DRAFT

REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS

FOR

PROPOSED HALIBUT FISHERY REGULATIONS

AND

AMENDMENT 72 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS

AND

PROPOSED AMENDMENT 64 TO THE FISHERY MANAGEMENT PLAN FOR GROUNDFISH OF THE GULF OF ALASKA

prepared by

Staff
National Marine Fisheries Service

June 2002

TABLE OF CONTENTS

1.0 INTRODUCTION 1
1.1 Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements 3
1.1.1 Purpose of and need for the action 3
1.1.2 Alternatives considered 5
1.2 Action 2: Revise the IFQ and CDQ offload window requirement 6
1.2.1 Purpose of and need for the action. 6
1.2.2 Alternatives considered 7
1.3 Action 3: Revise IFQ Vessel Clearance requirements 8
1.3.1 Purpose of and need for the action 8
1.3.2 Alternatives considered 9
1.4 Action 4: Revise IFQ and CDQ Shipment Report requirements 9
1.4.1 Purpose of and need for the action 9
1.4.2 Alternatives considered 10

2.0 REGULATORY IMPACT REVIEW 10
2.1 The problem, the management objectives, and the alternatives 12
2.2 Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements 13
2.2.1 Management Action Alternatives 13
2.2.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action 13
2.2.3 Costs and Benefits 14
2.3. Action 2: Revise IFQ Offload Window Requirements 17
2.3.1 Management Action Alternatives 17
2.3.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action 18
2.3.3 Costs and Benefits 18
2.4 Action 3: Revise IFQ Vessel Clearance requirements 19
2.4.1 Management Action Alternatives 19
2.4.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action 19
2.4.3 Costs and Benefits 19
2.5 Action 4: Revise IFQ and CDQ Shipment Report 20
2.5.1 Management Action Alternatives 20
2.5.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action 20
2.5.3 Costs and Benefits 20
2.6 Review of significance criteria 21

3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS 21
3.1 Requirement to Prepare an IRFA 22
3.2 What is a Small Entity? 23
3.3 Purpose and Legal Basis for the Proposed Rule 24
3.4 Small Entities in the IFQ Program 24
3.5 Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements--Economic Impact on Small Entities 25
3.6 Action 2: Revise IFQ Offload Window Requirements--Economic Impact on Small Entities 26

3.7 Action 3: Revise IFQ Vessel Clearance Requirements--Economic Impact on Small Entities . . 26
3.8 Action 4: Revise IFQ and CDQ Shipment Report Requirements--
Economic Impact on Small Entities 27
3.9 Other Considerations Required by the Regulatory Flexibility Act 27

4.0 SUMMARY 27

5.0 LIST OF AGENCIES AND INDIVIDUALS CONSULTED 29

6.0 LIST OF PREPARERS 29

7.0 REFERENCES 29

EXECUTIVE SUMMARY

Proposed halibut regulations, Amendment 72 to the Fishery Management Plan of the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) management area, and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs) would address several issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska, and the Community Development Quota (CDQ) Program for fisheries in and off of Alaska. The four actions proposed for this plan amendment are as follows.

(1) Revise IFQ and CDQ Prior Notice of Landing (PNOL) requirements. The regulations currently require that the operator of any vessel making an IFQ halibut and sablefish landing, including CDQ halibut landings, notify the NOAA Fisheries Office of Law Enforcement (OLE) no fewer than 6 hours before making the landing. Additionally, vessel operators are required to provide OLE with the name of the Registered Buyer to whom the vessel is delivering. The current PNOL regulations were implemented with the initial IFQ Program regulations to provide shorebased monitoring and enforcement personnel advance notice of vessel landings. Subsequent experience in the management and prosecution of IFQ fisheries suggests that the existing PNOL requirements could be revised to reduce the PNOL call-in time and modify the landing location requirements. Revising the PNOL requirements could improve economic efficiency in the fishery while continuing to provide adequate monitoring and enforcement opportunities for shorebased personnel. This analysis reviews the current PNOL requirements and alternatives to the existing requirements. This proposed change requires a regulatory amendment.

(2) Revise IFQ Offload Window requirements. The regulations currently require that vessels may commence any IFQ landing (including CDQ halibut), or offloading, between 6:00 a.m. and 6:00 p.m. unless permission to land has been granted in advance. These regulations were initially implemented to accommodate International Pacific Halibut Commission (IPHC) port-sampler and OLE personnel staffing limitations. Expanding the offload window to provide additional landing could provide some additional flexibility to the commercial fleet, however, increasing offloading times could increase data-collection, and monitoring and enforcement costs and reduce their overall efficacy. This analysis reviews the current offload requirement and an alternative to expand the existing offload window.

(3) Revise IFQ Vessel Clearance requirements. Currently, the BSAI and GOA FMPs state that vessels that are landing IFQ catch outside of the jurisdiction of the North Pacific Fishery Management Council (Council) must check in their catch at a NMFS specified site and have the load sealed prior to the vessel leaving. Regulations require that vessels landing IFQ catch outside of Alaska must obtain a vessel clearance at a port in Alaska prior to departure. Although the FMP's state that vessel holds must be sealed prior to vessels leaving the jurisdiction of the Council with catch, this provision has never been implemented and is not in regulation. There are no regulations requiring vessels to seal their holds prior to departure due to the inability of OLE to adequately seal holds without unduly compromising vessel safety. Experience with the vessel clearance requirement indicates that requiring vessels to obtain a vessel clearance at a port in Alaska has limited enforcement value. This analysis examines the status quo and an alternative to the existing vessel clearance report that would require a verbal hail-in "departure report"to replace the existing vessel clearance requirements. This proposed change requires an FMP amendment.

(4) Revise IFQ and CDQ Shipment Report requirements. Current regulations require that each registered buyer must complete and submit a written shipment report for landings of IFQ halibut and sablefish, and CDQ sablefish before the landed fish leave the landing site. Current regulations also require processors to submit a product transfer report (PTR) for all groundfish landings. The existing regulations require processors to submit two separate but essentially identical reports depending on whether the landed fish were

harvested under the IFQ Program or CDQ sablefish fishery, or under the non-IFQ and CDQ sablefish groundfish fishery. Combining the shipment report with the PTR would reduce paperwork for processors and registered buyers. They would submit one form, the PTR, to record landings of groundfish, IFQ species, and CDQ sablefish. Under this proposed alternative, Registered Buyers would submit a PTR rather than a shipment report. This would not increase the recordkeeping and reporting requirements for Registered Buyers. Although the PTR and Shipment Report differ in name, the same information is reported on both forms and they are essentially identical in appearance. This proposed change would maintain existing data collection, monitoring, and enforcement capabilities. This analysis examines the status quo and an alternative that would combine the PTR and shipment report for Registered Buyers. This would benefit processors and Registered Buyers by reducing a reporting burden. This is proposed change requires a regulatory amendment.

Alternatives for Analysis

Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements.

Alternative 1: Status quo: require that vessels adhere to existing PNOL requirements.

Alternative 2: Eliminate the PNOL requirement.

Alternative 3: Replace the reporting of "Registered Buyers" with the reporting of "Location of Landings" in the PNOL reporting requirements.

Suboption a: Change the minimum PNOL reporting requirement from six hours to three hours.

Alternative 4: Randomly apply the PNOL requirements to vessels.

Action 2: Revise IFQ Offload Window Requirements

Alternative 1: Status Quo: maintain the existing 6:00 a.m. to 6:00 p.m. offloading requirements.

Alternative 2: Extend the offload window landing requirements from 6:00 a.m. to 12:00 a.m.

Action 3: Revise IFQ Vessel Clearance requirements

Alternative 1: Status Quo: maintain the existing vessel clearance requirement

Alternative 2: Eliminate the Vessel Clearance Requirement and require a verbal "departure report" prior to leaving the jurisdiction of the Council.

Action 4: Revise IFQ and CDQ Shipment Report

Alternative 1: Status Quo: maintain the existing recordkeeping and reporting requirements.

Alternative 2: Eliminate the shipment report and require that IFQ species be reported on the Product Transfer Report.

Alternatives ***in bold italics*** represent NMFS and IFQ Cost Recovery and Implementation Committee recommendations

1. INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI and GOA are managed under the FMPs. Both FMPs were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act, P. L. 94-265, 16 U.S.C. 1801 (Magnuson-Stevens Act). Halibut fisheries are managed under the authority of the Northern Pacific Halibut Act of 1982 (NPHA). The International Pacific Halibut Commission (IPHC) is responsible for the conservation and management of Pacific halibut resource. The GOA FMP was approved by the Secretary of Commerce and became effective in 1978; the BSAI FMP became effective in 1982. The Individual Fishing Quota (IFQ) Program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries, was approved by NMFS in November 1993 and fully implemented beginning in March 1995. The sablefish IFQ Program is implemented by the FMPs and federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act. The CDQ Program is implemented by the FMPs and federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act.

The NPHA, P.L. 97-176, 16 U.S.C. 773 c (c) authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. waters which are in addition to but not in conflict with regulations of the IPHC. The halibut IFQ program is implemented by federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act and the NPHA.

The Magnuson-Stevens Act authorizes the Council to recommend to NMFS changes to the IFQ Program as necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

The National Environmental Policy Act (NEPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA) require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This document is the draft Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) for proposed changes in the sablefish IFQ Program, through Amendment 72 to the Bering Sea/Aleutian Islands (BSAI) Groundfish FMP and Amendment 64 to the Gulf of Alaska (GOA) Groundfish FMP. Concomitant changes to the halibut IFQ program would be implemented through a regulatory amendment to 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act. Section 2 contains a Regulatory Impact Review (RIR) which addresses the requirements of E.O. 12866, and Section 3 presents the Initial Regulatory Flexibility Analysis addressing the requirements of the RFA that potential adverse economic impacts on small entities be considered.

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 provides the policies and procedures to be followed by NMFS when assessing environmental issues. Under NAO 216-6, certain Federal actions that individually or cumulatively do not have the potential to pose significant threats to the human environment are exempt from further analysis and the requirement to prepare an environmental impact study or an environmental analysis (EA). This exemption, known as a categorical exclusion, applies to specific actions and general categories.

Section 6.02b.3(b)(ii) of NAO 216-6 categorically excludes "actions which do not result in a significant change in the original environmental action." Included in this general category are "minor technical additions, corrections, or changes to a management plan or regulation."

The actions comprised by these proposed amendments would not result in a significant change in the human environment. The proposed changes would make minor technical changes to existing recordkeeping and reporting requirements for the IFQ and CDQ Program. Action 3 would make a minor change to the FMPs. None of the proposed actions are precedent-setting or controversial. These actions do not affect the manner, time, or location of fishing. The proposed actions would make minor technical changes to a previously analyzed and approved action and the proposed change has no effect on individually or cumulatively on the human environment. These actions are addressed within the scope of issues thoroughly analyzed for implementation of the IFQ Program in the following documents:

Draft SEIS/RIR/IRFA for sablefish, November 16, 1989;
Revised Supplement to Draft SEIS/RIR/IRFA for sablefish, May 13, 1991;
Draft SEIS/RIR/IRFA for halibut, July 19, 1991;
Draft SEIS/RIR/IRFA for halibut and sablefish, March 27, 1992; and
Final SEIS/RIR/IRFA for halibut and sablefish, September 15, 1992.

Action 1--to replace the reporting of "Registered Buyers" with the reporting of "Location of Landing" in the PNOL reporting requirements and change the minimum PNOL reporting requirements from six hours to three hours: This action would relieve restrictions on vessel operators by providing them additional time to seek markets prior to reporting the time and location of landing. Requiring vessel operators to report a "location of landing" rather than a "Registered Buyer" provides shoreside data-collection and enforcement personnel with the location of the landing while not requiring a vessel to deliver to a specific processor. This provides vessels additional flexibility to market their product. This action modifies existing recordkeeping and reporting requirements.

Action 2--to maintain the existing offload window (status quo): The existing offload window provides adequate opportunity to vessels and accommodate data collection, monitoring and enforcement personnel requirements.

Action 3--to eliminate the Vessel Clearance, replacing it with a verbal "departure report" prior to leaving the jurisdiction of the Council. This action would modify the requirement in the BSAI and GOA FMP's for vessels with IFQ sablefish catch leaving the jurisdiction of the Council to check in with NMFS at a certified port and have the vessel's hold sealed prior to departure. This action makes little effective change in *de facto* management practices in the IFQ fisheries. This action would relieve some reporting burden and operational restrictions on vessels by allowing vessels leaving the jurisdiction of the Council to provide a verbal "departure report" rather than going to a specific port for a vessel clearance. Because enforcement personnel are not currently able to effectively determine catch quantity at the vessel clearance port and are unable to seal a vessel's hold without compromising vessel safety, from a monitoring and enforcement perspective there is no effective difference between a verbal "departure report" and the verbal vessel clearance report. This action could reduce the time vessels are required to stay in port and could reduce operating costs for vessels that are landing catch in locations outside of Alaska. This action would also amend the FMPs so that the intent of the FMPs incorporates the practical limitations of enforcement to meet the requirements of the FMPs. This action, if adopted, modifies existing recordkeeping and reporting requirements.

Action 4–to eliminate the shipment report and require that IFQ species be reported on the Product Transfer Report. This action would not have any significant impact on the management of IFQ or CDQ fisheries. Simply, this action would combine two forms into one. Under this action, Registered Buyers would submit a PTR form for landings of groundfish, IFQ halibut and sablefish, and CDQ sablefish. Currently, Registered Buyers submit a PTR for groundfish, and a separate shipment report for IFQ, and CDQ sablefish. This action is a recordkeeping and reporting measure and reduces paperwork and a regulatory burden.

For these reasons, these proposed amendments are determined to comprise such minor corrections and changes as envisioned by NAO 216-6 and are thus categorically excluded from the need for an environmental assessment.

1.1 Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements

1.1.1 Purpose of and need for the action

The regulations currently require that the operator of a vessel making an IFQ landing must notify the NOAA Fisheries Office for Law Enforcement (OLE) no fewer than 6 hours before making the landing. There are limited exemptions for vessels making landings less than 500 pounds of B, C, or D category IFQ, and landings make concurrent with lingcod and salmon. Additionally, vessel operators are required to provide OLE with the name of the registered IFQ buyer to whom the vessel is delivering. The pertinent regulations at 50 CFR 679.5(l)(i) read as follows:

> (i) Applicability. Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing, must notify OLE, Juneau, AK no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearance officer.

Regulations at 679.32(f)(2)(iv) clarifies that operators landing CDQ halibut must also comply with the PNOL requirements.

> (iv) Landings. A person may land halibut CDQ only if he or she has a valid CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the registered buyer must comply with the requirement of § 679.5(l)(1) and (l)(2).

Regulations at 679.5(l)(1)(iii)(B) indicate that a prior notice of landing must also include the "[n]ame and permit number of the Registered Buyer who will be responsible for completion and submittal of the IFQ Landing Report(s);"

During the implementation of the IFQ Program, OLE and IPHC staff indicated that prior notice of landing would be helpful for personnel staffing. Regulations enacted with the implementation of the IFQ Program in 1995 required a six hour advance notice as well as the name of the registered buyer and location to which the delivery was being made. These regulations also apply to CDQ halibut landings. These requirements were intended to provide enforcement agents and officers with the time necessary to travel to unmanned ports throughout Alaska to monitor specific IFQ offloads. Further, they allowed an agent or officer to prioritize their work by knowing specifics about a vessel's catch prior to landing. These requirements also provided a deterrent effect. When a vessel operator calls OLE and gives date, time, and location of their offload, there is some expectation that an enforcement agent or officer may show up, thereby reducing the incentive for vessel operators to misreport catch.

These requirements aid IPHC port samplers who use the prior notice of landing to schedule their day and allows them to optimally sample the landings and met the skipper during the offload to interview and collect logbook information. The PNOL requires that vessel owners specify the regulatory area in which the IFQ species were harvested, as well as tonnage, and species composition. This advance notice provides IPHC samplers with the ability to assess possible data collection needs prior to landing, prepare sampling equipment, travel to landing locations, and set-up equipment prior to landing.

Over the last seven years, the IFQ fishing industry have expressed concerns about specific aspects of the PNOL requirement. First, existing regulations require vessel operators to commit to a specific Registered Buyer at least 6 hours before landing. This may disadvantage the fisherman in his or her price negotiations. That is, if required to commit to a specific buyer, well in advance of delivery, the fisherman may not get the full benefit of competition for his or her catch, that might exists if additional negotiating time were available.

Second, communications at sea are often limited, as a result, a vessel operator may rely on a third party (e.g., Registered Buyers, spouses, etc.) to call in the PNOL to the toll-free number in Juneau. This has resulted in inaccurate information being passed from the vessel, through another party, to enforcement.

A third concern is that Registered Buyers are restricted in their ability to bid on a load of IFQ fish if they have to wait 6 hours to begin offloading fish from a vessel. As an example, in the fresh fish market, fish are quickly offloaded and packed into refrigerated vans and sent to market as quickly as possible to ensure a high quality product that will obtain a premium price. Registered Buyers in this market attempt to fill vans as quickly as possible. If vessels provide a PNOL, but dock before the six hour PNOL hail-in period has expired, they cannot offload fish from the vessel until that six hour period expires. In this case, Registered Buyer's would be unable to purchase product from this vessel, and the van would be waiting on the dock until the six hour period has expired. This additional time compromises the quality of the fish, thereby reducing market value. This is especially restrictive to the auction system in Homer, Alaska where many vessels are landing fish and a six-hour PNOL restricts offloading. This may impose unjustified costs on both fishermen and processors.

Finally, if a particular processor is operating at maximum capacity, or experiences mechanical or other operational difficulties, at the time a vessel is scheduled to deliver to that processor, then that vessel must locate another Registered Buyer, and provide a six hour notice before offloading to this other Registered Buyer. Under the status quo alternative, this effectively limits the flexibility of vessels to respond to necessary changes in business conditions.

In response to industry requests, OLE staff met in March 2001 to discuss these concerns and develop staff recommendations. The objective of the meeting was to assess possible changes to existing regulations that would address industry concerns while remaining responsive to enforcement needs. In July 2001, OLE staff requested that the Council's IFQ Cost Recovery and Implementation Committee (IFQ Committee) consider these changes. In December, 2001, the IFQ Committee met in Anchorage to discuss and evaluate these regulations. Industry, and staff from OLE, IPHC, NMFS, the Council, and the United States Coast Guard attended these meeting. OLE and IPHC personnel provided recommendations on potential changes to the existing regulations. In February 2002, the Council received a presentation from Council staff on the IFQ Committee's recommendations, and requested analysis of a suite of alternatives on the PNOL, Offload Window, Vessel Clearance Report, and the Shipment Report.

The PNOL requirement does extend to the CDQ halibut fishery under existing regulations and the CDQ halibut fishery would be affected by this proposed change. Currently, the CDQ sablefish fishery does not have a PNOL requirement. CDQ sablefish is harvested as retainable bycatch in trawl fisheries and in a directed hook-and-line fishery. The CDQ Program does require a prior notice to onboard and shorebased observers and a catch report for all CDQ species landed. These requirements provide monitoring and enforcement opportunities for the CDQ sablefish fishery and a PNOL is not required under existing regulations.

1.1.2 Alternatives considered

Alternative 1: Status Quo; maintain the existing PNOL requirements with a six hour notice, and reporting of the name of the Registered Buyer, and where the delivery is scheduled to be made.

This alternative would not address the concerns raised by industry over the existing regulations.

Alternative 2: Eliminate the PNOL requirement.

This alternative would relieve a restriction on both vessel operators and Registered Buyers. However, this option would also adversely affect data-collection, monitoring, and enforcement operations. The advance notice of landing provides IPHC and OLE staff with an indication of landing and allows staff to target specific vessels for data-gathering and enforcement needs. Eliminating the PNOL would impede the ability of the IPHC to effectively gather biological data from specific vessels fishing in specific areas because staff would not have advance notice of the landings of these vessels and would be unable to direct sampling efforts to gather samples from various regions prior to landing. This could limit the statistical validity of sampling efforts. Additionally, if vessels did not provide a location of landing it may be difficult for IPHC and OLE staff to observe landings and offloads from specific vessels in larger ports with several distinct and distant areas where offloading is possible. A PNOL requirement is thought to provide a deterrent to vessels by providing OLE personnel with the ability to target specific vessels and prepare enforcement prior to a vessel landing. This alternative would remove that deterrent effect.

Alternative 3: Replace the reporting of "Registered Buyer" with the reporting of "Location of Landing" in the PNOL announcement. **(Preferred Alternative)**

This alternative would relieve a restriction on vessels by providing them with the opportunity to specify a specific detailed location of landing rather than a Registered Buyer. This alternative would provide additional flexibility to fishermen marketing their fish. A specific location of landing would still provide IPHC and OLE staff with the ability to target specific vessels or offloads.

Suboption a: Change the minimum PNOL reporting requirement from six hours to three hours. **(Preferred Alternative)**

This alternative would reduce the interval for advance notice of a vessel landing. Reducing the call-in time provides fishermen with additional flexibility in selecting markets, negotiating sales terms, and responding to unanticipated operational concerns (e.g., a "plugged" processor). The reduction in reporting time is not likely to affect the efficacy of IPHC and OLE enforcement efforts, nor unduly burden available personnel, but may increase IPHC sampling costs incrementally.

Alternative 4: Randomly apply the PNOL requirements to vessels.

This alternative would require OLE to randomly select vessels that would be required to submit a PNOL. Currently, there is no method for determining which vessels are fishing until they submit a PNOL. This alternative would require OLE to develop a mechanism for identifying which vessels are fishing, perhaps through a "hail-out" before the vessels leave the dock. There is no "hail-out' requirement currently, and requiring it would be an additional regulatory burden on vessel operators. Under this alternative, OLE would then notify which vessels have been randomly selected to submit a PNOL. That notification would have to occur in advance of the current six-hour call-in period defined in the PNOL. The randomly selected vessels would then need to call OLE and provide a PNOL. This method could not be used to assist IPHC samplers in determining daily sampling priorities or location of offload.

This alternative would create additional work for OLE staff (i.e., recording vessel "hail-outs", and developing a method for randomly selecting vessels) with little appreciable benefit to enforcement efforts. Establishing a legal "random" method may be required, and this would add to the complexity of offload monitoring efforts. Some vessels would not be required to submit a PNOL and would be relieved of a regulatory burden. IPHC port-samplers could be adversely affected by this alternative since they would not have advance notice of vessel landings. This could affect bias the sampling methods used and the quality of data used in stock assessment models. It does not appear that this alternative would provide significant benefits to the industry or to enforcement efforts.

1.2 Action 2: Revise the IFQ and CDQ offload window requirement

1.2.1 Purpose of and need for the action.

Under the status quo, regulations require that vessels may begin landing catch only between 6:00 a.m. and 6:00 p.m. This is commonly known as the "offload window." The pertinent regulations at 50 CFR 679.5(l)(2)(iv)(A) read as follows:

> (A) An IFQ landing may commence only between 0600 A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.

Regulations at 679.32(f)(2)(iv) clarifies that operators landing CDQ halibut must also comply with the offload window requirements

> (iv) Landings. A person may land halibut CDQ only if he or she has a valid CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the registered buyer must comply with the requirement of § 679.5(l)(1) and (l)(2).

During the implementation of the IFQ Program, OLE and IPHC staff indicated that a twelve hour offload window would allow personnel to adequately collect data and monitor and enforce landings. At the time, OLE was concerned that halibut landings would be spread over a wide range of ports and time was needed to deploy personnel, especially to more remote locations. Additionally, some processors indicated that a twelve hour offload window provided them with the opportunity to control product flow in plants. During the December 2001 IFQ Committee meeting industry, OLE and IPHC personnel discussed modifying the offload window.

The industry expressed interest in extending the evening offload hours. This would make it more difficult for OLE and IPHC to cover these extended hours. During the PNOL discussion, industry agreed that if the PNOL was reduced from 6 hours to 3 hours, and the requirement to declare a specific location of landing rather than a Registered Buyer was implemented, there would be no need to change the offload window. Some IFQ fishermen wanted to extend the offload window to meet the 6 hour PNOL requirement if they decided to change Registered Buyers in early afternoon and did not want to wait until 6:00 a.m. the next day to begin offloading. With a 3 hour PNOL fishermen would have the freedom to change their delivery time up to 3:00 pm each day without having to reschedule a landing or resubmit a PNOL for the following day.

IPHC staff indicate that extending the offload window could pose problems for their port sampling efforts. Sampling efforts are designed to provide representative biological samples of total commercial halibut removals (Hutton et al., 2001). IPHC staff has indicated that expanding the offload window could adversely affect the random sampling techniques used to obtain an equal sampling proportion of the catch over the entire landing period, or season, using prescribed sampling rates. IPHC staff have also expressed concern

about the potential increase in staff costs under an extended offload window option. In February 2002, the Council requested an analysis of an extended the offload window.

The offload window requirement does extend to the CDQ halibut fishery under existing regulations and the CDQ halibut fishery would be affected by this proposed change. Currently, the CDQ sablefish fishery does not have an offload window requirement. CDQ sablefish is harvested as retainable bycatch in trawl fisheries and in a directed hook-and-line fishery. The CDQ Program does require a prior notice to onboard and shorebased observers and a catch report for all CDQ species landed. These requirements provide monitoring and enforcement opportunities for the CDQ sablefish fishery and an offload window is not required under existing regulations.

1.2.2 Alternatives considered

Alternative 1: Status quo. No revision would be made to the offload window. **(Preferred Alternative)**

This alternative maintains the existing offload window. This alternative would not address some of the concerns raised by industry. It would address some of the concerns raised by IPHC and OLE staff. As noted in section 1.2.1, industry did state that if the PNOL requirements were changed as proposed in Alternative 2, and 3 in section 1.1.2, there would be little need to increase the offload window.

Alternative 2: Extend the offload window landing requirements from 6:00 a.m. to 12:00 a.m.

As noted in the discussion in section 1.2.1, this alternative could adversely affect current port sampling techniques used by IPHC and increase their overall staffing costs. The industry has also indicated, through the IFQ Committee, that extending the offload window would not be necessary if the PNOL was modified as proposed in Alternative 2 and 3 in section 1.1.2. Extending the offload window could increase labor costs for Registered Buyers to accommodate a longer operational period.

1.3 Action 3: Revise IFQ Vessel Clearance requirements

1.3.1 Purpose of and need for the action

The regulations currently require that vessels leaving the jurisdiction of the Council to check in with NMFS at a certified port prior to departure The pertinent regulations at 50 CFR 679.5(l)(5)(i) read as follows:

> (i) Requirement. A vessel operator who intends to make an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must first obtain a vessel clearance at a primary port from a clearing officer.

The language in the FMP applicable to the IFQ sablefish program is found at section 4.4.1.1.7(c) in the GOA FMP, and at 13.4.7.1.7 in the BSAI FMP. Both sections read as follows:

> (c) QS owners wishing to transport their catch outside of the jurisdiction of the Council must first check in their catch at a NMFS specified site and have the load sealed.

The Vessel Clearance requirement was put in place for enforcement purposes during the initial implementation of the IFQ Program in 1995. OLE personnel wanted to monitor IFQ landings to ensure that IFQ harvest transported outside the jurisdiction of the Council be monitored to ensure that harvests delivered outside of Alaska could be traced back to harvests in Alaska. Originally, OLE planned to have fourteen (14) primary ports staffed with OLE personnel. With this level of coverage, it was assumed the requirement would cause only minor disruption to a vessel operator's trip if he or she wanted to offload IFQ catch outside of Alaska. This requirement, as originally proposed, would have given OLE an opportunity to board and inspect the catch, vessels logs, and permits before the vessel departed the jurisdiction of the Council.

However, in order to accurately count fish in a hold and confirm the departure report estimates, OLE personnel would need to offload all fish, weigh the fish, and reload the fish onto the vessel in order to be certain that fish landed outside the jurisdiction of the Council were accurately counted. This level of enforcement is beyond the current staffing level of the OLE, and complete offloading of catch before departure from the jurisdiction of the Council is not required under existing regulations. OLE staff indicate that the current requirement may, nonetheless, provide an deterrent effect if the vessel has to submit to a boarding and provide OLE personnel with logbooks, permits, and other required documents.

IFQ permit holders state that the requirement is onerous and costly when they have to divert off course to come dockside for a clearance. They also say that there are not enough port options for obtaining a clearance. Currently, OLE maintain staff in only four ports in Alaska instead of the 14 ports originally projected: Dutch Harbor/Unalaska, Ketchikan, Petersburg, and Sitka, AK. for vessel clearance checks. When OLE staff reviewed the requirement in March 2001, they recommended that the written clearance could be rescinded and that requiring a verbal departure report in its place would meet their needs.

It is significant to note that OLE personnel are not able to enforce the provisions of the FMP that require a vessel's hold to be sealed because sealing the hold could compromise vessel safety if vessel operator needed to redistribute fish, or even discard fish, to maintain vessel stability in heavy weather conditions. Consequently, these provision of the FMPs have never been implemented in regulations. Alternative 2 would revise the FMPs to remove this unenforceable and unimplementable provision.

1.3.2 Alternatives considered

Alternative 1. Status quo; retain the existing Vessel Clearance.

This alternative would result in no action to address the concerns that members of the industry have raised about the vessel clearance requirements. The existing enforcement approach would be followed which requires vessels to proceed to a port for clearance prior to departure. The FMP language requiring OLE personnel to seal vessel holds would remain in the FMP's but would continue to be unenforceable and unimplementable.

Alternative 2. Eliminate the Vessel Clearance and require a verbal "departure report" prior to leaving the jurisdiction of the Council. **(Preferred Alternative)**

This alternative would relieve restrictions on vessels by allowing vessels leaving the jurisdiction of the Council to provide a verbal "departure report" rather than having to get clearance and a specific port. Because OLE personnel are not currently able to effectively determine catch quantity at the vessel clearance port and are unable to seal a vessel's hold without compromising vessel safety, there is no effective difference between a verbal "departure report" and the verbal vessel clearance report given in port. This action could reduce the time vessels are required to stay in port and could reduce operating costs for vessels that are transiting to locations outside of Alaska. This action would also amend the FMP so that the language of the FMP incorporates the practical limitations on enforcement of the original provisions.

1.4 Action 4: Revise IFQ and CDQ Shipment Report requirements

1.4.1 Purpose of and need for the action

Regulations currently require that Registered Buyers of IFQ sablefish and halibut, and CDQ sablefish report landings on a shipment report. Processors report groundfish landings on a separate product transfer report (PTR). Those processors that are also Registered Buyers must submit a PTR for groundfish and a shipment report for IFQ halibut and sablefish, and CDQ sablefish. The pertinent regulations at 50 CFR 679.5 read as follows:

> 50 CFR 679.5(g)(1) Except as provided in paragraphs (g)(1)(i) through (iv) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must record on a separate PTR each transfer of groundfish product (including unprocessed fish) or donated prohibited species.
>
> 50 CFR 679.5(g)(iv) Exemption: IFQ Registered Buyer permit and IFQ or CDQ sablefish product. If the operator or the manager possesses a Registered Buyer permit issued per Section 679.4(d)(2), the operator or manager is not required to submit a PTR to document shipment of IFQ or CDQ sablefish product. However, a shipment report as described at paragraph (l)(3) of this section is required for each shipment of IFQ or CDQ sablefish product.
>
> 50 CFR 679.5(l)(3)(i)(A) Except as provided in paragraph (l)(3)(i)(D) of this section, complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish for which the Registered Buyer submitted a landing report before the fish leave the landing site.

The shipment report requirement was put in place at the request of OLE personnel during the implementation of the IFQ program in 1995. This report gives enforcement an audit tool to compare "fish in" with "fish out" of a processor. This allows for the most unintrusive method of auditing a fish plant because it can be done away from the plant. This report also allows OLE personnel to identify whether a load of halibut or sablefish

being transported was lawfully landed and it can be used in investigations to quickly track illegal fish to the first point of sale.

The IFQ fishing industry has expressed concern that this report is duplicative. Under the status quo, the Registered Buyers who are also receiving and shipping groundfish species are required to complete a Product Transfer Report (PTR) for those species. There are some limited exceptions for small catches, and for dockside sales, but other reporting requirements apply. OLE personnel state that if IFQ species were required to be reported on the PTR, then there would be enough information for audit purposes. For IFQ fish inspected in transit, there are other documents such as bills of landing, invoices, manifests, and export declarations that contain enough information to trace the fish if necessary. Additionally, a Vessel Activity Report (VAR) is required for all fishing vessels leaving the jurisdiction of the Council with groundfish, including IFQ sablefish. This report provides OLE with a tool for monitoring catch leaving Alaska, thus reducing the need for the vessel clearance. Vessels landing catch outside of Alaska are required to submit a PNOL when they land catch. This provides OLE staff with an advance notice of landing and an opportunity to monitor landings outside of Alaska.

A solution that addresses the concerns of industry would be to combine the shipment report and the PTR so that only one document–the PTR–is submitted with groundfish, IFQ halibut and sablefish, and CDQ sablefish reported on the form. This will reduce the amount of paperwork required of Registered Buyers while still providing the ability to audit catch. Currently, the PTR and the shipment report are nearly identical in terms of the information that participants must submit on each form.

1.4.2 Alternatives considered

Alternative 1. Status quo; retain the existing Shipment Report and the PTR.

This alternative would result in no action to address the concerns that members of the industry have raised about the duplication in reporting requirements.

Alternative 2. Eliminate the shipment report and require that IFQ species be reported on the PTR. **(Preferred Alternative)**

Simply, this alternative would combine two forms into one. Processors and Registered Buyers would submit a PTR form for landings of groundfish, IFQ, and CDQ sablefish. Currently, processors submit a PTR for groundfish, and Registered Buyers submit a separate shipment report for IFQ and CDQ sablefish. Sometimes the processor is also a Registered Buyer and both forms have to be submitted. This alternative is a recordkeeping and reporting measure and reduces paperwork.

2.0 REGULATORY IMPACT REVIEW

The Regulatory Impact Review (RIR) provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs.

An RIR is required by NMFS for all regulatory actions or for significant Department of Commerce or NOAA policy changes that are of significant public interest. The RIR: (1) provides a comprehensive review of the level and incidence of impacts associated with a proposed or final regulatory action; (2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major

alternatives that could be used to solve the problems; and (3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

Executive Order 12866, "Regulatory Planning and Review," was signed on September 30, 1993 and established guidelines for promulgating new regulations and reviewing existing regulations. While the order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order describes the regulatory philosophy and principles that are to guide agency development of regulations. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity) that maximize net benefit to the nation.

The regulatory principles in E.O. 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives, such as user fees or marketable permits, to encourage the desired behavior. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. Each agency shall assess both the costs and benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and the consequences of, the intended regulation.

An RIR is required for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. The RIR is part of the process of preparing and reviewing FMP's and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problem. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles of E.O. 12866.

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

2.1 The problem, the management objectives, and the alternatives

Descriptions of the management objectives and the problem being addressed can be found in Section 1 and are included here by reference.

This proposed action would make four changes to the IFQ Program for fixed gear Pacific halibut and sablefish fisheries off Alaska and to some of the reporting requirements for CDQ sablefish and halibut.

The first change would modify the Prior Notice of Landing requirements for the landing of all IFQ species, including CDQ halibut, to require a three hour notice of landing and require the vessel operator to provide a "Location of Landing." The regulations currently require that the operator of any vessel making an IFQ halibut and sablefish landing, including CDQ halibut landings, must notify OLE no fewer than 6 hours before making the landing. Additionally, vessel operators are required to provide OLE with the name of the Registered Buyer to whom the vessel is delivering. The current PNOL regulations were implemented with the initial IFQ Program regulations to provide shorebased monitoring and enforcement personnel advance notice of vessel landings. Subsequent experience in the management and prosecution of IFQ fisheries suggests that the existing PNOL requirements could be revised to reduce the PNOL call-in time and modify the landing location requirements. Revising the PNOL requirements could improve economic efficiency in the fishery while continuing to provide adequate monitoring, data collection, and enforcement opportunities for shorebased personnel.

The second change analyzed in this amendment looks at modifying the existing offload window. The regulations currently require that vessels may commence and IFQ landing, including CDQ halibut, between 6:00 a.m. and 6:00 p.m. unless permission to land has been granted in advance. This is commonly referred to as the "offload window." These regulations were initially implemented to accommodate IPHC port-sampler and OLE personnel staffing limitations. Expanding the offload window could provide some additional flexibility to the commercial fleet, however, increasing offloading times could increase labor costs for Registered Buyers and data-collection, monitoring and enforcement costs.

The third change would revise the IFQ Vessel Clearance requirements to require a verbal departure report rather than a vessel clearance at a designated port. Currently, regulations require that vessels landing IFQ catch outside of Alaska must obtain a written vessel clearance at a port in Alaska prior to departure. There are no regulations requiring vessels to seal their holds prior to departure due to the inability to adequately seal holds without unduly compromising vessel safety. Experience with the vessel clearance process indicates that requiring vessels to obtain vessel clearance at a port in Alaska has limited enforcement value. A verbal departure report would serve the same deterrent and monitoring function as a vessel clearance, at a lower economic costs and diminished procedural burden.

The fourth change would eliminate the shipment report and require that IFQ species be reported on the PTR. Simply, this action would combine two, largely redundant, forms into one. Under this action, processors and registered buyers would submit a PTR form for landings of groundfish, IFQ, and CDQ sablefish. Currently, processors submit a PTR for groundfish, and Registered Buyers submit a separate shipment report for IFQ and CDQ sablefish. This action is a recordkeeping and reporting measure and reduces paperwork.

These actions are described in more detail earlier in this document. Action 1, "Revise IFQ and CDQ Prior Notice of Landing Requirements" is described in Section 1.1, Action 2, "Revise IFQ Offload Window Requirements" is described in Section 1.2, Action 3, "Revise IFQ Vessel Clearance requirements" is described in Section 1.3, and Action 4 "Revise IFQ Shipment Report Requirements" is described in Section 1.4. These detailed descriptions are included here by reference.

2.2 Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements

2.2.1 Management Action Alternatives

Alternative 1: Status quo: require that vessels adhere to existing PNOL requirements.

Alternative 2: Eliminate the PNOL requirement.

Alternative 3: Replace the reporting of "Registered Buyers" with the reporting of "Location of Landing" in the PNOL reporting requirements.

Suboption a: Change the minimum PNOL reporting requirement from six hours to three hours.

Alternative 4: Randomly apply the PNOL requirements to vessels.

2.2.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

This action would potentially affect all individuals, corporations or partnerships, or other collective entities holding QS. This action could also affect all six of the CDQ groups that hold CDQ halibut. At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS (NMFS/RAM 2002a). In addition, all six of the CDQ groups have CDQ halibut allocations. A total of 270 individuals landed CDQ halibut in 2001 and may be affected by this regulation (O. Davis, NMFS Staff Pers. Comm. 2002). NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings (NMFS/RAM 2002a). For the 2001 season, there were 17,004 PNOL reports for halibut and 6,119 PNOL reports for sablefish (See Table 1).

Table 1: 2001 PNOL Reports by Area and Species (IFQ Halibut and Sablefish and CDQ Halibut)

Area	Halibut	Area	Sablefish
2C	4,447	AI	319
3A	6,238	BS	214
3B	1,944	CG	2,191
4A	866	SE	1,953
4B	624	WG	460
4C	994	WY	982
4D	118		
4F	1,773		
Total	17,004		6,119

Source: OLE Database.

2.2.3 Costs and Benefits

Alternative 1: The status quo alternative requires a six-hour advance notice of landing. Additionally, the status quo requires vessel operators to designate a specific Registered Buyers which obligates a vessel operator to deliver to a specific buyer. Alternative 1 would not be expected to result in any additional costs or benefits because it is the status quo alternative.

Alternative 2: This alternative would remove reporting requirements on vessel operators. This alternative would benefit vessel operators by providing them with additional opportunities to negotiate exvessel prices prior to reporting their landings. This will likely improve the overall exvessel price that vessels receive due to additional time to seek out more competitive marketing opportunities. Additionally, this action would lift a requirement that a QS holder must identify a specific Registered Buyer prior to landing. This may also provide additional market opportunities to vessels by preventing vessel operators from getting "locked in" to a specific Registered Buyer in order to satisfy the PNOL requirements when more favorable markets may be available with other Registered Buyers.

This alternative could increase competition among Registered Buyers if vessels have an increased period of time in which to seek out markets. It is not clear that this competition will have either an adverse or beneficial effect on Registered Buyers. Those Registered Buyers that can compete more efficiently would be expected to be able to offer a higher exvessel price than their competitors and obtain product to meet their operating needs. Those Registered buyers that are less efficient would be at a disadvantage in a more competitive market. Overall, one would expect benefits to accrue to more efficient operators offering a higher exvessel price. The overall effect on Registered Buyers is uncertain, but increased competition is likely to provide a higher exvessel price to vessels, and improved market efficiencies that are likely to have an overall beneficial effect on consumers. These benefits are not amenable to further quantification, at present, given available information on costs, earnings, and operational structure within the respective segments of the industry.

As noted in Section 1, removing the PNOL requirement could increase the operating costs of OLE and IPHC personnel because the PNOL provides staff with an advance notice of vessel landings and allows them to target vessels for specific data-collection or enforcement needs. If the PNOL requirement is eliminated, this advance notification is lost, and additional IPHC and OLE personnel may be required to provide the same level of enforcement and data-collection function as under the status quo alternative.

The potential increase in IPHC and OLE staff, and therefore, operating costs under this alternative is likely to result in an incremental increase in IFQ fee payments for the individual IFQ holder. Under the Magnuson-Stevens Act, NMFS must collect a fee to recover the costs of managing and enforcing the IFQ Program. Seventy-five percent of fee payments are deposited in the Limited Access System Administrative Fund and made available to offset costs of management and enforcement. Direct program costs incurred by IPHC and OLE to manage the IFQ fishery are paid for by this fund. In 2001, IPHC recovered $148,354 from this fund, and OLE recovered $1,749,400 to cover their costs. If this option is chosen, and if IPHC and OLE direct costs increase, then the overall cost of managing the IFQ Program would increase. This would increase the amount of money required to manage the program, and the fee assessed on an individual IFQ permit holder would be expected to increase. There are no data available, at present, to assess the potential costs to the industry from this alternative compared to the potential costs from potential additional OLE and IPHC operating expenses.

Alternative 3 (Preferred Alternative): This option would be expected to provide some of the benefits described under Alternative 2 although the potential benefits and costs are likely to be relatively less pronounced because it would modify only a portion of the PNOL requirements rather than eliminating the regulation. This alternative is likely to provide a net benefit relative to the status quo. Alternative 3 would provide vessel owners with additional opportunities to negotiate exvessel prices prior to reporting their landings by requiring a three-hour instead of a six-hour advance notice of landing. This will likely improve the overall exvessel price that vessels receive due to additional time to seek out more competitive marketing opportunities. Vessel operators will still need to provide an advance notice, however, so vessels would not be expected to receive the full extent of potential benefits of Alternative 2. This alternative would be expected to have a net benefit to vessel operators relative to the status quo based on the rationale provided under Alternative 2.

The potential costs and benefits of this alternative for Registered Buyers would be expected to be less extreme than those described under Alternative 2, but there are no data to estimate the potential benefits or costs of this alternative. This alternative would increase the amount of time available to vessels for negotiating prices prior to landing, but would still require vessel operators to select a Registered Buyer three-hours prior to landing. The potential benefits and costs of this Alternative would be expected to be less extreme than those described under Alternative 2, but there are no data to estimate the potential benefits or costs of this alternative. This alternative would be expected to have a net benefit to vessel operators relative to the status quo.

IPHC and OLE personnel have indicated that maintaining a three-hour advance notice would not impede existing enforcement efforts nor increase the costs of existing data -collection, monitoring, or enforcement. Because the costs associated with adoption of Alternative 2 are expected to be quite small, both in absolute terms and when compared to the expected benefits, this proposal probably has a positive net benefit to the Nation. Although neither the costs not the benefits can be readily quantified, they clearly do not approach levels defined under the threshold criteria, set out in the Executive Order 12866, for determining "significance."

Suboption a (Preferred Alternative): This alternative would eliminate the requirement that vessel operators designate a Registered Buyer in the PNOL, and replace it with a reporting of "Location of Landing." This suboption would be expected to provide some of the potential benefits and costs as described under Alternative 2. Eliminating the requirement that vessel operators designate a Registered Buyer would be expected to improve the negotiating position of vessel operators during price negotiations by allowing vessel operators to select a location rather than a specific buyer for their product. This suboption is likely to provide economic benefits to vessel operators who are delivering to ports with more than one Registered

Buyer where there is a competition for product. As an example, vessels delivering to Homer, Alaska where there are multiple Registered Buyers purchasing fish in an auction would be expected to have an improved negotiating position if they did not have to designate a specific Registered Buyer prior to landing. This suboption would provide vessel operators with increased flexibility to market their catch once the vessel has docked and negotiate an exvessel price among Registered Buyers. This suboption would be expected to provide a net benefit to vessel operators relative to the status quo. There are no data available to quantify the potential benefits of this suboption. This suboption would be expected to have a net benefit for vessel operators relative to the status quo.

This suboption could increase competition among Registered Buyers if vessels are relieved of the requirement to designate a specific Registered Buyer in the PNOL. It is not clear that this competition will have either an adverse or beneficial effect on Registered Buyers. Those Registered Buyers that can compete more efficiently for product once a vessel has landed would be expected to be able to offer a higher exvessel price than their competitors and obtain product to meet their operating needs. Those Registered buyers that are less efficient would be at a disadvantage in a more competitive market. Overall, one would expect benefits to accrue to more efficient operators offering a higher exvessel price. The overall effect on Registered Buyers is uncertain, but increased competition is likely to provide a higher exvessel price to vessels, and improved market efficiencies that are likely to have an overall beneficial effect on consumers. In ports where only one Registered Buyer exists, Registered Buyers would not be expected to experience increased competition, nor potential benefits or costs under this suboption. The potential costs or benefits of this suboption are not amenable to further quantification, at present, given available information on costs, earnings, and operational structure within the respective segments of the industry.

IPHC and OLE personnel have indicated that eliminating the designation of a Registered Buyer and replacing it with a specific Location of Landing would not impede existing enforcement efforts nor increase the costs of existing data -collection, monitoring, or enforcement provided the Location of Landing was specific enough to indicate the precise location of the landing. If this suboption is selected, NMFS staff would coordinate with IPHC and OLE staff during the development of a Proposed Rule to ensure that the Location of Landing was defined with adequate specificity to ensure that shorebased staff would be able to be present at the specific location of landing. Because the costs associated with adoption of this suboption are expected to be quite small, both in absolute terms and when compared to the expected benefits, this proposal probably has a positive net benefit to the Nation. Although neither the costs not the benefits can be readily quantified, they clearly do not approach levels defined under the threshold criteria, set out in the Executive Order 12866, for determining "significance."

Alternative 4: This alternative would randomly apply the PNOL requirement to vessels. Under this alternative, those vessels to which a PNOL did not apply would be expected to receive the same net benefits as described under Alternative 2. For those vessels, there would not be PNOL requirement and the vessels would be expected to receive the potential benefits of increased time for price negotiation and the ability to designate a Registered Buyer upon landing at a port. Those vessel's selected for a PNOL would be essentially be operating under the status quo. Selected vessels would receive the same benefits or costs as exist under the status quo. The extent of the vessels benefitting from this option would depend on the number of vessels selected to submit a PNOL. There are no data available at this time to determine the number of vessels that could be randomly selected to submit a PNOL. This alternative would likely provide a net benefit to vessel operators relative to the status quo. There are no data available to quantify this potential benefit.

Registered Buyers would likely be affected in the similar to that described under Alternative 2. Since only a portion of the vessels would be required to submit a PNOL, most vessels delivering catch would not submit

an advance notice of landing, nor would they be required to designate a specific Registered Buyer. This could increase competition among Registered Buyers if certain vessels are relieved of the requirement to designate a specific Registered Buyer in the PNOL. It is not clear that this competition will have either an adverse or beneficial effect on Registered Buyers. Those Registered Buyers that can compete more efficiently for product once a vessel has landed would be expected to be able to offer a higher exvessel price than their competitors and obtain product to meet their operating needs. Those Registered buyers that are less efficient would be at a disadvantage in a more competitive market. Overall, one would expect benefits to accrue to more efficient operators offering a higher exvessel price. The overall effect on Registered Buyers is uncertain, but increased competition is likely to provide a higher exvessel price to vessels, and improved market efficiencies that are likely to have an overall beneficial effect on consumers. Because some vessels would submit a PNOL under this alternative, the net effect on Registered Buyers would be less than that anticipated under Alternative 2.

This alternative would require OLE to develop a mechanism for identifying which vessels are fishing, perhaps through a "hail-out" before the vessels leave the dock. There is no "hail-out' requirement currently, and requiring it would be an additional regulatory burden on vessel operators.

This alternative would create additional work for OLE staff (i.e., recording vessel "hail-outs", and developing a method for randomly selecting vessels). IPHC port-samplers could be adversely affected by this alternative since they would not have advance notice of vessel landings. This could affect bias the sampling methods used and the quality of data used in stock assessment models. In order to ensure that vessels were adequately sampled, IPHC may need increase the number of staff to sample those vessels that do not submit a PNOL. Since those vessels do not provide advance notice of landing under this alternative, this could require additional expenditures for IPHC and OLE staff to effectively cover vessels since no advance planning is possible. As noted under Alternative 2, the potential increase in IPHC and OLE staff, and therefore, operating costs under this alternative is likely to result in an incremental increase in IFQ fee payments for the individual IFQ holder. The amount of this expenditure is uncertain, although it would be expected to be less than that under Alternative 2, since some vessels would be randomly selected to provide a PNOL. Overall, it is expected that this alternative would increase OLE and IPHC staffing expenditures to monitor the fishery.

2.3. Action 2: Revise IFQ Offload Window Requirements

2.3.1 Management Action Alternatives

Alternative 1: Status Quo: maintain the existing 6:00 a.m. to 6:00 p.m. offloading requirements.

Alternative 2: Extend the offload window landing requirements to be 6:00 a.m. to 12:00 a.m.

2.3.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

This action would potentially affect all individuals, corporations or partnerships, or other collective entities holding QS. This action could also affect all six of the CDQ groups that hold CDQ halibut. At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS. In addition, all six of the CDQ groups hold CDQ halibut. A total of 270 individuals landed CDQ halibut in 2001. This action could also affect the Registered Buyers. NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings (NMFS/RAM 2002a).

2.3.3 Costs and Benefits

Alternative 1 (Preferred Alternative): Adoption of this preferred alternative would not result in the imposition of additional costs since it would maintain the status quo. No additional administrative, enforcement, or information costs would be expected under the status quo alternative. Industry representatives indicated that modifying the PNOL requirements as described in Alternative 3, suboption a in Section 2.2 would provide QS holders with the additional marketing flexibility that they desired and provide a beneficial effect to vessel operators delivering catch and that extending the offload window would not be necessary to provide additional marketing opportunities to vessel operators.

Alternative 2: Extending the offload window as proposed under Alternative 2 could provide some additional flexibility to vessels that wish to offload outside of the current window. However, as long as vessels commence offloading prior to 6:00 p.m. by the offloading of at least one fish, the offloading can proceed after 6:00 p.m. Many vessels do in fact offload one fish prior to 6:00 p.m. in order to meet existing regulatory requirements, and then continue the offload once processing capacity becomes available. Given this operational "loophole" it is not clear that extending the offload window would practically benefit the majority of vessel operators. Presumably, only in the case of a vessel, wishing to off load its catch, which reached the processor's dock 'after" 6;00 p.m., could the proposed change be certain to make an operational difference. How much of a difference this might make would vary from case to case and, in any event, diminish the longer "after" 6:00 p.m. the vessel made port.

Increasing the offload window could increase labor and operational costs to Registered Buyers if they extend their operations beyond the current 6:00 a.m. to 6:00 p.m. window. However, presumably Registered Buyers can exercise some control over when they chose to "accept" deliveries, thus allowing management of these potential work force and operating costs (i.e., the proposed action would not "require" a buyer to receive deliveries after 6:00 p.m.). Furthermore, the reported practice of landing a "single fish" from a load before the 6:00 p.m. deadline, with the balance subsequently coming ashore, as needed by the processing line, suggests that when a plant is in full operation, the operator is willing and able to incur these costs to obtain the fish. It is unclear whether a longer offloading window would impose or offset these potentially increased costs.

Administrative costs could increase for IPHC port-samplers. During the 2001 season, IPHC maintained port-samplers in nine Alaska ports: Dutch Harbor, Homer, Hoonah, Juneau, Kodiak, Petersburg, Saint Paul, Seward, and Sitka. These samplers sample roughly 500 to 600 landings from Alaska and collect approximately 4,000 fishing logs by interviewing skippers at the time of offloading (Hutton et al., 2001). Extending the offload window could reduce the ability of existing staff to adequately sample landings. A greatly increased offload window could require IPHC to either increase their port-sampling personnel, or pay overtime rates to existing personnel to cover off-shift sampling, in order to adequately sample landings during this extended time-period. In the absence of empirical experience with an extended landings window, it is not clear if OLE personnel staffing costs might increase with a longer offloading window.

As already noted in Section 2.3, if IPHC and OLE staffing costs increase to administer the IFQ Program under this alternative, a portion of these costs would be borne by the IFQ holders. Under the Magnuson-Stevens Act, NMFS must collect a fee to recover the costs of managing and enforcing the IFQ Program. Seventy-five percent of fee payments are deposited in the Limited Access System Administrative Fund and made available to offset costs of management and enforcement. Direct program costs incurred by IPHC and OLE to manage the IFQ fishery are paid for by this fund. If this alternative is chosen, and if IPHC costs increase, then the overall cost of managing the IFQ Program would increase. The total impact on IPHC is dependent on fleet behavior in response to a longer offload window. That change in behavior cannot be quantified so estimates of increased costs cannot be made. It is likely that additional hours would be cover by additional staff. This would increase the amount of money required to manage the program, and the fee assessed on an individual IFQ permit holder would be expected to increase. There are no data available, at present, to assess the potential costs to the industry from this alternative compared to the potential costs from potential additional OLE and IPHC operating expenses.

The size, distribution, and scope of potential benefits or costs of an extended off load window are not clear.

2.4 Action 3: Revise IFQ Vessel Clearance requirements

2.4.1 Management Action Alternatives

Action 3: Revise IFQ Vessel Clearance requirements

Alternative 1: Status Quo: maintain the existing vessel clearance requirement

Alternative 2: Eliminate the Vessel Clearance Requirement and require a verbal "departure report" prior to leaving the jurisdiction of the Council.

Alternative 1: Alternative 1 would not result in any additional costs or benefits because it is the status quo alternative.

Alternative 2 (Preferred Alternative): Alternative 2 would eliminate the current vessel clearance requirement prescribed under the status quo alternative, and require that a vessel issue a verbal departure report to NMFS prior to departing the jurisdiction of the Council.

2.4.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

The proposed action would potentially affect all individuals, corporations or partnerships, or other collective entities holding QS. At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS. OLE issued 65 vessel clearances in 2001.

2.4.3 Costs and Benefits

Alternative 1: Alternative 1 would not be expected to result in any additional costs or benefits because it is the status quo alternative.

Alternative 2 (Preferred Alternative): Alternative 2 proposes to remove an unnecessary and potentially burdensome reporting requirement currently imposed on industry under the status quo alternative. As such, it is likely to have a beneficial effect on those vessels that land their catch outside of the jurisdiction of the Council. Currently, these vessels must proceed to a designated port in Alaska prior to departure. This may

require a vessel to divert to a clearance port, and depending on the vessel's course, this diversion could add additional operating costs for the vessel. There is no information on the number of vessels that may have diverted for a vessel clearance or the potential cost of those diversions. However, in 2001, 65 vessels received a vessel clearance. One can assume that a maximum of 65 vessels could have been required to proceed to a clearance port and may have been diverted from their original course to do so. Nonetheless, removing the requirement for vessel clearance at a designated port would reduce potential costs for vessels. Additionally, the vessel clearance requires enforcement staff to physically inspect catches. In practice, this catch inspection has not been feasible and therefore, has not been performed prior to issuing a written vessel clearance. Eliminating the mandatory vessel clearance and requiring a verbal departure report could reduce OLE personnel costs, with no effective reduction in monitoring and enforcement. Alternative 2 would also remove an unenforceable provision in the FMPs requiring OLE staff to seal vessel holds prior to a vessel departing the jurisdiction of the Council.

Alternative 2 appears to have the potential to yield net benefits for vessel operators and for fishery management and OLE. These benefits cannot be empirically quantified at this time. Although the benefits attributable to adoption of Alternative 2 cannot be estimated, they are probably positive. Because there are no attributable costs to this proposal, the net benefit of implementing Alternative 2 is probably positive, and in any case would not be expected to approach the "significant" threshold set forth in EO 12866.

2.5 Action 4: Revise IFQ and CDQ Shipment Report

2.5.1 Management Action Alternatives

Alternative 1: Status Quo: maintain the existing recordkeeping and reporting requirements.

Alternative 2: Eliminate the shipment report and require that IFQ species be reported on the Product Transfer Report.

2.5.2 Identification of the Individuals or Groups That May Be Affected by the Proposed Action

This proposed action would potentially affect all Registered Buyers. NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings (NMFS/RAM "Report to the Fleet, 2002).

2.5.3 Costs and Benefits

Alternative 1: Alternative 1 would not be expected to result in any additional costs or benefits because it is the status quo alternative.

Alternative 2 (Staff Recomemendation): Alternative 2 would relieve a largely redundant paperwork requirement on industry, and is likely to have a small beneficial effect on Registered Buyers who have been submitting two separate, but essentially equivalent forms. This could reduce their operational costs slightly and improve the efficiency of their operations.

This proposal appears to have the potential to yield net benefits for Registered Buyers that also process groundfish. Under the existing regulations, the shipment report must accompany the shipment of the IFQ and CDQ sablefish species from the landing site to the first destination beyond the location of the IFQ or CDQ sablefish landing. This means that Registered Buyers cannot offload a portion of a catch from a vessel and send that fish to market until the entire catch has been offloaded and a shipment report is sent with the catch to the first destination after the landing. This requirement may increase costs in fresh markets where

only a portion of a landing from a specific vessel may be needed to fill a container bound for the market. Under the existing regulations, Registered Buyers must offload the entire catch and send a shipment report with the catch before it can be offloaded. This can increase costs because shipments of fish could be delayed until the entire offload is completed. This may reduce the quality of fish, and therefore, the price of the fish in the market. This reduces the wholesale value received by Registered Buyers, and possibly the exvessel price that Registered Buyers offer to fishermen. Under Alternative 2, the shipment report would not be required and Registered Buyers could send portions of an offload to market before the entire offload is completed. This could increase the quality of product sent to market and the value of the catch.

These benefits cannot be empirically quantified at this time. No additional administrative, enforcement, or information costs would be incurred under either alternative. Although the benefits cannot be estimated, they are probably positive. Because there are no costs attributable to this proposal, the net benefit of Alternative 2 is probably positive, and certainly would not be expected to approach the "significant" threshold set forth in EO 12866.

2.6 Review of significance criteria

The total gross ex-vessel value of the halibut taken in the commercial fishery off of Alaska in 1999 was $116.9 million; the total gross value for the sablefish longline fishery was $70.8 million. The preferred alternatives for each proposed action under consideration will make marginal administrative changes in these fisheries. Although it has not been possible to monetize all the likely benefits and costs from these proposed program changes, their total net impact on the economy will be far below $100 million, annually. These proposals generally have no attributable cost and are expected to produce benefits (in the form of regulatory or report relief, and/or operational costs savings) for industry. For these reasons, they are unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These programs are, therefore not likely to meet, any of the economic criterion for significance under Executive Order 12866.

NMFS does not believe that the proposed rule will create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impacts 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 Executive Order 12866.

3.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agencies' awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

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 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. Finally, 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.

3.1 Requirement to Prepare an IRFA

The central focus of the IRFA should be on the economic impacts of a regulation on small entities and on the alternatives that might minimize the impacts and still accomplish the statutory objectives. The level of detail and sophistication of the analysis should reflect the significance of the impact on small entities. Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to address:

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

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

3.2 What is a Small Entity?

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

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act. 'Small business' or

'small business concern' includes any firm that is independently owned and operated and not 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 form 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 $ 3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $3.5 million criterion for fish harvesting operations. Finally, 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 under the following conditions: (1) If a person owns or controls, or has the power to control, 50% 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, that person is considered an affiliate of the firm; (2) If two or more persons each owns, controls or has the power to control less than 50% 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 controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor 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.

Small organizations. The RFA defines a "small organization" as any nonprofit enterprise that is independently owned and operated and not dominant in its field.

Small governmental jurisdictions. The RFA defines a "small governmental jurisdictions" as a city, county, town, township, village, school district, or special district with a population of fewer than 50,000.

3.3 Purpose and Legal Basis for the Proposed Rule

The legal basis for these proposed actions is described at the start of Section 1 of this RIR/IRFA. The purpose and the need for the actions are described in Sections 1.1.1. (Revise IFQ and CDQ Prior Notice of Landing Requirements), 1.2.1 (Revise IFQ Offload Window Requirements), 1.3.1 (Revise IFQ Vessel Clearance requirements), and 1.4.1 (Revise IFQ and CDQ Shipment Report). These descriptions of the legal basis and of the purpose and need for the actions are included here by reference.

3.4 Small Entities in the IFQ Program

The halibut and sablefish fisheries are described in more detail in the Final SEIS/RIR/IRFA for halibut and sablefish (September 15, 1992). At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS. In addition, all six of the CDQ groups hold CDQ halibut and sablefish. Other small entities include Registered Buyers. NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings (NMFS/RAM 2002a).

These proposed actions would potentially affect all QS holders in the IFQ Program, including the six CDQ groups holding CDQ halibut and sablefish allocations. At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by the present action. For the reasons discussed in the next paragraph, for the purpose of this analysis, NMFS has assumed that all operations are small.

In 2001, 1,451 unique vessels made IFQ halibut landings, and 433 unique vessels made sablefish landings. (NMFS/RAM 2002a). The number of small entities operating as fishing vessels in the IFQ Program may be deduced from certain restrictions the program places on those vessels. The IFQ program limits the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to a half percent (0.5%) of all halibut IFQ TAC or up to one percent (1.0%) of all sablefish TAC In 2001 these limits were 295,050 pounds of halibut (headed and gutted weight) and 293,882 pounds of sablefish (round weight).

NMFS annually publishes "standard prices" for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating permit holder cost recovery fee liabilities. In 2001, these price data suggest that the price of halibut might have been about $2.09 per pound of (headed and gutted weight) and $2.08 per pound of sablefish (round weight). (NMFS/RAM 2002b). In combination, these harvest limits and prices imply maximum vessel revenues of about $1,230,000 for halibut and sablefish taken together. Thus, No vessel subject to these restrictions could have been used to land more than $3,000,000 worth of halibut and sablefish combined in 2001 (the maximum gross revenue threshold for a "small" catcher vessel, established under RFA rules). Therefore all halibut and sablefish vessels may assumed to be small entities, for purposes of the IRFA. These estimates are likely to overestimate the numbers of small entities since they do not take account of income that might have been earned by the vessel in other fisheries or activities, and they do not take account of vessel affiliations.

3.5 Action 1: Revise IFQ and CDQ Prior Notice of Landing Requirements--Economic Impact on Small Entities

The maximum number of directly regulated small entities could be approximately 3,485 holders of halibut QS, and 872 holders of sablefish QS (NMFS/RAM 2002a). In addition, all six of the CDQ groups hold CDQ halibut and could be directly regulated. A total of 270 individual fishermen landed CDQ halibut in 2001 and may be directly regulated by this regulatory change. NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings (NMFS/RAM "Report to the Fleet, 2002). Registered Buyers could also be directly regulated by this change.

Alternative 1 is the status quo and would not have any associated adverse economic impacts on directly regulated small entities.

Alternative 2 would remove a restriction and may have an economic impact on vessel operators, CDQ groups, and Registered Buyers. As noted in Section 2.2 of this analysis, there could be some adverse economic impact on less economically efficient Registered Buyers. This regulation could increase competition between Registered Buyers for product. The net effect of this increased competition is likely to be beneficial for more efficient Registered Buyers that can provide higher exvessel prices, and may adversely affect less efficient Registered Buyers that cannot provide exvessel prices that attract vessel operators. There are no data available to determine how a more competitive market may affect individual Registered Buyers, or whether the reduced PNOL call-in time and location designation will in fact result in the anticipated increased competition among Registered Buyers. In any case there would be no differential impacts on the basis of size of the regulated entity attributable to this proposed action, because all are "small" on the basis of RFA criteria.

Alternative 3 would relieve some aspects of the reporting requirements for vessels submitting a PNOL for IFQ halibut and sablefish and CDQ halibut. Providing QS holders with greater operational flexibility by requiring a three hour instead of a six hour, PNOL filing.

Suboption a would allow vessels operators to provide a "Location of Landing" rather than a "Registered Buyer" designation when landing may provide additional marketing opportunity for vessel operators. This regulation could increase competition between Registered Buyers for product. The net effect of this increased competition is likely to be beneficial for more efficient Registered Buyers that can provide higher exvessel prices, and may adversely affect less efficient Registered Buyers that cannot provide exvessel prices that attract vessel operators. There are no data available to determine how a more competitive market may affect individual Registered Buyers, or whether the reduced PNOL call-in time and location designation will in fact result in the anticipated increased competition among Registered Buyers.

In any case there would be no differential impacts on the basis of size of the regulated entity attributable to Alternative 3, suboption a, because all are "small" on the basis of RFA criteria.

Alternative 4 would not be expected to have an economic impact significantly different than Alternative 1 (Status Quo). A random assignment of PNOL would cause vessel operators, CDQ groups, and Registered Buyers to function in the same manner as current regulations require since they could be randomly selected to submit a PNOL.

As noted in the RIR, the impact of this proposal (Alternative 3, suboption a), would be to relieve some reporting requirements to provide small entities with greater operational freedom. Thus, it might have some beneficial impacts on some of the small entities (i.e., vessel operators, QS holders, more efficient Registered

Buyers). Conceivably, this proposed action could have a negative impacts on some less efficient small entities (i.e., less efficient Registered Buyers). However, this proposal would not be likely to have a negative effect on the profitability or cash flow of small entities overall, nor would it be likely to impose a disproportionate negative impact on small entities.

3.6 Action 2: Revise IFQ Offload Window Requirements--Economic Impact on Small Entities

The maximum number of affected small entities could be the approximately 3,485 persons (individuals, corporations, and other entities) who held halibut QS; 872 persons held sablefish QS (NMFS/RAM 2002a). In addition, all six of the CDQ groups that hold CDQ halibut could be affected. A total of 270 individuals landed CDQ halibut in 2001 and may be affected by this regulation. NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings (NMFS/RAM 2002a). Registered Buyers could also be affected by this change in regulation.

Alternative 1 is the preferred alternative, ths would maintain the status quo. This would not result in any change in the current regulations and would not have an associated adverse economic impact.

Alternative 2 would not be expected to have any adverse economic impacts on directly regulated small entities. Some of the increased regulatory flexibility that Alternative 2 may provide small entities is provided under Alternatives 3, suboption a under Action 1 (For a detailed treatment of this issues see: Section 3.5).

3.7 Action 3: Revise IFQ Vessel Clearance Requirements--Economic Impact on Small Entities

As proposed, Alternative 2 could potentially directly regulate the 1,451 unique vessels which made IFQ halibut landings, and 433 unique vessels which made sablefish landings in 2001. OLE reports that 65 vessel clearances were processed in 2001. This indicates that a relatively small number of all vessels making IFQ landings would be directly regulated by this provision.

Alternative 1would maintain the status quo. This would not result in any change in the current regulations and would not have an associated adverse economic impact.

Alternative 2 is the preferred alternative and it could potentially provide an economic benefit to small entities by not requiring them to divert to a specified port for a vessel clearance prior to departing the jurisdiction of the Council. There are no data available to quantitatively assess the degree of this possible benefit. The action has no attributable adverse impacts which could bear on small entities, if adopted.

3.8 Action 4: Revise IFQ and CDQ Shipment Report Requirements--Economic Impact on Small Entities

As proposed, Alternative 2 could potentially directly regulate Registered Buyers, all of whom are assumed to be "small business," based upon RFA criteria. NMFS/RAM issued 694 permits for Registered Buyers in 2001, of these 215 reported landings.

Alternative 1would maintain the status quo. This would not result in any change in the current regulations and would not have an associated adverse economic impact.

Alternative 2, the proposed action, would essentially reduce the paperwork requirements for Processors who are also Registered Buyers by eliminating the Shipment Report and combining it with the PTR. This action

would impose no attributable adverse effects on any "small" entities so far as the analysis is capable of determining.

3.9 Other Considerations Required by the Regulatory Flexibility Act

No additional recordkeeping and reporting requirements are associated with this action. Under Action 4, Processors and Registered Buyers will be required to submit a PTR for groundfish, IFQ halibut and sablefish, and CDQ sablefish, rather than a PTR for groundfish, and a separate Shipment Report for IFQ halibut and sablefish and CDQ sablefish. These two forms are essentially identical. If Registered Buyers were submitting Shipment Reports, but no PTR's, they would now be submitting a PTR instead of a Shipment Report. Because the information required on the PTR and Shipment Report are essentially identical, this would not result in any additional paperwork burden.

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this proposed action. Action 3 would revise the existing FMP language to eliminate the unenforced and unenforceable provision that requires NMFS to seal the holds of vessels prior to a vessel leaving the jurisdiction of the Council. If the preferred alternative under Action 3 is not chosen, there would continue to be a conflict between the provisions in the FMPs and existing regulations.

NMFS is not aware of any alternatives in addition to the alternatives considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the economic impact of the proposed rule on small entities.

4.0 SUMMARY

Proposed amendment 72 to the Fishery Management Plan of the Groundfish Fishery of the Bering Sea and Aleutian Islands and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) would address four issues pertaining to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska, and the Community Development Quota (CDQ) Program:

(1) Revise IFQ and CDQ Prior Notice of Landing (PNOL) requirements to reduce the minimum notice from six hours to three hours and allow vessels to provide a "Location of Landing" instead of specifying a "Registered Buyer."

(2) Maintain the existing "Offload Window" of 6:00 a.m. to 6:00 p.m–status quo.

(3) Revise IFQ Vessel Clearance Requirements to allow vessels to submit a verbal "Departure Report" and eliminate the requirement for a Vessel Clearance at a specified port in Alaska.

(4) Revise IFQ and CDQ Shipment Report Requirements to eliminate the Shipment Report for IFQ halibut and sablefish and CDQ sablefish, and require that landings of IFQ halibut and sablefish and CDQ sablefish and groundfish be reported on the PTR.

The impacts projected for the proposed actions would appear to be largely positive, but without the data necessary to make that determination conclusively, NMFS cannot certify that these actions will not have a significant adverse effect on a substantial number of small entities within the meaning of the RFA.

5.0 LIST OF AGENCIES AND INDIVIDUALS CONSULTED

Jessie Gharrett
NMFS RAM Program
P.O. Box 21668
Juneau, Alaska 99802-1668

Sally Bibb
Obren Davis
Patsy Bearden
Lew Queirolo
NMFS Sustainable Fisheries Division
P.O. Box 21668
Juneau, Alaska 99802-1668

Jeff Passer
Eliza Stephens
NOAA Fisheries Office for Law Enforcement
P.O. Box 21767
Juneau, Alaska 99802-1668

Heather Gilroy
International Pacific Halibut Commission
P.O. Box 95000
Seattle, WA 98145

Jane DiCosimo
North Pacific Fishery Management Council
605 W. 4th Avenue
Anchorage, Alaska 99501

6.0 LIST OF PREPARERS

Glenn Merrill
Sustainable Fisheries Division
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802

7.0 REFERENCES

Hutton, L.M., T.O. Geernaert, W.G. Clark. 2002. Commercial Catch Sampling for Halibut in Alaska, British Columbia, Washington, Oregon, and California. IPHC. P.O. Box 95000, Seattle, WA. 98145.

NMFS/RAM. 2002a. Report to the Fleet, The IFQ Program – 2001. P.O. Box 21668, Juneau, AK 99802-1668.

NMFS/RAM. 2002b. Annual Report, IFQ Fee (Cost Recovery) Program – 2001. P.O. Box 21668, Juneau, AK 99802-1668.

G:\FCM-J\ALASKA\Amendments 72.64\Proposed Rule\irfa.rir (June 2002 rev).wpd
r:\region\2002\sf\oct\irfa.rir (June 2002 rev).wpd

Received from Region: SF3: 17 October 2002
G:\FCM-J\Alaska\Amendments 72.64\Proposed Rule\IRFA RIR.wpd