders that rely on the use of hired masters and who cannot, for legal or practical reasons, be on board the vessel. In these cases, the Final Rule provides these quota share holders with the option to transfer the quota share to another qualified person to receive economic value for the quota share or, in some circumstances, to use the temporary medical transfer provision described. Because quota share holders have these options, the Final Rule does not create an additional pressure for quota share holders who are unable to be on board a vessel to go on board a vessel and “fish under conditions that they would otherwise avoid.” Therefore, NMFS determined that the Final Rule promotes the safety of human life at sea to the extent practicable, while achieving the objective to promote an owner-onboard fishery.

The IFQ Program also includes a temporary medical transfer provision at 50 CFR 679.42(d)(2) that allows a quota share holder not otherwise qualified to hire a master to temporarily lease their annual IFQ to another individual if the quota share holder or an immediate family member have a temporary medical condition that prevents them from fishing. The provision is intended to provide a mechanism for quota share holders who are experiencing a temporary medical emergency that would prevent them from fishing during a season to lease their annual IFQ to another individual. The temporary medical transfer provision was implemented in 2007 (NMFS 2007). An applicant for a temporary medical transfer must document his or her medical emergency by submitting an affidavit to NMFS from a licensed medical doctor, an advanced nurse practitioner, or a primary community health aide, that describes the medical condition affecting the applicant and attests to the inability of the applicant to participate in the IFQ fishery/ies for which she or he holds IFQ permit(s), during the season. The Council and NMFS limited the length of time that quota share holders may use the medical transfer provision for the same medical condition. NMFS will not approve an emergency transfer if the quota share holder has been granted an emergency medical transfer in any two of the previous five years for the same medical condition.

Generally speaking, most individual initial quota share recipients can hire a master and they must own a minimum of 20 percent interest in a harvesting vessel to hire a master. Therefore, individual initial recipients who do not own a vessel have been approved for temporary medical

transfers since it was implemented. The Final Rule created another class of persons that are “not otherwise eligible to hire a master.” The medical transfer provision is another way in which these initial recipients who are not eligible to hire a master can temporarily continue to receive financial benefits from the fisheries if they are not able to be on board the vessel on which the IFQ they hold is fished. The number of initial recipients using the medical transfer provision in areas other than 2C and SE increased from 15 in 2010 to 110 in 2015 (NPFMC 2016). NMFS anticipates this number will continue to increase after implementation of the Final Rule. The temporary medical transfer provision is a reasonable alternative for those who cannot otherwise hire a master to remain in the fishery when a medical condition leaves them temporarily unable to safely participate on board the harvesting vessel. However, it is important to note that because the Council prioritized its long-term objective to promote an owner-onboard IFQ fishery, the medical transfer is intended to be a temporary provision for quota share holders that have a medical emergency. It is not intended to be a mechanism for persons unable or unwilling to participate in the fishery as an owner onboard to continue to receive economic benefits from their quota share holdings.

The guidelines at 50 CFR 600.355(b)(3) specify that for the purposes of National Standard 10, the safety of the fishing vessel and the protection from injury of persons aboard the vessel are considered the same as “safety of human life at sea.” Most importantly, the guidelines note that the safety of a vessel and the people aboard is ultimately the responsibility of the master of that vessel. Each master is responsible for decisions about vessel maintenance and loading and about the capabilities of the vessel and crew to operate safely in a variety of weather and sea conditions. The guidelines are clear that the requirements of National Standard 10 do not replace the judgment or relieve the responsibility of the vessel master related to vessel safety.

The guideline at 50 CFR 600.355(b)(3) also requires that the Council and NMFS undergo a consultation process with the U.S. Coast Guard in developing conservation and management measures to ensure they recognize any impact on the safety of human life at sea and minimize or mitigate that impact where practicable. The Council and NMFS consulted with the U.S. Coast Guard in the development of the IFQ Program and the Final Rule. The U.S. Coast Guard is represented on the Council and participated in development of the Council’s recommendation for the Final Rule. NMFS also consulted with the U.S. Coast Guard during development of the Final Rule, and the U.S. Coast Guard did not identify any concerns about the impact of the Final Rule on safety at sea.

The Final Rule is a limited amendment to the IFQ Program. The Council and NMFS determined that the Final Rule is necessary to meet the specified objective to promote an owner-onboard fishery by limiting the amount of quota share that can be harvested by hired masters. The Council and NMFS acknowledge that the Final Rule cannot achieve this objective without impacting quota share holders that rely on the use of hired masters and that cannot, for legal or practical reasons, be on board the vessel. In these cases, the Final Rule provides these quota share holders with the option to transfer the quota share to another qualified person to receive economic value for the quota share or, in some circumstances, to use the temporary medical transfer provision in the IFQ Program. Because quota share holders have these options, the Final Rule does not create an additional pressure for quota share who are unable to be on board a vessel to go on board a vessel and fish under conditions that they would otherwise avoid. Therefore, NMFS determined that the Final Rule promotes the safety of human life at sea to the

extent practicable, consistent with National Standard 10, while achieving the objective to promote an owner-onboard fishery.

3 References

- Hanselman D, Lunsford CR, Rodgveller C, Peterson M. 2016. Assessment of the Sablefish Stock in Alaska. 164 p., available at <https://www.afsc.noaa.gov/REFM/Docs/2016/GOAsablefish.pdf>.
- National Marine Fisheries Service (NMFS) 1992. Final Supplemental Environmental Impact Statement/Environmental Impact Statement for the Individual Fishing Quota Management Alternative for Fixed Gear Sablefish and Halibut Fisheries, Gulf of Alaska and Bering Sea/Aleutian Islands. 599 p., available at https://alaskafisheries.noaa.gov/sites/default/files/analyses/amd_15_20_seis_0992.pdf.
- NMFS 1993. Final Rule to Implement the IFQ Program. *Federal Register* Volume 58, Number 215: 59375-59413, available at <https://cdn.loc.gov/service/ll/fedreg/fr058/fr058215/fr058215.pdf#page=41>.
- NMFS 1999. Final Rule to Modify Hired Master Provisions of the IFQ Program. *Federal Register* Volume 64, Number 89: 24960-24962, available at <https://www.gpo.gov/fdsys/pkg/FR-1999-05-10/pdf/99-11699.pdf>.
- NMFS 2007. Final Rule to Modify Several Provisions of the IFQ Program. *Federal Register* Volume 72, Number 153: 44795-44812, available at <https://www.gpo.gov/fdsys/pkg/FR-2007-08-09/pdf/E7-15341.pdf>.
- NMFS 2014a. Final Rule to Amend the Hired Master Provisions of the IFQ Program. *Federal Register* Volume 79, Number 144: 43679-43692; available at <https://www.gpo.gov/fdsys/pkg/FR-2014-07-28/pdf/2014-17658.pdf>.
- NMFS 2014b. Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to the Halibut Individual Fishing Quota and Sablefish Individual Fishing Quota Program to Prohibit Use of Hired Skippers for Future Transfers of Halibut Catcher Vessel Quota Shares or Sablefish Catcher Vessel Quota Shares after a Control Date of February 12, 2010. 176 p., available at <https://www.regulations.gov/docket?D=NOAA-NMFS-2012-0185>.
- NMFS 2014c. Categorical Exclusion for a Regulatory Amendment to Modify the Hired Master Regulations for Management of the Individual Fishing Quota Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters off Alaska, 2 p., available at <https://alaskafisheries.noaa.gov/sites/default/files/analyses/hiredskipper-prce-031913.pdf>.
- NMFS 2016. Analysis of the Final Rule to Prohibit the Use of Hired Masters for Sablefish Catcher Vessel Quota Shares Received by Transfer after February 12, 2010, 31 p. available at <https://alaskafisheries.noaa.gov/sites/default/files/analyses/hired-master-ns9-10-final040116.pdf>.

- NMFS 2017a. Final Harvest Specifications and Prohibited Species Catch Allowances for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area. *Federal Register* Volume 82, Number 37: 11826-11852, available at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-27/pdf/2017-03698.pdf>.
- NMFS 2017b. Final Harvest Specifications and Prohibited Species Catch Allowances for the Groundfish Fishery of the Gulf of Alaska. *Federal Register* Volume 82, Number 37: 12032-12062, available at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-27/pdf/2017-03697.pdf>.
- North Pacific Fishery Management Council (NPFMC) 2016. Twenty-Year Review of the Pacific Halibut and Sablefish Individual Fishing Quota Management Program. 474 p., available at https://www.npfmc.org/wp-content/PDFdocuments/halibut/IFQProgramReview_417.pdf.
- NPFMC 2017a. Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. 169 p., available at <http://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf>.
- NPFMC 2017b. Fishery Management Plan for Groundfish of the Gulf of Alaska. 150 p., available at <http://www.npfmc.org/wp-content/PDFdocuments/fmp/GOA/GOAfmf.pdf>.

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