

FINAL

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW

FOR

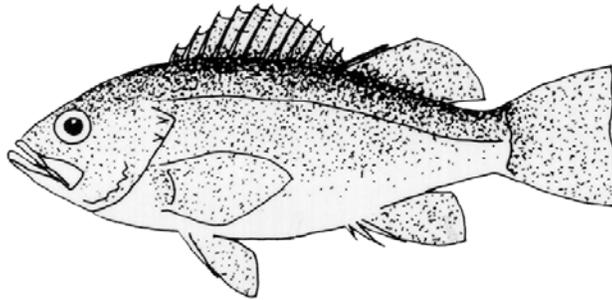
AMENDMENT 50 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUND FISH
FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

AND

AMENDMENT 50 TO THE FISHERY MANAGEMENT PLAN FOR GROUND FISH OF THE
GULF OF ALASKA

TO

**AUTHORIZE DISTRIBUTION
OF HALIBUT BYCATCH IN THE
GROUND FISH FISHERIES OFF ALASKA
TO ECONOMICALLY DISADVANTAGED INDIVIDUALS**



Prepared by

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International Pacific Halibut Commission
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EXECUTIVE SUMMARY

Halibut are taken incidental to the Alaska groundfish fisheries. Vessels participating in these fisheries typically use trawl, hook-and-line or pot gear: with trawl gear accounting for most of the groundfish catch, and for about 84 percent of the halibut bycatch mortality. A portion of this bycatch is landed dead at shoreside processing facilities and must be returned to Federal waters for disposal as a prohibited species. Total halibut bycatch mortality was estimated to be 6,757 metric tons during 1996.

At its January 1993 meeting, the North Pacific Fishery Management Council (Council) recommended to the International Pacific Halibut Commission (IPHC) and to the National Marine Fisheries Service (NMFS) that a program to allow limited retention of halibut for donation to needy individuals be considered. At its April 1997 meeting, the council approved alternative 2 as its preferred alternative.

Alternative 1: (Status quo.) All bycaught halibut landed at shoreside processing facilities would be retained until they could be transported to an appropriate site for discard in Federal waters as a prohibited species.

Alternative 2: Authorize a voluntary halibut donation program for distribution of halibut taken as bycatch in the groundfish trawl fishery to economically disadvantaged individuals. **(preferred).**

The status quo alternative was rejected as it would be counter to the Council's policy of reducing unnecessary regulatory discard of dead but wholesome fish.

The proposed action would expand the existing Salmon Donation Program (SDP) to create a Prohibited Species Donation (PSD) Program that includes Pacific halibut as well as salmon. The SDP was implemented in 1996 after two years of assessment under several experimental fishing permits. Based on the results from the SDP, it appears that the program is effective at reducing bycatch waste without increasing total bycatch and that the program merits expansion. However, because the program has not been tried with respect to halibut, it would be implemented with a three year sunset.

Neither Alternatives 1 nor 2 would be expected to change fishing activities in a manner that would affect the amount of groundfish harvested nor the amount of halibut taken as bycatch in the Alaska trawl fisheries. Neither alternative is likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act (NEPA) or its implementing regulations.

The total burden to shoreside processors resulting from the preferred alternative cannot be estimated because participation would be voluntary. Based on information acquired through the SDP, we estimate that costs would average approximately 20 cents per pound for donated halibut. It is also difficult to quantify potential benefits to needy individuals because the amount of prohibited halibut that would be donated is not known at this time.

1.0 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) off Alaska are managed under the groundfish Fishery Management Plans (FMPs) developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The FMP for Groundfish of the Gulf of Alaska (GOA) was approved by the Secretary of Commerce and became effective in 1978. The FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (BSAI) became effective in 1982.

Actions taken to amend FMPs or implement other regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, these include NEPA, the Endangered Species Act (ESA), the Marine Mammal Protection Act, Executive Order (E.O) 12866, and the Regulatory Flexibility Act (RFA).

NEPA, E.O. 12866, and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions that may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals also are addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered. Section 4 contains an economic analysis required by the RFA that specifically addresses the impacts of the proposed action on small businesses.

This EA/RIR addresses proposed amendments to the FMPs that would expand the existing SDP to create a Prohibited Species Donation (PSD) program that would include both salmon and halibut. This would permit the limited retention of halibut taken as groundfish-trawl bycatch, and landed dead at shoreside processing plants. These fish could then be donated, through tax-exempt organizations, to economically disadvantaged individuals. The intended effect of the proposed measure is to provide an opportunity to the groundfish industry to reduce the protein waste of bycaught halibut that would otherwise be discarded dead as a prohibited species.

1.1 Purpose of and Need for the Action

Halibut are taken incidental to the Alaska groundfish trawl fisheries. These fish, if not released during preliminary sorting, are landed dead at shoreside processing facilities and must be disposed in Federal waters as a prohibited species.

At its January 1993 meeting, the Council recommended to NMFS and to the IPHC that limited retention of halibut be permitted, on a temporary basis, to assess the feasibility of a charitable donation program for dead prohibited halibut bycatch. The Council's recommendation endorsed the policy of reducing unnecessary regulatory discards of dead but wholesome fish and in doing so provide public benefit by allowing fish that would otherwise be discarded to be retained for processing and delivery to economically disadvantaged individuals through tax-exempt

organizations. The Council's intent in making its recommendation was to reduce protein waste in the groundfish trawl fisheries, provide additional opportunity to collect biological samples or scientific data. The costs of this recommended action would be incurred by the voluntarily participating seafood processors.

At its September 1994 meeting, after one-and-a-half years of a SDP implemented under two EFPs, the Council approved Amendments 26 and 29 that authorized the retention and processing of salmon taken as bycatch to economically disadvantaged individuals. In July 1996, NMFS issued a final rule to implement Amendment 26 to the BSAI FMP and Amendment 29 to the GOA FMP.

At its January 1996 Annual Meeting, the IPHC approved a pilot program allowing limited retention of halibut bycatch for use by food banks. The pilot program was intended to explore ways to reduce waste and to improve bycatch records. The IPHC approved the retention of 50,000 pounds (net weight) of halibut, landed by trawlers at shore plants in Dutch Harbor, for distribution in the manner previously used for salmon bycatch from factory trawlers. However, NMFS Enforcement and NOAA General Counsel could not identify an acceptable administrative procedure to transfer halibut bycatch from the vessel or plants to the government. At its 1997 Annual Meeting, the IPHC requested that its staff work with the staffs of NOAA General Counsel and NMFS Sustainable Fisheries Division to find an acceptable administrative procedure for limited retention of halibut bycatch landed by trawlers at shore plants. The staffs recommended, and the IPHC concurred, that an amendment with a three year sunset be developed to allow a NMFS-authorized distributor(s) to receive and distribute halibut bycatch. The authorized distributor would file a plan stating the specifics of the operation, including port of landing, identification of participating plants and the quantity of halibut to be retained. At its April 1997 meeting, the Council approved Amendment 50 and 50 to the FMPs

The proposed action would expand the existing SDP by creating the PSD Program. It would authorize a tax-exempt distributor(s), selected by NMFS, to coordinate the donation of bycaught halibut, taken by trawl catcher vessels and landed at shoreside processing plants in Alaska, to economically disadvantaged individuals.

Neither Alternatives 1 nor 2 would be expected to change fishing activities in a manner that would affect the amount of groundfish harvested nor the amount of halibut taken as bycatch in the Alaska trawl fisheries. None of the alternatives is likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the NEPA or its implementing regulations.

The total burden to the Alaska trawl industry under alternative 2 cannot be estimated because shoreside processing plants may or may not choose to participate. Potential benefits to economically disadvantaged individuals under Alternative 2 cannot be quantified because the amount of prohibited halibut landed at shoreside processing facilities is not known at this time. The IPHC has recommended that the program be limited to 50,000 pounds per year until its efficacy can be assessed. NMFS estimates that each pound of fish provides three meals, resulting in a maximum potential benefit of 150,000 meals for economically disadvantaged individuals each year during the first years of the program.

1.2 Alternatives Considered

1.2.1 Alternative 1: No action.

Under the status quo, all halibut bycatch landed at shoreside processing facilities would be retained until it could be transported to an appropriate site for disposal in Federal Waters as a prohibited species.

1.2.2 Alternative 2: (preferred) Implement a Halibut Donation Program..

Under Alternative 2, FMP amendments 50/50 would be implemented to authorize a PSD Program that would expand the existing SDP to include halibut. This would allow distribution of halibut taken in the Alaska groundfish trawl fisheries, and landed on shore dead, to be retained, processed for human consumption, and donated to economically disadvantaged individuals. Halibut taken as bycatch in fixed-gear fisheries would not be donated because, in general, those fish can be released alive when taken as bycatch.

Under this alternative, the Regional Administrator would select from qualified applicants, a NMFS-authorized distributor(s) to coordinate halibut donation under the PSD Program. The distributor(s) would be selected for a three year period. The authorized distributor would submit a list of shoreside processors that would be participating in the program. Processors would then be required to have a copy of the list available for inspection by NMFS or Coast Guard enforcement personnel. Possession of halibut under the PSD Program would not be authorized unless a NMFS-authorized distributor has been selected by the Regional Administrator and announced in the Federal Register, and until the distributor has provided a list of all participants to the Regional Administrator.

Because the PSD program has not been tried for halibut, the regulations implementing the amendments would have a three-year duration. Prior to their expiration, the Council and the IPHC would assess the effectiveness of the halibut donation program and determine whether it should be implemented permanently. In order to facilitate monitoring, participation will be limited to specified shoreside processing facilities.

1.3 Background

The Alaska groundfish fisheries result in the incidental fishing mortality of Pacific halibut. Vessel operators participating in these fisheries typically use trawl, hook-and-line, or pot gear. Trawl gear operations account for most of the groundfish catch, harvesting 94 percent of the groundfish catch during 1995 and 1996. Trawl fisheries also account for about 84 percent of the halibut bycatch mortality. Table 1 summarizes bycatch amounts of Pacific halibut associated with the 1995 and 1996 groundfish fisheries off Alaska.

Halibut bycatch from the groundfish trawl fisheries is either returned immediately when brought aboard, or offloaded dead at shoreside processing plants as part of unsorted cod-ends. The bycatch of halibut in the groundfish trawl fisheries is becoming increasingly controversial as Pacific halibut are a completely utilized fishery resource. Halibut are used as catch and bycatch in directed commercial, subsistence, and sport halibut fisheries and as bycatch in other non-halibut and non-

groundfish fisheries. Halibut caught as bycatch in the groundfish trawl fisheries intensify the management issues associated with the allocation of halibut.

In general, no information exists to indicate that the current level of halibut bycatch landed at shoreside processing sites in the Alaska trawl fisheries presents critical conservation issues. The IPHC has recommended enhanced data collection at specified shoreside processing sites in the Alaska trawl fisheries to assess the levels of shoreside landings of trawl halibut bycatch.

During the period the Council was considering its recommendation for a halibut bycatch donation program, NMFS approved three Experimental Fishing Permits (EFPs) to test the feasibility of a Salmon donation program, applied for by Terra Marine Research and Education and Northwest Food Strategies (NWFS). The first tested the feasibility of mandatory retention of salmon. The purpose of this EFP was to reduce salmon bycatch amounts while increasing the utilization of bycatch that is discarded under existing regulations. NWFS concluded that the EFP was successful in increasing the utilization of salmon bycatch while reducing bycatch. Unfortunately, NMFS lacked the authority under the Magnuson-Stevens Act to require onshore processors to retain and process salmon caught as bycatch in the groundfish trawl fisheries off Alaska. The second permit tested the feasibility of voluntary retention. The interim and final Reports submitted by NWFS indicated that the voluntary program was equally if not more successful. The third EFP extended the second EFP for an additional year until the FMP and implementing regulations were developed and approved.

Because NWFS successfully demonstrated that salmon retained and processed for human consumption could be distributed to needy individuals in the manner intended, the Council approved amendments 26/29 to the FMPs and established the SDP which was implemented in 1996. The program appears to be successful. During its first year of operation, 38,000 pounds of salmon were donated by 54 catcher vessels and 22 processors.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An EA is required by NEPA to determine whether the action considered will result in significant impact on the human environment. The environmental analysis in the EA provides the basis for this determination and must analyze the intensity or severity of the impact of an action and the significance of an action with respect to society as a whole, the affected region and interests, and the locality. If the action is determined not to be significant based on analyses of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement must be prepared for major Federal actions significantly affecting the human environment. An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives were discussed in Sections 1.1 and 1.2, and the list of preparers is in Section 8.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators, changes in the population structure of target fish stocks, and changes in community structure; (2) changes in the physical and biological structure of the benthic environment as a result of fishing practices, e.g., effects of gear use and fish processing discards; and (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear. A summary of the effects of the 1995 groundfish total allowable catch amounts on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the Final Environmental Assessment for the 1997 Groundfish Total Allowable Catch Specifications (NMFS 1997).

Neither Alternatives 1 nor 2 would be expected to change fishing activities in a manner that would affect the amount of groundfish harvested or the amount of halibut taken as bycatch in the Alaska trawl fisheries. Relative to the status quo alternative, Alternative 2 would reduce the waste of halibut that are discarded in Federal waters to the extent that bycaught halibut are diverted to economically disadvantaged individuals. Any affect on the biological or physical environment resulting from a reduction in halibut discard amounts would be insignificant relative to overall discard amounts of fish or fish parts associated with groundfish harvesting and processing operations.

2.2 Impacts on Endangered, Threatened or Candidate Species

The following species are currently listed as endangered under the ESA and occur in the GOA and/or BSAI groundfish management areas:

Northern Right Whale	<i>Balaena glacialis</i>
Bowhead Whale ¹	<i>Balaena mysticetus</i>
Sei Whale	<i>Balaenoptera borealis</i>
Blue Whale	<i>Balaenoptera musculus</i>
Fin Whale	<i>Balaenoptera physalus</i>
Humpback Whale	<i>Megaptera novaeangliae</i>
Sperm Whale	<i>Physeter macrocephalus</i>
Snake River Sockeye Salmon	<i>Oncorhynchus nerka</i>
Short-tailed Albatross	<i>Diomedea albatrus</i>
Steller Sea Lion ²	<i>Eumetopias jubatus</i>

The following species are currently listed as threatened and occur in the BSAI and GOA management areas:

Snake River Fall Chinook Salmon	<i>Oncorhynchus tshawytscha</i>
Snake River Spring/Summer Chinook Salmon	<i>Oncorhynchus tshawytscha</i>

¹species is present in Bering Sea area only.

²listed as endangered west of Cape Suckling.

Steller Sea Lion³
Spectacled Eider
Steller Eider

Eumetopias jubatus
Somateria fishcheri
Polysticta stelleri

Section 7 Consultations Because the groundfish fisheries are federally regulated activities, any negative effects of the fisheries on listed species or critical habitat and any takings that may occur are subject to ESA section 7 consultation. NMFS initiates the consultation with itself in the case of most marine mammals and anadromous species, and with the FWS for the bird species. The resulting letters of concurrence and biological opinions are issued to NMFS. Section 7 consultations have been done for all the above listed species, some individually and some as groups. Below are summaries of the consultations.

Endangered Cetaceans In 1991, NMFS concluded a formal section 7 consultation on the effects of the BSAI and GOA groundfish fisheries on endangered cetaceans within the BSAI and GOA (NMFS 1991d). The determination was the fisheries are unlikely to jeopardize the continued existence or recovery of endangered whales. Consideration of the bowhead whale as one of the listed species present within the area of the Bering Sea fishery was not recognized in the 1979 opinion, however, its range and status are not known to have changed. No new information exists that would cause NMFS to alter the conclusion.

Steller sea lion Beginning in 1990 when Steller sea lions were first listed under the ESA, NMFS determined that both groundfish fisheries may adversely affect Steller sea lions, and therefore conducted Section 7 consultation on the overall fisheries and subsequent changes in the fisheries. The 1991 biological opinion concluded no jeopardy but that changes in the temporal and spatial distribution of the pollock fishery may have contributed to the Steller sea lion decline. Specifically, the fishery operated more in fall and winter, caught the quota in less time, and fished more often in areas that would be designated as critical habitat. The biological opinion issued January 26, 1996 (NMFS 1996) concluded that these fisheries and harvest levels are unlikely to jeopardize the continued existence and recovery of the Steller sea lion or adversely modify critical habitat. NMFS reinitiated consultation to consider the localized harvest of Atka mackerel in the Aleutian Islands and the potential implications for the western (endangered) population of Steller sea lions. After reviewing the current status of the Steller sea lion, the environmental baseline for the action area, and the effects of the 1998 Atka mackerel fishery, and the cumulative effects, it is the agency's biological opinion that the 1998 Atka mackerel fishery, as proposed, is not likely to jeopardize the continued existence of the Steller sea lion and is not likely to destroy or adversely modify critical habitat (NMFS 1998). The opinion also states consultation (for Steller sea lions) must be reinitiated for the 1999 fishery (NMFS 1998).

Pacific Salmon NMFS has issued two biological opinions and no-jeopardy determinations for listed Pacific salmon in the Alaska groundfish fisheries (NMFS 1994; NMFS 1995). Conservation measures were recommended to reduce salmon bycatch and improve the level of information about the salmon bycatch. The no jeopardy determination was based on the assumption that if total salmon bycatch is controlled, the impacts to listed salmon are also controlled. The incidental take statement appended to the second biological opinion allowed for

³listed as threatened east of Cape Suckling.

take of one Snake River fall chinook and zero take of either Snake River spring/summer chinook or Snake River sockeye, per year.

Short-tailed albatross NMFS has initiated three formal consultations with the FWS since 1989 on the effects of the groundfish fisheries on the short-tailed albatross. The Biological Opinions concluded that fisheries would not jeopardize the continued existence of that species (Fish and Wildlife Service 1989; Fish and Wildlife Service 1995; Fish and Wildlife Service 1997). The incidental take statement attached to the 1997 opinion is an estimated take of four birds in two years.

2.3 Impacts on Marine Mammals

Marine mammals not listed under the ESA that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

A list of marine mammal species and detailed discussion regarding life history and potential impacts of the 1995 groundfish fisheries of the BSAI and GOA on these species can be found in the EA prepared for the 1998 Total Allowable Catch Specifications for Groundfish (NMFS 1998). None of the alternatives would be expected to adversely affect marine mammals.

2.4 Coastal Zone Management Act

Implementation of each of the alternatives considered would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Conclusions and Finding of No Significant Impact

In view of the analysis presented in this document, none of the alternatives will significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of NEPA or its implementing regulations.

Date:

Assistant Administrator
for Fisheries, NOAA

3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES

This section provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the tradeoffs between qualitative and quantitative benefits and costs.

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, environment, 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:

- (1) 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;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

3.1 Alternative 1: Status Quo

Under Alternative 1, no halibut would be retained and processed for donation to economically disadvantaged individuals through tax-exempt organizations. Although there would be no new costs to the groundfish industry, economically disadvantaged individuals would not be provided access to halibut that otherwise would be discarded. If an estimated 50,000 pounds of halibut is donated annually, approximately 150,000 high protein meals would be foregone each year..

3.2 Alternative 2: (preferred)

Under Alternative 2, Amendments 50/50 would be implemented to authorize a PSD program that would expand the existing SDP to include halibut. This would allow distribution of halibut taken in the Alaska groundfish trawl fisheries, and landed on shore dead, to be retained, processed for human consumption, and donated to needy individuals. Because the PSD program has not been tried for halibut, the regulations implementing the amendment would have a three-year duration. Prior to their expiration, the Council and the IPHC would assess the effectiveness of the halibut donation program and determine whether it should be implemented permanently.

Under this alternative, the Regional Administrator would select from qualified applicants, a NMFS-authorized distributor(s) to coordinate halibut donation under the PSD Program. The distributor(s) would be selected for a three year period. The authorized distributor would submit a list of shoreside processors that would be participating in the program. Processors would then be required to have a copy of the list available for inspection by NMFS or Coast Guard enforcement personnel. Possession of halibut under the PSD Program will not be authorized unless a NMFS-authorized distributor has been selected by the Regional Administrator and announced in the Federal Register, and the NMFS-authorized distributor has provided a list of all participants to the Regional Administrator.

A brief discussion of potential costs and benefits of this program is provided for purposes of assessing other alternatives considered. Under the terms and conditions of the 1993 EFP issued to Terra Marine Research and Education, Terra Marine prepared an annual report assessing feasibility of retaining bycaught salmon for distribution to needy individuals (Terra Marine and Research and Education, 1993). Their report only addressed the retention of prohibited salmon bycatch. However, costs associated with the halibut donation program should be similar. A summary of the cost associated with implementing these EFPs is shown in Table 2.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The information requirements include an application to participate as an-authorized distributor in the PSD Program, documentation requirements for the authorized distributor(s) and processors participating in the PSD Program; and packaging requirements for processors. The estimated annual documentation cost for a distributor is estimated to be \$1,337, and for a processor to be \$226.00. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Requests to collect this information are pending approval by OMB.

The collection of information requirement necessary for the SDP has been approved by OMB under OMB control number 0648-0316. The additional information collection required for the halibut donation program under 0648-0316 has been submitted to OMB for review and approval.

A preliminary comparison of voluntary and mandatory salmon retention programs, under the EFPs, indicate that under the voluntary program more vessel operators and processors are willing to participate, which increased salmon donation and reduced administrative costs (Table 2). NMFS estimates that the cost per pound for halibut bycatch distribution would decrease with increased quantities of donated halibut.

Under Alternative 2, potential costs to the groundfish industry are anticipated to be significantly lower than under the first Salmon Bycatch EFP, given that processor managers would have no regulatory requirement to retain and process halibut if the costs of doing so are judged too high or have too great an impact on groundfish operations. The actual costs to shoreside processing operations would be relative to the amount of halibut retained and processed. However, the administrative costs incurred by the NMFS-authorized distributor would decrease significantly as halibut donations increase.

Potential benefits to needy individuals resulting from halibut donations cannot be quantified because participation in the program would be voluntary. The IPHC has recommended a preliminary cap of 50,000 pounds of donated halibut annually. If that limit is reached, the program provides a potential benefit of 150,000 high protein meals annually. These meals likely would provide a healthy alternative to the diets of people who often only have access to meager and inadequate food.

3.4 Reporting Costs

Application and Selection Process for NMFS-Authorized Distributors

Under the preferred alternative, NMFS would select a distributor(s) from eligible applicants. Factors that would be considered in the selection include: (1) applicant's tax-exempt status; (2) bylaws, which state that the primary purpose of the organization is to provide food resources to hunger relief agencies, food bank networks, and/or food bank distributors; (3) a proposed operation budget to cover the expenses of insuring that halibut donated under this program will be distributed to hunger relief agencies, food bank networks, and/or food bank distributors that maintain the halibut in a manner fit for human consumption; (4) documentation that all regulatory requirements will be met under the PSD Program; (5) documentation describing the ability to coordinate the transportation of halibut products from remote Alaskan locations to hunger relief agencies, food bank networks, and/or food bank distributors, while providing quality control mechanisms, and (6) documentation describing the maximum number of processors that the applicant is capable of administering effectively, (7) the total poundage of halibut that the distributor intends to process. The distributor(s) would be chosen for a three year period following the publication of a Federal Register notice announcing the Regional Administrator's selection.

The number of distributors selected by the Regional Administrator would be based on the number of processors and the quantity of halibut that the applicant(s) can effectively administer; the anticipated level of halibut bycatch; and the potential number of vessels and processors participating in the groundfish trawl fisheries. The maximum quantity of halibut retained by the program will be

determined by the Regional Administrator in consultation with the IPHC. Because the pilot nature of the program, the IPHC has recommended that it be limited to 50,000 pounds of halibut annually for the first three years.

Responsibilities of a NMFS-Authorized Distributor

A NMFS-authorized distributor(s) would be responsible for: coordinating the processing, storage, transportation, and distribution of halibut donated by processors; submitting and maintaining a list of processors that are participating in the program; monitoring the retention, processing and distribution of halibut by program participants. The distributor must submit a plan to the IPHC and NMFS stating how the above items would be accomplished.

Application and Selection Process for Processors

Processors seeking to participate in the halibut donation program must submit the following information to an authorized distributor: (1) a Federal processor permit number; (2) the name of the owner or responsible manager; (3) telephone and fax number; (4) a signature verifying participation in the PSD Program, (5) a description of the methods for processing, freezing, and packaging halibut in accordance with directions from the distributor. The distributor(s) will select processors from qualified applicants and submit a list of participants to NMFS.

Reporting Requirements--Documentation and Labeling for Processors and Distributor(s)

Processors must comply with the following new documentation requirements: (1) All packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the halibut contained in the package and the words, "NMFS PROHIBITED SPECIES DONATION PROGRAM - NOT FOR SALE - PERISHABLE PRODUCT - KEEP FROZEN"; (2) All processors retaining or receiving halibut and the NMFS-authorized distributor(s) must keep on file and make available for inspection by a NMFS-authorized officer, receipt and cargo manifests describing the contents and weight of halibut retained under the PSD Program and shipped from each processing facility; (3) The distributor must keep on file and make available, from each hunger relief agency, food bank network, and/or food bank distributor, receipt and cargo manifests describing contents and weight of halibut; (4) Prior to retaining any halibut, the distributor shall provide the Regional Administrator with a list of all program participants. The list provided by the distributor must include the following information from each processor: Federal processor permit number, the name of the owner or responsible manager, telephone number, fax number, and a signature from a responsible party verifying participation in the program or, alternatively, documentation of current participation in the SDP. Any modification of the list of processors or delivery locations must be submitted to the Regional Administrator. The distributor will notify processors of any modifications to their PSD permit.

Responsibilities of Participating Processors

A copy of the distributor's PSD permit and a copy of the list of processors participating under the distributor's PSD permit are required to be at each processing site and must be made available for inspection by an authorized officer. Processors are responsible for processing all donated halibut

in a manner that is fit for human consumption. Participation in the PSD Program does not relieve any vessel operator or processor from existing reporting requirements.

Three new sets of information are required under the voluntary PSD Program: an application to participate as an-authorized distributor in the program; documentation requirements for the authorized distributor(s) and processors; and packaging requirements for processors.

NMFS estimates that no more than two qualified applicants would be interested in submitting an application as an authorized distributor. This application process would be necessary once every 3 years and is estimated at 40 hours for each applicant. An additional 40 hours each year would be required to develop a list of participating processors, track them and provide documentation to NMFS.

The amount of time necessary for processors to apply to the distributor for participation in the program is estimated at 0.3 hours for each respondent. NMFS anticipates that about 5 processors could apply to participate. A processor would only need to apply once every 3 years. processors would be further required to label all processed halibut as required under the PSD Program. NMFS estimates that this would take 6 minutes for each day halibut are retained and processed, or about 90 days per year.

These estimates of hourly burden were based on results from the EFPs issued to assess the SDP and are summarized below, as well as the annualized cost to respondents for the hourly burden based on a wage rate of \$25 per hour. The estimated hourly burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Though the EFPs addressed only the retention of prohibited salmon bycatch, the information gained as a result of the study is directly applicable to halibut.

I. ANNUAL COST TO NMFS-AUTHORIZED DISTRIBUTORS

A. Application

Number of NMFS-authorized distributors	2 applicants
Time requirement for each application	40 hours/3 yrs
Annual time requirement for the application (2 applicants x 40 hours/3)	27 hours per year
Cost per hour	\$25/hour
Total annual cost	\$675/year

B. Documentation--List of processors--Labeling and tracking requirements.

Estimated number of authorized distributors	2
Annual documentation time per distributor	40 hours
Total annual time requirement	80 hours
Hourly cost	\$25/hours
Total annual cost	\$2,000/year

TOTAL ANNUAL COST OF I	\$2,675
TOTAL ANNUAL TIME BURDEN OF I	107 hours

II. COST TO PROCESSORS

A. Documentation----Labeling and product tracking requirements

Number of processors	5
Time requirement for documentation	0.1 hours/day
Annual time requirement for all processors (5 x 0.1 x 90 processing days/year)	45 hours
Hourly cost	\$25/hour
Total Annual Cost	\$1,125/year

No capital or significant start up costs are associated with the information collection under the PSD Program. Additional costs associated with the PSD Program information collection include costs associated with mailing or faxing permit applications and lists of participating processors (every 3 years) or faxing modifications of the list of program participants to NMFS as required. These costs are not expected to exceed those associated with customary and usual business of private practice.

3.5 Administrative, Enforcement and Information Costs

NMFS would not require additional staff resources to administer, monitor, and enforce the voluntary PSD Program. The PSD program uses a NMFS-authorized distributor as a means of allowing the private sector to handle the administration to reduce NMFS administration costs. Comprehensive reporting requirements allow enforcement to monitor compliance through the reports submitted. At this time, NMFS estimates that a fraction of a part-time position (one-tenth) would be required to administer this program and an additional part-time (one-tenth) position would be required to monitor and enforce it.

NMFS will be required to review applications for NMFS-authorized distributors and to publish in the Federal Register a notice of qualified applicants that have been issued a PSD permit. A total of 40 hours is estimated for the review, processing and issuance of each PSD permit. Given that each permit is effective for a 3-year period and that no more than 2 permits for NMFS-authorized distributors likely would be issued, the total annual burden is estimated at 27 hours.

COST AND TIME TO FEDERAL GOVERNMENT

A. Application Review

Estimated number of applicants	2 applicants
Time required for application review	40 hours/applicant (every 3 yrs)
Annual time requirement (2 applicants x 40 hrs/3)	27 hours
hourly cost	\$25/hour

Total Annual Cost

\$675

4.0 ECONOMIC IMPACT ON SMALL ENTITIES

The objective of the RFA is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities an Initial Regulatory Flexibility Analysis must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit-enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant negative impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or would be likely to cause approximately 2 percent of the affected small business to go out of business.

If an action is determined to affect a substantial number of small entities, the analysis must include:

- (1) a description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and
- (2) analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cash flow and liquidity, and ability of small entities to remain in the market.

Most shoreside processors have fewer than 500 employees and would be considered small entities.. The PSD program would be totally voluntary, and processors could choose not to participate. Thus, NMFS does not know precisely how many processors would be involved. . Northwest Food Strategies, the NMFS-authorized distributor for the SDP, estimates that approximately 5 processors would choose to participate. NMFS does not anticipate that any processor that qualifies as a small entity would elect to participate in the voluntary program if the costs of doing so reduced gross annual receipts by 5 percent or more, increased total costs of production by more than 5 percent or resulted in the processor going out of business. Compliance costs would not be higher for small entities than for large. Most of the program costs would be borne by the NMFS-authorized distributor, a tax-exempt organization not considered a small entity. Therefore, there should be no significant economic impact on a substantial number of small entities under the RFA.

5.0 SUMMARY AND CONCLUSIONS

At its April 1997 meeting the Council approved alternative 2 as its preferred alternative. This action would expand the existing SDP to create a PSD program that includes halibut.. Under the SDP program, an-authorized distributor(s) would be selected by the Regional Administrator. The distributor would be responsible for submitting a list of shoreside processors that would participate in the program. This action would be implemented under Amendments 50 and 50 to the BSAI and GOA groundfish FMPs, respectively.

The EA/RIR for Amendments 50/50 analyzes the following two alternatives:

Alternative 1: No Action

Alternative 2: Authorize a voluntary halibut donation program for distribution of halibut taken as bycatch in the groundfish trawl fishery to economically disadvantaged individuals. **(preferred).**

The status quo alternative was not recommended as it would be counter to the Councils policy of reducing unnecessary regulatory discard in the Alaska trawl fisheries.

Alternative 2 would meet the Councils objective to reduce protein waste in the groundfish fisheries. Potential benefits to needy individuals resulting from donated halibut cannot be quantified. If the amount of halibut processed by the program reaches the 50,000 pound annual limit recommended by the IPHC, about 450,000 meals could be provided over three years. These meals likely would provide a healthy addition to the diets of people who often only have access to meager and inadequate food. Because the PSD program has not been tried for halibut, the regulations implementing the amendment would have a three-year duration. Prior to their expiration, the Council and the IPHC would assess the effectiveness of the halibut donation program and determine whether it should be implemented permanently.

Under Alternative 2, an unknown number of halibut could be voluntarily retained and processed by the groundfish trawl industry for donation to authorized distributors for tax-exempt organizations. Potential costs to the groundfish industry are anticipated to be low since processors would not be required to retain and process halibut. The actual costs to shoreside processing operations would depend on how much halibut is retained and processed.

Neither Alternatives 1 nor 2 would be expected to change fishing activities in a manner that would affect the amount of groundfish harvested nor the amount of halibut taken as bycatch in the Alaska trawl fisheries. None of the alternatives is likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of NEPA or its implementing regulations.

6.0 REFERENCES

National Marine Fisheries Service (NMFS). 1993a. Draft environmental assessment/regulatory impact review/initial regulatory flexibility analysis for a fishery management plan

amendment to implement a vessel incentive program to reduce salmon bycatch rates in the Bering Sea and Aleutian Islands Area trawl fisheries. April 15, 1993. National Marine Fisheries Service, P.O. Box 21668, Juneau AK 99802-1668.

National Marine Fisheries Service (NMFS). 1993b. Addendum to the public review draft of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis for a fishery management plan amendment to implement a vessel incentive program to reduce salmon bycatch rates in the Bering Sea and Aleutian Islands Area trawl fisheries. June 15, 1993. NMFS, P.O. Box 21668, Juneau AK 99802-1668.

National Marine Fisheries Service (NMFS). 1998. Final Environmental Assessment for 1998 Groundfish Total Allowable Catch Specifications. NMFS-Alaska Region, P.O. Box 21668, Juneau, Ak 99802-1668.

North Pacific Fishery Management Council. 1993. Draft environmental assessment/regulatory impact review/initial regulatory flexibility analysis for Amendment 21b (Salmon Bycatch Management) to the fishery management plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. March 18, 1993. North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

Terra Marine Research and Education. 1993. Annual Report. Bering Sea and Aleutian Islands Groundfish Fishery Experimental Fishing Permit - Feasibility of Retaining Salmon Caught As Bycatch for the Purposes of Distribution to Economically Disadvantaged Individuals, Permit # 93-2. December 31, 1993. National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

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Tables

Table 1a. Summary of the 1995 halibut bycatch mortality (mt, round weight) in the groundfish fishery off Alaska, by gear and target fishery. Figures represent catches reported through December 2, 1995. Source: NMFS/AKR Bulletin Board.

GULF OF ALASKA (GOA)			BERING SEA/ALEUTIAN ISLANDS (BSAI)		
Gear and Target	G. fish Catch (mt)	Bycatch Mort. (mt)	Gear and Target	G. fish Catch (mt)	Bycatch Mort. (mt)
Trawl			Trawl		
Atka mackerel	549	1	Atka mackerel	90,252	24
Bottom trawl pollock	22,650	93	Bottom trawl pollock	123,383	283
Pacific cod	46,101	479	Pacific cod	113,533	1482
Deep water flatfish	3,173	86	Other flatfish	18,965	29
Shallow water flatfish	6,435	366	Rockfish	13,141	73
Rockfish	19,975	301	Flathead sole	10,585	142
Flathead sole	1,849	74	Midwater trawl pollock	1,162,672	120
Other sp.	24	<1	Rock sole	58,323	735
Midwater trawl pollock	49,394	12	Sablefish	202	14
Sablefish	413	12	Turbot	5,857	267
Arrowtooth flounder	4,081	146	Arrowtooth	65	<1
Rex sole	13,706	494	Yellowfin sole	175,421	542
Total Trawl	168,349	2,065	Total Trawl	1,772,400	3,711
Hook & Line			Hook-&-Line		
	35,449	489		127,325	1,119
Pot			Pot		
	16,224	18		20,045	14
Total All Gears	220,022	2,572	Total All Gears	1,919,770	4,844

Table 1b. Summary of the 1996 halibut bycatch mortality (mt, round weight) in the groundfish fishery off Alaska, by gear and target fishery. Figures represent catches reported through November 23, 1996. Source: NMFS/AKR Bulletin Board. (Note: The “other” fishery classification in this table encompasses a number of small fisheries and does not match the NMFS classification).

GULF OF ALASKA (GOA)			BERING SEA/ALEUTIAN ISLANDS (BSAI)		
Gear and Target	G. fish Catch (mt)	Bycatch Mort. (mt)	Gear and Target	G. fish Catch (mt)	Bycatch Mort. (mt)
Trawl			Trawl		
Atka mackerel	1,530	9	Atka mackerel	119,637	141
Bottom trawl pollock	5,731	11	Bottom trawl pollock	106,310	102
Pacific cod	43,030	263	Pacific cod	111,891	1,643
Deep water flatfish	2,783	106	Other flatfish	8,495	41
Shallow water flatfish	14,622	623	Rockfish	19,122	47
Rockfish	19,527	179	Flathead sole	24,637	298
Flathead sole	3,375	86	Midwater trawl pollock	1,082,035	146
Other sp.	203	1	Rock sole	46,422	576
Midwater trawl pollock	43,361	4	Sablefish	105	1
Sablefish	313	4	Turbot	772	6
Arrowtooth flounder	12,078	342	Arrowtooth	59	3
Rex sole	15,717	322	Yellowfin sole	174,144	710
Total Trawl	162,270	1,950	Total Trawl	1,693,629	3,714
Hook & Line ¹	11,517	168	Hook-&-Line ¹	115,012	887
Pot	12,253	17	Pot	33,227	21
Total All Gears	186,040	2,135	Total All Gears	1,841,868	4,622

¹ Sablefish for both the GOA and the BSAI as well as rockfish for the BSAI hook and line fishery are not included.

Table 2. Cost and landings breakdown for the SDP. Costs for any reprocessing or reshipping following receipt by a food bank distributor are not included.

Program Type	Number of Participants	Season	Pounds Donated	Direct ¹ Vessel/ Processing Cost	Admin. ² NMFS Cost	Distributor ³ Costs	RRR ⁴ Ves/Proc Cost	RRR ⁵ Distributor Cost	Total Cost
Mandatory EFP-1	19	93 'B' Pollock	48,000	\$0.19	\$0.10	\$0.35	Same	\$0.04	\$0.68
Mandatory EFP-1	19	94 'A' Pollock	21,000	\$0.21	\$0.10	\$0.35	Same	\$0.03	\$0.69
Voluntary EFP-2	56	93 'B' Pollock	69,000	\$0.15	\$0.05	\$0.18	Same	\$0.03	\$0.41
Voluntary EFP-2	56	95 'A' Pollock	21,000	n/a	n/a	\$0.18	Same	\$0.03	n/a

1 Direct Production Costs to Vessels and Processors

2 NMFS Administration costs resulting from implementing EFP. Included are enforcement, administration and information costs.

3 Administration costs including logistics, transportation and shipping costs and direct administration costs.

4 Recordkeeping and Reporting costs for vessels and processors did not change under the EFP.

5 Recordkeeping and Reporting cost for the NMFS-authorized distributor as a result of future implementation.

6 Total Costs of from vessels and processors to Hunger Relief Agencies.