

Regulatory Impact Review/Final Regulatory Flexibility Analysis  
of a Regulatory Amendment to Facilitate Online  
Transfers of Quota for the  
Fisheries of the Exclusive Economic Zone off Alaska

Date: July 2009

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National Marine Fisheries Service  
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Juneau, Alaska

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Abstract: This document is a Regulatory Impact Review and Final Regulatory Flexibility Analysis of an action to revise regulations at 50 CFR parts 679 and 680 amending the Central Gulf of Alaska Rockfish Pilot Program, the Amendment 80 Program, the Western Alaska Community Development Quota (CDQ) Program, and Bering Sea and Aleutian Islands Crab Rationalization Program. NMFS proposes regulations to provide cooperatives and CDQ groups with an option to accomplish intercooperative transfers and crab individual processing quota transfers through automated, online submittals.

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## EXECUTIVE SUMMARY

This action creates a new option for Western Alaska Community Development Quota (CDQ) groups, Central Gulf of Alaska Rockfish Pilot Program cooperatives, the Amendment 80 cooperatives, and the Crab Rationalization Program (CR Program) Harvesting Cooperatives, to transfer quota “online”, among participants within each respective management program. Prior to this action, these entities have been required to submit transfer request paperwork to NMFS, using the U.S. mail, fax, or commercial courier.

Because cooperatives and CDQ groups will have other options for submitting transfer applications, they will only use the online option if they perceive that its benefits exceed its costs. NMFS expects that they will tend to participate, because the option is expected to reduce their reporting requirements, increase operational flexibility, enhance potential for collaboration and coordination among transferors and transferees, and provide an augmented ability to respond in a timely way to market changes. Cooperatives and groups will not have to wait for the agency to do the transfer and notify them when it is complete. They can conduct such transfers when it is convenient for them to do so – evenings, weekends, and holidays.

This change will create no new costs for NMFS, because the costs of implementation have already been incurred. To the extent that industry uses this option, administrative costs for NMFS would also be reduced, by streamlining the administrative process, with no appreciable loss of necessary data or management capabilities. Automated checks in the submission system will monitor applications for completeness and consistency with law. Paper applications would only be required if a problem arises with a specific submission.

This action also divides the single form, currently used to apply for transfers of crab quota share/individual fishing quota (QS/IFQ) or processing quota share/individual processor quota (PQS/IPQ), into three separate forms governing transfers of crab IFQ, crab IPQ, and crab QS or PQS, respectively. Currently, somewhat different information is collected for each type of transfer, but only one form is used for the applications. This form is, therefore, unnecessarily complicated.

NMFS estimates that this action may directly regulate six small CDQ groups, one small rockfish cooperative, no small Amendment 80 cooperatives, four small crab cooperatives, 18 small crab processors, 31 small crab IFQ holders, 13 small crab IPQ holders, about 210 to 243 small crab QS holders, and about 25 small crab PQS holders. The CDQ groups are small entities because they are non-profits. However, in other instances, the number of small entities may be upper bound estimates, because they may not fully account for affiliations or non-crab revenues.

This action makes recordkeeping and reporting requirements more efficient and faster. This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

This action is the least burdensome of management alternatives available, in terms of directly regulated small entities, while fully achieving the conservation and management purposes consistent with applicable statutes. NMFS initially considered an alternative that would have

required use of the online systems, rather than making them optional. NMFS rejected this alternative, because NMFS could not be certain that all entities in all impacted industry sectors had the capability of submitting forms electronically. For any that did not, such a mandate would have imposed an unnecessary and disproportionate economic burden.

## **1.0 REGULATORY IMPACT REVIEW**

### **1.1 Introduction**

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a proposed rule to provide an online option for submittal of quota transfers between cooperatives within each of the following management programs: the Central Gulf of Alaska Rockfish Pilot Program, Bering Sea and Aleutian Islands Management Area (BSAI) Amendment 80 Program, and Crab Rationalization Program, and between Western Alaska Community Development Quota (CDQ) Program groups.

### **1.2 What is a Regulatory Impact Review?**

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

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

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

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

### **1.3 Statutory authority**

NMFS manages the groundfish fisheries in the U.S. Exclusive Economic Zone, off the coast of Alaska, under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The crab fisheries are managed under the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs (Crab FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and are implemented by regulations at 50 CFR part 679 and part 680. General regulations governing U.S. fisheries also appear at subpart H of 50 CFR part 600.

Actions taken to implement regulations governing these fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, the most important of these are the Northern Pacific Halibut Act of 1982, the National Environmental Policy Act (NEPA), the Endangered Species Act, the Marine Mammal Protection Act, Executive Order 12866, and the Regulatory Flexibility Act (RFA).

### **1.4 Description of Programs Regulated under this Action**

#### **1.4.1 Western Alaska Community Development Quota (CDQ) Program**

The CDQ Program was created by the Council in 1991, as part of the inshore/offshore allocation of pollock in the BSAI. A final rule implementing the administrative regulations for the CDQ Program was published on November 23, 1992 (57 FR 54936). By design of the Council, the CDQ Program is jointly managed by the Secretary of Commerce and the State of Alaska. The program was established to provide Western Alaska fishing communities the opportunity to participate in the BSAI fisheries. Allocations of CDQ and prohibited species quota (PSQ) are made to each of the six CDQ groups. Since 1992, the CDQ Program has expanded several times and now includes allocations of pollock, halibut, sablefish, crab, all of the remaining groundfish species (cod, Atka mackerel, flatfish, and rockfish), as well as allowances for bycatch of prohibited species (salmon, halibut, and crab), while prosecuting CDQ target fisheries.

The purpose of the CDQ Program is to provide resources for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of eligible communities. Currently, 65 communities participate in the CDQ Program, representing about 27,000 people in Western Alaska. These communities have formed six CDQ groups to manage and administer the CDQ allocations, investments, and economic development projects. The CDQ groups use the proceeds derived from the harvest of CDQ allocations to fund a variety of fisheries-related projects and provide employment, training, and educational opportunities to residents of eligible communities.

#### **1.4.2 Central Gulf of Alaska Rockfish Pilot Program**

The Central Gulf of Alaska Rockfish Pilot Program (Rockfish Program) is a share-based groundfish management program under which the total allowable catch is apportioned as

exclusive shares among cooperatives, based on the catch history of the members of those cooperatives. The Rockfish Program, a pilot program, was established for management of the rockfish fisheries in the Central Gulf of Alaska (GOA) and rockfish sideboard fisheries in the GOA and BSAI. Each calendar year, NMFS determines the tonnage of primary rockfish species to be assigned to the Rockfish Program. For participants in a rockfish cooperative, tonnage shares of fish are allocated to either the catcher/processor sector or the catcher vessel sector. Cooperatives within a sector can transfer cooperative quota (CQ) among each other, subject to use cap limits. Use caps limit the holdings or use of rockfish quota share (QS) and CQ. Caps also limit the amount of fish a cooperative and catcher/processor can harvest, and the amount of rockfish a processor can process.

#### 1.4.3 Amendment 80 to the BSAI FMP Program

Amendment 80 to the BSAI FMP (Amendment 80 Program) permits the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl catcher/processor sector. The BSAI groundfish species directly affected by Amendment 80 include Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole. In addition, Amendment 80 modifies the management of halibut and crab PSC limits.

The objectives of Amendment 80 are as follows:

- ◆ To improve retention and utilization of fishery resources by the non-AFA trawl catcher/processor fleet, by extending the groundfish retention standard to non-AFA trawl catcher/processor vessels of all lengths;
- ◆ Allocate fishery resources among BSAI trawl harvesters in consideration of historic and present harvest patterns, and future harvest needs;
- ◆ Authorize the allocation of groundfish species to harvesting cooperatives and establishing a limited access privilege program for the non-AFA trawl catcher/processors to reduce potential groundfish retention standard compliance costs, encourage fishing practices with lower discard rates, and improve the opportunity for increasing the value of harvested species; and
- ◆ Limit the ability of non-AFA trawl catcher/processors to expand their harvesting capacity into other fisheries, not managed under a limited access privilege program.

Amendment 80 cooperatives have an exclusive privilege to collectively catch and use CQ, or an Amendment 80 cooperative can transfer all or a portion of this CQ to another Amendment 80 cooperative. Use caps limit the amount of Amendment 80 QS units and Amendment 80 species CQ that may be held or used by an Amendment 80 QS holder or Amendment 80 vessel. Use caps may not be exceeded, unless the Amendment 80 QS holder or Amendment 80 vessel subject to the use cap is specifically allowed to exceed a cap according to the established criteria or by an operation of law.

#### 1.4.4 Crab Rationalization (CR) Program

The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The CR Program is a limited access system that balances the interests of several groups that depend on these crab fisheries. The following nine crab fisheries are managed under the rationalization program: Bristol Bay red king crab; Bering Sea *Chionoecetes opilio*; Eastern Bering Sea *C. bairdi*; Western Bering Sea *C. bairdi*; Pribilof red king crab and blue king crab; St. Matthew Island blue king crab; Western Aleutian Islands red king crab; Eastern Aleutian Islands golden king crab; and Western Aleutian Islands golden king crab.

Under the CR Program, NMFS issued four types of harvesting QS and one type of processing quota share (PQS) to persons, based on their qualifying participation histories in the BSAI crab fisheries during a specific period of time. Annually, PQS yield annual individual processor quota (IPQ) to receive a certain amount of crab; and QS yields individual fishing quota (IFQ) for a particular amount of crab in a given season.

A crab harvesting cooperative is limited to QS holders that NMFS has determined are eligible to receive crab IFQ. A crab harvesting cooperative may transfer its IFQ only to another crab harvesting cooperative. Inter-cooperative transfers of IFQ apply to the individual use caps of crab harvesting cooperative members, through the designation of the crab harvesting cooperative members, conducting the transfer.

### **1.5 Purpose and need for the action**

The purpose of this action is to provide the entities in the CDQ Program, Rockfish Program, Amendment 80 Program, and CR Program the opportunity to electronically submit quota transfer applications, with the potential for electronically processing and approving quota transfers, entirely over the Internet. Program participants have commented that current transfer processes are not flexible or responsive enough to meet the needs of a 24-hour, seven-days-a-week, short-term fishery that must continually reorganize allocations to meet operational and market demands. For example, cooperatives frequently use inter-cooperative leases to maximize the efficient use of vessels and allocations. The proposed revised submission process is intended to address: (1) potential application filing problems associated with limited business hours at NMFS Restricted Access Management Program (RAM); (2) existing requirements for original application documents and notarized signatures; and (3) the lengths of time needed for application submission, approval, and receipt of permits. The revisions to NMFS regulations would benefit the Program participants by reducing the time, expense, and administrative effort associated with submitting requests to NMFS for approval of quota transfers. This action would impact administrative procedures for four fisheries management programs within the Alaska Region. Standardization of transfer procedures has been identified as a NMFS Alaska Region objective, regardless of the method of transfer.

The other element in this action is the division of the single form, currently used to apply for transfers of crab QS/IFQ or PQS/IPQ, into three separate forms governing transfers of crab IFQ, crab IPQ, and crab QS or PQS, respectively. Currently, somewhat different information is



collected for each type of transfer, but only one form is used for the applications. The existing (current) form is therefore unnecessarily complicated.

## **1.6 Alternatives considered**

The alternatives were developed to minimize potential adverse economic effects on directly regulated entities. NMFS considered the following two alternatives:

Alternative 1: No action. Do not provide an option for online transfer of quota. Under this alternative, quota transfer submittal would continue to take place through U.S. mail, commercial courier, or fax.

Alternative 2 (*The preferred alternative*): Revise regulations for quota share transfers for the CDQ Program, Rockfish Program, Amendment 80 Program, and CR Program to provide an option for online transfer, as an addition to the current permissible methods for applying to NMFS for approval to transfer quota.

Alternative 2 is composed of the following revisions to the regulations at 50 CFR parts 679 and 680:

- ◆ Provide CDQ groups a voluntary option to submit online transfer requests to NMFS for CDQ and PSQ transfers. In addition, the transferee CDQ group must log in and enter its electronic identification information to accept a transfer entered by a transferor CDQ group.
- ◆ Provide a voluntary option for online inter-cooperative transfers of Rockfish CQ; add a requirement to enter the species name, as well as the amount of CQ to be received by the transferee; and identify the transferor's associated processor and the transferee's associated processor. The requirement to report information for associated processors is provided in § 679.80(c), but was inadvertently excluded in the application and regulations.
- ◆ Provide a voluntary option for online inter-cooperative transfers of Amendment 80 CQ; add a requirement to enter the species name of the transferred CQ.
- ◆ Remove the notary requirements for the transferor and transferee signatures for the transfer of CR crab harvesting cooperative IFQ; remove identification of the transferor member who provided the IFQ to be transferred; remove transferor information regarding brokerage fees; add a requirement to enter the number of IFQ pounds to be applied to each member.
- ◆ Remove application for transfer of crab QS/IFQ or PQS/IPQ all in one application.
- ◆ Add separate application for transfer of crab IFQ.
- ◆ Add separate application and a voluntary option for online transfer of crab IPQ.

- ◆ Add separate application for transfer of crab QS or PQS.

Regulations and forms that would be modified for the applications are listed in Table 1.

Table 1. Forms Affected by this Rule	
	Paragraph
CDQ Program	
CDQ or PSQ Transfer Request	§ 679.5(n)
Rockfish Program	
Application for Inter-Cooperative Transfer of Rockfish CQ	§ 679.81(f)
Amendment 80 Program	
Application for Inter-Cooperative Transfer of Amendment 80 CQ	§ 679.91(g)
CR Crab Program	
RCR Fee Submission Form	§ 680.5(g)
Application for transfer of IFQ between Crab Harvesting Cooperatives	§ 680.21(f)
Application for transfer of crab IFQ	§ 680.41(h)(1)
Application for transfer of crab IPQ	§ 680.41(h)(2)
Application to transfer crab QS or PQS	§ 680.41(h)(3)

NMFS considered options that would impose a mandatory requirement that transfers be submitted electronically. However, in several of the regulated sectors, NMFS could not be certain that all entities had the capability of submitting forms electronically. Therefore, this alternative was rejected because of the inherent imposition of unnecessary and disproportionate economic burdens it could impose.

### 1.7 Summary of the costs and benefits of this action

This program creates a new, wholly voluntary quota share transfer option for the CDQ groups, the rockfish cooperatives, the Amendment 80 cooperatives, and the CR Program harvesting cooperatives. Currently, these entities are required to submit transfer paperwork to NMFS, using the U.S. mail, commercial courier, or fax. This action will add a voluntary electronic online option.

Because cooperatives and CDQ groups will have other options for submitting transfer applications, they will only use this voluntary electronic option if its perceived benefits exceed its costs. NMFS expects that regulated entities will tend to exploit this mechanism, because the option is expected to reduce their reporting requirements, increase operational flexibility, enhance potential for collaboration and coordination among transferors and transferees, and provide an augmented ability to respond in a timely way to market changes. Although approval triggers are added to the software to guard against input of illegal or inaccurate data, cooperatives and groups will not have to wait for the agency to do the transfer and notify them when it is complete. They can conduct such transfers when it is convenient for them to do so –

evenings, weekends, and holidays. Online transfers are expected to reduce NMFS's response time for issuing approvals.

This change will create no new costs for NMFS, because the costs of implementation have already been incurred under existing data collection programs. Transfers of quota are currently being conducted through non-electronic means, so the time and information it takes to complete a transfer is already established. To the extent that industry chooses to use this option, administrative costs for NMFS would also be reduced, by streamlining the administrative process, with no appreciable loss of necessary data or management capabilities. Automated checks in the submission system will monitor applications for completeness and consistency with law. Paper applications would only be required if a problem with a specific electronic application occurred.

The other element in this action entails the division of the single form, currently used to apply for transfers of crab QS/IFQ or PQS/IPQ, into three separate forms governing transfers of crab IFQ, crab IPQ, and crab QS or PQS. Currently, somewhat different information is collected for each type of transfer, but only one form is used for the applications. The use of forms specific to each transfer type will simplify each application, make the forms easier to fill out, and make it easier for NMFS to process the information that is collected. Each of these attributes will benefit one or more parties to the application process. This action does not appear to have any identifiable costs.

## **2.0 FINAL REGULATORY FLEXIBILITY ANALYSIS**

### **2.1 Introduction**

This Final Regulatory Flexibility Analysis (FRFA) evaluates the potential adverse economic impacts on directly regulated small entities of a proposed rule to provide a voluntary option for CDQ groups, Rockfish cooperatives, Amendment 80 cooperatives, and CR Program cooperatives to transfer quota online.

This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612).

### **2.2 The purpose of a FRFA**

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

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

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

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

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

### **2.3 What is required in an FRFA?**

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

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) a description of, and an estimate of, the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will

be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

## **2.4 What is a small entity?**

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

### Small businesses.

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

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

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical

business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

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

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

#### Small organizations.

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

#### Small governmental jurisdictions.

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

## **2.5 Reasons for considering the proposed action**

A complete description of the purposes of this action can be found in Section 1.5 of the RIR and is briefly summarized here. Potentially, electronic transfers would

- ◆ Present a voluntary means of submitting "quota" transfer requests to NMFS, by constituents with Internet access, to reduce transactions costs and improve operational efficiencies;

- ◆ Provide the convenience and flexibility offered by electronic communication technology to conduct logistically and economically efficient transfers of fishing “quota” among program operations, subject to NMFS’s approval;
- ◆ Reduce the reporting and paperwork burden on fishery participants;
- ◆ Help NMFS meet national mandates to offer increased electronic services under the Government Paperwork Elimination Act and other efficiency measures;
- ◆ Increase NMFS’s efficiency by reducing existing transfer processing costs; and
- ◆ Increase accuracy of the data and efficacy of the transfer process.

## **2.6 Objectives of and legal basis for the proposed action**

The objectives of the proposed action are as follows:

- ◆ Maintain recordkeeping and reporting requirements for the impacted programs that provide the information necessary to manage the fisheries and to enforce Federal regulations applicable to the programs.
- ◆ Reduce the time, effort, and documentation involved in the process of making authorized quota transfers under provisions of the respective programs.
- ◆ Maintain the overall economic and social goals and purpose of the regulated programs, while making available means to enhance efficiency and effectiveness of the respective quota share programs.

The legal basis for the proposed action was discussed in Section 1.3 of the RIR that accompanies this FRFA.

## **2.7 Public comments**

The proposed rule for this action was published in the Federal Register on May 26, 2009 (74 FR 24762). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule and described in the classification section of the preamble to the proposed rule. The public comment period ended on June 10, 2009. No comments were received on the IRFA. No changes were made in the final rule from the proposed rule.

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

The entities that would be directly regulated by this action are:

<b>Number and description of small entities Regulated by the proposed action</b>			
	No. of entities	Small	Large
CDQ groups	6	6	0
Rockfish cooperatives	7	1	6
Amendment 80	1	0	1
CR crab cooperatives	18	4	14
CR crab processors	29	18	11
CR crab IFQ holders	44	31	13
CR crab IPQ holders	24	13	11
CR crab QS holders	481	250	231
CR crab PQS holders	32	25	7
TOTAL	642	348	294

- ◆ CDQ groups. There are six CDQ groups. Each of these is a non-profit entity, independently owned and operated, and not dominant in its field. These are all small entities, for RFA purposes.
- ◆ Rockfish cooperatives. There are currently seven rockfish cooperatives. Two are catcher-processor cooperatives and five are catcher vessel cooperatives associated with shoreside processors. Based on the processor affiliations of the cooperatives, staff estimates that two of the cooperatives are associated with large catcher-processor operations and that four and possibly five of the catcher vessel cooperatives are large, because of their association with large shoreside processors. One of the catcher vessel cooperatives has reported aggregate gross revenues, from all sources, of less than \$4.0 million, annually, and may on the basis of available information be small (and has been assumed so for RFA purposes).
- ◆ Amendment 80 cooperatives. There is currently only one Amendment 80 cooperative. Most firms operating vessels in this fleet are large entities, with annual gross revenues in excess of \$4.0 million. Thus, the cooperative composed of these firms is, itself, a large entity, by definition.
- ◆ CR crab cooperatives. There were 18 crab cooperatives in 2007—2008. IFQ allocations by fishery for 2007—2008 were obtained from NMFS RAM. These were used, with estimated ex-vessel prices obtained from the recent Council three-year review of the CR Program (Council 2008), to estimate total cooperative gross revenues. Fourteen of these cooperatives had gross revenues in excess of \$4 million, and four had gross revenues less than \$4 million. Thus, four of the crab cooperatives have been estimated to be small. Since this estimate is based on crab revenues, and these entities may have other revenues or affiliations, this may be an overestimate of the number of small entities.



- ◆ CR crab processors. This analysis adopts the conclusions in a recent Council analysis for exempting certain custom processing from use caps on processor shares. The only entities directly regulated by this action are holders of PQS or custom processors of those shares. Currently, 29 processors hold PQS. Estimates of large entities were made, based on available records of employment, information on participation in processing activities in other fisheries, and analysts’ knowledge of foreign ownership of vertically integrated processing companies. Of the recipients of PQS, 11 are estimated to be large entities, leaving 18 “presumably” small entities among the directly regulated universe under consideration within this IRFA (Council 2007). This may be a high estimate of the number of small entities, if there are additional affiliations not identified in the Council analysis.
  
- ◆ CR crab IFQ holders. This analysis adopts the conclusions in a recent analysis of a proposal to allow post-delivery transfer of crab shares. Estimates of the number of small entities holding IFQ are based on estimates of gross revenues. Since many IFQs are held by cooperatives, landings data from the most recent season for which data are available in the crab fisheries (2006—2007) were used to estimate the number of small entities. Based on those data, 44 entities received IFQ allocations. Of these 44 entities, 13 were large entities and 31 were judged to qualify as small. (NMFS 2008). This may be a high estimate of the number of small entities, if there are additional revenues or affiliations not identified in the analysis.
  
- ◆ CR crab IPQ holders. This analysis adopts the conclusions in a recent analysis of a proposal to allow post-delivery transfer of crab shares. Estimates of small entities holding IPQ are based on the number of employees of IPQ holding entities. Currently, 24 entities receive IPQ allocations. Estimates of large entities were made, based on available records of employment, and analysts’ knowledge of foreign ownership of processing companies. Of these 24 entities, eleven appear to be large entities, leaving thirteen judged to be small entities (NMFS 2008). This may be a high estimate of the number of small entities, if there are additional employees or affiliations not identified in the analysis.
  
- ◆ CR crab QS holders. RAM records show 481 QS holders and 32 PQS holders. Of these, 227 of the QS holders held *only* crew quota. These are natural persons and are, thus, not small entities within the meaning of the RFA. The remaining 254 persons either held owner’s shares issued to License Limitation Program holders, or held both crew and owner’s shares. Only a small number of the latter are believed to be large entities. A recent analysis of owner QS holders estimated that there were 221, of which 210 were small under SBA criteria (NMFS 2009). Thus, the number of small QS holders is estimated to be about 210 to 243 entities.<sup>1</sup> Because of limited information about affiliations among entities, this may overstate the actual number of small entities.
  
- ◆ CR crab PQS holders Thirty-two entities held PQS. Staff inspection of the list suggested that seven of these were large entities. Thus, 25 of these are estimated to be

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<sup>1</sup> The upper bound of 243 is estimated by subtracting the 11 large entities estimated in NMFS 2009 from the upper bound count of 254 owner and owner and crew QS holders.

small entities. Because of limited information about affiliations among entities, this may overstate the true number of small entities.

## **2.9 Recordkeeping and reporting requirements**

The FRFA should include “a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record...”

The proposed electronic “quota transfer” action is wholly voluntary. It imposes no new reporting requirements. The portion of this action that streamlines the reporting forms for each specific type of “quota transfer” would make possible a less burdensome and potentially confusing method for requesting quota transfers. Both aspects of this action would be expected to reduce paperwork associated with transfers of quota.

## **2.10 Description of significant alternatives**

An FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. “Significant alternatives” are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities, as a whole.

The alternatives are described in Sections 1.6 and 1.7 of the RIR. The preferred alternative, constituting the “final action” under this element of the FRFA, reflects the least burdensome of management structures available, in terms of directly regulated small entities, while fully achieving the conservation and management purposes consistent with applicable statutes.

NMFS initially considered an alternative that would have required use of the online systems, rather than making them optional. NMFS rejected this alternative without analysis, because NMFS could not be certain that all entities in all impacted industry sectors had the capability of submitting forms electronically. For any that did not, such a mandate would have imposed an unnecessary and disproportionate economic burden.

## **2.11 Author and Contributors**

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## 2.12 References

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Revised: JScheurer 10/14/08

Revised: LQueirolo 01/08/09; 02/11/09

Revised: Bmuse 09jun09

Revised: GAberle 06 29 09

Revised: SSalveson 07 22 09

Revised: TMeyer 09 17 09