

**Regulatory Impact Review and Initial Regulatory Flexibility Analysis  
for Seven Proposed Amendments to Regulations that Implement the  
Halibut and Sablefish IFQ Program**

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**Abstract:** This document is a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for seven proposed actions to amend halibut and sablefish Individual Fishing Quota (IFQ) regulations under the authority of the NOAA Fisheries Service. The preferred alternatives would: (1) allow the use of medical transfers; (2) tighten the criteria allowing the use of hired skippers; (3) add vessel clearance requirements to the sablefish IFQ fisheries in the Bering Sea and Aleutian Islands regulatory areas; (4) change the sablefish product recovery rate for bled sablefish to 1.0; (5) amend the halibut quota share (QS) block program to: a) increase the block limit to three, unless unblocked QS is held; b) unblock QS in excess of 69,492 QS units in Area 3B and 93,404 QS units in Area 4A from a single block; and c) increase the sweep-up limits to 33,320 units in Area 2C and 46,520 units in Area 3A; (6) allow IFQ derived from category D QS to be fished on category C vessels in Areas 3B and 4C; and (7) eliminate the exception that prohibits IFQ derived from category B QS to be used on vessels greater than 60 ft for halibut in Area 2C and sablefish in the Southeast Outside District. None of the proposed actions are expected to have the potential to result in a “significant action,” as defined in Executive Order 12866, or result in adverse impacts on directly regulated small entities, as defined in the Regulatory Flexibility Act.

**Comment Due Date:** A public comment period will be announced by NOAA Fisheries Service in the proposed rule.

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# Table of Contents

Executive Summary.....	<a href="#">v</a>
1.0 Introduction .....	<a href="#">1</a>
1.1 Management Authority .....	<a href="#">1</a>
1.2 Requirements of a Regulatory Impact Review.....	<a href="#">1</a>
1.3 Requirements of a Regulatory Flexibility Analysis.....	<a href="#">2</a>
1.4 Structure of the IFQ Program.....	<a href="#">4</a>
1.5 Description of the Fishery.....	<a href="#">7</a>
2.0 Action 1: Amend regulations to allow medical transfers .....	<a href="#">9</a>
2.1 Problem and management objectives for the action.....	<a href="#">9</a>
2.2 Management Action Alternatives.....	<a href="#">9</a>
2.3 Expected effects of Alternative 1.....	<a href="#">14</a>
2.4 Expected effects of Alternative 2.....	<a href="#">14</a>
2.5 Conclusions .....	<a href="#">15</a>
2.6 Initial Regulatory Flexibility Analysis.....	<a href="#">16</a>
3.0 Action 2: Amend hired skipper provisions .....	<a href="#">18</a>
3.1 Problem and management objectives for the action.....	<a href="#">19</a>
3.2 Management Action Alternatives.....	<a href="#">19</a>
3.3 Expected effects of Alternative 1.....	<a href="#">23</a>
3.4 Expected effects of Alternative 2 (Preferred).....	<a href="#">23</a>
3.5 Conclusions .....	<a href="#">25</a>
3.6 Initial Regulatory Flexibility Analysis.....	<a href="#">26</a>
4.0 Action 3: Add vessel clearance requirements .....	<a href="#">28</a>
4.1 Problem and management objectives for the action.....	<a href="#">28</a>
4.2 Management Action Alternatives.....	<a href="#">29</a>
4.3 Expected effects of Alternative 1.....	<a href="#">30</a>
4.4 Expected effects of Alternative 2 (Preferred).....	<a href="#">30</a>
4.5 Conclusions .....	<a href="#">31</a>
4.6 Initial Regulatory Flexibility Analysis.....	<a href="#">33</a>
5.0 Action 4: Amend sablefish product recovery rate .....	<a href="#">34</a>
5.1 Problem and management objectives for the action.....	<a href="#">34</a>
5.2 Management Action Alternatives.....	<a href="#">35</a>
5.3 Expected effects of Alternative 1.....	<a href="#">38</a>
5.4 Expected effects of Alternative 2 (Preferred).....	<a href="#">38</a>
5.5 Expected effects of Alternative 3.....	<a href="#">40</a>
5.6 Conclusions .....	<a href="#">40</a>
5.7 Initial Regulatory Flexibility Analysis.....	<a href="#">43</a>
6.0 Action 5: Amend the halibut block program in Areas 2C, 3A, 3B, 4A, 4B, 4C, and 4D.....	<a href="#">44</a>

6.1	Problem and management objectives for the action.....	<a href="#">44</a>
6.2	Management Action Alternatives.....	<a href="#">44</a>
6.3	Alternative 1 - No action.....	<a href="#">45</a>
6.4	Expected Effects of Alternative 2 (Preferred).....	<a href="#">49</a>
6.5	Expected Effects of Alternative 3.....	<a href="#">51</a>
6.6	Expected Effects of Modified Alternative 3 (Preferred).....	<a href="#">52</a>
6.7	Expected Effects of Alternative 4.....	<a href="#">53</a>
6.8	Expected Effects of Modified Alternative 5 (Preferred).....	<a href="#">54</a>
6.9	Expected Effects of Alternatives 2 through 5 in combination.....	<a href="#">55</a>
6.10	Conclusions .....	<a href="#">57</a>
6.11	Initial Regulatory Flexibility Analysis.....	<a href="#">58</a>
7.0	Action 6: Amend Area 3B, 4A, 4B, 4C, and 4D halibut quota share categories .....	<a href="#">60</a>
7.1	Problem and management objectives for the action.....	<a href="#">60</a>
7.2	Management Action Alternatives.....	<a href="#">60</a>
7.3	Alternative 1 - No action (Preferred for Areas 4A, 4B, and 4D).....	<a href="#">61</a>
7.4	Expected Effects of Alternative 2 (Preferred for Areas 3B and 4C)....	<a href="#">62</a>
7.5	Expected Effects of Alternative 3.....	<a href="#">64</a>
7.6	Expected Effects of Alternative 4.....	<a href="#">65</a>
7.7	Conclusions .....	<a href="#">65</a>
7.8	Initial Regulatory Flexibility Analysis.....	<a href="#">66</a>
8.0	Action 7: Amend “fish down” regulations for Area 2C halibut and Southeast Outside District sablefish.....	<a href="#">68</a>
8.1	Problem and management objectives for the action.....	<a href="#">68</a>
8.2	Management Action Alternatives.....	<a href="#">68</a>
8.3	Alternative 1 - No action.....	<a href="#">68</a>
8.4	Expected Effects of Alternative 2.....	<a href="#">69</a>
8.5	Conclusions .....	<a href="#">70</a>
8.6	Initial Regulatory Flexibility Analysis.....	<a href="#">71</a>
9.0	Preparers .....	<a href="#">72</a>
10.0	Individuals Contacted .....	<a href="#">73</a>
11.0	References .....	<a href="#">73</a>
Appendix 1	.....	<a href="#">75</a>
Appendix 2	.....	<a href="#">77</a>



## Tables and Figures

Table 1.1 Vessel categories at initial allocation.....	<a href="#">4</a>
Table 1.2 Number of Persons holding halibut and sablefish QS in 2004.....	<a href="#">8</a>
Table 1.3 Vessels participating in the halibut and sablefish fisheries in 2003.....	<a href="#">8</a>
Table 2.1 Summary of the cost and benefit analysis of Action 1.....	<a href="#">16</a>
Table 3.1 Type of QS Holder and Percent of Catcher Vessel (CV) Quota Held - Year-end 2002.....	<a href="#">20</a>
Table 3.2 Individual QS Holders who were Eligible to Hire Skippers, had IFQ Landings, and Hired Skippers; and Number of Skippers Hired.....	<a href="#">21</a>
Table 3.3 Halibut - Hired Skipper Information.....	<a href="#">21</a>
Table 3.4 Sablefish - Hired Skipper Information.....	<a href="#">22</a>
Table 3.5 Non-individual entities with catcher vessel QS/IFQ whose hired skipper(s) are owners of the hiring entity.....	<a href="#">22</a>
Table 3.6 Skippers hired by non-individual (i.e., corporate) QS holders who, in 2002, held IFQ permits in their individual capacity.....	<a href="#">22</a>
Table 3.7 Summary of the cost and benefit analysis of Action 2.....	<a href="#">26</a>
Table 4.1 Sablefish quotas and landings, 1995-2003.....	<a href="#">28</a>
Table 4.2 Ex-vessel prices in the fixed gear sablefish fisheries, 1997-2001.....	<a href="#">29</a>
Table 4.3 Federal Fishery Permitted Vessels with VMS Endorsements.....	<a href="#">30</a>
Table 4.4 Number of BSAI sablefish QS holders who also hold halibut QS in Area 4..	<a href="#">30</a>
Table 4.5 Summary of the cost and benefit analysis of Action 3.....	<a href="#">32</a>
Table 4.6 Sablefish QS holders by area. ....	<a href="#">33</a>
Table 5.1 Results of Sigler et al. bleeding study under experimental fishing conditions.....	<a href="#">36</a>
Table 6.1 QS Holdings by area.....	<a href="#">46</a>
Table 6.2 Average QS transfer price in 2003, and number of transfers.....	<a href="#">47</a>
Table 6.3 Representative QS prices based on market offerings, September 2004.....	<a href="#">47</a>
Table 6.4 QS/IFQ conversion rates in 1995 and 2004.....	<a href="#">48</a>
Table 6.5 Distinct halibut QS holders by holdings block type.....	<a href="#">48</a>
Table 6.6 Consolidation of halibut QS between initial issuance and year-end 2003, by area.....	<a href="#">49</a>
Table 6.7 Percent blocked versus unblocked halibut QS, by category and regulatory area.....	<a href="#">51</a>
Table 6.8 Effects of Alternative 3 on the proportion of blocked holdings.....	<a href="#">52</a>
Table 6.9 Total amount of QS that would become unblocked under Modified Alternative 3.....	<a href="#">53</a>
Table 6.10 Total proportion of blocked to unblocked QS under Alternative 3 and Modified Alternative 3, by area, in 2004.....	<a href="#">53</a>
Table 6.11 QS holdings as a result of Modified Alternative 3, the approximate number who would hold 2 blocks + unblocked QS.....	<a href="#">53</a>
Table 6.12 Halibut sweep-up levels.....	<a href="#">54</a>
Table 6.13 Summary of the benefits and costs of Action 5.....	<a href="#">56</a>

Table 7.1 QS/IFQ use restrictions by category.....	<a href="#">61</a>
Table 7.2 QS Units by category and area.....	<a href="#">61</a>
Table 7.3 Percent of category C and D IFQ harvested, by area, 1998-2003.....	<a href="#">62</a>
Table 7.4 Fish down on vessels less than or equal to 35ft LOA, 2003.....	<a href="#">62</a>
Table 7.5 Category D QS holders that are new entrants to the fishery.....	<a href="#">63</a>
Table 7.6 Summary of the benefits and costs of Action 6.....	<a href="#">66</a>
Table 8.1 QS units by category and area.....	<a href="#">69</a>
Table 8.2 Eligibility of category B QS holdings for fish down.....	<a href="#">69</a>
Table 8.3 Summary of the benefits and costs of Action 7.....	<a href="#">71</a>
Figure 1.1 IFQ regulatory areas for Pacific halibut .....	<a href="#">5</a>
Figure 1.2 IFQ regulatory areas for sablefish .....	<a href="#">5</a>



## Acronyms and Abbreviations

ABC	allowable biological catch
AD	Administrative Determination
AI	Aleutian Islands
BS	Bering Sea
BSAI	Bering Sea and Aleutian Islands
CDQ	Community Development Quota
CFEC	State of Alaska Commercial Fisheries Entry Commission
CFR	Code of Federal Regulations
Council	North Pacific Fishery Management Council
EEZ	exclusive economic zone
EMT	Emergency Medical Transfer
EO	Executive Order
FMP	Fishery Management Plan
FR	Federal Register
ft	feet
GOA	Gulf of Alaska
IFQ	Individual Fishing Quota
IPHC	International Pacific Halibut Commission
IRFA	Initial Regulatory Flexibility Analysis
lb	pound(s)
LOA	length overall
mt	metric ton(s)
NMFS	National Marine Fisheries Service
RAM	Restricted Access Management Program
NOAA Enforcement	National Oceanic and Atmospheric Administration, Office of Law Enforcement
NPFMC	North Pacific Fishery Management Council
PRR	product recovery rate
QS	quota share
RA	Regional Administrator
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
TAC	total allowable catch
VMS	vessel monitoring system

## Executive Summary

Proposed amendments to the halibut and sablefish fishery regulations would address seven issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. In December 2004, the North Pacific Fishery Management Council identified its preferred alternatives for the seven proposed actions as follows:

(1) Allow the use of medical transfers.

Current regulations require catcher vessel quota share (QS) holders to be aboard the vessel during harvest and offloading of IFQ species. The IFQ program does not have medical transfer provisions. Therefore, QS holders who experience a legitimate medical emergency that prevents them from fishing their IFQS are left without the ability to temporarily transfer them. In light of loan repayment obligations and financial dependence on the IFQ program, fishermen who are not allowed to hire a skipper must often divest themselves of QS. This analysis reviews the status quo and the preferred alternative to allow emergency medical transfers of an IFQ permit, if the applicant meets specified requirements related to eligibility, the nature of the exemption, limit on transfers, justification for an emergency medical transfer, evidence of the qualifying medical condition. An application and appeals process would be outlined in the regulations. The preferred alternative likely would increase economic efficiency and operational flexibility for halibut fishermen. It requires an amendment to the halibut and sablefish IFQ regulations.

(2) Tighten the criteria allowing the use of hired skippers.

An exception to the “owner onboard” regulatory requirement, which stipulates that QS holders must be onboard the vessel on which catcher vessel QS is being fished, was created to allow the use of a “hired skipper” by persons who received QS allocations at the time the IFQ program was established. However, the Council continues to be concerned about alleged abuses of this regulatory provision. This analysis reviews the status quo and alternatives to further limit the use of the hired skipper exception. In addition to the current regulatory requirement that QS holders must demonstrate at least a 20 percent ownership interest in a vessel to use a hired skipper on that same vessel, the preferred alternative would require an abstract of title that documented continuous ownership in the vessel, upon which the hired skipper is used, for the previous 12 months. Further, the Council recommended that replacement of a vessel be allowed in the case of a constructive loss. The preferred alternative would address the Council’s goal for the IFQ program of maintaining an owner-operated fleet. It requires an amendment to the halibut and sablefish IFQ regulations.

(3) Add vessel clearance requirements to the Bering Sea and Aleutian Islands sablefish fishery.

Current regulations require fishing location in the sablefish fishery to be self-reported. This analysis reviews the status quo and the preferred alternative to require vessels in the Bering Sea and Aleutian Islands sablefish fishery to either check-in/check-out or use a vessel monitoring system to verify fishing locations. The preferred alternative addresses concern about misreporting. It would enhance accuracy of catch accounting and enforcement of regulations that require IFQ to be harvested from the specified regulatory area to which it was allocated. It requires an amendment to the sablefish IFQ regulations.

(4) Amend the sablefish product recovery rate for bled sablefish.

Current regulations apply a product recovery rate of 0.98 to all sablefish intentionally bled upon landing. This rate is used to calculate the equivalent 'round' weight to be attributed to a harvest allocation. However, industry has proposed that the rate is inaccurate and therefore may be compromising accurate catch accounting, providing a disincentive for fishermen to bleed fish, and reducing the quality of fish delivered. NOAA Fisheries Service staff has reported that the rate is accurate and is used to enhance accuracy of catch accounting. This analysis reviews the status quo and alternatives to change the product recovery rate. The preferred alternative would revise the rate from 0.98 to 1.0 for bled sablefish, effectively eliminating the product recovery rate for sablefish. The Council set its policy for accounting of bled sablefish, weighing the increased economic efficiencies for halibut fishermen over inaccurate catch accounting. It requires an amendment to the regulations that implement groundfish product recovery rates.

(5) Amend the halibut block program.

At initial implementation, all halibut QS holdings in a regulatory area that yielded less than 20,000 lb, based on the 1994 catch limits, were issued as an indivisible block. The regulations limit the ownership of halibut QS to two blocks per person in a regulatory area (or one block and any amount of unblocked QS). Small blocks may be consolidated into one, up to a maximum number of QS units. However, halibut QS holders have reported that existing block and sweep-up restrictions are cumbersome. This analysis reviews the status quo and four alternatives to the existing requirements. One alternative would increase block limits, two alternatives would ease restrictions on blocks yielding greater than 20,000 lb based on the 2003 TACs, and a fourth would increase sweep-up limits for Pacific halibut in Areas 2C and 3A. The Council has made three recommendations under this preferred alternative. The first would increase the number of QS blocks that may be held by a person in each regulatory area to 3 blocks, unless unblocked QS is held, in which case the limit is one block. The second would divide all QS blocks in Areas 3B and 4A which yield more than 20,000 lb, based on the 2004 TACs, into one block of 20,000 lb with the remainder as unblocked QS. This proposed exception to the current block limits would no longer be in effect for a QS holder once one of his/her two blocks are transferred. The third would increase the Areas 2C and 3A halibut sweep-up level to a 5,000 lb equivalent in 1996 QS units. These preferred alternatives are likely to increase economic efficiency and operational flexibility for halibut fishermen. They require amendments to the halibut IFQ regulations.

(6) Amend halibut quota share categories.

The IFQ program was designed to restrict the harvest of IFQ assigned to a particular QS category to a specific vessel size class. Regulations currently require that category D QS be fished on a vessel of 35 ft or less. However, halibut fishermen have identified safety concerns when fishing on small vessels in western Alaska. These concerns could be alleviated by relaxing restrictions on category D QS. This analysis reviews the status quo and three alternatives to the existing requirements. Two alternatives would allow category D QS to be fished on vessels less than or equal to 60-ft LOA, and one alternative would allow category D QS to be fished on vessels of any size. The preferred alternative would allow category D QS to be fished on vessels less than or equal to 60-ft LOA in Areas 3B and 4C only. This preferred alternative would likely increase the catch of IFQ derived from category D QS in Area 4C, which has been low in recent years, and may address reported safety concerns in Area 3B. The preferred alternative requires an amendment to the halibut IFQ regulations.

(7) Amend fish down regulations.

Current regulations permit category B QS to be fished only from a vessel 60 ft or greater. In 1996, the regulations were revised to allow category B QS to be fished on vessels less than 60-ft LOA (i.e., “fish down”). At that time, certain QS holdings in the Southeast Outside District sablefish and Area 2C halibut fisheries were identified as ineligible for “fish down” to ensure that category B QS would be available to vessels 60 ft or greater. However, some fishermen have recently identified this prohibition as unnecessary, inefficient, and burdensome. This analysis reviews the status quo and the preferred alternative to allow category B QS to be fished on a vessel of any length. The preferred alternative would likely increase the marketability and value of unblocked and larger blocks of category B QS. It requires an amendment to the halibut and sablefish IFQ regulations.

## **1.0 Introduction**

This document contains the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) for seven proposed amendments to regulations that describe management of Pacific halibut Individual Fishing Quota (IFQ) fisheries in North Pacific Halibut Convention waters in and off Alaska, and sablefish IFQ fisheries in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) Federal waters off Alaska.

The proposed actions are the result of two solicitations by the North Pacific Fishery Management Council (Council) for proposals from the public in 1999 and 2003. Proposals were reviewed by the IFQ Implementation Team in 1999, and 2003, and recommendations were forwarded to the Council. Seven proposed actions to amend the halibut and sablefish IFQ program were approved for analysis, in December 2003. The proposed actions are: (1) allow the use of medical transfers; (2) tighten the criteria allowing the use of hired skippers; (3) add check-in/check-out or vessel monitoring systems to the Bering Sea and Aleutian Islands sablefish fisheries; (4) amend the sablefish product recovery rate for bled sablefish; (5) amend the halibut quota share (QS) block program; (6) amend halibut quota share categories; and (7) amend fish down regulations. Each action is addressed individually, by chapter, with the RIR analysis preceding the IRFA.

### **1.1 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 and sablefish 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.

### **1.2 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.

### **1.3 Requirements of a Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 601, et. seq., 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 would 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.

Based upon a preliminary evaluation of the seven proposed IFQ actions, it appears that “certification” would not be appropriate. Therefore, an IRFA has been prepared for each action. Analytical requirements for the IRFA are described below in more detail.

The IRFA must contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- 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);
- 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;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
- 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 the 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.

### Definition of Small Entities

The RFA recognizes and defines three kinds of small entities: 1) small businesses; 2) small nonprofit organizations; and 3) and small government jurisdictions. Only small businesses are directly regulated by any of the seven proposed IFQ actions.

Section 601(3) of the RFA defines a “small business” as having the same meaning as a “small business concern,” which is defined under Section 3 of the Small Business Act. A “small business” or “small business concern” includes any firm that is independently owned and operated and does not dominate in its field of operation. The U.S. Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish



processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3.5 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

NOAA Fisheries has defined all halibut and sablefish vessels as small businesses, for the purpose of this analysis. In 2003, 1,338 unique vessels made IFQ halibut landings, and 409 unique vessels made sablefish landings. The number of small entities operating as fishing vessels in the IFQ Program may be deduced from certain restrictions the program places on those vessels. The IFQ program limits the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to one half percent (0.5 percent) of all halibut IFQ TAC, or up to 1.0 percent of all sablefish TAC. In 2003, these limits were 295,050 lb of halibut (headed and gutted weight) and 348,635 lb of sablefish (round weight).

NOAA Fisheries annually publishes “standard prices” for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NOAA Fisheries uses these prices for calculating permit holder cost recovery fee liabilities. In 2003, these price data suggested that the prevailing prices might have been about \$2.92 per pound for halibut (headed and gutted weight), and \$2.36 per pound for sablefish (round weight) (68 FR 71036). In combination, these harvest limits and prices imply maximum ex-vessel revenues of about \$1.68 million (for halibut and sablefish taken together).

While some of the operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and/or sablefish fisheries likely represent the largest single source of annual gross receipts for these operations. Based upon available data, and more general information concerning the probable economic activity of vessels in these IFQ fisheries, no vessel subject to these restrictions could have been used to land more than \$3.5 million in combined gross receipts in 2003 (the maximum gross revenue threshold for a “small” catcher vessel, established by SBA under RFA rules). Therefore all halibut and sablefish vessels have been assumed to be “small entities,” for purposes of the IRFAs. This simplifying assumption likely overestimates the true 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.

#### **1.4 Structure of the IFQ Program**

The IFQ Program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) in the North Pacific Halibut Convention waters in and off Alaska, and sablefish (*Anoplopoma fimbria*) fisheries in waters of the Exclusive Economic Zone 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 and sablefish IFQ fishery are described in Pautzke and Oliver (1997), Hartley and Fina (2001a, b), and the annual *Report to the Fleet* (NOAA Fisheries 2003a, in prep.).

### Design of the IFQ Program

The purpose of the program was to provide for improved long-term productivity of the sablefish and 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 needed to address the issue of protecting small producers, part-time participants, and entry-level participants who may tend to be squeezed out of 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).