

**SUPPLEMENT**  
**Final Regulatory Flexibility Analysis (FRFA)**  
**for Amendments 42/42**  
**to the Bering Sea/Aleutian Islands Groundfish FMP**  
**and the Gulf of Alaska Groundfish FMP,**  
**as prepared by the North Pacific Fishery Management Council**  
**and approved by the National Marine Fisheries Service.**

August 1, 1996

**BACKGROUND**

Amendments 42/42 to the Bering Sea/Aleutian Islands Groundfish and the Gulf of Alaska Groundfish Fishery Management Plans were prepared by the North Pacific Fishery Management Council (Council) and submitted to the National Marine Fisheries Service (NMFS) for review, approval, and implementation under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Council also prepared an initial regulatory flexibility analysis (IRFA) in support of the its proposed action. On June 12, 1996, NMFS published in the Federal Register a notice of availability of Amendments 42/42 and related documents for public comment, including the IRFA (61 FR 29729). NMFS published a proposed rule for Amendments 42/42 on June 25, 1996 (61 FR 32767) . Public comments were invited on the proposed amendments, the proposed rule, the IRFA, and other supporting documents through August 5, 1996. NMFS approved Amendments 42/42 on [date] and will implement the approved amendments through a final rule. Copies of the IRFA as well as Amendments 42/42 are available from the North Pacific Fishery Management Council or from NMFS (see Further Information below).

In conjunction with promulgation of the final rule to implement Amendments 42/42, NMFS has prepared this FRFA as a supplement and appendix to the IRFA. There have been no changes in the measures implemented in the amendments, and the reasons for the action are explained in the preamble to the proposed rule.

**OBJECTIVES OF AND NEED FOR THE FINAL RULE**

Amendments 42/42 contain management measures applicable to the IFQ Program for Fixed Gear Pacific Halibut and Sablefish Fisheries In and Off of Alaska. During the first year of fishing under the IFQ Program in 1995, IFQ fishermen and their representatives reported to the Council that the prohibition against using or transferring QS across vessel categories limited their ability to improve the profitability of their operations. Many fishermen reported that they had received QS that represented far fewer pounds than their recent catch history prior to the IFQ program. Small boat fishermen reported the scarcity of medium- and large-size QS blocks greater than or equal to 5,000 lb (2.3 mt)) available to smaller vessels and requested that the Council enable them to purchase shares from QS holders in larger vessel size categories. Also, category B vessel operators reported difficulties in using or marketing small category B blocks and requested the opportunity either to downsize operations or to sell smaller QS blocks to owners of smaller vessels.

These amendments address the above concerns by allowing QS initially assigned to a larger vessel category to be used on smaller vessels, while continuing to prohibit the use of QS or its associated IFQ assigned to smaller vessel categories on larger vessels. QS will continue to be assigned to vessel categories by existing criteria at § 679.40(a)(5)(i)-(v) and will retain original vessel category assignments. However, halibut and sablefish QS and their associated IFQ assigned to vessel category B can be used on vessels of any size; halibut QS assigned to vessel category C likewise can be used on vessels of categories C and D. The regulations continue to

prohibit the use of QS and IFQ on vessels larger than the maximum LOA of the category to which the QS was originally assigned.

This rule does not apply to halibut in IFQ regulatory areas 2C or to sablefish east of 140 deg. W. long. Halibut QS assigned to vessel category B in IFQ regulatory areas 2C and sablefish QS east of 140 deg. W. long. are prohibited from use on vessels less than or equal to 60 ft (18.3 m) LOA except in QS blocks equivalent to less than 5,000 lb (2.3 mt) based on the 1996 Total Allowable Catch (TAC).

## A SUMMARY OF SIGNIFICANT ISSUES RAISED BY PUBLIC COMMENTS

Sixteen letters of comment were received by NMFS regarding Amendments 42/42. Fourteen letters provided comments in support of the amendments. Of these, nine opposed the exception for halibut in regulatory areas 2C and for sablefish east of 140° W. long. Seven letters requested that NMFS expedite the regulatory review process, promoting the opportunity for fishermen with larger QS to take advantage this action during the summer weather. One letter provided no comment. One letter indicated that these amendments would increase costs for consumers as a result of smaller, rather than larger, vessels delivering QS. These comments, which are summarized and responded to below, were considered in the formulation of this final rule.

**Comment 1:** The amendments should improve the profitability of operations for fishermen in the IFQ program.

**Response:** NMFS concurs in this comment. These amendments will provide small boat owners opportunity to acquire QS initially assigned to holders with larger vessels, and the amendments will make smaller category B blocks more marketable.

**Comment 2:** The exception for the regulatory areas 2C for halibut and east of 140° W. long. is unnecessary.

**Response:** The exception is necessary. The imbalance in distribution of QS across vessel categories in these regulatory areas, with a predominant amount of shares assigned for use on smaller vessels, requires the exception to prevent excessive consolidation of QS among owners of smaller vessels. This action nevertheless provides some additional flexibility by allowing QS blocks equivalent to less than 5,000 lb (2.3 mt) to be used on smaller vessels.

**Comment 3:** These amendments will increase costs for consumers, because more small vessels will deliver IFQ catch. The concept of scale economies, in which a processing plant can spread its fixed costs over more quantity permitting it to sell at better prices, is lost. These amendments, therefore, will not be in the best interest of the local economy, the region, or the nation.

**Response:** Although the commenter may be theoretically correct with respect to any one processor, NMFS does not have information to compare price information with fixed costs in the aggregate for all processors. On balance, these amendments will benefit the nation. National standard 1 of the Magnuson Act requires measures, in part, to achieve the optimum yield (OY) from each fishery for the U.S. fishing industry. The determination of OY is a decisional mechanism for balancing the various interests that comprise the national welfare. Among these interests are social factors, including those relevant to small boat fisheries on which local Alaskan communities often depend. NMFS finds that these amendments promote these social factors, resulting in a positive benefit to the nation.

**Comment 4:** The majority of letters implored NMFS to expedite the implementation of the amendments.

**Response:** NMFS notes the comment. In response, the final rule notes that this action relieves a restriction, because fishermen with vessels in smaller size categories will be able to harvest, in 1996, QS and its associated IFQ assigned to larger vessels prior to the advent of poorer weather,

thereby harvesting more of the available quota during safer fishing conditions. A delayed effectiveness under 5 U.S.C. section 553(d)(1), therefore, is not required.

#### DESCRIPTION AND ESTIMATE OF THE NUMBER OF SMALL BUSINESSES TO WHICH THE RULE WILL APPLY

NMFS has defined all fish harvesting businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$2 million as small businesses. In addition, seafood processors with 500 employees or less, wholesale industry members with 100 members or less, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A “substantial number” of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a “significant impact” on these small entities if it resulted in a reduction in annual gross revenues by more than 5%, annual compliance costs that increased total costs of production by more than 5%, or compliance costs of small entities that are at least 10% higher than compliance costs as a percent of sales for large entities.

Every catcher vessel participating in the Alaska Pacific halibut and sablefish fisheries would potentially be affected by the preferred alternative. Most vessels harvesting halibut and sablefish off Alaska meet the definition of a small entity under the RFA. A maximum of 6,640 halibut fishermen who received catcher vessel QS in categories B, C, and D and a maximum of 1,974 sablefish fishermen who received catcher vessel QS in categories B and C may potentially be affected by the preferred alternative. The maximum number of affected fishermen would not include holders of category B unblocked QS of any amount and blocked QS of  $\geq 5,000$  lb in halibut area 2C and sablefish Southeast area.

The impacts of these amendments are not likely to lead to a reduction in the gross revenues received by the small business sector of the fleet, nor would they appear to pose the potential for any significant negative impact within the meaning of the Regulatory Flexibility Act.

These amendments would, however, impact the small business sector of the fleet in a very positive manner. The tables on pages 9-25 illustrate the extent to which this amendment would open new opportunities for owners of smaller vessels to improve the profitability of their operations. Table 2, for example, illustrates the potential movement of larger vessel IFQ to smaller vessels for Alternatives 2 and 3. Under the status quo, in halibut area 3B there are 243 category B IFQ holdings of 2 million lb; 551 category C holdings of nearly 1.4 million lb; and 257 holdings in category D of 133,000 lb. Alternative 2 would allow the use of the 243 category B IFQs on category C vessels for a potential maximum of 794 (243+551) holdings of 3.4 million pounds. Additionally, the 794 category B and C holdings would be available for use on category D vessels, for a maximum of 1,051 holdings of 3.6 million pounds. This represents an increase of 309% in QS holdings and 2,547% in IFQ pounds for the small boat fleet. These figures represent the maximum potential changes in IFQ distribution among vessel categories since not all holders of larger vessel IFQ are expected to desire to use their IFQ on smaller vessels.

These amendments would have a significant positive impact on small vessel owners. The industry recommended this change and has supported its implementation. Small vessel owners continue to express great interest in this change to IFQ Program regulations.

#### DESCRIPTION OF THE PROJECTED REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS OF THE RULE

No significant additional administrative, enforcement, or information costs are expected under this action.

## DESCRIPTION OF THE STEPS THE AGENCY HAS TAKEN TO MINIMIZE THE SIGNIFICANT ECONOMIC IMPACTS ON SMALL ENTITIES

This action will have positive impacts on the small entities it affects; it will have no associated negative impacts that need to be minimized. A potential imbalance in the distribution of quota shares across vessel size categories in regulatory areas 2C for halibut and east of 140° W. long. for sablefish is obviated by the inclusion of an exception for these regulatory areas that will limit the amount of QS that can be used across vessel size categories to Qs blocks equivalent to less than 5,000 lbs.

## FOR FURTHER INFORMATION

For further information Contact: James Hale, Alaska Regional Office, NMFS, Phone: 907-586-7425. Copies of the final rule and the Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from Fisheries Management Division, ATTN: Lori Gravel, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.