

Regulatory Impact Review and Final Regulatory Flexibility Analysis

For a

Regulatory Amendment to the Halibut and Sablefish IFQ Program

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Abstract: This Regulatory Impact Review and Final Regulatory Flexibility Analysis evaluate final action to amend Pacific halibut and sablefish Individual Fishing Quota regulations to revoke quota share that have been inactive since initially issued in 1995. Inactive quota share are those held by a person that have never harvested their individual fishing quota and have never transferred quota share or individual fishing quota into or out of their individual fishing quota accounts. A written request must be submitted to the National Marine Fisheries Service requesting the inactive quota share not be revoked otherwise the inactive quota share will be revoked and the associated IFQ proportionally distributed to fishery participants.

Table of Contents

Executive Summary.....	4
1.0 Introduction.....	7
1.1 Management Authority.....	7
1.2 Requirements of a Regulatory Impact Review.....	7
1.3 Background.....	8
1.4 Description of the Fishery.....	8
1.5 Problem and management objectives for the action.....	13
1.6 Description of the Alternatives.....	13
1.6.1 Alternative 1 <i>No Action</i>	13
1.6.2 Alternative 2 2006 Preferred Alternative.....	13
1.6.3 Alternative 2-3 2009 Preferred Alternative.....	14
1.7 Expected effects.....	15
1.7.1 2006 Preferred Alternative.....	16
1.7.2 2009 Preferred Alternative.....	18
1.8 Benefit Cost Analysis.....	19
1.8.1 Administrative, Enforcement, and Information Costs.....	20
2.0 Final Regulatory Flexibility Analysis.....	24
2.1 Introduction.....	24
2.2 The Purpose of a FRFA.....	24
2.3 Required Content of a FRFA.....	25
2.4 Regulatory Flexibility Act Definition of a Small Entity.....	25
2.5 The Need For, and Objectives Of This Rule.....	27
2.7 Description and Estimate of Small Entities Directly Regulated by This Rule.....	28
2.7.1 Determination of Small Business Entity in the Halibut and Sablefish IFQ Fisheries.....	30
2.7.2 Determination of the Direct Effect on a Small Business Entity.....	33
2.8 Description of Projected Record Keeping, Reporting and Other Compliance Requirements.....	36
2.9 Description of agency Steps to Minimize Significant Economic Impacts on Small Entities.....	37
2.9.1 Factual, Policy and Legal Reasons for Selecting the Alternative in the Final Rule.....	37
2.9.2 Other Alternatives Rejected by the Agency.....	38
2.9.3 Description of significant alternatives to the proposed action that minimize adverse impacts on small entities.....	39
3.0 References.....	39
4.0 List of Preparers and Contributors.....	40
4.1 Individuals Contacted.....	40
Appendix 1 Letters sent to quota share holders.....	42

EXECUTIVE SUMMARY

This Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) addresses an amendment to regulations that implement the Individual Fishing Quota (IFQ) Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in waters in and off Alaska (IFQ Program). In 2005, the North Pacific Fishery Management Council (Council) adopted a proposal that was recommended by the IFQ Implementation team for consideration by the Council. In 2006, the Council initiated this analysis and adopted a preferred alternative to: 1) withdraw all inactive halibut and sablefish quota shares (QS) held by initial recipients from the QS pools; and 2) redistribute inactive halibut QS through a lottery, if the amount of inactive QS exceeds the number of QS units equivalent to 50,000 pounds for all International Pacific Halibut Commission (IPHC) regulatory areas (Area) in and off Alaska in the year of the lottery. The Council recommended that the National Marine Fisheries Service (NMFS): 1) contact halibut and sablefish IFQ permit holders with inactive QS by certified letter and indicate that these permit holders would need to act affirmatively by notifying NMFS in writing within the 60-day period to be noticed by NMFS, of their desire to retain inactive QS or the QS will be revoked; and 2) provide broad public notice of its intent to redistribute inactive QS at the conclusion of the 60 day period following implementation of regulations.

In 2009, the Council reaffirmed its recommendation to remove inactive QS and associated IFQ permits. Staff reported that in the time between the Council's selection of a Preferred Alternative in 2006 and staff review of the action in 2009, QS transfers had achieved a considerable reduction in the number of inactive halibut and sablefish QS. The Council acknowledged that the amount of inactive halibut QS had decreased to a level below the QS threshold to implement a lottery for inactive halibut QS; therefore a lottery would not be developed for inactive halibut QS. The Council recommended final action would withdraw all initial inactive halibut and sablefish QS from the QS pool and revoke all IFQ permits associated with the inactive QS. This action would require NMFS issue official notice to persons with inactive QS and an IFQ permit, provide a 60-day period for these affected persons to act, and distribute revoked IFQ to IFQ permit holders with active accounts in proportion to their QS holding. Final action will be forwarded to the Secretary of Commerce for consideration.

Alternative 1. No action

Alternative 2. Withdraw all inactive initial halibut and sablefish QS and associated IFQ held by initial recipients from the QS pool.

2006 Preferred Alternative. (1) Withdraw all inactive initial halibut and sablefish QS held by initial recipients from the QS pool.

(2) Redistribute halibut QS through a lottery, if the amount of withdrawn QS exceeds the number of QS units equivalent to 50,000 pounds for all IPHC regulatory areas in the year of the lottery, as follows:

1. Lotteries would allocate 5,000 pounds per recipient; the final recipient would receive the remaining QS units; QS will be awarded to a single lottery recipient if the amount of QS is less than 5,000 pounds in an Area.
2. QS would retain species and management Area designations.
3. All lottery QS would be reissued as blocked, "B" Category QS.
4. Applicants are limited to applying for QS for one Area.
5. Entry level crewmen would be required to provide an affidavit stating that they have the ability and intent to harvest the lottery QS for which they applied and who NMFS can verify that they:
 - a. have a transfer eligibility certificate to hold QS;

- b. were not an initial recipient of halibut or sablefish QS; and
 - c. do not own QS units equivalent to more than 5,000 pounds in the year of the lottery.
6. Lottery QS recipients will be considered second generation QS holders.
 7. Lottery QS must be fished within the first full season after issuance, or it will be withdrawn from the QS pool.
 8. Before transfer, lottery QS recipients must fish their QS twice (two seasons).

2009 Preferred Alternative. Withdraw all inactive initial halibut and sablefish QS and associated IFQ held by initial recipients from the QS pool.

When the North Pacific Fishery Management Council (Council) reaffirmed their 2006 Preferred Alternative in 2009, data indicated 287 persons held inactive QS. At that time a total of approximately 3,070 QS holders were active in the halibut and sablefish fisheries. Of the total QS holders over 2,770 permit holders held halibut QS of which 9.5 percent were inactive QS and about 830 permit holders held sablefish QS of which almost ½ percent was inactive QS. Permit holders with inactive QS would forfeit their halibut and sablefish QS if they do not activate their IFQ permits. Permits are activated by fishing, leasing, hiring a master, transferring at least one QS unit, or requesting NMFS activate QS prior to or within the 60-day response period to be announced by NMFS. Quota Share holders actively participating in the halibut and sablefish fisheries benefit from the reduction in the QS Pool by the amount of inactive QS revoked because their percentage of total QS increases as the size of QS Pool is reduced. The IFQ associated with revoked inactive QS would also be redistributed to the remaining permit holders active in the fishery in proportion to each of those permit holder's share of the existing QS pool.

In 2010, when the proposed rule for this action published, there were almost 2,700 unique QS holders in the halibut fisheries and 838 unique QS holders in the sablefish fisheries. A unique QS holder refers to an individual or non-individual permit holder qualified to fish either halibut or sablefish in a specific area using a vessel assigned a specific vessel category. Multiple unique quota share holdings may be attributed to one permit holder. Of the unique halibut QS holders in 2010, 8 percent held inactive halibut QS while of the unique sablefish QS holders about 0.4 percent held inactive sablefish QS. All unique QS holders that actively fish their IFQ permits would benefit from redistribution of the revoked inactive QS in an amount proportional to their QS holding.

Additional landings are expected to lead to increases in consumer and producer surpluses, all else equal. The most recent year with complete information to estimate value is 2010. In 2010, 222 persons held inactive halibut QS that if reallocated to QS holders participating in the 2010 halibut fishery would have yielded roughly \$92,000 gross ex-vessel revenues based on 2010 price per pound. Inactive sablefish QS was held by 4 permit holders and would have yielded roughly \$2,500 ex-vessel based on the 2010 price per pound, if reallocated to QS holders participating in the 2010 sablefish fishery. Total inactive halibut QS would be worth approximately \$400,000 if transferred at the current market value and inactive sablefish QS would have a market value of about \$12,000.

Nominal costs will likely be incurred due to additional administrative and information expenditures to revoke inactive QS. Estimates of these costs cannot be provided, *a priori*. However, the costs are a one-time expense. In the future, the costs to process the inactive QS will be replaced by the income from the IFQ fee that will be applied to landings that formerly went unharvested. Providing that initial QS recipients will be allowed to retain inactive QS upon request, those QS will receive an active status and be available to fish or transfer at the prerogative of the QS holder. Some welfare loss may accrue to any initial QS recipient who, for whatever reason, wished to retain QS ownership, but remain inactive. Quota share not activated will be removed from the QS pool for that fishery. Loss of future benefit from these QS will occur to the extent these small QS holdings could have provided entry level opportunities.

Optimal yield of halibut and sablefish would more likely be achieved under the Preferred Alternative as would administrative efficiencies than under the status quo. Assuming QS redistributed to current fishery

participants is fished, then the fishery should realize a slight increase in effort. As a result, groundfish bycatch in these fisheries could increase, but these are limited by maximum retainable allowances.

Net benefits to the Nation are expected to increase via increased opportunity to achieve the halibut and sablefish optimum yield. Actively fished IFQ will result in larger supplies of halibut and sablefish entering the marketplace. Larger supplies may yield lower prices and, to the extent these supply and price effects accrue to domestic consumers, increases in net benefits to the Nation are expected. More recently, the number of legal-sized halibut in the population has declined and reduced the supply of halibut available for the market. There has been little change in demand under these circumstances and the price per pound of halibut has increased substantially resulting in greater revenue to permit and QS holders but higher prices for consumers. However the continued decline in the halibut total allowable catch is of a magnitude that, even with the price effect, the market value has declined. The degree that larger supply of QS contributes to increased net benefit is masked in the marketplace by the interaction of simultaneous and historic changes in stock size and price structure.

The preferred alternative best meets the objectives of this action.

REGULATORY IMPACT REVIEW/ FINAL REGULATORY FLEXIBILITY ANALYSIS

1.0 INTRODUCTION

This document contains the Regulatory Impact Review and Final Regulatory Flexibility Analysis for an amendment to regulations that describe federal waters management of Pacific halibut 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).

1.1 Management Authority

Management of the commercial fishery for halibut (*Hippoglossus stenolepis*) 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 (Halibut Act). The Halibut Act provides that, for the halibut fishery off Alaska, the North Pacific Fishery Management 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. Such regulations shall only be implemented with the approval of the Secretary of Commerce (Secretary).

Federal management of the commercial fishery for sablefish (*Anoplopoma fimbria*) is authorized by the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act) and implemented by regulations at 50 CFR part 679.

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 B Individual Fishing Quota Management Measures, Sections 679.40 through 679.45.

1.2 Requirements of a Regulatory Impact Review

A 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 Background

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, and sablefish fisheries in waters of the Exclusive Economic Zone off Alaska. The Council, under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the 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 IFQ program in 1995.

The IFQ 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 ability to decide how much and what type of investment they wished to make to harvest their allotment of 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 IFQ could determine where and when to fish, how much gear to deploy, and how much overall investment in harvesting they would make. The development and design of the halibut and sablefish IFQ fishery is described in Pautzke and Oliver (1997), Hartley and Fina (2001a,b), and the annual Report to the Fleet (NOAA Fisheries, 2007).

Regulatory restrictions are intended to prevent the fisheries from being dominated by large boats or by any particular vessel class. Quota shares were initially assigned to vessel categories, based on vessel size and whether the vessel operated as a catcher vessel or catcher processor vessel. They are issued specifically to a vessel category and to an IFQ regulatory area. There are eight areas and four vessel categories for halibut (see figure below left), and six areas and three vessel categories for sablefish (below right).

1.4 Description of the Fishery

A detailed description of the fishery is compiled each year in the Pacific Halibut-Sablefish IFQ Report (*Report to the Fleet*) by NMFS, Restricted Access Management Program (RAM). Typically, this report is available the year following these fisheries because the fishing seasons conclude in November. The data on price of QS and transfer value of QS and IFQ are usually available from other sources within two years of the fishery. In 2010 NMFS also published a comprehensive evaluation of the 1995 through 2009 halibut fishery and sablefish fishery consolidation of QS holdings, permanent QS and IFQ transfers, QS prices, and seasonal leases of QS and IFQ (NOAA 2010a, NOAA 2010b). Current data for this report is from the *Report to the Fleet* for fishing year 2010 (NOAA 2011) and preliminary estimates of revenue from the fisheries is available from 2011. Similarly, the Council was able to review preliminary data from the 2009 fishing season and complete information for the 2008 fishing year when they reviewed an update of the original analysis (NPFMC 2009) in 2009 and reaffirmed the intent of their preferred alternative. In 2006, the Council selected their preferred alternative based on the original analysis of 2004 fishing year (NPFMC 2006) and at that time was provided a description of the 2005 and 2006 fishing seasons. This progressive update of recent data and more extensive fishery information provides the Council and Secretary the best available data for making decisions.

Table 1 shows the number of unique halibut QS holders and unique sablefish QS holders initially issued QS, that participated in the fisheries from 2004 to 2006 and 2008 to 2011, and that hold inactive QS in 2011 (the subset of the unique QS holders in 2011 who hold inactive QS). These years correspond to the most complete year's fishery data used in the RIR/IRFA and RIR/FRFA (2004, 2008, 2010) and fishing season data available at the "current" time of decision (2004-2005, 2009, 2011). The most comprehensive data available when the Council selected its 2006 preferred alternative were from 2004. When the Council reviewed this action in 2009 and reaffirmed the preferred alternative, the most current and comprehensive data were from 2008. For purposes of this analysis, data from 2010 provide the most complete description of the fisheries while limited data from 2011, describe the current status of inactive QS. Together, these data describe existing fishery conditions and best represent all entities impacted by this final action, if approved.

Table 1 shows in 2004 and 2005 the number of unique halibut QS holders ranged from 3,302 to 3,218 and unique sablefish QS holders ranged from 874 to 875. By the end of 2008, unique QS holders totaled 2,829 in the halibut fisheries and 853 in the sablefish fishery. In 2010, the number of unique QS holders in the halibut fishery had declined to 2,699 while unique QS holders in the sablefish fishery remained relatively stable at 838.

The annual total allowable catches (TAC) of halibut and sablefish have been and remain fully exploited (Table 2). The percent of the TAC harvested varies around 100 percent because IFQ regulations provide for administrative adjustment of IFQ permits as a result of under- and overfishing the "parent" QS the prior year. Amounts carried over are limited by a "use it or lose it" provision and a large debit may result in enforcement action. In 2004 almost 59 million pounds of halibut were allocated among halibut QS holders in the eight halibut IFQ regulatory areas. About 29 million pounds of sablefish were allocated among sablefish QS holders in the six sablefish IFQ regulatory areas. Ninety-seven percent of the halibut total allowable catch (TAC) and 89 percent of the sablefish TAC were harvested across all areas in 2004. From 2005 to 2006 the annual halibut allocation declined from almost 57 million pounds to 53 million pounds. The sablefish allocation also declined in 2005 and 2006 from about 28 million pounds in 2005 to just over 26.5 million pounds in 2006. These harvest levels resulted in 97 and 98 percent harvest of the halibut allocation and 92 and 89 percent of the sablefish TAC in 2005 and 2006 respectively. In 2008 approximately 48 million pounds of halibut and 30 million pounds of sablefish were allocated among QS holders in the IFQ regulatory areas. Ninety-nine percent of the halibut TAC and 90 percent of the sablefish TAC were harvested across all areas in 2008. Allocations were decreased in 2010 as the available TAC continued to decline; halibut TAC declined to 40 million pounds and sablefish TAC declined to 25 million pounds. Ninety-nine percent of the halibut TAC and 88 percent of the sablefish TAC were harvested across all areas in 2010.

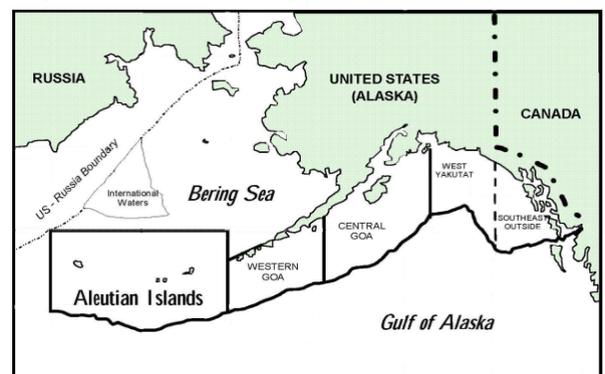
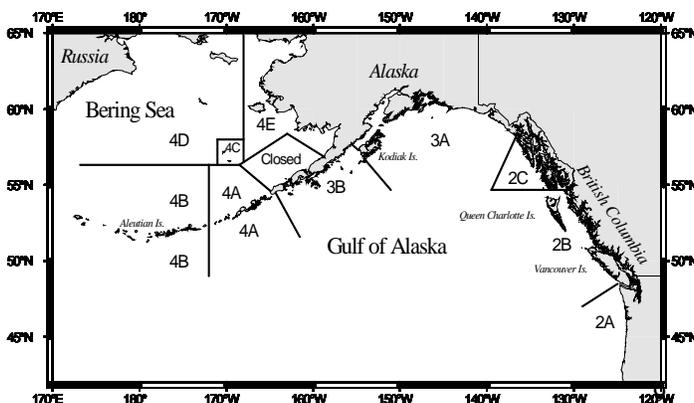


Table 1 Number of Unique Halibut Qs Holders and Unique Sablefish Qs Holders by Area and Year.

	Area	Initial 1994-95	Active and Inactive QS by Year							Inactive QS 2011
			2004	2005	2006	2008	2009	2010	2011	
Halibut	2C	2388	1413	1384	1362	1225	1205	1162	1139	69
	3A	3071	1897	1842	1795	1547	1501	1462	1449	135
	3B	1056	557	546	526	495	493	489	492	13
	4A	531	271	264	264	239	235	230	219	15
	4B	152	106	107	107	99	96	96	89	0
	4C	81	63	62	62	56	53	53	53	1
	4D	69	47	47	47	47	46	46	47	0
	Total All Areas	4829	3302	3218	3174	2829	2772	2699	2740	203
Sablefish	Southeast Outside	715	451	452	441	427	418	411	408	0
	West Yakutat	456	276	276	265	247	245	240	239	0
	Central GOA	643	429	413	406	386	377	378	372	1
	Western GOA	232	173	174	171	169	164	168	164	0
	Aleutian Islands	135	98	100	99	92	94	93	93	0
	Bering Sea	145	114	117	115	110	105	101	103	0
	Total All Areas	1054	874	875	869	853	835	838	838	1

*1994-95 was the period of time when QS was initially issued to IFQ permit holders.

*Data by area are not additive; QS holders may hold QS in more than one area.

*Total all areas by species by year is a count of unique QS holders in the fishery that year.

Table 2 Total Allowable Catch and Percent Harvested by Species and Year.

Year	Halibut TAC	Percent Harvested	Sablefish TAC	Percent Harvested
2004	58,942,000	97.2	37,936,756	88.8
2005	56,976,000	96.9	35,765,226	91.9
2006	53,308,000	98.0	34,546,083	89.3
2007	50,211,800	98.2	33,450,396	89.9
2008	48,040,800	98.5	29,967,127	89.7
2009	43,548,800	97.1	26,488,269	91.4
2010	40,298,000	99.0	24,876,707	88.2
2011	30,382,000	97.5	26,794,708	89.7

* Pounds of halibut are in net weight and pounds of sablefish are in round weight.

The number of vessels harvesting halibut and sablefish has significantly changed since implementation of the IFQ Program and initial issuance of QS in 1994 and 1995 (Table 3). The number of vessels making IFQ landings declined rapidly in the first few years of the program. A total of 1,304 unique vessels participated in the 2004 halibut fishery and 396 unique vessels participated in the sablefish fishery. Since then the number of vessels participating in the halibut fishery has declined slowly and steadily between 3 and 8 percent. The total number of vessels participating in the sablefish fishery reached a low of 359 in 2008 and has since increased slightly at about 1.5 percent a year.

Table 3 Number of Vessels with IFQ Halibut and Sablefish Harvest by Area and Year.

	Area	Initial	Year					
		1994	2004	2005	2006	2008	2009	2010
Halibut	2C	1461	678	672	682	609	569	575
	3A	1712	696	670	644	600	576	549
	3B	320	303	302	287	281	269	271
	4A	176	112	104	93	91	88	88
	4B	74	42	38	36	37	35	42
	4C	64	24	9	8	7	5	5
	4D	39	27	29	30	29	30	28
Total All Areas		3452	1304	1276	1255	1156	1089	1074
Sablefish	Southeast Outside	488	252	234	227	215	210	215
	West Yakutat	265	136	131	128	117	116	117
	Central GOA	602	192	192	189	176	178	174
	Western GOA	30	73	76	75	64	64	65
	Aleutian Islands	61	36	34	30	36	37	39
	Bering Sea	61	38	45	40	38	43	42
Total All Areas		1166	396	378	372	359	362	368

*Quota share was initially issued to its first holder in 1994. Initial issuance was accomplished primarily at the beginning of the

IFQ Program but continued because of adjudicate appeals.

*Total all areas is the unique number of vessels in all areas.

*Number of vessels is not additive over area or time.

Table 4 illustrates the relative size of vessels participating in the 2004 halibut and sablefish fisheries, across the corresponding regulatory areas. Significantly more small vessels (< or = 35 ft.) participated in the halibut fishery than the sablefish fishery which is dominated by vessels greater than 60 ft. 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 the sablefish fishery, from 38 percent to 56 percent of QS is allocated to freezer longline vessels in the Bering Sea, Aleutian Islands, and western GOA, although in the central and eastern GOA, only between 7 percent and 16 percent of sablefish IFQ may be processed onboard. Another indicator of harvesting capacity besides vessel size can be the median size of harvests (Table 5).

Table 4 Number of Vessels Participating in the Halibut and Sablefish Fisheries in 2004 by Vessel Size (category) and Area.

Halibut	Area	Number of Vessels			
		Category D 0-35'	Category C 36-60'	Category B 61-125'	Category A ≥126'
	2C	236	405	24	0
	3A	173	406	85	2
	3B	36	189	71	4
	4A	28	44	29	3
	4B	2	14	20	2
	4C	6	1	2	0
	4D	0	13	16	1
	TOTAL All Areas	481	1,072	247	12
Sablefish	Southeast Outside	8	184	39	2
	West Yakutat	0	84	44	1
	Central GOA	7	116	60	6
	Western GOA	2	39	28	7
	Aleutian Islands	0	11	16	6
	Bering Sea	2	20	15	7
	TOTAL All Areas	19	454	202	29

*Counts are not additive across areas. Data as of November 1, 2005. Source: NOAA Fisheries RAM.

Table 5 Total Vessels and Median IFQ lbs (thousands) of halibut and sablefish per vessel by year by vessel size (category)

	Year	Total No. Vessels	Category D CV: 0-35'	Category C CV: 36-60'	Category B CV: 61-125'	Category A CP: >125'
Halibut	2004	1304	4	17	41	11
	2005	1276	3	18	40	12
	2006	1255	9	16	39	10
	2008	1156	3	13	37	8
	2009	1089	3	12	34	7
	2010	1074	3	12	33	6
	Year	Total No. Vessels		Category C CV: 0-60'	Category B CV: >60'	Category A CP: Any Size
Sablefish	2004	396		22	46	17
	2005	378		24	51	31
	2006	372		24	45	26
	2008	359		22	43	24
	2009	362		22	34	20
	2010	368		18	31	16

*CP ≡ Cather Processor; CV ≡ Catcher Vessel; LOA ≡ Length Overall.

*Data rounded to nearest thousand.

* Pounds of halibut are in net weight and pounds of sablefish are in round weight.

1.5 Problem and management objectives for the action

Numerous initial recipients of halibut and sablefish QS have chosen not to fish, transfer, or lease any of their QS and associated IFQ, which has resulted in inactive QS and dormant IFQ permit accounts. This inactive QS, however, is miniscule. Some of these individuals have requested to be removed from the IFQ program, because the small amount of QS they hold is unmarketable, but federal regulations do not provide for the voluntary removal of QS, other than through transfer.

Improving access to all available QS increases the operational flexibility of fishermen participating in the IFQ fisheries to increase yield from QS. The objective of this action is to achieve the fishery constant exploitation yield of halibut and the optimal yield of sablefish. The administrative tasks for managing inactive QS would be eliminated. Less information to administer would benefit QS managers and program participants. As a result this action includes an objective to promote efficient use of the IFQ Program and program participant resources.

1.6 Description of the Alternatives

1.6.1 Alternative 1 *No Action*

There is no clear regulatory authority for NMFS to void QS; therefore, a QS (permit) holder may not surrender his/her holdings. Instead, a QS holder may voluntarily transfer (by sale or gift) his or her QS or fish the associated IFQ, neither of which was occurring for a substantial number of holders of very small QS holdings.

The IFQ Implementation Team noted the following in its report to the Council in December 2004.

- The IFQ program is a privilege, not a right, and the legal aspect of a “taking” is not applicable to this proposal.
- Only QS holders actively participating in the fishery pay the IFQ recovery fee (which is based on landings) to compensate the federal government for the costs of the IFQ program. Inactive QS holders are free riders on that program.
- Initial recipients are allowed to hire a Master, except for halibut (Area 2C) and sablefish (Southeast Outside).
- The Magnuson-Stevens Act mandates full utilization. Reallocating QS after 10 years of inactivity would address National Standard 1.
- Inactivity of some QS holders during the 10 years of the program has led to economic inefficiencies.

Since QS was initially issued in 1995, IFQ permit holders with inactive QS have had the opportunity to activate their QS by fishing the associated IFQ or transferring the QS to another entity. To facilitate transfers private brokerages provide listings of QS and IFQ buyers and sellers and NMFS, RAM maintains internet reports of inactive QS holdings, current QS holders and transfer-eligible persons that they update daily for general public information. All NMFS reports include descriptions of the QS held (e.g., species, area, category, block type), number of inactive QS units, and a business mailing address of each QS holder. This information is available to the general public to allow for voluntary transfers and consolidation.

1.6.2 Alternative 2 2006 Preferred Alternative

- (1) *Withdraw all inactive initial halibut and sablefish QS held by initial recipients from the QS pool.*
- (2) *Redistribute halibut QS through a lottery, if the amount of withdrawn QS exceeds the number of QS units equivalent to 50,000 pounds for all IPHC regulatory areas in and off Alaska in the year of the lottery, as follows:*
 1. *Lotteries would allocate QS equivalent to 5,000 pounds per recipient; the final recipient would receive the remaining QS units; QS will be awarded to a single lottery recipient if the amount of QS is equivalent to less than 5,000 pounds in an area.*

2. *QS retains species and management area designations.*
3. *All lottery QS would be reissued as blocked, "B" Category.*
4. *Applicants are limited to applying for QS for one area.*
5. *Entry level crewmen would be required to provide an affidavit stating that they have the ability and intent to harvest the lottery QS for which they are applying and who NMFS can verify:*
 - *has a transfer eligibility certificate to hold QS,*
 - *were not an initial recipient of halibut or sablefish QS,*
 - *do not own QS units equivalent to more than 5,000 pounds in the year of the lottery.*
6. *Lottery QS recipients will be considered second generation QS holders.*
7. *Lottery QS must be fished within the first full season after issuance, or it will be withdrawn from the QS pool.*
8. *Before transfer, lottery QS recipients must fish their QS twice (two seasons).*

Under the 2006 Preferred Alternative, inactive QS, defined as QS that has neither been fished, nor at least 1 QS unit or 1 IFQ pound transferred since initial issuance, would be forfeited (with no compensation) under a "use it or lose it" provision. Only persons awarded initial QS, but who activated neither halibut nor sablefish QS/IFQ, would have his or her permit revoked under this preferred alternative. If a person fished some or all of his/her halibut QS/IFQ, but never fished a single unit of sablefish QS, he or she would not be subject to forfeiture under this preferred alternative.

The 2006 Preferred Alternative is modeled after voter registration rolls that are "purged" periodically, to remove those who don't exercise their right to vote. The preferred alternative eliminates inactive QS from the halibut and sablefish IFQ program. It would result in smaller halibut and sablefish QS pools. The associated IFQ would be allocated in proportion to the amount of IFQ pounds held by an IFQ permit holder that has actively participated in the IFQ halibut and sablefish fisheries and results in that person receiving a slight increase in his or her allocation of IFQ pounds.

In its selection of the 2006 Preferred Alternative, the Council stated its intent that NMFS contact persons holding inactive halibut and sablefish QS by certified letter, and indicate that the permit holder will need to affirmatively act by notifying NMFS in writing of their desire to retain inactive QS or these QS will be revoked and redistributed through lottery. In addition, NMFS would give broad public notice of the Council's intent to distribute inactive QS. All inactive QS held by IFQ permit holders who do not respond in writing, affirming their desire to retain inactive QS, within 60 days of notice, will be revoked and redistributed as described. Appendix 1 contains two letters that NMFS mailed to inactive QS holders.

1.6.3 Alternative 2-3 2009 Preferred Alternative

Withdraw all inactive initial halibut and sablefish QS held by initial recipients from the QS pool.

The Council's 2006 preferred alternative did not proceed to draft rulemaking until 2009, due to recommendations by the Council to prioritize other proposed groundfish and halibut actions in 2007 and 2008. In 2009, staff reported to the Council that in the time between the selection of a preferred alternative in October 2006 and a review of pending NMFS rulemakings in February 2009, QS transfers had achieved a considerable reduction in the number of inactive halibut and sablefish QS. At that time, the Council reaffirmed its preferred alternative to remove inactive QS and associated IFQ permits, despite the reduction in number of inactive halibut QS and sablefish QS.

The Council acknowledged that the amount of inactive halibut QS decreased below the threshold level identified to implement a lottery to redistribute inactive QS to eligible crew. The Council acknowledged that rulemaking would proceed to remove inactive QS (unless NMFS was notified in writing of a permit holders interest in retaining his or her initially issued QS that had been identified as inactive), but that rulemaking would not proceed for a lottery due to the threshold not being met at the time of Secretarial review.

1.7 Expected effects

Alternative 1 would not revise the IFQ regulations to grant the agency the authority to either: (1) remove inactive QS and IFQ held by IFQ permit holders, or (2) accept voluntary relinquishment of the same. Under the status quo, NMFS will continue to send annual paperwork related to annual IFQ permits and the IFQ Program to IFQ permit holders that are initial recipients of halibut and sablefish QS, but have not fished, transferred, or leased one unit of their QS holdings since implementation of the IFQ program in 1995. Alternative 1 would not reduce the amount of administrative work NMFS, RAM Division must complete to monitor and manage inactive QS or issue QS allocations to permit holders with inactive QS. Under Alternative 1 the permit holders with inactive QS receive IFQ Program services for free while permit holders that actively participate in the halibut and sablefish fisheries must pay a fee when they land sablefish and halibut to partially offset the program costs.

The 2006 and 2009 Preferred Alternatives address inefficiencies in the administration of the IFQ fisheries and barriers to achieving optimal yield in these fisheries. In 2005, more than five hundred IFQ permit holders were issued QS in amounts that were, and remain, too small to economically fish, lease, or transfer (Table 6). While many initial recipients dropped out of the IFQ program by transfer (i.e., “selling” QS), 537 persons holding inactive halibut and sablefish QS remained at the time of final action in 2006; just over 300 QS holders still retained inactive QS when the Council reaffirmed their 2006 action in early 2009.

Table 6 Halibut and Sablefish QS Holdings Over Time.

	Halibut		Sablefish		Halibut and Sablefish	
	Persons	Units	Persons	Units	Persons	Units
Initial Recipients and their holdings 1994-1995	4,829	332,585,547	1,054	317,844,583	4,867	650,430,130
Initial Recipients actively fishing their holdings 2005	2,213	244,076,358	581	242,910,646	2,342	486,987,004
Initial Recipients with inactive holdings in 2006	534	865,586	7	57,522	537	923,108
Initial Recipients with inactive holdings in 2009	299	251,204	4	10,637	303	261,841

RAM data indicate that the sum of inactive QS units is miniscule and equate to less than one percent of the total allocated pounds in each area and year of Council decision (Table 7). Inactive QS holdings have little economic value, because there is a limited market for very small QS allocations and because of the relatively high cost and burdensome paperwork involved in transfers of small holdings (evidenced, perhaps, by their lack of transfer). Anecdotal reports suggest that a few QS holders have pursued transfers of inactive QS, because of their potential value for use in the charter halibut fishery, as guided angler fish (GAF). The proposed rule for the Halibut Catch Sharing Plan (76 FR 44156) would allow charter halibut limited entry permit holders to lease IFQ pounds from a commercial entity to use as GAF.

Table 7 Amount of Inactive Quota Share, Corresponding Inactive IFQ Pounds, and Percent of the Total Allowable Catch (TAC) that was Inactive by Area by Year.

	Area	Amount QS Inactive			IFQ Pounds Inactive			Percent of Area TAC		
		2005	2008	2010	2005	2008	2010	2005	2008	2010
Halibut	2C	NA	94,198	61,763	NA	9,823	4,563	NA	0.002%	0.104%
	3A	394,496	213,652	127,651	54,339	27,984	13,800	0.213%	0.001%	0.069%
	3B	NA	8,829	3,854	NA	1775	704	NA	0.000%	0.007%
	4A	NA	1,216	1,192	NA	258	190	NA	0.000%	0.008%
	4B	NA	953	0	NA	153	0	NA	0.000%	NA
	4C	NA	578	578	NA	127	117	NA	0.000%	0.014%
	Sum	394,496	319,426	194,460	54,339	40,120	19,257			
Sablefish	Bering Sea	21,522	0	0	2,465	0	0	0.115%	NA	NA
	Central GOA	20,614	10,637	9,281	2,360	924	661	0.018%	0.000%	0.008%
	Southeast Outside	2,113	3,499	0	252	376	0	0.003%	0.000%	NA
	Western GOA	1,147	0	0	143	0	0	0.003%	NA	NA
	West Yakutat	1,723	0	0	162	0	0	0.003%	NA	NA
	Sum	47,119	14,136	9,281	5,382	1,300	661			

*NA data not available or amount not applicable.

*TAC and Pounds of halibut are in net weight and TAC and pounds of sablefish are in round weight.

When the Council took action in 2009 the amount of inactive QS was known however, the most complete and current QS pricing information for the halibut and sablefish fisheries was from 2008. If inactive QS were reallocated to fishery participants (either to eligible crew through a lottery under the 2006 Preferred Alternative or to the QS pool under the 2009 Preferred Alternative), the foregone value of halibut QS would have been captured by those beneficiaries of the preferred alternatives. Assuming inactive QS would be reallocated to fishery participants and all QS would be harvested, then the inactive halibut QS in 2009 yielded roughly 33,000 pounds, worth an estimated \$142,000 (based on a \$4.30 per pound ex-vessel value of halibut in 2008). Inactive halibut QS and the associated IFQ, if transferred (i.e., sold) at the 2008 market value, would have been worth roughly \$750,000. Inactive sablefish QS would have yielded roughly 900 pounds worth an ex-vessel value of \$3,000 (based on \$3.20 per pound ex-vessel value of sablefish in 2008), if reallocated and completely fished. If the total inactive sablefish QS were transferred, at the 2008 market value, it would have been worth \$15,000.

1.7.1 2006 Preferred Alternative

During initial review of this action, the Council modified Alternative 2 (2006 Preferred Alternative) by replacing a voluntary component for permit holders with inactive QS to relinquish inactive QS, with an opportunity to notify NMFS of their interest in maintaining their holdings. This opportunity accommodates QS holders with inactive QS who do not wish to fish, lease, or transfer even 1 QS unit, but still wish to hold their inactive initial QS allocation. The Council deemed the revision to remove inactive QS unless the holder of such QS notifies NMFS, in writing, of their interest in maintaining their holdings to be more effective at eliminating inactive QS from the IFQ Program. Such application would be deemed evidence of activity. The preferred alternative is expected to (1) increase the likelihood of attaining

optimal yield from the halibut and sablefish resource, (2) remove QS from more than 500 permit holders in the IFQ Program that have inactive QS, with little or no adverse impact to these persons, and (3) maintain the social or economic benefits that appear to be enjoyed, by some permit holders, from the privilege of continuing to hold inactive QS. Requiring persons with inactive QS to notify NMFS if they choose to retain their inactive QS does not affect the number of affected individuals.

The 2006 Preferred Alternative makes the relinquished halibut QS available to qualified new entrants through a lottery. Lottery entrants would be limited to individuals who were not initially issued halibut QS, who are eligible to hold QS as proven by the possession of a Transfer Eligibility Certificate (TEC), and who do not hold more QS than is equivalent to 5,000 pounds, in the year in which the lottery is conducted. The details of how the lottery would be operated would be left to NMFS to identify in the proposed rule. The number of QS units available for redistribution via the lottery cannot be quantified exactly, until after notice has been filed; however, about 865,000 halibut units and 57,000 sablefish units were inactive in 2006.

Crew members who held transfer eligibility certificates or TECs totaled more than 2,700 in 2005 and 3,000 in 2008. Of those, more than 1,100 hold QS for one or more species in one or more regulatory areas (Table 8). Table 9 provides a maximum number of potential lottery entrants for each area. The number would be further reduced, since an entrant must choose only one area for the lottery.

Table 8 U.S. Citizens who did not receive QS by initial issuance, but who have demonstrated their eligibility to receive QS by transfer (as IFQ Crew Members) and to whom “IFQ Crewmember” Transfer Eligibility Certificates have been issued, and who currently hold QS.

	2005	
	Crew	Crew holding QS
Alaska resident	1,391	833
Non-resident	788	294
Total	2,719	1,147
	2008	
	Crew	Crew holding QS
Alaska resident	2,143	829
Non-resident	922	312
Total	3,065	1,141

Table 9 IFQ Crew members who have received halibut QS by transfer since the start of the program in 1995 and their holdings by area.

Area	2005	
	Crew	QS Units
2C	742	18,515,581
3A	951	41,411,741
3B	297	13,403,035
4A	255	4,929,917
4B	106	9,284,774
4C/D/E	211	9,106,607
Area	2008	
	Crew	QS Units
2C	1,225	59,552,039
3A	1,547	184,911,315
3B	494	54,203,096
4A	239	14,587,099
4B	99	9,916,489
4C/D/E	205	9,106,835

The Council reviewed a hypothetical example of the 2006 Preferred Alternative for a lottery that assumed all inactive QS and permits were distributed to lottery winners (Table 10). Results were based on the 2005 data for blocked and unblocked QS held by permit holders with inactive QS using the 2005 halibut and sablefish TACs. Approximately 27 TEC holders would have been awarded approximately 865,000 halibut QS units, roughly equivalent to 130,000 pounds of halibut, worth more than \$2.2 million in ex-vessel gross revenues based on 2005 ex-vessel value per pound. On average, lottery winners would have been awarded approximately 4,700 pounds of halibut, worth more than \$80,000 ex-vessel value (2005 ex-vessel value per pound).

Table 10 Hypothetical halibut lottery winnings under the 2006 Preferred Alternative

Area	Block size (2005 lb equivalents)	Blocks	QS units	2005 lbs	Asking Price \$	Gross ex-vessel \$ value	Winners	Per winner lbs -- \$value
2C	<= 5,000	148	187,921	34,487	20.00	689,740		
	unblocked		7,743	1,424	21.00	29,900		
	Total	148	195,664	35,911		719,640	7	5,000 102,806
3A	<= 5,000	336	575,334	79,249	16.00	1,267,984		
	unblocked		22,878	3,151	21.00	66,171		
	Total	336	598,212	82,400		1,334,155	16	5,000 83,375
3B	<= 5,000	15	23,666	5,736	16.50	94,644		
	unblocked		6,861	1,661	15.00	24,915		
	Total	15	30,527	7,397		119,559	1.5	5,000 60,000/30,000
4A	<= 5,000	7	9,609	2,266	10.50	23,793		
	unblocked		1,728	406	10.50	4,263		
	Total	7	11,337	2,672		28,056	1	2,672 28,056
4B	<= 5,000	3	5,116	996	5.50	5,478	1	996 5,478
								131
4C	<= 5,000	1	578	131	5.50	700	1	700
4D			0	0	0	0	0	0

Table 11 Inactive Halibut and Sablefish Quota Share, Pounds and Unique Persons Holding Inactive Quota Share by Area at Year End 2008.

Area	TOTAL	2C	3A	3B	4A	4B	4C	4E	CG	SE	Grand Total
Total QS	94,198	213,652	8,829	1,216	953	578	550	10,637	3,499	334,112	
Ratio	9.59	7.63	4.97	4.71	6.24	4.54		11.51	9.31		
Pounds	9,823	27,984	1,775	258	153	127		924	376	40,129	
Persons w/Inactive Halibut QS	100	188	17	18	1	1	10			287	
Persons w/Inactive Sablefish QS								4	1	4	

*Data are from October 28, 2008 and differ somewhat from data available at the end of 2008.

*Numbers of unique QS holders are not additive across area.

1.7.2 2009 Preferred Alternative

By the end of 2008, inactive halibut QS equivalent to little more than 38,000 pounds and inactive sablefish equivalent to 1,300 pounds remained (Table 11). According to the Council's decision in 2006, a halibut lottery would not occur if the pounds of halibut IFQ declined below a 50,000 threshold. In review

of action in 2009, the Council determined a lottery was no longer advisable because the costs of implementing the lottery outweighed its benefits. The Council recommended no lottery be conducted. Although many of the benefits of this action had been achieved voluntarily, the Council preferred that the remaining inactive QS be removed.

1.8 Benefit Cost Analysis

Table 12 summarizes the benefit and costs of the alternatives. Under all the alternatives some welfare gain may accrue to initial QS recipients who, for whatever reason, receive benefits from retaining QS ownership, even though they may choose to remain inactive. The 2006 and 2009 Preferred Alternatives would be expected to enhance achievement of optimum yield of halibut and sablefish by reducing the number of unfished halibut and sablefish IFQ shares, through voluntary or administrative actions. Both alternatives would result in some long-term savings that would accrue from reducing the number of recipients for annual IFQ mailings, allocations and reports issued by NMFS RAM Division. The time used to provide IFQ Program services to permit holders with inactive QS would instead be available for management of the resource and administration of the IFQ Program and fisheries resources.

While the 2006 Preferred Alternative and 2009 Preferred Alternative could lead to increased target catches of halibut and sablefish, current management strategies already assume that these harvests will occur, thus these preferred alternatives are not expected to have a measurable effect on halibut or sablefish stocks. However, both Preferred Alternatives can be expected (if inactive QS is fished) to lead to small increases in bycatches of rockfish and Pacific cod, limited to their respective maximum retainable allowances. Based on an analysis of the demand for Pacific halibut (Herrmann and Criddle 2006), the additional halibut landings that may result from both preferred alternatives could lead to increases in consumer and producer surpluses. While the lack of a concurrent model of supply and demand for sablefish precludes definitive prediction of the magnitude or direction of changes in net benefits to the Nation from the preferred alternatives, the volume of the potential increase in landings is small and would enter an international market. Thus, the increase in benefits to U.S. harvesters is likely to be greater than any potential change in consumer surpluses accruing to U.S. citizens (whether positive or negative). Under the lottery included in the 2006 Preferred Alternative, the value of the halibut quota to be distributed could be relatively large for an individual lottery winner, even though the total amount of redistributed halibut QS is small, relative to the universe of QS holders and the halibut catch limit.

Potential beneficiaries of the 2006 preferred alternative would include all active QS holders, some halibut TEC holders, and some inactive fishermen who have no interest in retaining the QS initially issued to them and prefer to not receive annual paper work from NMFS for their small QS holdings. In addition, (1) processors may benefit by receiving halibut and sablefish associated with the otherwise inactive IFQ in the future; (2) communities may benefit from a future income stream generated by exercise of the otherwise inactive IFQ; (3) suppliers of fishing inputs (e.g., gear purveyors, fuel suppliers, boat yards) may benefit by the harvest generated by use of the transferred IFQ; (4) consumers may benefit by additional supply of product (associated with the otherwise inactive IFQ) to the marketplace; and (5) the Nation may benefit in several ways, to the extent that previously unharvested quantities of halibut and sablefish allowable catch are delivered to the marketplace: enhanced potential to attain optimum yield; increased supply to world markets; potential improvements in domestic supply and price; and expanded opportunity for entry level participation in these fisheries.

Potential beneficiaries of the 2009 preferred alternative would include the same as listed for the 2006 preferred alternative, except there would be no lottery winners. Most of the intended redistribution effects have occurred, to date, through voluntary transfers; however, the Council reaffirmed its intent that all inactive QS be removed (except as provided by NMFS to allow permit holders to retain inactive QS by request).

1.8.1 Administrative, Enforcement, and Information Costs

Minor administrative and information costs of the program would be recovered over a 1 to 2 year period, by annual cost recovery fees. Short term administration costs already have been borne by the RAM Division from:

- 1) developing and posting a database of inactive QS holdings on its website at (<http://www.alaskafisheries.noaa.gov/ram/inactivepersons.xls>); and
- 2) processing transfers that result from identifying those potentially willing to transfer their holdings.

NMFS has identified that implementing a lottery for nearly 3,000 halibut IFQ crew members for more than 50,000 pounds of halibut IFQs under the 2006 Preferred Alternative would be time, money, and labor intensive. The Council identified a threshold of inactive halibut QS equivalent to be 50,000 pounds at the time of implementation, at which it identified that the costs outweighed the benefits. The Council did not include inactive sablefish QS in the proposed lottery, because costs of redistributing less than 7,000 pounds of inactive sablefish IFQ was determined to outweigh the benefits.

Additional costs would accrue from developing, printing, and processing notices to IFQ permit holders with inactive QS that announce the 60-day period to apply to retain inactive QS prior to NMFS revoking the QS.

No additional enforcement costs were identified for this action.

Table 12 Summary of the 2009 cost and benefit analysis of this Action.

	Alternative 1	2006 Preferred Alternative. Withdraw inactive halibut and sablefish QS and implement a lottery when the amount of inactive halibut QS exceeds a 50,000 pound threshold in the year of implementation.	2009 Preferred Alternative. Withdraw inactive halibut and sablefish QS (no lottery).
Who may be affected	Baseline	<p>268 persons could forfeit their halibut and sablefish QS, if they do not activate their IFQ permits by fishing, leasing, hiring a Master, transferring at least 1 QS unit by the year following implementation, or requesting NMFS activate the QS. Approximately 3,070 active QS holders would benefit from the reduction in the QS pool when inactive QS are revoked. The QS holder's IFQ would be increased in proportion to the amount of QS held by that permit holder.</p> <p>If this alternative had been implemented in 2006, as many as 27 crew could have benefited from redistribution of more than 1 million QS units.</p>	<p>Same as under the 2006 Preferred Alternative for sablefish.</p> <p>Same as under the 2006 Preferred Alternative for halibut, except the threshold to hold a lottery for inactive halibut QS under the 2006 Preferred Alternative was not met. Therefore, an estimated 27 crew would not benefit from redistribution of revoked inactive QS using a lottery.</p>
Impacts to the resource	Baseline	<p>May increase the likelihood that the optimum yield would be achieved for Pacific halibut and sablefish stocks, consistent with sound management practices. Groundfish bycatch in these fisheries could increase, as more of the TACs are harvested, but only to the maximum retainable allowance for each species.</p>	<p>Same as under the 2006 Preferred Alternative.</p>

Benefits	Baseline	<p>Additional landings are expected to lead to increases in consumer and producer surpluses, all else equal. Halibut QS held by inactive persons would yield roughly \$400,000 gross ex-vessel revenues, annually. The total inactive halibut QS, if transferred at current market value, would be worth approximately \$3.8 million. Inactive sablefish QS would yield roughly \$30,000 at ex-vessel, annually, if reallocated to currently active QS holders and completely fished. The total inactive sablefish QS to be reallocated to current sablefish QS holders would be worth approximately \$120,000, if transferred at 2009 market value.</p> <p>The lottery would enhance entry level opportunities for crew. Eligible crew who win the lottery for inactive halibut QS would receive a windfall proportionate to the amount of QS they are awarded.</p>	<p>Same as under the 2006 Preferred Alternative, except that the benefits for the halibut fishery would be distributed to current QS holders, rather than to crew (i.e., winners of the lottery).</p> <p>For any QS owner of inactive shares, this alternative yields the additional potential benefit that, if NMFS is given notice as required, the QS would be activated and these owners may retain their QS.</p>
Costs	Baseline	<p>Nominal costs would likely be incurred due to additional administrative and information expenditures to revoke inactive QS. Estimates of these costs cannot be provided, <i>a priori</i>. However, most or all of these costs would be recovered from the IFQ fee that would be applied to formerly unharvested landings. Cost to manage inactive QS information, allocation and reporting would be replaced by increased time to manage the IFQ program and resources for efficient industry participation.</p> <p>Lottery costs could be relatively high. Providing the possibility that initial QS recipients may be allowed to retain inactive QS or that these small QS holdings would be removed from the QS pool, may diminish entry level opportunities in these fisheries.</p> <p>Some welfare loss may accrue to any initial QS recipient who, for whatever reason, wished to retain QS ownership, but remain inactive.</p>	<p>Same as under the 2006 Preferred Alternative, except costs associated with lotteries would not occur. Costs accruing to inactive QS holders who, for whatever reason, wish to retain QS and remain inactive at present, could be avoided.</p>

Net benefits	Baseline	<p>Net benefits to the Nation are expected to increase via increased opportunity to achieve the halibut and sablefish optimum yield. Actively fished IFQ could result in even larger supplies of halibut and sablefish entering the marketplace. Larger supplies would yield lower prices and, to the extent these supply and price effects accrue to domestic consumers, increases in net benefits to the Nation would be expected, all else equal.</p> <p>Entry level opportunities for, perhaps as many as, 27 crew would be enhanced. Active QS holders could benefit from (marginally) additional IFQ holdings resulting from redistribution of historically inactive QS. Additional IFQ units per vessel may result in improved efficiency (e.g., higher CPUE) in the fleet, all else equal, yielding net economic benefits to the Nation.</p>	Same as under the 2006 Preferred Alternative, except benefits to crew from winning lotteries for redistributed halibut QS would not accrue.
Action objectives	Fails to address the objectives.	As of 2009, inactive halibut QS (when converted to pounds) are below the threshold necessary to implement a lottery; therefore, this alternative was rejected by the Council, because the costs of implementation would outweigh the benefits.	Best meets the objectives of this action. The Council's "objective" of providing for entry by qualified crew was secondary to its objective to remove inactive QS without creating a program whose costs outweighed its benefits.

2.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

2.1 Introduction

This final action modifies the IFQ Program for the fixed-gear commercial fisheries for Pacific halibut and sablefish in waters in and off Alaska by revoking QS that have been inactive since they were originally issued in 1995. Inactive QS is initially allocated QS that has never been used to harvest halibut or sablefish and has never been transferred in to or out of the initial QS account. Inactive QS continues to exist because current regulations do not provide for the voluntary removal of QS, other than through transfer to another IFQ permit holder. The final rule accompanying this Final Regulatory Flexibility Analysis (FRFA) implements regulations in the IFQ Program that revoke all inactive halibut and sablefish QS except for those QS permitted to be retained by request. The action relieves an operational restriction created by a lack of regulatory authority. Quota share revoked will be redistributed to IFQ permit holders in proportion to their allocation of QS.

2.2 The Purpose of a FRFA

The 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 frequently has 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 agency could not support by a factual basis that this action would not have a significant adverse effect on a substantial number of small entities and instead prepared and made available to the public for review and an Initial Regulatory Flexibility Analysis (IRFA) that described the impact of the proposed rule alternatives on small entities. The IRFA was prepared instead of seeking certification. The IRFA demonstrated that data on the cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to this regulatory action are insufficient, at present, to permit preparation of a “factual basis” upon which to certify that the preferred alternative does not have the potential to result in “significant adverse impacts on a substantial number of small entities” (as those terms are defined under the RFA). Because it is not possible to “certify” this outcome, based on all available information, this formal FRFA has been prepared and included in this package for review by the Secretary.

This FRFA reviews the impact of revoking inactive QS on all directly regulated small entities, such as individual persons and small businesses and meets the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 601-612). On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency’s compliance with the RFA. The 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file amicus briefs in court proceedings involving an agency’s violation of the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities.

2.3 Required Content of a FRFA

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

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

2.4 Regulatory Flexibility Act Definition of a Small Entity

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small nonprofit organizations, and (3) small government jurisdictions. Small non-profit organizations and small governmental jurisdictions are not directly affected by this rule and therefore the contexts of these entities operations and interactions, within the requirements of the RFA, are not addressed in this FRFA.

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

The SBA has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million, for all its affiliated operations worldwide. Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied, and continues to apply, the SBA’s fish harvesting criterion for these businesses because catcher processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4 million criterion for an operation. NMFS is reviewing its small entity size classification for all catcher processors in the United States. However, until new guidance is adopted, NMFS will continue to use the annual receipts standard of \$4 million for catcher processors. Even if additional catcher processors would have been identified as small entities under a revised small entity size classification, NMFS would have analyzed the effect on small entities using the

same methods that were used in the IRFA prepared for the proposed rule. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in providing fishing charter services is a small business if it is independently owned and operated and not dominant in its field of operation and if it has combined annual receipts not in excess of \$7.0 million.¹ A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

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

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

¹ This industry may fall into one of three North American Industry Classification System (NAICS) industry sectors, and all three have a \$7 million threshold. The sectors include NAICS 721110 (“This industry comprises establishments primarily engaged in providing short-term lodging in facilities known as hotels, motor hotels, resort hotels, and motels. The establishments in this industry may offer food and beverage services, recreational services, conference rooms and convention services, laundry services, parking, and other services.”), NAICS 713990 (“This industry comprises establishments (except amusement parks and arcades; gambling industries; golf courses and country clubs; skiing facilities; marinas; fitness and recreational sports centers; and bowling centers) primarily engaged in providing recreational and amusement services.”), and NAICS 713930 (“This industry comprises establishments, commonly known as marinas, engaged in operating docking and/or storage facilities for pleasure craft owners, with or without one or more related activities, such as retailing fuel and marine supplies; and repairing, maintaining, or renting pleasure boats.”).

2.5 The Need For, and Objectives Of This Rule

The background for this action and problem statement can be found in sections 1.3 through 1.5 of the RIR. In summary, several hundred initial recipients of halibut and sablefish QS have chosen not to fish, transfer, or lease miniscule amounts of QS and associated IFQ since QS were initially issued sixteen years ago. There is no clear regulatory authority for voluntary removal of QS that would enable NMFS to void unwanted QS. Therefore, inactive QS is inaccessible unless a QS holder voluntarily transfers (by sale or gift) his or her QS or fishes the associated IFQ.

Since the Council recommended revoking inactive QS in 2006, holders of inactive QS have been notified several times that their inactive QS could be revoked by NMFS unless the associated IFQ is transferred or fished. Information to facilitate transfers has also been maintained by private brokerages and NMFS/RAM. Response to these efforts has reduced the number of inactive QS holders and IFQ by more than half though the rate of response has diminished over time.

Remaining inactive IFQ preempts harvest of some IFQ and a portion of the TACs will remain unharvested. This reduces economic and social benefits from QS harvest typically realized by fishery dependent businesses and the public. Unused IFQ also deprives consumers of product. Holding inactive QS prevents access to halibut and sablefish QS by persons qualified to fish the QS, and limits the ability of fishermen interested in entering the IFQ Program or expanding their QS holdings. Therefore, the inactive QS prevent the IFQ fisheries from optimizing yield. This action to remove inactive QS is needed to improve operational flexibility of active program participants to harvest species TACs. The change in distribution of IFQ will allow broader opportunity to achieve the fishery constant exploitation yield in halibut fisheries and optimum yield from the sablefish fisheries as required by National Standard 1 of the Magnuson-Stevens Act.

Even though QS is inactive, NMFS must perform routine administrative tasks to process, monitor, and maintain data on inactive QS, including recordkeeping, regular correspondence with the IFQ permit holder that holds inactive QS, annual allocation of IFQ pounds, and monthly and annual reporting. The administrative work detracts time from NMFS managers that can be used more productively to manage fisheries quota and the IFQ Program. IFQ permit holders help pay for the program costs through the IFQ cost recovery program (50 CFR 679.45) by remitting a fee when IFQ species are landed. When QS remains inactive, no landing fees accrue to the program though the IFQ permit holder with the inactive QS continues to receive IFQ Program benefits. This action to revoke inactive QS is needed to eliminate the administrative tasks and costs for managing inactive QS because those QS would no longer exist. Less information to administer and manage will streamline aspects of the IFQ Program to the benefit of QS managers and program participants. Reducing the administrative costs and burden will allow for more efficient use of IFQ Program resources, and, for the sablefish fisheries, is consistent with National Standard 5.

The objectives of amending the IFQ Program regulations are to improve access to all available QS, increase the operational flexibility of fishermen participating in the IFQ fisheries, and to increase yield from QS and help achieve optimum yield. In addition, data collection, recordkeeping, and reporting of inactive QS and the administrative tasks for managing inactive QS are eliminated. Less information to administer and manage will streamline aspects of the IFQ Program and promote efficient use of IFQ Program and participant resources. To achieve these objectives, the final rule grants NMFS regulatory authority to revoke QS or accept relinquishment of QS amounts that are not voluntarily transferred or fished.

2.6 Public Comments and Agency Response

NMFS received two unique comment letters. Neither of the comments directly addressed the IRFA or significant economic impact on small entities. One comment did refer to the potential for indirect economic impact on CQEs, which are not directly regulated by this action. Both the comments and NMFS responses are available in the Final Rule. Electronic copies of the rule are available from <http://www.regulations.gov>, or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. No changes were made in the final rule from the proposed rule.

2.7 Description and Estimate of Small Entities Directly Regulated by This Rule

The RFA emphasizes consideration of alternatives that may minimize the impacts on affected entities, while still achieving the stated objective of the action. The status quo alternative does not meet the objectives of this action and no other alternative meets the objectives without some impact on the persons holding inactive QS. The preferred alternative was selected because it met the objectives of the action with the least impact on the affected persons.

In determining the scope, or “universe”, of the entities to be considered in a FRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of analysis. The universe of entities that is directly regulated by this final action is all QS holders in the commercial fixed-gear halibut and sablefish fisheries that hold inactive halibut or sablefish QS on their IFQ permits. Quota share holders that actively participate in the fishery are indirectly affected by this action.

The RFA also emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities. NMFS interprets this intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus is to exist in analyses that are designed to address RFA compliance. This action does not result in significant adverse impacts because the QS to be revoked have never been used by the QS holder. The significance either monetarily or otherwise of inactive QS is unknown. Inactive QS holdings have no economic value at the individual holding because there is no market for very small QS allocations and the relatively high cost and burdensome paperwork involved in transfers of small holdings (evidenced by their lack of transfer). But if they are reallocated, the foregone value of halibut QS could be captured by active participants. The average ex-vessel value for the total remaining inactive halibut QS and inactive sablefish QS can be estimated from the average ex-vessel value per pound of IFQ pounds landed in the halibut and sablefish fisheries, respectively. Similarly, the market value of the inactive QS can be projected from that known to have been generated by active QS Transfers (Table 13).

Table 13 Summary of Halibut and Sablefish Inactive Quota Shares (QS): Total QShare Units, Total Pounds, QS Market Value (\$/QS), and Ex-Vessel Value (\$/lb) by Year and Area.

	Year	Area					Total	Sablefish CG
		Halibut 2C	3A	3B	4A	4C		
Total QS	2008	81,186	191,520	3,901	1,204	578	278,389	10637
	2009	74,721	144,041	3,854	1,192	578	224,386	9281
	2010	61,763	127,651	3,854	1,192	578	195,038	9281
Total Equivalent Pounds	2008	8,466	25,085	784	256	127	34,719	924
	2009	6,299	16,904	775	208	113	24,299	731
	2010	4,563	13,800	704	190	117	19,374	661
QS	2008	\$219,202	\$672,235	\$20,246	\$3,925	\$1,098	\$916,707	\$14,785

Market Value	2009	\$127,026	\$432,123	\$13,990	\$2,467	\$1,289	\$576,895	\$12,251
	2010	\$103,762	\$291,044	\$13,104	\$2,396	\$1,156	\$411,462	\$12,251
QS Ex-Vessel Value	2008	\$36,658	\$110,376	\$3,397	\$1,018	\$463	\$151,912	\$3,381
	2009	\$19,400	\$52,739	\$2,341	\$563	\$238	\$75,281	\$2,889
	2010	\$22,634	\$65,135	\$3,498	\$942	\$523	\$92,733	\$2,551

*QS and IFQ market value is calculated using prices from transfers that included IFQ amounts within 5 % of the standard IFQ per unit of QS in that year and management area.

*QS market value is calculated from the estimated weighted average annual prices per QS unit transferred by area each year.

*QS prices in dollars per QS unit, that were used to calculate the values in the above table, are not comparable across areas because the ratio of IFQs to QS differs from area to area and may differ from year to year as TACs change.

*QS prices in dollars per pound of associated IFQ are more comparable across areas.

When the Council took action in 2009 the amount of inactive QS was known however, the most complete and current QS pricing information for the halibut and sablefish fisheries was from 2008. If inactive QS were reallocated to fishery participants (either to eligible crew through a lottery under the 2006 Preferred Alternative or to the QS pool under the 2009 Preferred Alternative), the foregone value of halibut QS would have been captured by those beneficiaries of the preferred alternatives. Using 2009 pricing data² and assuming inactive QS would be reallocated to fishery participants and all QS would be harvested, then the inactive halibut QS (~224,000 units) in 2009 yielded roughly 34,000 pounds, worth an estimated \$152,000 (based on ex-vessel value of halibut in 2009). Inactive halibut QS if transferred (i.e., sold) at the 2009 market value, would have been worth about \$575,000³. Inactive sablefish QS (~9200 units) would have yielded roughly 900 pounds worth an ex-vessel value of \$3,300 (based on the ex-vessel value of sablefish in 2009), if reallocated and completely fished. If the total inactive sablefish QS were transferred, at the 2009 market value, it would have been worth almost \$15,000 (Table 13).

In comparison, the total 2010 ex-vessel values (based on 2010 price per pound) of the active plus inactive halibut and sablefish QS converted to net halibut pounds and round sablefish pounds, are \$193.8 million and \$82.4 million, respectively. If all QS associated with IFQ permits, but not the IFQ permits, were sold, then the estimated market value of all halibut QS is \$97.9 million and the estimated market value of all sablefish QS is \$28.9 million. Together, the ex-vessel value and market value of QS are an approximate estimate of the total revenue from QS in a fishery. The value of associated IFQ is not included in these estimates because the opportunity to re-enter the fishery and to use a hired skipper are IFQ type privileges that are not affected by this action. In addition, separate valuation of these types of

² The ex-vessel value is based on the annual fee estimated by NMFS RAM division for QS holders to calculate costs per landing for IFQ Program services (NOAA 2010c, NOAA 2010d, NOAA 2011b). Price data for each species are available from two principle sources: the Alaska Department of Fish and Game Commercial Operators Annual Report (COAR) and the National Marine Fisheries Service, RAM Division fee assessment.

³ For purpose of estimating the annual average revenue per QS holder, the average QS holding is converted to average IFQ pounds (metric tons) and multiplied by available transfer price per pound to estimate average revenue potential for an average QS holding. The expected revenue is estimated by NMFS RAM division from annual data on QS transfers (NOAA 2010a; NOAA 2010b).

IFQ privileges is possible only by subtracting the value of transferred QS from the value of QS and IFQ transferred together. Thus such an estimate is not based on value of IFQ sold alone and is not addressed here.

Data are used from two types of IFQ Program QS holders affected by this action, QS holders who have not fished or transferred their QS since it was initially issued at the inception of the IFQ Program and those QS holders that actively fish their QS. The latter are small entities that will benefit from this action and are unique QS holders, individuals or non-individuals, that will receive an amount of the revoked inactive QS in proportion to their IFQ allocation. Small entities adversely impacted, though not significantly adversely impacted, by this action are the QS holders whose inactive QS will be revoked unless they voluntarily comply with the requirements to be specified in regulation to retain the impacted QS. Division of small entities into beneficiaries and benefactors assumes affected QS holders that receive QS in proportion to their allocation perceive the additional QS as a positive outcome. The purposes of including QS holders with active QS (beneficiaries) in the analysis in addition to the QS holders with inactive QS (benefactors) is to provide the basis for estimating the size of impact that revoking and redistributing of QS places on QS holders and to allow independent assessment of the significance of these actions relative to the size of the IFQ Program.

At the end of 2010, the most recent year with complete data, a total of 2,778 unique persons held halibut QS on 3,965 active halibut IFQ permits with a sum of 331,653,004 units of QS (40,298,000 net lb, 18,279 mt) in the halibut fishery. Inactive halibut QS was held by 219 unique persons and amounted to 195,038 units (19,374 net lb, 8.8 mt). A total of 837 unique persons held sablefish QS on 1,517 active sablefish IFQ permits summing to 317,801,032 units of QS (24,876,797 round lb, 11,284 mt) and 3 persons held 9,281 inactive QS units of sablefish (661 round lb, 0.3 mt). No permit data exist for QS holders with inactive QS because no landings were recorded on the permit that would result in permit registration. As of June 30, 2011, QS holders of inactive halibut QS will average a loss of \$2,300 each (based on 2010 ex-vessel price per net pound of halibut) while holders of inactive sablefish QS will average a loss of \$4,900 each (based on 2010 ex-vessel price per round pound of sablefish).

The pounds of annual TACs represented by the revoked IFQ will be distributed among IFQ permit holders with active QS in an amount proportional to their IFQ allocation. The RIR/FRFA (NPFMC 2009) notes that the revoked inactive QS and associated IFQ is not expected to adversely affect IFQ permit holders that are active participants in the halibut and sablefish fixed-gear fisheries. Current assessment of applicable data supports this view. As of October 30, 2011, the percent of the total IFQ pounds composed of inactive pounds to be redistributed, will be approximately 0.04 percent of the 2011 harvest of active participants in the halibut fishery and 0.003 percent of the 2011 harvest of active participants in the sablefish fishery. Though these very small amounts of the total harvest will be further reduced when prorated amongst all permit holders with active QS, the amounts are a positive increment to each IFQ allocation. Given the proportion of QS units a single QS holder would be assigned, a very small positive change in average value is expected to impact fishery participants.

2.7.1 Determination of Small Business Entity in the Halibut and Sablefish IFQ Fisheries

Currently, NMFS does not possess sufficient ownership and affiliation information to determine the precise number of QS holders considered small entities in the IFQ Program. It is likely that most halibut and sablefish QS holders are small entities under the SBA criteria. Persons who are QS holders in the halibut and sablefish IFQ fisheries in Alaska appear to be “small business concerns” because the majority of the QS held is owned independent of any other entity and the predominate operation is an owner operator of a vessel that is not dominant in other BSAI or GOA fisheries. These small business concerns

are not representative of large capitalized fishing companies and the viability of the fishing operation does not seem to be dependent on complex ownership affiliations.

While some operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and sablefish 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 \$4.0 million in combined gross receipts in 2009. Therefore, all halibut and sablefish vessels have been assumed to be “small entities,” for purposes of the FRFA. 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.

Several metrics are used to validate the small business nature of the IFQ Program halibut and sablefish fixed-gear fishery operations. These metrics demonstrate that on average a QS holder operating as a small business in the halibut and sablefish IFQ Program has combined annual receipts totaling less than \$4.0 million. The metrics include simple accounting of the number of entities by species and area (Table 1), profiling the capacity of the average halibut and sablefish business (Tables 14 and 15), and an updated assessment of the maximum number of participants based on caps examined in the IRFA.

Small IFQ business’ can be profiled to the best extent by examining several variables by area over time: the number of persons holding QS, the amount of QS held by persons, the number of vessels with IFQ harvests, the vessel size class, and the median harvest by vessel size category (Table 14). Data on number of persons holding QS blocks in 2004, 2008 and 2010 indicate that in areas with larger TACs and higher numbers of QS holders, such as Areas 2C and 3A, between 34 percent and 65 percent of the persons holding halibut QS have IFQ holdings of 3,000 or less pounds (in 2010 IFQ pounds). Fewer persons, between 6 and 22 percent of all QS holders in these areas during these years, retain halibut QS holdings between 10,000 and 25,000 pounds and 1 percent or less have QS holdings greater than 25,000 pounds. In halibut regulatory Area 4D, the Bering Sea, where fewer participants target a lower TAC, about 8 percent of the persons hold QS less than 3,000 pounds while around 40 percent hold QS amounts greater than 25,000 pounds. Minor trends in business profiles by area can be seen over time in two areas, Area 3A and 3B, show distinct shifts in halibut QS holdings between the time this action was recommended by the Council (2004 data) and this point in time when the action is finalized (2010 data). Areas 3A and 3B show a 27 and 24 percent decline, respectively in the holdings of QS less than 3,000 pounds between 2004 and 2010. This decline was accompanied by a 37 and 35 percent increase in the percent of halibut QS holdings between 10,001 and 25,000 in areas 3A and 3B.

Table 14 Percent of Persons Holding Halibut QS by Area and Size of Holdings, Expressed in 2010 IFQ Pounds.

Size of IFQ Holding in 2010 IFQ lbs	Year	Area						
		2C	3A	3B	4A	4B	4C	4D
3,000 or less	2004	65%	47%	25%	41%	19%	24%	6%
	2008	58%	37%	19%	35%	17%	23%	9%
	2010	56%	34%	19%	35%	19%	25%	9%
3,001-10,000	2004	28%	25%	25%	30%	30%	32%	22%
	2008	34%	29%	24%	30%	30%	32%	21%
	2010	35%	29%	23%	26%	26%	28%	22%

10,001-25,000	2004	6%	16%	27%	21%	28%	29%	33%
	2008	7%	20%	31%	27%	29%	21%	30%
	2010	9%	22%	31%	31%	29%	25%	26%
over 25,000	2004	0%	12%	23%	8%	23%	16%	39%
	2008	1%	15%	26%	9%	23%	23%	40%
	2010	1%	16%	27%	9%	26%	23%	43%
Total Number of Persons	2004	1413	1897	557	280	107	63	49
	2008	1225	1547	495	239	99	56	47
	2010	1162	1462	489	230	96	53	46

The trend in Sablefish QS capacity (Table 15) differs somewhat by area and time from the halibut fishery. Holdings of sablefish QS by amount of IFQ pounds are more consistent within areas and between areas over time compared to the distribution of QS holdings in the halibut fishery. Areas with larger TACS garner the greatest proportion of QS holders and also demonstrate the more recent trend of increasing numbers of persons with larger sized QS holdings shown for halibut. Between 36 and 54 percent of the persons holding sablefish QS in all regulatory areas in the years 2004, 2008, and 2010 have holdings less than 5,000 pounds. During the same years, QS holdings between 5,001 and 10,000 pounds of sablefish IFQ are held by 12 to 19 percent of the total number of persons with sablefish QS. The percent of QS holder with QS in weight categories between 5,001 and 10,000 and between 10,001 and 25,000 remains relatively constant within areas over time. Similarly, QS holdings between 10,001 and 25,000 pounds of sablefish IFQ vary from 13 percent to 18 percent except for Southeast. The amount of sablefish QS holdings between 10,001 and 25,000 pounds of sablefish held by persons in Southeast declined from 25 percent in 2004 to 13 percent in 2010. The percent of holdings greater than 25,000 pounds is more variable between areas but mostly consistent within areas over time except for Southeast where the amount of QS holdings increased from 16 percent to 28 percent from 2004 to 2010 indicating some QS holdings were upgraded from the 10,000 to 25,000 pound range to an amount over 25,000 pounds.

Table 15 Percent of persons holding sablefish QS by area and size of holdings, expressed in 2010 IFQ pounds.

Size of IFQ Holding in 2010 IFQ lbs	Year	Area					
		Southeast Outside	West Yakutat	Central GOA	Western GOA	Aleutian Islands	Bering Sea
5,000 or less	2004	43%	54%	48%	49%	36%	39%
	2008	42%	53%	45%	46%	42%	40%
	2010	40%	52%	43%	42%	40%	35%
5,001-10,000	2004	16%	14%	12%	16%	19%	16%
	2008	17%	12%	12%	18%	17%	17%
	2010	19%	13%	13%	18%	19%	15%
10,001-25,000	2004	25%	16%	15%	17%	18%	18%
	2008	15%	16%	14%	17%	15%	15%
	2010	13%	15%	14%	17%	13%	18%
over 25,000	2004	16%	16%	26%	18%	27%	27%
	2008	25%	19%	29%	20%	25%	28%
	2010	28%	20%	30%	23%	28%	33%

Total Number of Persons	2004	464	280	429	173	98	114
	2008	92	244	386	169	92	110
	2010	93	237	378	168	93	101

The IRFA indicated the maximum number of directly regulated small entities that operate as fishing vessels in an IFQ fishing area may be deduced from the restrictions placed on the amount of annual IFQ that may be landed from any individual vessel fishing in that area. The IFQ Program rules place an annual limit on the amount of TAC that can be landed from one vessel during a fishing season. This vessel IFQ cap is a constant percentage of the TAC by area. The IFQ Program rules also places an annual limit on the amount of QS that a person may hold. This QS holder use cap is set at a constant percentage of the QS pool for each species by regulatory area and has been constant based on the 1996 quota share pools. For example, the Southeast Alaska (Area 2C) halibut use cap is about 600,000 QS units and the 2010 ratio of QS units to pounds is 13.53 QS units/lb: the 2010 limit on the amount of Area 2C halibut a person could hold would have been 44,331 pounds of halibut IFQ. In addition, a vessel operating in the 2010 2C halibut fishery would have been limited to one percent of the 2010 TAC of 4,400,000 pounds halibut IFQ: in Area 2C a limit of 44,000 pounds halibut IFQ could have been landed from a single vessel in 2010. Based on preliminary 2010 ex-vessel value per pound of halibut, the use caps equate to a maximum landed value of halibut equal to about \$218,000 per vessel. For sablefish in Southeast (Southeast Outside) the use cap is over 688,000 units. Using the 2010 ratio of 14.04 QS units/lb the Southeast Outside sablefish use cap would have been limited to just over 49,000 pounds sablefish IFQ. The vessel landing limit of one percent of the TAC resulted in just over 56,500 pounds for 2010. Given an ex-vessel value of \$3.86, the maximum value of harvested sablefish would have been over \$219,000 per vessel. This example while limited to Area 2C and Southeast Alaska demonstrates the utility of IFQ Program use caps in limiting annual vessel harvests by area. In this case, the maximum use cap and vessel IFQ caps result in maximum harvest value far below the \$4.0 million SBA limit. While this vessel and value metric provides a comparison to SBA criteria in terms of maximums, the actual data on numbers of vessels, numbers of QS holders, and revenue from QS are also presented by area in Table 13.

2.7.2 Determination of the Direct Effect on a Small Business Entity

Since the overall size of inactive QS holder's fishery operations is unknown, a more general description of these directly affected entities is used as a proxy to indicate if this action will have a direct effect on these small entities compared to the \$4 million cap maximum. The Annual Stock Assessment Fishery Evaluation (SAFE) Economic Report estimates the number of groundfish hook and line vessels that caught or caught and processed more than and less than \$4 million ex-vessel value or product value of groundfish and other species by area and vessel type. The value of groundfish from hook and line vessels includes all sablefish harvests while the value of other species includes all halibut harvests. No break out of halibut and sablefish harvest values by QS holders targeting these species exists thus the size of QS holding in Tables 14 and 15 can be coupled to the value of harvests by vessel category to approximate the potential capacity of the effected entities and associated value of landed and processed product. Table 16⁴ shows no catcher vessels (CV) and only catcher processor vessels (CP) catch and process more than

⁴ Data in Tables 16 and 17 are from the Commercial Operators Annual Report and allow estimation of the total gross value of groundfish including halibut and sablefish by metric ton from all hook and line catcher vessels and catcher processor vessels in and off Alaska that harvest these species directly or as a part of the groundfish complex (NMFS, SAFE Economic Report, Hiatt, T. et.al. 2011, Table26).

\$4.0 million dollars ex-vessel product value during the years this action has been considered. Table 17 shows that all hook and line catcher vessels and a proportion of all hook and line catcher processors harvested groundfish valued at less than \$4 million dollars. Participation of catcher processors in the halibut and sablefish fisheries has declined over time to about 14 vessels in 2010. Thus the portion of the groundfish harvest represented by the effected entities is likely harvested by operations landing less than \$4.0 million dollars. The ex-vessel value per catcher vessel for Alaska groundfish delivered to shoreside processors (Table 18) supports this conclusion for entities operating hook and line catcher vessels that target groundfish including halibut and sablefish throughout Alaska.

Table 16 Number of hook and line groundfish vessels that caught or caught and processed more than \$4.0 million ex-vessel value or product value of groundfish and other species by area, vessel type and gear.

Year	Gulf of Alaska			Bering Sea/Aleutian Islands			All Alaska		
	CV	CP	All Vessels	CV	CP	All Vessels	CV	CP	All Vessels
2004	0	13	13	0	28	28	0	28	28
2005	0	14	14	0	32	32	0	32	32
2006	0	19	19	0	35	35	0	35	35
2007	0	20	20	0	33	33	0	33	33
2008	0	18	18	0	33	33	0	33	33
2009	0	16	16	0	26	26	0	26	26
2010	0	13	13	0	25	25	0	25	25

Note: Includes only vessels that fished part of federal groundfish TACS. Determination that a vessel was above the \$4.0 million threshold was based on total revenue from catching or processing all species not just groundfish.

Source: CFEC fish tickets, weekly processor reports, NMFS permits, Commercial Operators Annual Report (COAR), ADF&G intent-to-operate listings. National Marine Fisheries Service, P.O. Box 15700, Seattle WA 98115-70.

Table 17 Number of hook and line groundfish vessels that caught or caught and processed less than \$4.0 million ex-vessel value or product value of groundfish and other species by area, vessel type and gear.

Year	Gulf of Alaska			Bering Sea/Aleutian Islands			All Alaska		
	CV	CP	All Vessels	CV	CP	All Vessels	CV	CP	All Vessels
2004	748	5	753	50	12	62	771	13	784
2005	679	4	683	56	8	64	703	9	712
2006	598	4	602	46	5	51	618	6	624
2007	494	2	496	36	5	41	508	6	514

2008	547	4	551	46	7	53	571	8	579
2009	530	6	536	38	15	53	547	17	564
2010	545	10	555	41	14	55	559	16	575

Note: Includes only vessels that fished part of federal groundfish TACS. Determination that a vessel was below \$4.0 million threshold was based on total revenue from catching or processing all species not just groundfish.

Source: CFEC fish tickets, weekly processor reports, NMFS permits, Commercial Operators Annual Report (COAR), ADF&G intent-to-operate listings. National Marine Fisheries Service, P.O. Box 15700, Seattle, WA98115-0070.

Table 18 Ex-vessel value per hook and line catcher vessel for Alaska groundfish delivered to shoreside processors by area and catcher-vessel length (dollars in thousands).

Year	Gulf of Alaska			Bering Sea and Aleutian Islands			All Alaska		
	<60	60-124	>=125	<60	60-124	>=125	<60	60-124	>=125
2004	64	176	30	71	110	101	67	193	102
2005	62	211	60	63	169	127	65	238	147
2006	68	253	55	103	225	350	74	307	370
2007	73	276	9	78	286	222	77	336	224
2008	79	341	76	121	284	379	87	404	372
2009	69	276		75	158	198	74	288	198
2010	78	325		109	173	188	85	342	188

Note: These estimates include catch from both federal and state of Alaska fisheries.

Source: NMFS Alaska Region Catch-Accounting System and Weekly Processor reports; ADF&G COAR buying data. National Marine Fisheries Service, P.O. Box 15700, Seattle, WA 98115-0070.

Based on metrics per QS holder, the cap on maximum halibut and sablefish revenues, and revenues for the average groundfish vessel, 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 the directly regulated entities subject to this action.

Aside from assigning ex-vessel value to IFQ pounds held by a QS holder to estimate average ex-vessel value per pound of QS held, most all metrics analyzed and the results used to quantify the size of the small entities in the IFQ Program are based on vessels and not on QS holders. Therefore a final comparison is made between these metrics per vessel and the same metrics per QS holder to approximate costs and benefits of the preferred alternative to the small entity impacted, the QS holder. An estimate of a vessel's revenue in relation to a QS holder's revenue is used to translate between the economy of the affected entity, a QS holder, and the accepted definition of a small business, a harvesting vessel. The average annual value of QS holdings per QS holder and per vessel are estimated to gauge the approximate value of a QS holder's QS relative to the vessel used to harvest that QS.

Based on the maximum number of persons holding active QS in 2010 the average annual value of QS

holding per halibut QS holder is about \$105,000 and for sablefish the value is \$133,000. In comparison, using the number of vessels in 2010, the 2010 average value of active halibut QS on a vessel is \$271,500 and the 2010 average value of active sablefish QS on a vessel is \$302,500. The differences in value of the average QS holding per active QS holder and the average value of active QS on a vessel can be explained by at least one of two circumstances. First, QS from multiple IFQ permit holders may contribute to landed catch from a single vessel's harvest in the area endorsed on the IFQ permits so long as the total amount of QS from all permit holders does not exceed the harvesting vessel's seasonal IFQ poundage cap when all QS is converted to IFQ pounds. Second, a QS holder may have QS holdings equal to the QS cap for one or both species in multiple areas as long as the sum of the QS for a unique combination of species and area does not exceed the QS use cap. In either circumstance, the realized value of QS to the small entity, a QS holder or a vessel, is less than the SBA's \$4 million criteria used to distinguish small entities.

2.8 Description of Projected Record Keeping, Reporting and Other Compliance Requirements

The final rule implements regulations authorizing NMFS to send each holder of inactive QS a "Notice of Determination of Quota Share Inactivity" (Inactive QS Notice). The Inactive QS Notice provides persons holding inactive QS with the opportunity to respond in writing to NMFS within a single 60-day response period to request their QS and IFQ remain active. NOAA Fisheries will issue the Inactive QS Notice to alert holders of inactive QS of the potential forfeiture of their inactive QS, if they do not activate their IFQ permit or respond in writing to NMFS within 60 days after NMFS issues the Inactive QS Notice following implementation of the final rule.

The Inactive QS Notice will be issued by NMFS and sent by certified mail to the address of record at the time the Inactive QS Notice is sent (50 CFR 679.43(e)). The Inactive QS Notice will describe the inactive status of the QS, identify the IFQ permit holder, and provide the date 60 days from the when the Inactive QS Notice is sent when the authorized response period will end.

Small entities subject to the reporting requirement are persons NMFS determines have inactive QS and that choose to retain their QS. A person has inactive QS if official records indicate that initially-issued QS was never used to land IFQ halibut or IFQ sablefish or to transfer any QS or IFQ to or from another person. Small entities in receipt of an Inactive QS Notice have two response options: (1) do nothing, thereby resulting in revocation of the inactive QS; or (2) request in writing that the inactive QS not be revoked. A person with inactive QS that chooses to retain or activate the QS by notifying NMFS in writing that he or she does not want the inactive QS revoked must submit a written request by mail postmarked within the 60-day response period specified in the Inactive QS Notice.

The Inactive QS Notice will be constructed to allow the bottom half of the document to be separated and used as a mail-in response form. The form will be preprinted with required information and provide an example for the holder of inactive QS who may respond by mail without using the provided form. Once the completed mail-in form or other response statement is received in the mail by NMFS and verified correct, a letter of acknowledgement will be issued to the person identified as the holder of the inactive QS or his or her legal representative. The letter will serve as final agency action advising that QS will be "active" and no further response by the person holding the inactive QS or by NMFS will be required.

The options to activate otherwise inactive QS by either transferring some or all of the inactive QS, or harvesting halibut or sablefish based on IFQ derived from the inactive QS, will continue to be available to a person holding inactive QS through the end of the 60-day response period specified in the Inactive QS Notice. It is incumbent on the person holding the inactive QS to file appropriate documents and follow the current legal process NMFS requires to transfer or begin fishing QS. No additional period of time will be provided to demonstrate these activities.

A person holding inactive QS who is unable to respond to the Inactive QS Notice from NMFS within the 60-day response period may appeal to NMFS to submit his or her response late to the NMFS Alaska Region Office of Administrative Appeals pursuant to § 679.43. As a practical matter, any other written challenge of the Inactive QS Notice within the 60-day response period will be considered a request to not revoke the inactive QS. As such, a challenge will activate the otherwise inactive QS by demonstrating a reaction and, therefore, at least minimal activity in the IFQ Program.

The action contains a collection-of-information requirement subject to the Paperwork Reduction Act. The written requirement imposes *de minimus* costs upon the subset of inactive QS owners (ie. those choosing to notify NMFS of their desire to retain their inactive QS) and involves no special skills. Public reporting burden for a letter requesting NMFS not revoke IFQ Program QS is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

2.9 Description of agency Steps to Minimize Significant Economic Impacts on Small Entities.

In June 2006, the Council took action on a multi-part IFQ regulatory amendment package, including this action on inactive QS. Since Council action, NMFS, Alaska Region has maintained a website listing of inactive QS and the information needed to facilitate voluntary transfers of QS. NMFS also contacted persons holding inactive halibut or sablefish QS by direct mail. NMFS notified these persons of the status of this action in letters sent by direct mail in January 2008 and again in March 2009. NMFS communicated that it was pursuing rulemaking that, if implemented, would require persons to notify NMFS in writing that they do not want their inactive QS and associated annual IFQ revoked. In between these notification letters, the amount of inactive halibut QS declined below the threshold poundage to conduct a lottery prompting the Council, in February 2009, to reaffirm its previous recommendation for Alternative 3, minus the lottery. The RIR/IRFA for the regulatory amendment to the halibut and sablefish IFQ Program was updated to reflect the changes in QS and finalized September 8, 2009. NMFS also provided broad public notice of the Council's intent to withdraw inactive QS with publication of the proposed rule (75 FR 51743) in the Federal Register, August 23, 2010.

The RIR/IRFA prepared for this action reports that when the Council initially considered the proposal in June 2006, 534 persons held 865,586 units of inactive halibut QS (280,000 lbs [127 mt] in 2006 equivalents). Inactive sablefish QS equating to 57,522 units (16,000 lbs [7.3 mt] in 2006 equivalents) was held by seven persons. As of the end of the 2011 fishing season; 202 persons held 156,218 units of inactive halibut QS (10,597 lbs [4.8 mt] in 2011 equivalents) and two persons held 9,281 units of inactive sablefish QS (695 lbs [0.32 mt] in 2011 equivalents). Overall the communications with IFQ permit holders stimulated transfers of inactive QS that resulted in a 62 percent decline in the number of persons holding inactive halibut QS and a 71 percent decline in the number of persons holding inactive sablefish QS. The decline in QS units was also similar for both species: inactive halibut QS declined 82 percent and inactive sablefish QS declined 84 percent.

2.9.1 Factual, Policy and Legal Reasons for Selecting the Alternative in the Final Rule

The RFA emphasizes consideration of alternatives that may minimize the significant economic impact on small entities, while still achieving the stated objectives of the action. The small entities directly regulated by the selected alternative are persons with an IFQ permit that is annually allocated QS and the QS has never been fished or transferred. No other alternatives meet the objectives of the action including the status quo. The status quo alternative would not revoke QS and therefore would not have met the multiple objectives of this action. The objectives of this action that revokes inactive QS and redistributes the associated IFQ to the fleet, are to improve access to all available QS, increase the operational

flexibility of fishermen participating in the IFQ fisheries, increase yield from QS and help achieve optimum yield, and reduce administrative costs and burden. These objectives minimize the economic impact on the affected small entities which comprise the majority of the IFQ Program fisheries participants. The objectives support the policy determined by the Council's selection of the preferred alternative, achievement of optimum yield and efficient use IFQ Program and participant resources.

The Council directly regulates allocations of halibut to IFQ permit holders under authority of the Halibut Act through the IFQ Program regulations. The IPHC directly regulates and manages all other aspects of halibut fisheries under the Halibut Act and updates regulations annually. Sablefish IFQ and QS holders are directly regulated under the IFQ Program regulations, the BSAI Groundfish FMP, and the GOA Groundfish FMP which are all products of the Council.

This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska and with National Standards 1 and 5 of the Magnuson-Stevens Act. The Administrator, Alaska Region, NMFS, determined that this action is necessary for the conservation and management of the fisheries managed under the halibut and sablefish IFQ Program and that it is consistent with the Halibut Act, the FMPs, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable laws.

2.9.2 Other Alternatives Rejected by the Agency

The Council reviewed the status quo, no action alternative of not revoking inactive halibut or sablefish QS, and two action alternatives to withdraw inactive QS. NMFS considered the effects and costs of this action in analysis of the alternatives independent of all entities status as small or large entities. Each of the alternatives considered and described in the RIR were structured to remove QS that was defined inactive while still achieving the stated objectives of the action. Each one of the alternatives considered by the agency and rejected by the Council had potential to impact predominantly small entities as did the preferred alternative.

During initial review of the draft analysis, the Council rejected an option to redistribute unused sablefish QS through a lottery, because only 57,522 units (less than 7,000 pounds) held by 7 permit holders (Table 3) were estimated to be inactive at the time the Council reviewed the draft analysis. The Council deemed that the administrative costs of a lottery for sablefish exceeded the benefits. The structure of the halibut QS lottery required availability of a threshold amount of inactive QS and was to be eliminated if the amount of inactive QS fell below the threshold of QS units equal to 50,000 pounds (22.7 mt) for all IPHC regulatory areas.

In subsequent review, the Council determined that the remaining outstanding inactive halibut QS had declined by such an amount (between 2006 and 2009) that there was insufficient QS to justify the cost of a lottery. Thus the original impetus for a QS lottery has been superseded by ongoing changes in the characteristics of the halibut and sablefish fisheries QS holdings; specifically, the increased transfer of inactive QS and elimination of latent IFQ. The provision for a lottery to redistribute revoked halibut QS to eligible persons was rescinded from the preferred alternative and the two action alternatives were merged into one alternative. Compared to the status quo, or the alternative to remove all QS, this action allows holders of inactive halibut or sablefish QS to transfer or fish their QS prior to the end of a 60-day response period, voluntarily relinquish their inactive QS, or retain their QS by request.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of this action and minimize adverse economic impact on small entities.

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

NMFS is not aware of any alternatives, in addition to the alternatives considered and rejected, that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes, and that would achieve the objectives of this action, while minimizing the adverse economic impact on small entities.

3.0 REFERENCES

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

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. Pages 186-207 in R. Shotton, editor. Case studies on the effects of transferable fishing rights on fleet capacity and concentration of quota ownership. FAO. Fisheries Technical Paper 412. FAO, Rome. Online: <http://www.fao.org/DOCREP/005/Y2498E/Y2498E00.HTM>

Herrmann, M. and K.R. Criddle, 2006. An Econometric Market Model for the Pacific Halibut Fishery, Marine Resource Economics, Marine Resources Foundation, Vol. 21(2).

Hiatt, T., Dalton, M., Feltoven, R., Fissel, B., Garber-Yonts, B., Haynie, A., Hime-Cornell, A., Kaperski, S., Lee, J., Lew, D., Pfeiffer, L., Sepez, J., and C. Seung. 2011. Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Area: Economic Status of the Groundfish Fisheries off Alaska, 2010. NOAA, National Marine Fisheries Service, Alaska Fisheries Science Center, Resource Ecology and Fisheries Management Division, Economic and Social Sciences Research Program. November 18, 2011. 280 pgs. Online: <http://www.afsc.noaa.gov/refm/docs/2011/economic.pdf>

Hiatt, T., Dalton, M., Feltoven, R., Garber-Yonts, B., Haynie, A., Kaperski, S., Lew, D., Package, C., Pfeiffer, L., Sepez, J., C. Seung and the staff of Northern Economics, Inc. 2009. Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands Area: Economic Status of the Groundfish Fisheries off Alaska, 2008. NOAA, National Marine Fisheries Service, Alaska Fisheries Science Center, Economic and Social Sciences Research Program, Resource Ecology and Fisheries Management Division, December 9 2009. 280 pgs. Online: <http://www.afsc.noaa.gov/refm/docs/2009/economic.pdf>

NPFMC 2006. Initial Review Draft of the Environmental Assessment/Regulatory Impact Review/Initial

NPFMC. 2009. Initial Review Draft of the Environmental Assessment/Regulatory Impact Review/Initial

NPFMC. 2011. Initial Review Draft of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis to Revise Halibut Prohibited Species Catch Limits under Gulf of Alaska Groundfish Harvest Specifications. September 12, 2011.

NOAA. 2007. Pacific Halibut – Sablefish IFQ Report, For Fishing Year 2003. The 9th IFQ Program Report. NOAA Fisheries, Alaska Region, Restricted Access Management. October 2007. Online: <http://www.fakr.noaa.gov/ram/rtf03.pdf>

NOAA. 2009. Pacific Halibut – Sablefish IFQ Report, Fishing Year 2008. NOAA’s National Marine Fisheries Service, Restricted Access Management. April 2009. Online: <http://www.fakr.noaa.gov/ram/rtf08.pdf>

NOAA. 2010a. Transfer Report, Changes Under Alaska’s Halibut IFQ Program, 1995 Through 2009. NOAA Fisheries Service, Restricted Access Management Program, Juneau, Alaska. Online: http://www.fakr.noaa.gov/ram/reports/halibut_transfer_rpt.pdf

NOAA. 2010b. Transfer Report, Changes Under Alaska’s Sablefish IFQ Program, 1995 Through 2009. NOAA Fisheries Service, Restricted Access Management Program, Juneau, Alaska. Online: http://www.fakr.noaa.gov/ram/reports/sablefish_transsum_changes.pdf

NOAA. 2010c. Annual Ex-Vessel Prices of Halibut by Management Area and Statewide, from 1992 to 2009. NOAA Fisheries Service, Restricted Access Management Program, Juneau, Alaska. Online: <http://www.fakr.noaa.gov/ram/ifqreports.htm#special>

NOAA. 2010d. Annual Ex-Vessel Prices of Sablefish by Management Area and Statewide, from 1992 to 2009. NOAA Fisheries Service, Restricted Access Management Program, Juneau, Alaska. Online: <http://www.fakr.noaa.gov/ram/ifqreports.htm#special>

NOAA. 2011. Proposed regulations to implement a catch sharing plan for the guided sport and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). National Marine Fisheries Service. Juneau, Alaska. Federal Register Volume 76, No. 141. Friday, July 22, 2011. Proposed Rules Pages 44156-44198: (76 FR 44156). Online: <http://209.112.168.2/sustainablefisheries/halibut/sport.htm>

NOAA. 2011. The Pacific Halibut and Sablefish IFQ Report Fishing Year 2010 (March 6, 2010- November 15, 2010). NOAA Fisheries Service, Restricted Access Management Program, Juneau, Alaska. August 2011. 91 pgs. Online: <http://www.alaskafisheries.noaa.gov/ram/ifqreports.htm>

Pautzke, C.G. and C.W. Oliver 1997. North Pacific Fishery Management Council. Development of the Individual Fishing Quota Program for Sablefish and Halibut Longline Fisheries off Alaska. Paper presented to the National Research Council's Committee to Review Individual Fishing Quotas. Anchorage, Alaska. September 4, 1997.

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IFQ Implementation Team	various
Advisory Panel	various
Scientific and Statistics Committee	various

APPENDIX 1 LETTERS SENT TO QUOTA SHARE HOLDERS.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21568
Juneau, Alaska 99802-1568

January 2008

Dear Quota Share Holder:

This letter is early notice of an anticipated change to the Pacific halibut and sablefish Individual Fishing Quota (IFQ) program. According to records maintained by the Restricted Access Management (RAM) Program, you were initially issued Quota Share (QS) but you have never used any of your annual IFQ permits to make landings, nor have you ever participated in transfers of any QS or IFQ to or from another person. Therefore, we consider you to be an "inactive" QS holder.

Background

In response to constituent inquiries about IFQ program administration costs and unfished IFQ, the North Pacific Fishery Management Council (Council) has recommended that NMFS implement regulations that would revoke a QS held by "inactive" QS holders. This action would occur only after: (1) publication in the Federal Register of a proposed rule inviting public comment and a final rule which would implement this proposed regulation change, if it is approved; (2) ample notice to the public about this regulation change, and (3) an opportunity for you to request in writing that your QS not be revoked.

Program Development

We are developing regulations to implement the Council's recommendations. At present, we have no definite implementation schedule, but this change would not be effective before at least 2009. This letter is just a notice that program development has begun. If you act to fish your QS or transfer it to another person before this program is implemented, we would no longer consider you "inactive." On the other hand, if you do not take some action to change your inactive status, *or at the appropriate time* provide notice in writing to RAM of your interest in retaining your QS, your QS could be permanently revoked without compensation. Note that we do not assist Quota Share holders in arranging transfers. You may wish to check trade journals for advertisements and for brokers who provide these professional services.

Again, this letter is notice of pending IFQ program changes; your QS would not be revoked until new regulations are approved, published, and effective and you are provided written opportunity to respond. If you have further questions about this proposed change to the IFQ program, please contact NMFS:RAM at (toll-free) 800-301-6846 option 2.

Sincerely,

Jessica Ghanetti
Acting Program Administrator
Restricted Access Management, Alaska Region



5030K-801001 www.fishbase.gov



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668
March 30, 2009

Dear Quota Share Holder:

This letter is notice of a pending IFQ program change. According to our records, you were issued Quota Share (QS) at the start of the Pacific halibut and sablefish individual fishing quota (IFQ) program in 1995. Our records also indicate that you have never used any of your annual IFQ permits to commercially harvest halibut or sablefish and you have not transferred any QS or IFQ to or from another person. Therefore, we consider your QS to be "inactive."

We are developing regulations that, if approved, would revoke inactive QS. You could prevent revocation of your inactive QS by taking one of the following actions: (a) transfer some or all of your QS to another person; (b) transfer additional QS from another person to you; (c) use your annual IFQ permit by fishing for halibut or sablefish; or (d) at the appropriate time, submit a letter to the Restricted Access Management Program, NMFS Alaska Region, informing us of your interest in continuing to hold these inactive QS.

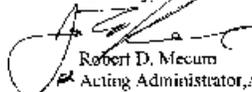
The North Pacific Fishery Management Council (Council) recommended in June 2006 that we implement regulations to revoke QS held by inactive QS holders. In February 2009, the Council again considered this issue and decided not to change its original recommendation. Therefore, we are proceeding with development of regulations that, if approved, would change the IFQ program to revoke inactive QS. Development of regulations involves publication of a proposed rule notice in the *Federal Register* inviting public comment, consideration of the comments and, if the action is approved, publication of a final implementing rule. This regulatory process is not likely to be completed before 2010. We will later provide public notice of this proposed change and opportunity for you to request in writing that your QS not be revoked.

This letter is an advance notice that we have started working on proposed regulations that would implement the Council's recommendation. If this recommendation is approved and implemented as proposed and you take no action to prevent your inactive QS from being revoked as outlined above, then your QS could be permanently revoked without compensation.

Note that there are always persons interested in acquiring QS. We do not assist QS holders to arrange transfers but we provide lists of QS holders with business mailing addresses, and an updated copy of the "Inactive Persons" list on our Internet web site, under the heading "Licenses Issued" on this web page: <http://www.alaskafisheries.noaa.gov/ramp/ilireports.htm>. You also may wish to check trade journals for advertisements and with brokers who provide these professional services.

If you have further questions about this proposed change to the IFQ program, please contact the Restricted Access Management Program at: (toll-free) 800-304-4846 option 2.

Sincerely,


Robert D. Mecum
Acting Administrator, Alaska Region



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