

FINAL REGULATORY FLEXIBILITY ANALYSIS

For Substantial Regulatory Amendments
to Recordkeeping and Reporting Requirements

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Abstract: This Final Regulatory Flexibility Analysis (FRFA) evaluates the adverse economic impacts on regulated small entities of regulatory amendments to 50 CFR part 679 and part 680 to revise and reorganize regulations associated with logbooks, forms, and electronic reporting systems. Several definitions are changed. This action changes certain crab provisions, including fee calculations. The FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612).

FINAL REGULATORY FLEXIBILITY ANALYSIS

This Final Regulatory Flexibility Analysis (FRFA) evaluates the potential for adverse economic impacts this final rule will have on small entities. This FRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980 (Public Law 96-354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612). It specifically addresses the requirements at section 604(a).

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

- (1) A succinct statement of the need for, and objectives of, the rule;
- (2) 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;
- (3) 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;
- (4) 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
- (5) 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.

1. Need for and objectives of the rule

Primarily, this action would improve the methods and procedures of recordkeeping and reporting for participants in the fishery programs of NMFS Alaska Region by expanding electronic reporting methods and by simplifying and clarifying regulations.

2. Public comments

The proposed rule was published in the *Federal Register* on June 29, 2007 (72 FR 735748). An Initial Regulatory Flexibility Analysis (IRFA) was prepared and described in the classifications section of the preamble to the rule. The public comment period ended on July 30, 2007. No comments were received on the IRFA.

3. Number and description of small entities directly regulated by the final rule

As required by the RFA, NMFS has estimated the numbers of small entities that may be directly regulated by this action. Counts of small catcher vessel and catcher/processor entities are based on 2006 revenue estimates from the Alaska Fisheries Science Center. Counts of shoreside processors and stationary floating processors (SFPs) are based on 2006 information on plants and plant ownership from NMFS Alaska Region. Counts of other more specialized categories of small entities are explained when they occur below.

The number and description of small entities affected by the final rule are listed in the following table, indicating how many of each of the classes is affected by the seven major items in the rule. The criteria for determining whether or not an entity is small are described in detail in Section 2.4 of the IRFA. In general, the estimates of small entity numbers described in the following paragraphs are believed to be high for several reasons:

- Each vessel or processing plant is treated as a separate entity; however, this does not consider that a firm may own multiple vessels and/or plants.
- Revenue estimates do not take account of revenues an entity may have earned in waters outside of Alaska, or in non-fishing activities.
- Estimates do not take account of potential affiliations among entities. Cooperative membership and joint venture affiliations are common among Alaskan fishing firms.

In the absence of detailed information on ownership and affiliations, and on revenue from fishing or other activities outside of Alaska, NMFS has chosen to make estimates that are conservative, and avoid undercounting numbers of small entities.

Small Entity		Regulatory Amendment						
Number	Type	ELB (voluntary)	IERS	Permits	Text Reorg	680	Obs	Misc
771	catcher vessels	X		X	X		X	X
11	catcher/processors	X	X	X	X		X	X
80	shoreside processors		X	X	X			X
5	stationary floating processors		X	X	X			X
0	mothership							
184	Registered Buyers		X					
6	CDQ groups			X				
30	Registered Crab Receivers					X		

Electronic Logbooks (ELBs)

NMFS will provide the process and criteria by which a private-sector software vendor could obtain approval for ELB software in the Alaska Region groundfish fisheries.

NMFS will provide an option for voluntary use by operators to replace the DFL for trawl gear catcher vessels and longline or pot gear catcher vessels. ELBs will also be allowed for use by operators to replace the DCPL used by trawl gear catcher/processors, longline or pot gear catcher/processors, and motherships to voluntarily fulfill daily catch recordkeeping and reporting requirements.

The participants associated with this aspect of the proposed action include an estimated 771 small catcher vessels, 11 small catcher/processors, and no small motherships. The catcher vessel and catcher/processor estimates may be high, because they do not take account of affiliations among entities.

NMFS considered two alternatives for implementation of the ELBs: the no-action (or status quo) and action alternatives. The action alternative allows participants to voluntarily use an ELB instead of a DFL or DCPL, but does not require firms to incur additional costs, because all processors participating in Federal fisheries have access to a computer. The no-action alternative was considered, but rejected, because it did not meet the action objective of creating a better regulatory environment for the introduction and use of ELB software for compliance with NMFS' reporting requirements.

NMFS interacted with the fishing industry on the use of ELBs during a pilot project described in the RIR/IRFA wherein a trawl gear ELB created by a private vendor was used by catcher vessels. An early version of this analysis included a provision requiring that fishing operations using the ELB software file a report with NMFS within 24 hours of delivering their product. This provision was eliminated from the alternatives following industry consultations during the preparation of the IRFA. The provision was expected to impose an undue burden on operations that were using the software voluntarily and perhaps slow its adoption rate. An examination of existing response rates indicated that about 32 percent of these reports have been received by NMFS within 24 hours of the landing, and about 73 percent have been received within 48 hours of the landing. The action alternative relaxes a constraint on the public, and may reduce data entry costs relative to the DFL and DCPL.

Interagency Electronic Reporting System (IERS)

With this final rule, NMFS implements regulations for the eLandings data entry component of IERS to be used for reporting commercial fishery landings and production data and allow fishery participants to use the Internet to enter data only once for subsequent distribution to the ADF&G, the IPHC, and NMFS, as appropriate.

NMFS estimates that this action will directly regulate 11 small catcher/processors, 80 small shoreside processors, 5 small SFPs, no small motherships, and 184 small Registered Buyers. Under this action, these entities will be required to report electronically, using the IERS software in an interagency electronic reporting system.

The Registered Buyer estimates were prepared as follows. Two hundred and six (206) IFQ Registered Buyers are expected to use IERS to record their halibut IFQ deliveries under provisions of this action. An examination of the names of the Registered Buyers suggests that at

least 22 are large entities under the Small Business Administration (SBA) criteria (i.e., processors subject to the 500 employee SBA criterion). The remaining Registered Buyers appear to be small shoreside firms or fishing operations. Thus, 184 Registered Buyers are estimated to be small for IRFA purposes. This is likely to be an overestimate of the number of small entities among the Registered Buyers directly regulated by adoption of the IERS.

NMFS considered two alternatives for the IERS and eLandings: the status quo and action alternatives. The status quo alternative, if retained, would not have required firms to begin using IERS for Federal reporting purposes. However, since State regulations will require firms to begin reporting in-state deliveries of harvests with the IERS system, retention of the status quo alternative would be of no advantage to small entities. Indeed, these small entities could be in the position of having to conform to two separate reporting standards. Moreover, a significant proportion of the harvest from Federal waters is delivered to onshore or inshore processors, who would be using the IERS to input these records.

The preferred alternative requires processors to use IERS and eLandings to report data from Federal fisheries, but only imposes small additional costs. IERS is a joint project of ADF&G, IPHC, and NMFS. If NMFS adopted an alternative system, confusion would result for the fishing industry and industry costs would be increased. Additional alternatives in this instance would compromise our ability to meet the objectives of the action. Because the costs of this action are minor, it is difficult to identify additional alternatives with significant cost savings.

Regulatory Text Reorganization

NMFS reorganizes and revises § 679.5(a) and (c), such that each of the six groundfish logbooks is described in an individual section of regulatory text separately, completely, and clearly. This action also makes the regulations easier for the public to use. Regulations for processor forms also are revised and reorganized in this rule. Prior to this final rule, these regulations were arranged into tables by data element relating to multiple logbooks and forms. The reader had to consult several places in the regulations to find complete requirements for any given logbook or form. This action consolidates all of the requirements for each form and logbook into individual sections in § 679.5.

The small entities directly regulated by this action include 80 shoreside processors, 5 SFPs, 11 catcher/processors, no motherships, and 771 catcher vessels.

NMFS considered two alternatives for the reorganization of regulations: the status quo and action alternatives. Under the status quo alternative, the regulations at § 679.5 would remain without reorganization. The regulations at § 679.5 would remain arranged into tables by data element relating to multiple logbooks and forms causing the reader to consult several places in the regulations to find complete requirements for any given logbook or form. Under the regulatory scenario of the status quo alternative, participants would likely face increased R&R regulatory uncertainty and a loss of efficiency. Under the action alternative, NMFS will reorganize and revise regulations at § 679.5 such that each of the six groundfish logbooks is described in regulatory text separately, completely, and clearly. Under the regulatory scenario of

the action alternative, participants would enjoy increased R&R regulatory certainty and a gain of efficiency.

Permits

NMFS is unifying the language and revising permit-related regulations governing fishing activities in FMP fisheries in the GOA and BSAI in the EEZ off the coast of Alaska. These minor revisions will improve enforcement of the regulations at 50 CFR part 679 by clarifying and simplifying text, especially regarding permit-related issues.

NMFS estimates that 771 small catcher vessels, 11 small catcher/processors, 80 small shoreside processors, 5 SFPs, and 6 small CDQ groups are directly regulated by this action.

Six CDQ groups, representing 65 Western Alaska communities, currently participate in the CDQ Program. Each is organized as a not-for-profit entity, and none is dominant in its field. Consequently, each is a small entity under the RFA. Several CDQ groups own, in whole or in part, and operate vessels participating in the CDQ fisheries. Because CDQ groups must obtain permits for their vessels, the six CDQ groups also will be directly regulated by this rule.

NMFS considered two alternatives for the permit-related revisions: the status quo and action alternatives. The status-quo alternative would maintain the inconsistency of regulatory language regarding permit-related issues, for example, by maintaining the term “federally regulated” and by not replacing it with the specific permit that relates to the paragraph. This would maintain the inconsistency in determination of which permit authorizes which activity. Under the action alternative, NMFS “tightens up” the regulations as they relate to permits, for example, regulatory text is made specific as to whether a permit is issued to a person or to a vessel. Under the action scenario, NMFS clarifies ambiguities in the permit-related regulatory text and improves enforcement of the regulations at 50 CFR part 679.

Revise 50 CFR Part 680

eLandings Landing Report. NMFS revises regulations at 50 CFR part 680 by removing IFQ crab landing report regulations for incorporation into the § 679.5(e) eLandings regulations. The eLandings landing report originally was created for CR crab, but will be used for reporting groundfish, IFQ halibut, CDQ halibut, and IFQ sablefish as well.

This rule simply changes the location of existing regulations without changing their substantive content. NMFS therefore estimates that there will be no small entities directly regulated by this action.

NMFS considered two alternatives for the eLandings regulatory revisions: the status quo and action alternatives. Under the status quo scenario, the regulations for use of eLandings for the CR crab fisheries would remain at § 680.5 and the regulations for use of eLandings for other fisheries would be in § 679.5(e). This would duplicate two sets of regulations and introduce confusion.

Under the action alternative, NMFS removes regulatory text from § 680.5(b), (c), and (d) that describe the use of eLandings for CR crab and integrates that text into regulations at § 679.5(e). This change allows all related information for the eLandings landing report to be found in one section for groundfish, CR crab, IFQ halibut, IFQ sablefish, and CDQ halibut.

CR Registered Crab Receiver Ex-vessel Volume and Value Report. NMFS is adding a new form, the CR Registered Crab Receiver (RCR) Ex-vessel Volume and Value Report, to be submitted by participants near the end of the crab fishing year. This report is similar to a report required by regulations implementing the NMFS Alaska Region IFQ Program for Pacific halibut and sablefish. The regulations for the form will be described at § 680.5(m).

The small entities directly regulated by this action are approximately 30 RCRs required to submit an annual CR Registered Crab Receiver Ex-vessel Volume and Value Report.

NMFS considered two alternatives for the addition of this form: the status quo and action alternatives. Under the status quo scenario, the requirement to report the price paid for crab during landing through eLandings would remain mandatory. This would mean that the crab price would be inaccurate, because the price at the time of landing does not include post-delivery or end-of-season adjustments. An inaccurate report of crab value would then be used to assess fees for participants in the CR crab fisheries, required by the Magnuson-Stevens Act (Section 304(d)(2)(B)). Inaccurate fees could result in less than sufficient amounts to manage the CR Program.

The action alternative adds the new form to collect crab price information from CR Crab RCRs. The form collects information used to assess fees on an annual basis, which is a statutory requirement. NMFS considered but rejected more frequent or less frequent collection of the price information. NMFS Restricted Access Management (RAM) will collect the price information to establish a "standard" ex-vessel price for CR crab. The standard price will be used to estimate the cost recovery fees due from processors and harvesters; the participants may not participate in the CR fisheries if fees are not paid. The cost recovery fees will be used to support management of the CR Program. An additional effect will be the removal of a requirement for an RCR who receives a landing of CR crab harvested under the CDQ or Adak community allocation programs to submit for each landing the price per pound. Instead, each RCR will be required to submit a CR Registered Crab Receiver Ex-vessel Volume and Value Report near the end of the crab fishing year. In addition, the requirement to report through eLandings the price paid for crab when landed will become optional.

Groundfish Observer Provision Regarding At-sea Vessel-to-vessel Transfers

The Fisheries Monitoring and Analysis Division (FMA) monitors groundfish fishing activities in the EEZ off Alaska and conducts research associated with sampling commercial fishery catches, estimation of catch and bycatch mortality, and analysis of fishery-dependent data. As part of the FMA's North Pacific Observer Program, approximately 400 fishery observers spend up to 90 consecutive days each year at sea or at processing plants collecting data for management of the Alaskan groundfish fisheries. On occasion, crab fisherman must transfer an observer at sea from one vessel to another.

The small entities directly regulated by this proposed action include no motherships, 11 catcher/processors, and 771 catcher vessels.

NMFS considered three alternatives for the observer at-sea transfer revisions: the status quo and two action alternatives. Under the status quo alternative, the regulatory text would not be changed.

The no-action alternative was rejected because it did not meet the action objective of creating a safe transfer environment for a groundfish observer.

Under the preferred action alternative, NMFS will revise a groundfish observer provision regarding at-sea vessel-to-vessel transfers by removing "via small boat or raft" from the regulations at § 679.50(g)(1)(ix)(A). This revision will improve safety for observers undergoing a transfer at sea. The text to be removed restricts the type of observer transfer to boat or raft. This text removal will require other types of at-sea transfer to be conducted during daylight hours, under safe conditions, and with the agreement of observers involved.

Under the second action alternative, NMFS will prohibit the transfer of an observer at sea. Most of the at-sea transfers are done by companies that own two or vessels with less than 100 percent observer coverage and use one observer to meet observer coverage requirements on these vessels. This revision would require an observer to be transferred only at the dock, resulting in increased costs for the company, because vessels would have to return to the dock to pick up or drop off an observer. This alternative was rejected for further analysis because the incremental improvement in observer safety appeared to come at a disproportionate cost to fishing operations.

Miscellaneous Revisions to Fishing Regulations at 50 CFR parts 679 and 680

NMFS proposes to amend regulations in parts 679 and 680 to improve clarity and efficiency.

The small entities directly regulated by this proposed action include 80 shoreside processors, 5 SFPs, 11 catcher/processors, no motherships, and 771 catcher vessels.

NMFS considered two alternatives for the miscellaneous regulatory revisions: the status quo and action alternatives. Under the status quo alternative the regulatory text would not be changed. Under the action alternative, NMFS will amend regulations at § 679.5 and part 680, by adding and revising definitions, revising text to clarify a Sitka Pinnacles Marine Reserve closure provision, adding or correcting cross references, removing obsolete text, adding new text, codifying certain existing practices, and revising figures and tables to part 679. These changes will facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts.

The preferred action alternative will have no known adverse impacts on small entities. The status quo alternative was rejected because it did not meet the action objective of creating a better regulatory environment.

4. Description of recordkeeping and reporting and compliance requirements

The following is a summary of the projected recordkeeping, reporting, and other compliance requirements:

- ◆ Allow operators of catcher vessels operating in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) to substitute an electronic logbook (ELB) for the daily fishing logbook (DFL), currently required; allow operators of catcher/processors and motherships operating in the GOA and the BSAI to substitute an ELB for the daily cumulative production logbook (DCPL), currently required;
- ◆ Provide the process and criteria by which a private software vendor could get ELB software approved for use in the Alaska Region groundfish fisheries.
- ◆ Implement regulations for the use of the Interagency Electronic Reporting System (IERS) and eLandings. Using eLandings on the Internet, fishery participants report commercial fishery landings and production data with a single data entry for subsequent distribution to Alaska Department of Fish and Game (ADF&G), International Pacific Halibut Commission (IPHC), and NMFS, as appropriate. This action is undertaken in close cooperation with ADF&G and IPHC, and complements parallel actions being adopted by those agencies. Although three agencies are involved in the implementation of eLandings, this analysis is focused on the Federal implications of the action. eLandings replaces the NMFS-distributed Shoreside Electronic Logbook Report to enter groundfish data and replaces the individual fishing quota (IFQ) web application for entering IFQ halibut, Western Alaska Community Development Quota Program (CDQ) halibut, and IFQ sablefish information;
- ◆ Reorganize regulations for logbooks to provide complete information for each logbook in its own section in order to make the regulations more accessible and easier to use.
- ◆ Provide uniform language and revise permit-related regulations governing fishing activities in FMP fisheries in the GOA and BSAI in the EEZ off the coast of Alaska. The minor revisions improve enforcement of the regulations at 50 CFR part 679, by simplifying text, where necessary, such that the regulations are specific, especially regarding permitting issues.
- ◆ Revise 50 CFR part 680 by removing IFQ crab landing report regulations for incorporation into § 679.5 IERS description and by adding a requirement for a CR Registered Crab Receiver Ex-vessel Volume and Value Report.
- ◆ Revise a groundfish observer provision regarding at-sea vessel-to-vessel transfers.
- ◆ Make miscellaneous revisions to fishing regulations at 50 CFR parts 679 and 680 by adding and revising definitions, revising text to clarify a Sitka Pinnacles Marine Reserve closure provision, adding or correcting cross references, removing obsolete text, adding new text, codifying certain existing practices, and revising figures and tables to part 679.

The professional skills necessary to comply with these requirements include the ability to read, speak, and write English; follow directions to accurately complete forms and documents; math skills (addition, subtraction); and proficiency with a computer.

5. Description of steps taken to minimize economic impact on small entities

According to the RFA, an FRFA should contain “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.” As described in Section 3, this regulation appears to impose no adverse economic impacts on directly regulated small entities. Therefore no steps were needed to minimize the effects of this regulatory action on small entities.

In the various items considered in this analysis, the preferred alternative was chosen rather than selecting the status quo alternative. The preferred alternative in every case supported the primary objective of this action which is to improve the methods and procedures of recordkeeping and reporting for the fishery programs of NMFS Alaska Region through expansion of electronic reporting methods and by simplifying regulations.

Use of electronic recordkeeping will allow the public to more easily record daily information and retrieve daily information and will increase the accuracy of information collected and summarized. In addition, this initiation of electronic recordkeeping is the first step to interface with onboard electronics to collect certain information automatically or almost automatically (for example location and direction information from a global positioning system). Electronic recordkeeping also creates a wide range of potential reports to allow the operator to analyze his or her fishing activity.

The eLandings will be used as a single reporting system for commercial harvest and production of groundfish, halibut, and crab. eLandings allows processors and others to make all three required landings reports to regulatory agencies (NMFS, IPHC, and ADF&G) with a single reporting system. Using eLandings removes reporting duplications, and once implementation is complete, eLandings makes recordkeeping and reporting simpler. Additional benefits of the eLandings system include:

- Immediate verification of permits and vessel identification;
- Timely catch reports for management agency use;
- Options for processors to import or export catch and production information; and
- Significant reduction in data entry by management agencies and processors.

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