Final Regulatory Impact Review / Initial Regulatory Flexibility Analysis

For Amendment to Regulations that Implement the Halibut IFQ Program

Allow IFQ derived from Category D QS to be fished on Category C vessels in Area 4B

January, 2014

Abstract: This action amends the halibut Individual Fishing Quota (IFQ) regulations under the authority of the NOAA Fisheries Service. The action allows IFQ derived from Category D quota share (QS) to be fished on Category C vessels in Area 4B. This action would relieve a restriction placed on IFQ halibut fishery participants and would further program goals by increasing the amount of IFQ that may be harvested by the small boat fleet, and by increasing safety at sea for that fleet.

North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501
(907) 271-2809

NMFS, Alaska Region
P.O. Box 21668
Juneau, AK 99802
(907) 586-7228

1.0 Regulatory Impact Review

1.1 Introduction

This document contains the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for a proposed amendment to regulations that describe management of Pacific halibut (*Hippoglossus stenolepis*) Individual Fishing Quota (IFQ) fisheries in North Pacific Halibut Convention waters in and off Alaska. The proposed regulatory amendment would address a management issue pertaining to the IFQ halibut fisheries in western Alaska. The proposed action would allow Category D QS to be fished on vessels ≤ 60 ft. (18.3 m) length overall (LOA) in Area 4B. This action was first proposed in a 2003 call for IFQ proposals. In December 2004, the North Pacific Fishery Management Council took no action for Area 4B when it adopted a similar "fish-up" action for Areas 3B and 4C. The final rule for implementing the Areas 3B and 4C fish-up amendment was published in August 2007 (http://www.alaskafisheries.noaa. gov/frules/72fr44795.pdf). At the time of the 2004 final action, no stakeholders had commented on the proposed action for Area 4B, so the Council did not adopt the action for that area. The Council assumed that Area 4B stakeholders either did not believe it was necessary to make this change at that time or opposed it (but were silent) because of concerns about potential outmigration of deliveries from the area that could occur.

Under a call for IFQ proposals in 2009, one proposal requested that the Council adopt this proposed action specifically for Area 4B. The proposer described a lack of moorage and storage for his vessel, especially in the off season at Adak, and potentially hazardous fishing conditions out of Sand Point. In September 2009, the Council's IFQ Implementation Committee unanimously recommended this proposal for Council consideration, noting that the proposed action is the same as has been implemented for Areas 3B and 4C. In supporting the current proposed action, the committee identified increased concerns about vessel safety; it noted that delivery options for small vessels are limited to Dutch Harbor, which can be several days in transit from the fishing grounds.

In February 2009, the Council approved this proposal for analysis, after receiving additional favorable public testimony from community representatives. The Council identified that this proposal previously was analyzed for Area 4B as a part of the Omnibus IV IFQ program amendments that were implemented in 2007. The Council scheduled the analysis for the selection of a new preferred alternative during final action in December 2010. The problem statement from the 2006 analysis was adapted as the purpose and need for this proposed action. No action was taken in December 2010.

In February 2012, the Council scheduled final action on the November 5, 2010 public review draft for April 2012, after twice tabling the proposed action in 2011. In April 2012, the Council adopted a preferred alternative to allow IFQ derived from Category D QS to be fished on Category C vessels in Area 4B. The Council considered, but did not expand, its action to Area 4A. The preferred alternative would relieve a restriction placed on IFQ halibut fishery participants and would further program goals by increasing the amount of IFQs that may be harvested by the small boat fleet and increasing safety at sea for that fleet. This action would affect up to 12 Area 4B Category D QS holders, who hold < 3 percent of IFQs, and owners of up to 17 larger vessels upon which these IFQs would be allowed to be fished.

The Council reviewed information on a related February 2012 final action to allow an Area 4B CQE to form on behalf of Adak in the context of the current action. The current action and the February 2012 action for the Adak CQE will be linked for the purpose of publishing proposed and final rulemaking. The analysis for the CQE action is incorporated here by reference.

1.2 Management Authority

Management of the halibut fishery in and off Alaska is based on an international agreement between Canada and the United States and is given effect by the Northern Pacific Halibut Act of 1982. The Act

provides that, for the halibut fishery off Alaska, the Council may develop regulations, including limited access regulations, to govern the fishery, provided that the Council's actions are in addition to, and not in conflict with, regulations adopted by the International Pacific Halibut Commission (IPHC).

Regulations implementing the commercial IFQ fishery for Pacific halibut may be found at 50 CFR 679: Fisheries of the Exclusive Economic Zone off Alaska, Subpart D – Individual Fishing Quota Management Measures, Sections 679.40 through 679.45.

1.3 Requirements of a Regulatory Impact Review

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

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

EO 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A significant regulatory action is one that is likely to:

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

1.4 Structure of the Halibut IFQ Program

The IFQ Program is a limited access system for managing the fixed gear Pacific halibut fisheries in the North Pacific Halibut Convention waters in and off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Northern Pacific Halibut Act of 1982, adopted the IFQ Program in 1991, and implementing regulations were published in the Federal Register on November 9, 1993 (58 FR 59375). Fishing began under the program in 1995.

The program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based; to allocate specific harvesting privileges among U.S. fishermen; to resolve management and conservation problems associated with "open access" fishery management; and to promote the development of fishery-based economic opportunities in western Alaska. The IFQ approach was chosen to provide fishermen with the authority to decide how much and what types of investment they wished to make to harvest the resource. By guaranteeing access to a certain amount of the total catch at the beginning of the season, and by extending the season over a period of eight months, those who held the IFQ could determine where and when to fish, how much gear to deploy, and how much overall

investment in harvesting to make. The development and design of the halibut IFQ fishery is described in Pautzke and Oliver (1997), Hartley and Fina (2001a, b), and the 2009 Annual Report to the Fleet by NOAA Fisheries (2010) (http://www.alaskafisheries.noaa.gov/ram/rtf09.pdf).

The purpose of the IFQ program was to provide for improved long-term productivity of the halibut fisheries by further promoting the conservation and management objectives of the MSA and the Halibut Act, and to retain the character and distribution of the fishing fleets as much as possible. The Council protected small producers, part-time participants, and entry-level participants who may tend to be eliminated from the fisheries, because of potential excessive consolidation under the IFQ program. For this reason, the system includes restrictions designed to prevent too many quota shares from falling into too few hands (ownerships caps) or from being fished on too few vessels (vessel use caps). Other restrictions are intended to prevent the fishery from being dominated by large boats or by any particular vessel class. Halibut QS were initially assigned to vessel categories, based on vessel size and kind of fishery operation[1] (Table 1), and to one of eight regulatory areas (Figure 1). The Council also designed a "block program," to further guard against excessive consolidation of QS and consequent social impacts on the fishery and dependent communities. The block program reduced the amount of QS consolidation that could have occurred under the IFQ program, and slowed consolidation by restricting QS transfers.

Table 1. QS/IFQ use restrictions by Category

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

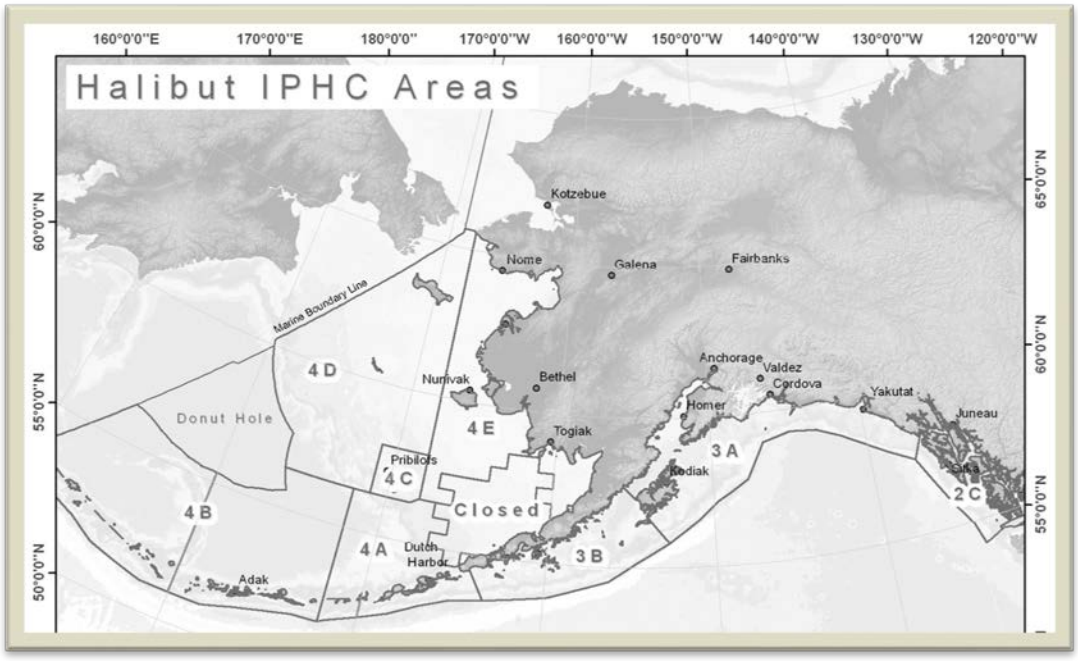

Figure 1. IPHC Regulatory Areas for Pacific Halibut

[1] There are no vessel categories associated with CDQ halibut.

Only part of the original structure of the vessel Category designations of QS remains, since 1995 when implementation of the halibut IFQ program occurred. A 1996 amendment relaxed the restrictions on using QS across vessel categories. This 'fish down' amendment, as it was termed, allowed QS deriving from larger catcher vessels to be fished on smaller vessels (http://www.alaskafisheries.noaa.gov/frules/fr_43312.pdf . It increased flexibility of halibut QS transfers for Category B, C, and D vessels to alleviate a scarcity of large to medium size QS blocks in some areas. It allows the use of larger vessel QS (B and C) on smaller Category vessels (C and D: vessels ≤ 60 ft LOA), except that fish down of Category B halibut QS in Area 2C was allowed only for blocks of less than 5,000 pounds (based on 1996 TACs). The 2007 "fish-up" amendment allowed Category D QS to be fished on vessels ≤ 60 ft. (Category C) in Areas 3B and 4C, and removed the Southeast exemption from the 1996 amendment.

The Council has eased QS restrictions for other program elements to enhance harvesting opportunity and promote objectives of the Halibut Act, the IPHC, and the Council. Regulations were implemented in 2002 that allowed holders of Area 4D halibut CDQ to harvest such halibut CDQ in Area 4E. A 2005 amendment allowed holders of Area 4C halibut IFQ and CDQ to harvest such halibut IFQ/CDQ in Area 4D. With a decline in catch rates greater than 70 percent over the previous ten years, this action allows 4C IFQ (and CDQ) fishermen to fish outside their localized depleted area.

Vessel Categories

Vessel Length	Processor Vessel	Catcher Vessel	
		Sablefish	Halibut
Over 60'	A	B	B
>35' to 60		C	C
0 to 35'			D

Processor (Freezer) vessel - any vessel used to process its catch during any fishing trip.

The Council amended the block program for halibut by allowing a QS holder to hold three, rather than two blocks of QS, by dividing halibut blocks in Areas 3B and 4A that yield more than 20,000 pounds into a block of 20,000 pounds, and the remainder unblocked, and by increasing the halibut sweep-up level in Areas 2C and 3A to 5,000 pounds; these change were implemented in 2007. Also, early in the program (for the 1997 season), the Council raised the "sweep-up" levels to 3,000 pounds for halibut (based on 1996 QS units from 1,000 pounds.

1.5 Description of the Fishery

A detailed description of the fishery can be found in the Report to the Fleet, prepared annually by the Restricted Access Management Program, NOAA Fisheries Alaska Region. The information below was provided in the report and/or by the NMFS RAM Division for the draft RIR/IRFA used by the Council when it selected its preferred alternative[2]. In 2010, approximately 42 million pounds of IFQ halibut were allocated among halibut QS holders in the eight halibut IFQ regulatory areas (Table 2). Overall, nearly all the allocation is harvested. Table 3 shows the number of unique halibut QS holders by regulatory area. Halibut IFQs are not awarded to the 103 persons who hold Area 4E QS, as that entire allocation is made to the western Alaska CDQ Program.

A total of 1,089 unique vessels and 2,852 QS holders participated in the halibut fishery in 2009 (Table 3). In the halibut fishery, less than 10 percent of the annual harvest in any regulatory area is allocated to vessels that are allowed to process onboard (i.e., those with Category A QS). In 2009, in Area 4B, there were: 1) 96 QS holders, 12 of whom held Category D QS (Table 4); 2) no vessels using Category A or D halibut IFQs (Table 4); 3) 17 vessels using Category C shares; and 4) only 82 percent of available IFQs harvested (74 percent in 2010 (Table 2)). There were 67 vessel landings in 2009 in Area 4B.

[22] Current fishery information is summarized in Annual Pacific Halibut–Sablefish IFQ Report (Report to the Fleet) for fishing year 2011 https://alaskafisheries.noaa.gov/ram/ifq/rtf11.pdf.

Table 2. Individual Fishing Quota (IFQ) Allocations and Landings for Fishing Year 2010 (as of 28 Oct 2010)

IFQ Area	Landings	Catch Limit (lb)	Catch (lb)	Remaining	% Harvested
2C	1,711	4,400,000	4,220,544	179,456	96
3A	2,158	19,990,000	19,654,143	335,857	98
3B	825	9,900,000	9,719,356	180,644	98
4A	244	2,330,000	2,171,147	158,853	93
4B	99	1,728,000	1,273,197	454,803	74
4C	39	812,500	106,338	706,162	13
4D	58	1,137,500	1,647,415	(509,915)	145
Total	5,134	40,298,000	38,792,140	1,505,860	96

Notes:

1. Total number of vessel offloads containing only halibut IFQ: 4,979
2. 4D allocation may be fished in 4D or 4E. Harvest is debited from the account for the reported harvest area. This may cause 4E landings to appear overharvested and 4D under harvested.
3. 4C allocation may be fished in 4C or 4D. Harvest is debited from the account for the reported harvest area. This may cause 4D landings to appear overharvested and 4C under harvested.
4. Halibut weights are reported in net (headed and gutted) pounds.
5. 'Vessel Landings' include the number of landings by participating vessels reported by IFQ regulatory area. Due to over- or under harvest of TAC and/or rounding, percentages may not total to 100%.
6. Data are derived from initial data entry procedures and are preliminary. Future review and editing may result in minor changes.

Table 3. Number of Persons holding halibut QS at year end 2008 and 2009. NOTE: Counts are not additive across areas

Area	Number Distinct QS holders end 2008	Number Distinct QS holders end 2009
2C	1,225	1,205
3A	1,547	1,501
3B	495	493
4A	239	235
4B	99	96
4C	56	53
4D	47	46
4E	103	103
Total across areas:	2,909	2,852

Table 4. QS holders and vessels in the halibut IFQ fisheries in 2010 by size and area.
NOTE: Counts are not additive across areas. Source: NOAA Fisheries RAM.

	QS holders			Vessels		
Area	D	C	B	D	C	B
2C	457	676	71	188	362	19
3A	483	824	280	146	356	71
3B	73	283	177	33	177	56
4A	73	89	99	17	44	26
4B	12	28	63	0	17	17
4C	30	14	23	3	5	0
4D	0	11	39	0	16	14

1.6 Purpose and Need

The halibut vessel size categories were designed to maintain a diverse, owner-operated fleet and provide an entry-level opportunity in the IFQ fisheries. Increased concerns in Western Alaska regarding vessel safety due to limited delivery options for small vessels warrant a review of vessel size class restrictions in Area 4B, to determine if changes are needed to ensure program goals are met. Delivery options for small vessels are limited to Dutch Harbor, which can be several days in transit from the fishing grounds.

Halibut fishermen in western Alaska have identified safety concerns in Area 4D, and problems in fully harvesting Area 4C QS, associated with fishing in that area on small vessels. These problems can be alleviated, in large part, by relaxing the current restrictions on vessel length associated with category D quota share.

1.7 Management Action Alternatives

Alternative 1. No action

The Council designed the original IFQ program to include elements that were intended to preserve the diversity of the fleet and maintain entry-level opportunity in the fisheries. The IFQ program, as currently regulated, constrains the use of IFQ derived from a particular QS Category. The use restrictions are described in 50 CFR 679.40(a)(5)(ii) and are listed in Table 1. This provision permanently attributes QS holdings to halibut vessel categories A, B, C, and D, which restricts how the resulting IFQ is fished. The QS Category determines both whether harvested fish may be processed onboard (Category A QS only), and the size of vessel on which the catcher vessel IFQ may be harvested.

At the request of industry, and to facilitate flexibility and efficiency in the fishery, however, a regulatory amendment in 1996 allowed halibut IFQ derived from Category B or C QS to be fished on smaller vessels ("fish-down"), in all halibut areas, except Area 2C (NPFMC 1996). In 2007, the Council expanded flexibility across QS categories by adopting a "fish-up" allowance for Areas 3B and 4C, and removed the Area 2C fish-down exception.

Taking no action retains the existing restrictions regarding the use of halibut IFQ derived from a particular QS Category. The status quo alternative does not address the safety objectives and low harvest concerns of stakeholders in Area 4B.

(Preferred) Alternative 2. Allow IFQ derived from Category D QS to be fished on Category C vessels in Area 4B

Under Alternative 2 (Preferred Alternative), halibut IFQ resulting from Category D QS in Area 4B would be allowed to be fished (up) on vessels ≤ 60ft LOA. Some QS holders who fish from small vessels have

expressed safety concerns, due to the short season in which they are forced to fish. Under the proposed alternative, they will have more options available. These QS holders may choose to upgrade to a vessel of a larger size, hire a skipper of a larger vessel, if they are an initial recipient, or team with a larger vessel as crew to fish their IFQs. It is not known which option QS holders may select.

The preferred alternative would address safety concerns for small vessel operators and concerns over the ability of Category D QS holders in Area 4B to completely harvest their IFQs. The uncertainty surrounding shoreside processing in Adak, which has had a number of ownership changes since its establishment as Adak Seafoods in 1999, contributes to the need for greater flexibility in operating platforms. These problems can be alleviated, to some degree, by relaxing the current restrictions on vessel length associated with Category D QS.

The preferred alternative could potentially directly regulate up to 12 Category D halibut QS holders in Area 4B.[3] These persons hold less than 3 percent of halibut QS in that area (Table 5). Fishery participants in Area 4B have asserted that the restrictions governing the use of IFQ derived from Category D QS present a safety issue that contributes to their inability to harvest their allocations. Reportedly, due to weather conditions, a 35ft LOA vessel can only safely fish between May 15 and September 15. Additionally, fishing during the safest part of the summer window may not be possible for small vessels, as processors may not be accepting halibut during the peak of the salmon fisheries. Category D vessels may, thus, be limited to a substantially shortened season, and/or forced to fish under less safe conditions in order to harvest their IFQ. As a result of these adverse conditions, Category D vessel owners have reported that they prefer to increase their QS holding by purchasing Category B and C QS. They prefer those categories to Category D, so that they may harvest their QS on a larger vessel in the future. Consequently, there is very little market demand for the Category D QS, according to industry members.

Table 5. QS Units by category and area .
Data from end of 2009. Source: NOAA Fisheries RAM.

Area	QS Units end 2008	IFQ Pound Equivalents net wt 2009	Cat A Pct of Total	Cat B Pct of Total	Cat C Pct of Total	Cat D Pct of Total
3B	54,203,176	10,899,931	2.9%	55.3%	38.7%	3.1%
4A	14,587,099	2,550,014	4.2%	58.6%	30.0%	7.2%
4B	9,284,774	1,496,000	6.0%	76.6%	14.5%	2.9%
4C	4,016,352	784,505	0.5%	40.4%	21.6%	37.6%
4D	4,958,250	1,098,294	8.3%	82.7%	9.0%	0.0%

The attainment of TAC in the western areas has become much more reliable through consolidation and changing use patterns in the fisheries, but remains lower for smaller vessels. Table 6 illustrates the attainment of TAC for Category C and D IFQ allocations. Recall that "fish up" has been allowed in Areas 3B and 4C since 2007. The halibut harvest in Area 4C is consistently under-harvested, but this appears to be due to a change in the location of the halibut stock, rather than a safety issue (see NPFMC 2005 for further discussion); Area 4C halibut IFQs may be harvested in Area 4D. Areas 3B, 4A, and 4B appear to have had a higher rate of harvest than Area 4C, with the exception of Category D, in Area 4B.

[3] Because the analysis includes data for all areas, an expansion of this action to the remaining Western Alaska area (Areas 4A), not yet included under the fish-up provisions, would be considered within the scope of this analysis; there is no Category D halibut QS in Area 4D. The Council chose not to take action for Area 4A.

Table 6. Percent of Category C and D IFQ harvested, by area, 2000-2010.
Source: NOAA Fisheries RAM.

Year	Area 3B		Area 4A		Area 4B		Area 4C	
	Category C	Category D	Category C	Category D	Category C	Category D	Category C	Category D
2000	98%	96%	99%	96%	93%	38%	87%	51%
2001	98%	90%	97%	87%	90%	47%	96%	43%
2002	100%	99%	102%	92%	91%	29%	75%	17%
2003	100%	96%	99%	98%	97%	46%	73%	4%
2004	98%	96%	94%	95%	87%	18%	89%	13%
2005	98%	99%	94%	99%	94%	74%	21%	0%
2006	99%	97%	98%	100%	85%	1%	3%	37%
2007	100%	98%	94%	95%	85%	59%	4%	22%
2008	98%	97%	95%	93%	83%	14%	13%	3%
2009	96%	93%	93%	89%	80%	0%	13%	8%
2010*	97%	90%	92%	87%	64%	15%	0%	26%

*partial year

Table 7 illustrates the degree to which fish up and fish down occurred in 2009. This can be gleaned from a comparison between the left portion of Table 7, which identifies allocations, and the right portion of the table, which identifies the landings, for each area and category. Cases where landings exceed allocations may be interpreted to be situations where fish up/down occurred; however, cases where both fish-up and fish-down occurred may not be evident from the data.

Table 7 Fish down on vessels ≤ 35ft LOA, 2009.

Source: NOAA Fisheries RAM.

			IFQ Derived from QS Categories as % of total IFQ Landed from Vessels 0-35' LOA				IFQ Landed from 0-35' LOA vessels as Pct of Total IFQ derived from QS Categories			
Area	Total IFQ Landed on Vessels 0-35' LOA	Number of Distinct Vessels Used, 0-35'	A	B	C	D	A	B	C	D
3B	650,426	33	3.2%	29.1%	38.5%	29.1%	6.5%	3.1%	5.9%	56.9%
4A	340,804	17	0.0%	25.0%	27.1%	47.9%	0.0%	5.7%	12.1%	89.0%
4B	0	0	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
4C	9,542	3	7.8%	0.0%	0.0%	92.2%	20.1%	0.0%	0.0%	3.0%

Category D QS is not issued in Area 4D.

Table 8 shows the numbers and percentages of blocked and unblocked QS, and number of blocks and blocked QS holders, in 2009.

Table 8 **Counts and percentages of blocked, unblocked QS in 2009 and number of blocks and blocked QS holders**

AREA	Total QS	Percent Blocked QS	Percent Unblocked QS	Number of Blocks	Distinct QS Holders
2C	59,552,039	70.8	29.2	1,777	1,168
3A	184,911,315	35.4	64.7	2,231	1,462
3B	54,203,176	46.1	54.0	683	489
4A	14,587,099	65.2	34.9	292	230
4B	9,284,774	35.9	64.1	116	96
4C	4,016,352	52.2	47.8	71	53
4D	4,958,250	49.0	51.0	56	46

Table 9 shows price data for QS holdings, by regulatory area, category, and blocked or unblocked status. While this does not necessarily provide a complete understanding of the QS market, it gives a general indication of the relative value of QS. One may conclude that the value of Category D blocked QS in the western areas seems to be consistently lower than other categories of blocked QS in those areas, which is to be expected as the QS are more restrictive. The value of these QS is also affected by the remoteness of the fishing grounds, processing uncertainties, and weather.

Table 9 **Information on 2009 QS transfers: weighted average prices for priced QS transfers.** Source: NMFS RAM.

Area	A		B		C		D	
	Blocked	Unblocked	Blocked	Unblocked	Blocked	Unblocked	Blocked	Unblocked
2C				*	17.49	23.70	17.43	
3A		*	22.73	26.21	22.60	22.49	17.54	
3B			16.99	15.36	3.23	21.34	*	
4A	*		10.00	*	*	*	6.71	
4B			8.58	10.29	6.22	*		
4C			*	*	*	*	*	
4D			*		*			

*data are confidential

The preferred alternative could reduce entry level opportunities by increasing the cost of acquiring Category D QS, but this possibility is believed to be low, due to the aforementioned factors that affect their price. While the marginal increase in the market value of Category D QS may disadvantage new entrants to the fishery, these shares comprise less than 3 percent of Area 4B QS. Category D QS was originally intended, in part, to provide an affordable opportunity for skippers and crew members to buy into the fishery. The difference in the market price, between Category C and D QS, is discussed above. Too few small vessel QS are held, much less transferred, for this analysis to be informative.

Table 10 indicates the current number of Category D QS holders who are second generation QS holders (i.e., not initial recipients and have bought into the fishery), and also the amount of Category D QS they control. These data represent a point in time, and do not reflect any of the transfer history of QS held by these second generation QS holders. Initial recipients in Areas 3B, 4A, and 4C still represent the majority

of Category D QS holders and hold half the Area 4B QS. New entrants control a disproportionate portion of QS, except in Area 4B. To date, the price of QS does not appear to prevent crew members or other new entrants from being able to acquire QS, although this action may impose some economic cost on new entrants by potentially increasing the cost of the few Category QS in Area 4B. It, however, may not have inhibited acquisition of Category D QS in Area 3B and 4C, where "fish-up" is allowed.

There may be some corollary decrease in the value of Category C QS because the proposed alternative is likely to (marginally) increase the value of Category D QS in this area. However, Category D QS constitutes such a small share of the aggregate halibut TAC in Area 4B, that such a change in relative value would not be expected to substantially influence the market for QS.

Table 10 Category D QS holders that are new entrants to the fishery, and the amount of QS controlled in 2009.

AREA	Total Category D QS holders	Second Generation Category D QS holders	% Second generation Category D QS holders	Total Category D QS units	Second Generation Category D QS	% Second generation Category D QS
3B	73	20	27%	1,653,973	790,347	48%
4A	73	21	29%	1,049,364	764,324	73%
4B	12	6	50%	268,996	158,614	59%
4C	30	8	27%	1,509,042	688,953	46%

1.8 Conclusions

None of the alternatives are likely to change fishing patterns or harvest amounts to an extent that would result in an impact on the halibut stock, bycatch amounts, or other environmental impacts. There are no data that suggest adverse impacts would result from a higher proportion of the harvest being taken on larger vessels. The preferred alternative is expected to increase economic efficiencies of halibut IFQ fishing operations and safety by allowing small boat IFQs to be fished on larger vessels. Beneficiaries of the preferred alternatives would include all holders of Category D QS in Area 4B. Minor administrative costs of the program would be recovered by annual cost recovery fees for the entire program. NMFS annually publishes "standard prices" for halibut that are estimates of the ex-vessel prices received by fishermen for their harvests. Standard ex-vessel value is the default value on which to base fee liability calculations. Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut landings made during the year. NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut landings, by month and port or port group. NMFS uses these prices for calculating the permit holder's cost recovery fee. In 2009, the ex-vessel price per pound for halibut in the Bering Sea was $2.53 (http://www.fakr.noaa.gov/notice/74fr65741.pdf).

The total "standard" ex-vessel value of the total catch taken in the commercial halibut fishery in Area 4B in 2009 was approximately $3 million (1.2 million lb at $2.53/lb). This action only affects up to 12 Area 4B Category D IFQ holders (potentially 3 percent of total Area 4B IFQs), whose IFQ holdings are valued at approximately $90,000. This proposed action would directly affect those participants who hold Category D QS in the area, and would indirectly affect an unknown number of owners of larger vessels upon whose vessels those Category D QS may be "fished up."

Although it has not been possible to fully monetize the benefits and costs from these proposed program changes, their total net impact on the economy would be expected to be *de minimus*. The proposed action generally has little attributable costs and is expected to produce benefits in the form of small economic efficiencies, greater operational flexibility, and improved safety at sea, especially for those few fishery participants who hold Category D QS in this remote area. A summary of benefits and costs that may be attributed to the proposed alternative, relative to the status quo, is included below in Table 11.

Table 11. Summary of the cost and benefit analysis of Proposed Action.

	Alternative 1. No Action	**Preferred Alternative.**
Who may be affected?	Baseline	Up to 12 halibut Category D QS holders, an unknown number of Category D vessels, and up to 17 Category C vessels
Impacts to the resource	Baseline	None
Benefits	Baseline	• likely to address safety by providing an alternative to fishing on very small boats in hazardous weather • likely to increase optimum yield of the halibut resource • may increase landings, valued at $90,000 ex vessel gross, 2010 • may increase economic efficiencies of small and larger vessel operations • may marginally increase the value of Category D QS • may provide *de minimus* economic relief to large vessel owners who are experiencing difficulty acquiring halibut QS
Costs	Baseline	• may decrease relative market value of Category C QS • may decrease entry-level opportunities
Net benefits	Baseline	• likely to increase safety for small vessel operators • likely to increase optimum yield of halibut resource • likely to increase economic efficiency by allowing small vessel IFQs to be fished on larger vessels, along with the IFQs for that size vessel class
Action objectives	Does not meet safety objectives or allow for increased resource utilization.	Best meets safety objectives or allow for increased resource utilization.

2.0 Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: 1) to increase agency awareness and understanding of the impact of their regulations on small business; 2) to require that agencies communicate and explain their findings to the public; and 3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

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

This IRFA has been prepared instead of seeking certification. Analytical requirements for the IRFA are described below in more detail. The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
4. A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
6. A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

    a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
    b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
    c. The use of performance rather than design standards;
    d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The "universe" of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule (and alternatives to the proposed rule), or more general descriptive statements if quantification is not practicable or reliable.

2.1 Reason for the action, objectives, and the legal basis for, the proposed rule

Halibut fishermen in western Alaska have identified safety concerns associated with fishing in Area 4B on small vessels, which could be alleviated, in large part, by relaxing the current restrictions on vessel length associated with Category D QS. As Category D QS comprise less than 3 percent of the halibut QS in the area, relaxing this restriction would allow for increased economic efficiencies and safety in their being harvested along with larger vessel IFQs. The problem statement is discussed in detail in Section 1.6.

2.2 Description and estimate of small entities

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

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 not dominate 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 form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The U.S. Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, and those size standards can be found in 13 CFR 121.201. The size standards are matched to North American Industry Classification System industries. A business involved in finfish fishing 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 $19 million for 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 would 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.

Some businesses operating in the commercial halibut fisheries would be directly regulated by this action. The proposed alternative could directly regulate all halibut QS holders who are eligible to transfer Category D QS in Area 4B (up to 12); however, the actual number is expected to be much smaller. At present, NOAA Fisheries does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ program that are "small," based on SBA guidelines, nor the number that would be adversely impacted by the present action. For the reasons discussed above, this analysis assumes that all directly regulated operations are small, for RFA purposes.

For the purpose of this discussion, the entities may be divided into two, mutually exclusive groups. One group include operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not). The Alaska Fisheries Science Center publishes data that allow for the estimation of the total gross revenues, by entity, from all sources in and off Alaska, for these operations. A second group includes operations that harvest halibut, but no groundfish. These entities may also harvest species such as herring or salmon.

The annual Groundfish SAFE reports contain the best available data on revenues from all sources, for operations harvesting groundfish. Table 36 of the report indicates that no hook-and-line catcher vessels had more than $4 19 million in gross revenues from all fishing sources in and off Alaska in 2008[4] (NPFMC 2009). That was also the case in prior years. Average gross revenue for the small hook-and-line catcher vessels was about $510,000 The IFQ program limits the amount of annual IFQ that any single vessel may be used to harvest and the maximum number of QS units an entity may use. NMFS annually publishes the number of QS units that an entity may use. The use cap for halibut in Area 4 is 1.5 percent of the Area 4 commercial quota share pool, or 495,044 QS units. The vessel cap is 0.5 percent of the all IFQ issued for halibut (217,744 net pounds in 2009). The harvest limits and prices, identified in Section 1.8, reflect the maximum ex-vessel gross revenues in 2009, accruing to a vessel operator who owned the maximum permissible amount of QS units for halibut ($90,000 in Area 4B).

While some operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut fisheries likely represent the largest single source of annual gross receipts for many of these operations. Based upon available data, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a *de minimus* number) directly regulated by these restrictions could have been used to land more than $419.0 million in combined gross receipts in 2009. Therefore, all halibut vessels have been assumed to be "small entities," for purposes of the IRFA. This simplifying assumption may overestimate the number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

Thus, all of the entities that harvest both groundfish and halibut are under the threshold. Based on the low revenues for the average groundfish vessel, and the low cap on maximum halibut revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of vessels. Therefore, the available data and analysis suggest that there are few, if any, large entities among

[4] Current information at the time the analysis was prepared for Council action.

the directly regulated entities subject to the proposed action. Because of regulatory limits on the size of halibut QS holdings, and the amounts that may be used on each vessel, NMFS believes that few vessels that harvest halibut, but no groundfish, would exceed the $~~4~~ 19 million threshold, either.

2.3 Description of reporting and record keeping compliance requirements

No additional reporting requirements have been identified.

2.4 Identification of relevant federal rules that may duplicate, overlap, or conflict with the proposed rule

NMFS is not aware of any other federal rules that would duplicate, overlap, or conflict with this action.

2.5 Description of significant alternatives to the proposed action that minimize adverse impacts on small entities

The significant alternative to the proposed action (the status quo alternative) for this action is treated, in detail (to the extent practicable), in the RIR. Retention of Alternative 1, the no action or status quo alternative, would impose adverse economic impacts on directly regulated small entities. Under the status quo, as described in detail in the RIR, Category D QS holders (all of whom are assumed to be small entities), must fish their quota from boats 35 ft. or smaller. This requirement puts these entities at physical and economic risk, owing to the remoteness and severity of weather and sea conditions under which they operate.

Alternative 2, the Council's preferred alternative, seeks to mitigate these adverse economic and operational impacts on directly regulated small entities. It does so, by removing the Category D vessel-size restriction for Area 4D halibut QS; thus, allowing use of this valuable asset aboard vessels better suited to the extremes of this region. By allowing these entities to "fish-up", the action recognizes the unique needs of, and burdens imposed upon, directly regulated small entities in the Area 4D sector, and makes accommodation for these limitations. On the basis of the foregoing analysis, the proposed alternative (relative to the status quo) appears to be the "least burdensome" for directly regulated small entities, among all available alternatives.

NOAA Fisheries is not aware of any alternatives, in addition to the alternatives considered therein, that would more effectively meet these RFA criteria.

3.0 Preparer

Jane DiCosimo
North Pacific Fishery Management Council
Anchorage, Alaska

4.0 Contributors

Jessie Gharrett, Tracy Buck	NMFS Restricted Access Management Program	Juneau, Alaska
Dr. Lew Queirolo	NMFS Alaska Region	Camano Island, Washington

5.0 Persons Contacted

IFQ Implementation Team		
Bob Snell		Anacortes, WA
Luci Roberts	APICDA	Soldotna, AK

6.0 References

Hartley, M. and M. Fina. 2001a. "Allocation of individual vessel quota in the Alaskan Pacific halibut and sablefish fisheries." Case studies on the allocation of transferable quota rights in fisheries. FAO Fisheries Technical Paper 411. Rome. pp. 251-265.

Hartley, M. and M. Fina. 2001b. "Changes in fleet capacity following the introduction of individual vessel quotas in the Alaskan Pacific halibut and sablefish fishery." Case studies on the effects of transferable fishing rights on fleet capacity and concentration of quota ownership. FAO Fisheries Technical Paper 412. Rome. pp. 186-207.

NPFMC. 1996a. Environmental Assessment and Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Categories (Class C & D). February, 1996. 28p.

NPFMC. 2005. Draft Regulatory Impact Review for a Regulatory Amendment to Modify Harvest Restrictions in Individual Fishing Quota and Western Alaska Community Development Quota Fisheries for Pacific Halibut in Areas 4C and 4D of the Bering Sea.

Pautzke, C. and C. Oliver. 1997. Development of the Individual Fishing Quota Program for Sablefish and Halibut Longline Fisheries off Alaska. North Pacific Fishery Management Council, Anchorage, AK. 22p. www.fakr.noaa.gov/npfmc/sci_papers/ifqpaper.htm.

Queirolo, L. E. 2011. Conducting Economic Impact Analyses for NOAA Fisheries Service. (Revised in response to Presidential Executive Order 13563). National Marine Fisheries Service, P. O. Box 21668, Juneau, AK 99802. February 23, 2011.