

REVIEW DRAFT

Regulatory Impact Review/ Initial Regulatory Flexibility Analysis to Amend Regulations for Participants in the Halibut and Sablefish Individual Fishing Quota Program and the Bering Sea and Aleutian Islands Crab Rationalization Program.

CHANGES TO AUTHORIZED COST RECOVERY FEE PAYMENT METHODS

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Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis analyzes proposed changes to the cost recovery programs for the Halibut and Sablefish Individual Fishing Quota Program and the Bering Sea and Aleutian Islands Crab Rationalization program. Changes to the authorized payment methods are considered. The purpose of this action is to improve security procedures for processing cost recovery fee payments and to reduce administrative costs of cost recovery payment processing.

List of Acronyms and Abbreviations

ACH	Automated Clearing House
BSAI	Bering Sea and Aleutian Islands
CDQ	Community Development Quota
CFR	Code of Federal Regulations
Council	North Pacific Fishery Management Council
CR Program	Crab Rationalization Program
E.O.	Executive Order
EA	Environmental Assessment
ECC	eligible crab community
EEZ	Exclusive Economic Zone
FMP	fishery management plan
FR	<i>Federal Register</i>
GOA	Gulf of Alaska
Halibut Act	Northern Pacific Halibut Act
IAD	Initial Administrative Determination
IFQ	Individual Fishing Quota
IPHC	International Pacific Halibut Commission
IPQ	individual processing quota
IRFA	Initial Regulatory Flexibility Analysis

LAPP	limited access privilege program
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NMFS	National Marine Fisheries Service
NAICS	North American Industry Classification System
NAO	NOAA Administrative Order
NOAA	National Oceanographic and Atmospheric Administration
PQS	processor quota shares
QS	quota shares
RCR	Registered Crab Receiver
RFA	Regulatory Flexibility Act
RIR	Regulatory Impact Review
SBA	Small Business Administration
Secretary	Secretary of Commerce
U.S.	United States
U.S.C.	United States Code

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Executive Summary

The proposed action would amend existing regulations for the cost recovery fee programs for the Halibut and Sablefish Individual Fishing Quota Program (IFQ Program) and the Bering Sea/Aleutian Islands Crab Rationalization program (CR Program). Changes to the authorized fee payment methods are proposed. The purpose of this action is to improve security procedures for processing cost recovery fee payments and to reduce administrative costs of cost recovery payment processing.

Purpose and Need

The purpose of this action is to address potential security vulnerabilities and administrative costs that result from NMFS staff manually processing credit card, paper check, and money order payments for cost recovery fees. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for fishery management programs that issue a permit allocating exclusive harvest privileges. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Permit holders are required to submit cost recovery fee payments to NMFS annually. The existing regulations for the cost recovery programs for the IFQ Program and the CR Program allow permit holders to submit credit card information for manual processing by NMFS staff (in-house credit card processing). This results in the possession and electronic transmission of sensitive financial information on the NMFS Alaska Region's information network, which is a significant security vulnerability and administrative cost to both the permit holder and to NMFS. As a result of this security vulnerability, the Alaska Region has been directed by the NOAA's Office of the Chief Information Officer to cease manual processing of credit card payments for cost recovery fees. All manual processing of cost recovery payments generates significant costs for the administration of these programs. Therefore, the purpose of this action is also to reduce administrative costs by eliminating payment methods that require in-house processing.

Alternatives

Alternative 1 (*Status quo, no action*) Make no change in the authorized cost recovery fee payment methods for the IFQ Program and the CR Program. Cost recovery fee payment methods would continue to include in-house credit card processing using the NMFS payment form submitted by mail or by facsimile, as well as credit card information given to NMFS staff over the phone or in-person. Permit holders would continue to be authorized to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system. Permit holders would continue to be authorized to submit payment, made in U.S. dollars, by paper check drawn on a U.S. bank account, money order, or bank certified check.

Alternative 2 Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. This would eliminate in-house credit card processing. Permit holders would continue to be authorized to submit payment made in U.S. dollars by paper check drawn on a U.S. bank account, money order, or bank certified check. Permit holders would continue to be authorized to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system.

Alternative 3 Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. Permit holders would no longer be able to submit payment by paper check, money order, or bank certified check. Permit holders would be required

to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system.

Option 1 (*Preferred alternative*) Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. Revise the current cost recovery regulations to eliminate submission of cost recovery payment by paper check, money order, and bank certified checks beginning in 2020. All permit holders would be required to submit payments through the pay.gov system or the Fedwire system beginning in 2020.

Environmental Assessment

An Environmental Assessment is not provided because this action qualifies for a Categorical Exclusion.¹

Regulatory Impact Review

Table 1 summarizes and compares the components of each alternative. Under Alternative 1, there would be no change to how NMFS accepts and processes cost recovery fee payments. NMFS would continue to be at risk of a security breach as a result of the practice of processing and transmitting sensitive financial information over the Alaska Region information network. The *2015 Cost of Data Breach Study* estimates that the average total cost of a data breach in the United States is \$6.5 million (Ponemon Institute 2015). NMFS is financially liable for compromised information, including fines and restitution, and loss of public confidence. The baseline costs of maintaining network security continue to increase as there are increasing threats and breaches to electronic systems and information. Therefore, under Alternative 1, NMFS expects the administrative costs for complying with security needs to continue to increase. When these costs are directly related to a program subject to cost recovery, permit holders are financially responsible for these costs. Under Alternative 1, costs related to administering current cost recovery programs would likely increase, resulting in increased assessed on industry.

Approximately one quarter of payments for IFQ Program cost recovery fees made in 2014 involved in-house credit card processing. Under Alternative 2, using 2014 data, an estimated 528 IFQ Program permit holders would need to choose an alternative payment method. Alternatively, no in-house credit card processing was done for the CR Program from 2012 through 2014; so NMFS expects that Alternative 2 would have no effect on CR Program permit holders. Under Alternative 2, permit holders who previously made payments with a credit card over the phone or in-person would benefit from increased security of their financial information when paying their cost recovery fee. NMFS would also benefit from the mitigation of risk relative to processing and transmitting sensitive financial information over the Alaska Region information network. If Alternative 2 resulted in a significant increase in the number of permit holders paying by paper check, there would be an increase in staff time, and therefore cost, required to process payments. These costs are recoverable under the IFQ Program and CR Program cost recovery programs so would result in an increase in cost recovery fees for permit holders. Alternatively, if the majority of affected permit holders changed to paying through pay.gov, there would be a decrease in staff time, and therefore cost, required to process cost recovery payments. This would reduce cost recovery fees for IFQ Program and CR Program permit holders. The costs to permit holders of changing payment

¹ The proposed action is a minor change to previously analyzed and approved actions. The proposed changes have no effect individually or cumulatively on the human environment (as defined in NAO 216-6). The action only addresses changes in requirements for persons to pay cost recovery fee liabilities, as required under the Magnuson-Stevens Act, and will have no effect on the human environment, beyond those examined in the environmental impact statement or environmental analysis (EA) for each action implementing the programs. Therefore, it is categorically excluded from the need to prepare an EA.

methods are difficult to assess. Both IFQ Program and CR Program permit holders are currently required to submit fishery landings information to NMFS using electronic reporting methods; so it is assumed that requiring electronic cost recovery payments would be a *de minimus* cost for most participants.

Under Alternative 3, 1,533 IFQ Program permit holders would need to change their payment method. This includes the 528 permit holders who made in-house credit card payments, 986 who paid by paper check, and 19 who paid by money order in 2014. These permit holders represent 75 percent of all IFQ Program permit holders owing cost recovery fees. For the CR Program, no in-house credit card payments were made for the CR Program in 2014. However, 10 permit holders paid by paper check in 2014, which represents 50 percent of CR Program permit holders. Overall, Alternative 3 would affect 75 percent of IFQ Program permit holders and 50 percent of CR Program permit holders. Under Alternative 3, permit holders who made payments with a credit card over the phone or in-person would benefit from increased security of their financial information when paying their cost recovery fees. NMFS would also benefit from the mitigation of risk relative to processing and transmitting sensitive financial information over the Alaska Region information network. Permit holders would be restricted to paying electronically using pay.gov or using Fedwire. Over the long term, Alternative 3 would reduce NMFS staff time processing cost recovery payments, which would reduce the costs associated with administering the cost recovery programs. These administrative costs are recoverable under the cost recovery program; so this would result in reduced cost recovery fees for permit holders. The costs to permit holders of changing payment methods are difficult to assess. Both IFQ Program and CR Program permit holders are currently required to submit fishery landings information to NMFS using electronic reporting methods; so it is assumed that requiring electronic cost recovery payments would be a *de minimus* cost for most participants.

Option 1 under Alternative 3 would provide an adjustment period by authorizing permit holders to continue to pay by paper check or money order until 2020. This would provide an opportunity for the permit holders to become familiar with either the pay.gov system or the Fedwire system and change to a new payment method on or before 2020. This would also spread out any transition costs for NMFS staff in providing customer service to help permit holders affected by the change. Option 1 would address the immediate need of ensuring that permit holder's sensitive financial data are secure, and would provide a long-term reduction in administrative costs for NMFS cost recovery fee payment processing, by transitioning away from paper checks and money orders.

Comparison of Alternatives for Decision-making

Table 1. Summary of alternatives and major impacts

	Alternative 1	Alternative 2	Alternative 3
	Status quo. No action.	Remove option for in-house credit card processing	Remove option for in-house credit card processing and payment by paper check, money order, or bank certified check
Differences in Alternatives (Section 2.4)			
Authorizes payment by credit card over the phone, by mail, or in-person	Yes	No	No
Authorizes payment by paper check, money order, or bank certified check	Yes	Yes	No; Option 1 (Preferred alternative) — sunset provision in 2020
Authorizes payment by credit card online	Yes	Yes	Yes
Authorizes payment by debit card or direct debit/Automated Clearing House online (pay.gov)	Yes	Yes	Yes
Authorizes payment by Fedwire	Yes	Yes	Yes
Economic Impacts			
Number of IFQ permit holders that would be affected	0	528 (26%)	1,533 (75%)
Number of CR Program permit holders that would be affected	0	0	10 (50%)
Administrative Impacts	Permit holders and NMFS remain at risk of security breach	Security risk is mitigated — if payments by paper check increase, program costs increase —if payments by pay.gov increase, programs costs decrease	Mitigation of security risk; program costs decrease Option 1 (Preferred alternative) — program costs decrease further after 2020

1 Introduction

The proposed action would amend existing regulations for the cost recovery fee programs for the Halibut and Sablefish Individual Fishing Quota (IFQ) Program and the Bering Sea/Aleutian Islands Crab Rationalization (CR) program. The action would revise the authorized payment methods for payment of cost recovery fees.

This document is a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA). An RIR/IRFA assesses the economic benefits and costs of the action alternatives, as well as their distribution (the RIR), and the adverse economic impacts of the action on directly regulated small entities (the IRFA). This RIR/IRFA addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act. An RIR/IRFA is a standard document produced by the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) Alaska Region to provide the analytical background for decision-making.

1.1 Purpose and Need

The purpose of this action is to address potential data security vulnerabilities and administrative costs that result from NMFS staff manually processing credit card, paper check, and money order payments for cost recovery fees. The Magnuson-Stevens Act authorizes and requires the collection of cost recovery fees for fishery management programs that issue a permit allocating exclusive harvest privileges. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Permit holders are required to submit cost recovery fee payments to NMFS annually. The existing regulations for the cost recovery programs for the IFQ Program and the CR Program allow permit holders to submit credit card information for manual processing by NMFS staff (in-house credit card processing). This results in the possession and electronic transmission of sensitive financial information on the NMFS Alaska Region's information network, which is a significant data security vulnerability and administrative cost to both the permit holder and to NMFS. As a result of this vulnerability, the Alaska Region has been directed by the NOAA's Office of the Chief Information Officer to cease manual processing of credit card payments for cost recovery fees. All manual processing of cost recovery payments generate significant costs for the administration of these programs. Therefore, the purpose of this action is also to reduce administrative costs by eliminating payment methods that require in-house processing.

1.2 History and Operation of the Cost Recovery Programs

Section 304(d)(2)(A) of the Magnuson-Stevens Fishery and Conservation Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*) requires the Secretary of Commerce (Secretary) to "collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any (i) limited access privilege program." The fee cannot exceed 3 percent of the annual ex-vessel value in dollars, goods, and services.

1.2.1 IFQ Halibut and Sablefish

The IFQ Program is a limited access privilege program (LAPP) for the commercial fixed-gear halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in the exclusive economic zone (EEZ) off Alaska. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota shares (QS) in specific regulatory areas. Quota shares equate to individual harvesting privileges that are given effect annually through the issuance of IFQ permits. An annual IFQ permit

authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a regulatory area. The amount of IFQ issued to a permit holder is based on the number of QS units they hold as a proportion of the annual total allowable catch in the halibut or sablefish fishery. The IFQ Program was recommended by the Council in 1992, and implementing rules were published by NMFS on November 9, 1993 (58 FR 59375). Fishing under the program began on March 15, 1995.

The cost recovery program for the IFQ fishery was implemented in March 2000 (65 FR 14919, March 20, 2000). The program stipulated that an IFQ permit holder would incur a cost recovery fee liability for every pound of IFQ halibut and sablefish that he or she landed. The fee liability is calculated by determining the incremental costs of managing the IFQ Program, that is, costs that would not have been incurred but for the IFQ Program. To arrive at these costs, in early September NMFS agency units calculate their IFQ-associated costs, broken out by cost categories including: personnel/overhead, travel, transportation, printing, contracts/training, supplies, equipment, and rent/utilities. Then the ex-vessel value of the fishery is determined. The ex-vessel value is calculated based on the IFQ Registered Buyer Ex-Vessel Volume and Value Report (IFQ Buyer Report). The IFQ Buyer Report requires IFQ Registered Buyers to annually submit the monthly total weights of IFQ species purchased, the value paid, and the landing port location. These data are compiled into standard prices by month and port for IFQ halibut and sablefish. These standard prices are used to calculate the value of all landings made under the IFQ Program. The management costs for the program are divided by the value of the landings under the program to calculate the annual fee percentage. The annual fee percentage is applied to the overall value of each IFQ permit holder's IFQ landings for the year to determine each permit holder's cost recovery payment. The standard prices and annual fee percentage are published in the *Federal Register* every year during the last quarter of the calendar year. Permit holders are also sent a bill with an itemization of their IFQ landings for the year and the application of the standard prices. The IFQ permit holder is responsible for submitting this payment to NMFS on or before the due date of January 31 following the year in which the landings were made. Funds collected under the IFQ Program vary yearly because annual ex-vessel value and costs fluctuate.

The cost recovery regulations originally stated that fee payments are to be made by personal check drawn on U.S. bank account, money order, or bank certified check (50 CFR § 679.45). Amendments to the regulations made at 67 FR 4100 (January 28, 2002) added the option for permit holders to make fee payments with a credit card. Receipts from the collection effort are deposited in two accounts. Twenty-five percent of the collections are deposited in the U.S. Treasury. They are available to Congress for annual appropriations to support the North Pacific IFQ Loan Program, which provides long-term loans to individual fishermen for the purchase of quota shares. The remaining 75 percent is deposited in the "Limited Access System Administrative Fund." Funds in this account are available only to the Secretary and must be spent on IFQ Program management and enforcement.

If an IFQ Program permit holder who owes a fee fails to submit payment in full by January 31 following the year in which the IFQ Program landings were made, NMFS sends the permit holder an Initial Administrative Determination (IAD) with the cost recovery fees owed. If a permit holder fails to make payment after receiving the IAD, NMFS may disapprove any transfer of IFQ or QS to or from the permit holder until the fee liability is reconciled. If further action is necessary, NMFS may invalidate any IFQ fishing permits held by the permit holder.

1.2.2 CR Program

The CR Program is a catch share program that allocates QS for nine crab fisheries under the Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands (BSAI) King and Tanner Crabs. NMFS published final regulations implementing the CR Program in 2005 (70 FR 10174, March 2, 2005). NMFS originally issued QS to eligible harvesters as determined by specific criteria and participation in the CR

Program fisheries during qualifying years. Additionally, NMFS issued processor quota shares (PQS) to eligible processing entities that met specific criteria based on processing activities during the qualifying years. Each year, individual QS holders are issued IFQ based on the number of QS units they hold as a proportion to the annual total allowable catch in a CR Program fishery. PQS holders are similarly issued annual individual processing quota (IPQ) that allow entities to receive deliveries of CR Program crab. NMFS issues three classes of IFQ: A shares, B shares, and C shares. Three percent of the total IFQ pool for each fishery is issued as C shares for captains and crew. The remaining IFQ pool is split with 90 percent issued as A shares and 10 percent issued as B shares. Class A shares carry the requirement of matching, on a one-to-one basis, with IPQ. Class B shares do not have a matching requirement. Both Class B and Class C shares may be delivered to any registered crab receiver (RCR). RCRs include shoreside processors, catcher/processors, entities holding PQS with custom processing agreements with other shoreside processors, and communities holding PQS.

Effective in 2005, section 313(j) of the Magnuson-Stevens Act provided supplementary authority to section 304(d)(2)(A) and additional detail for cost recovery provisions specific to the CR Program. As a LAPP, the CR Program must follow the statutory provisions set forth by section 304(d) and section 313(j) of the Magnuson-Stevens Act. Section 313(j) requires the Secretary to approve a cost recovery program for the CR Program, conducted in accordance with the existing IFQ cost recovery program. Section 313(j) includes specific cost recovery requirements to accommodate the crab processing industry. Additionally, section 313(j) requires cost recovery fees to be paid in equal shares by the harvesting and processing sectors. The processing sector, specifically RCRs, are responsible for collecting the fee liability from the harvesters and submitting this and their own self-collected liability to NMFS. Catcher/processors, vessels that harvest and process crab, pay the full fee percentage. Similar to the IFQ cost recovery program, the CR cost recovery program allows for the collection of actual management and enforcement costs up to 3 percent of ex-vessel gross revenues and a loan program using 25 percent of the fees collected. The cost recovery regulations for the CR Program were published on March 2, 2005 (70 FR 10174).

The fee liability is calculated by determining the incremental costs of managing the CR Program, that is, costs that would not have been incurred but for the CR Program. To arrive at these costs, in April NMFS agency units calculate their CR Program-associated costs, broken out by cost categories including: personnel/overhead, travel, transportation, printing, contracts/training, supplies, equipment, and rent/utilities. The value of the fishery is then calculated using information from the Ex-vessel Volume and Value Report that is submitted annually by RCRs. The Report includes the CR Program crab pounds purchased and the ex-vessel value paid. The overall ex-vessel value of the fishery is calculated by summing the value of all pounds purchased of CR crab. Additionally, the Ex-vessel Volume and Value Report is used to calculate standard prices by month and by crab species. These standard prices are multiplied by the landings of catcher/processors to determine the ex-vessel value for that sector. NMFS then computes the annual fee percentage by dividing the management costs by the total ex-vessel value of crab landings paid in money, goods, or services. The annual fee percentage is published in the *Federal Register* at the start of the crab fishing year and is used by CR Program permit holders and RCRs to collect cost recovery fees throughout the season. This is distinct from the IFQ Program, which applies the fee percentage to the landings that occurred during the most recent fishing year, the CR Program calculates the fee percentage and applies it to the upcoming crab fishing year. At the end of the fishing year, NMFS sends each RCR an itemized bill. Funds collected under the CR Program vary yearly because annual ex-vessel value and costs fluctuate.

The annual fee percentage is then applied to all landings of CR crab. NMFS publishes a notice of fee percentage in the *Federal Register* during the last quarter of the crab fishing year. The annual fee liability percentage is determined by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt. NMFS also provides a summary of fee liabilities to all RCR permit holders during the last quarter of the crab fishing year. The summary explains the fee liability

determination including the current fee percentage, details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices. The RCR permit holder is responsible for submitting payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made. The regulations specify payment methods to be paper check drawn on U.S. bank account, money order, bank certified check, or credit card (50 CFR § 680.44).

If an RCR owes fees and fails to submit full payment for the previous crab fishing year by July 31, the Regional Administrator may disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR and may withhold issuance of any new CR crab permits, including IFQ, IPQ, Federal crab fishing vessel, or RCR permits for the subsequent crab fishing year.

1.3 Description of Permit Holders

Under the IFQ Program, permit holders who landed IFQ halibut or sablefish are required to annually submit a cost recovery fee. In 2014, there were 2,766 permit holders. Permit holders who did not land their IFQ that year were not assessed a cost recovery fee. Non-participation may occur because a permit holder is no longer active in the fishery, has leased their IFQ to another permit holder, has transferred the quota shares to another permit holder, or chose not to fish their IFQ that year due to economic considerations. Due to these reasons, the number of IFQ permit holders who are assessed cost recovery fees each year is fewer than the total number of IFQ permit holders. In 2014, 2,038 IFQ permit holders were required to submit cost recovery fees.

Under the CR Program, both harvester QS holders and processor QS holders are subject to cost recovery. The cost recovery fees from landed IFQ are collected by the RCRs. In 2014, there were 26 RCRs. The RCRs then make the cost recovery fee payments to NMFS. Therefore, substantially fewer permit holders are required to submit cost recovery fees under the CR Program than the IFQ Program. Additionally, the average fee payments are significantly larger for the CR Program. In 2014, 20 permit holders were required to submit cost recovery fees.

1.4 Description of Existing Payment Methods

Existing cost recovery regulations for the IFQ Program and CR Program allow permit holders to pay their fee by submitting a form via mail or facsimile with their credit card information to NMFS (in-house credit card processing). Additionally, NMFS staff accept credit card information over the phone or in-person. NMFS staff then manually enter the credit card information into the pay.gov system, which is described below. Under current regulations, credit card payments can involve NMFS staff transmitting permit holders' credit card information over the Alaska Region information network.

Permit holders may also make electronic cost recovery payments directly to the pay.gov system, which can be accessed through the NMFS Alaska Region online system called eFISH. The eFISH system is an Interagency Electronic Reporting System for commercial fishery landings and seafood production in Alaska. When an individual logs on to eFISH to pay their cost recovery fee liability, the system pre-populates the amount owed into pay.gov. Pay.gov is a web-based application that allows entities to make online payments to Federal government agencies. The pay.gov system is operated by the U.S. Department of the Treasury (Treasury) and offers the highest level of security for the personal and financial information submitted to pay fees to NMFS. Pay.gov uses the latest industry-standard methods and encryption to safely collect, store, and transmit information that is submitted. Through the pay.gov system, permit holders can make cost recovery payments using a credit card, debit card, or direct debit through the Automated Clearing House (ACH). ACH is a network for electronic funds transfers. Due to the transaction fee incurred by the Treasury, there is a payment limit of \$24,999.99 on credit card

transactions through pay.gov (effective June 1, 2015). There is currently no cap on debit card or direct debit payments. Payments made through the pay.gov system automatically update the NMFS internal cost recovery payment tracking system to reflect the payment. While NMFS staff must still update the internal cost recovery payment tracking system with the payment posted date, processing credit card payments made through pay.gov require less staff time than in-house credit card processing.

Paper check, money order, or bank certified check processing occurs in-house following the Treasury guidelines. The checks are scanned into the system and batched up for deposit the following day. NMFS staff must then check the system to ensure that each check has cleared. NMFS staff manually updates an internal cost recovery payment tracking system to reflect the payment. Discrepancies or errors between the fee liability owed and the amount paid by check must be addressed by staff. Therefore, processing checks for payment has a greater staffing burden than payments made through pay.gov.

Permit holders may also make payments through the Fedwire Funds Service. Fedwire is a real-time transfer system that allows financial institutions to electronically transfer funds. The Fedwire system allows wire transfers of fee payments from any bank or wire transfer service to NMFS to fulfill cost recovery fee obligations. To make a Fedwire payment, a permit holder must provide their financial institution the routing number and account information and the amount owed. The permit holder's financial institution then initiates the transaction. Payments are made directly to the Federal Reserve Bank, which then notifies NOAA Headquarters of the payment. Payments are processed individually through the Fedwire Funds Service, which uses a highly secure electronic network.

2 Description of Alternatives

Action: Review and consider amending existing cost recovery regulations for the IFQ Program and CR Program.

Alternative 1 (Status quo, no action) Make no change in the authorized cost recovery fee payment methods for the IFQ Program and the CR Program. Cost recovery fee payment methods would continue to include in-house credit card processing using the NMFS payment form submitted by mail or by facsimile, as well as credit card information given to NMFS staff over the phone or in-person. Permit holders would continue to be authorized to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system. Permit holders would continue to be authorized to submit payment, made in U.S. dollars, by paper check drawn on a U.S. bank account, money order, or bank certified check.

Alternative 2 Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. This would eliminate in-house credit card processing. Permit holders would continue to be authorized to submit payment made in U.S. dollars by paper check drawn on a U.S. bank account, money order, or bank certified check. Permit holders would continue to be authorized to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system.

Alternative 3 Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. Permit holders would no longer be able to submit payment by paper check, money order, or bank certified check. Permit holders would be required to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system.

Option 1 (Preferred alternative) Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. Revise the current cost recovery regulations to eliminate submission of cost recovery payment by paper check, money order, and bank certified checks beginning in 2020. All permit holders would be required to submit payments through the pay.gov system or the Fedwire system beginning in 2020.

2.1 Alternative 1, No Action

Under Alternative 1, the no-action alternative, the current regulations for the IFQ cost recovery program at 50 CFR 679.45 would be maintained.

(a) * * *

(4) *Payment*—

(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not

later than January 31 of the year following the calendar year in which the IFQ and/or GAF landings were made.

(ii) *Payment recipient.* Make payment payable to IFQ Fee Coordinator, OMI.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: IFQ Fee Coordinator, Office of Operations, Management, and Information, P.O. Box 21668, Juneau, AK 99802-1668; submit by fax to (907) 586-7354; or submit electronically through the NMFS Alaska Region Home Page at <http://alaskafisheries.noaa.gov>. If paying by credit card, ensure that all requested card information is provided.

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

Additionally, the current cost recovery regulations for the CR Program at 50 CFR 680.44 would be maintained.

(a) * * *

(4) *Payment—*

(i) *Payment due date.* An RCR permit holder must submit any crab cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than July 31 of the crab fishing year following the crab fishing year in which the payment for a CR crab landing was made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Submit payment and related documents as instructed on the fee form; payments may also be submitted electronically to NMFS. Forms are available on the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>, or by contacting NMFS at: 800-304-4846, Option 2.

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

Alternative 1 would continue to allow participants in the IFQ and CR Programs to remit cost recovery fee payments to NMFS with a credit card using the pay.gov system, through the mail, by facsimile, over the phone, or in person. Under Alternative 1, sensitive financial information would continue to be possessed and electronically transmitted over the NMFS Alaska Region information network. The baseline costs of maintaining network security continue to increase as there are increasing threats and breaches to electronic systems and information. Therefore, under Alternative 1, NMFS expects the administrative costs for complying with security needs to continue to increase, costs that are included in the direct program costs included under both the IFQ and CR Program cost recovery programs.

2.2 Alternative 2

Under Alternative 2, the cost recovery regulations for the IFQ and CR Programs would be revised to eliminate the option for permit holders to submit credit card payment information through the mail or via facsimile and end the current practice of NMFS staff accepting credit card information from permit holders over the phone or in-person. Permit holders would continue to be able to submit credit card payments through the pay.gov system. Additionally, payments could be made using a debit card or direct debit/ACH through pay.gov or through the Fedwire system. Permit holders would also be authorized to submit payment made in U.S. dollars by paper check, drawn on a U.S. bank account, money order, or bank certified check. Under Alternative 2, permit holders who currently remit cost recovery fee liabilities by phoning, mailing, faxing, or delivering in person their credit card information would need to change to a different payment method.

2.3 Alternative 3

Under Alternative 3, the cost recovery regulations for the IFQ and CR Programs would be revised to eliminate the option for permit holders to submit credit card payment information by mail or facsimile and end the current practice of NMFS staff accepting credit card information from permit holders over the phone or in-person. Additionally, Alternative 3 would remove the option for permit holders to submit payments by paper check, money order, and bank certified check. Under Alternative 3, only electronic modes of payment through pay.gov or Fedwire transactions would be accepted.

2.3.1 Option 1 (*Preferred alternative*)

Under Option 1, payment by paper check, money order, or bank certified check would be accepted until 2020. This option would create a transition period during which affected individuals could learn how to use the pay.gov system or Fedwire system for fee submission. Beginning in 2020, permit holders would be required to use the pay.gov system or Fedwire to pay cost recovery fees.

2.4 Comparison of Alternatives

The comparison of alternatives is split into two sections, the effects of the action on permit holders and the effects of the action relative to the cost recovery program administration. Table 2 shows the number of payments made and the overall disposition of payments in the IFQ Program by each payment method for fiscal years 2012 through 2014. Table 3 shows the number of payments made and the overall disposition of payments made by RCRs in the CR Program for fiscal years 2012 through 2014. Both tables show the number of permit holders using each payment method and the percentage those permit holders represent out of the total number of permit holders who submitted payment.

Table

4

and

Table 5 provide more detail about transactions made by specific payment methods. This analysis was prepared using data from the IFQ Program and CR Program cost recovery programs payment database. The data below are final transaction numbers that reflect adjustments to payments made due to underpayment or overpayment of cost recovery fees. The data are categorized into one of two processing types: in-house or online. In-house payments refer to those that required action from NMFS staff, either submission of payment (e.g., credit cards) or manual updating of the payment transaction database (e.g., paper checks). Payments in the online processing type category are payments made through the pay.gov system. Table 6 gives an overview of the difference between the alternatives and the scope of their respective effects.

Table 2. Disposition of cost recovery cost recovery payments for the IFQ Program.

Processing type	Payment type	2012	2013	2014
In-House	Fedwire	15 (0.7%)	30 (1.4%)	23 (1.1%)
In-House	Credit card	491 (22.8%)	474 (22.5%)	528 (25.9%)
In-House	Paper check	1,172 (54.3%)	1,044 (49.6%)	986 (48.4%)
In-House	Money order	20 (0.9%)	20 (1.0%)	19 (0.9%)
Online	ACH	10 (0.5%)	13 (0.6%)	7 (0.3%)
Online	Credit card	450 (20.9%)	524 (24.9%)	475 (23.3%)
Total number of payments made		2,158	2,105	2,038
Total fee payment		\$5,074,136.73	\$5,130,541.36	\$4,974,094.40
Average fee payment		\$2,351.31	\$2,437.31	\$2,440.67

Table 3. Disposition of cost recovery cost recovery payments for the CR Program.

Processing type	Payment type	2012	2013 ²	2014
In-House	Fedwire	*	-	*
In-House	Paper check	12 (57.1%)	-	10 (50.0%)
Online	ACH	6 (28.6%)	-	8 (40.0%)
Online	Credit card	*	-	*
Total number of payments made		21	-	20
Total fee payment		\$3,713,214.01	-	\$1,566,210.76
Average fee payment		\$176,819.72	-	\$78,310.54

*Data withheld due to confidentiality.

² The fee liability percentage was zero in 2013; therefore there were no fees assessed. There was one payment made in advance for 2014; this payment has been aggregated into the 2014 payments.

Table 4. Average, maximum, and minimum of cost recovery payments under IFQ Program cost recovery.

		In-House Fedwire	In-House Credit card	In-House Check	In-House Money Order	Online ACH	Online Credit card
2012	Average	\$1,157.46	\$2,200.44	\$2,300.53	\$277.78	\$5,957.03	\$2,700.03
	Maximum	\$5,056.71	\$28,337.63	\$40,460.84	\$1,161.53	\$42,652.43	\$41,394.57
	Minimum	\$25.55	\$3.38	\$3.62	\$16.28	\$211.09	\$20.28
2013	Average	\$974.51	\$2,190.74	\$2,354.21	\$230.46	\$8,484.35	\$2,843.88
	Maximum	\$4,212.85	\$44,456.16	\$37,494.34	\$750.22	\$41,040.74	\$34,300.97
	Minimum	\$17.88	\$0.03	\$11.12	\$17.33	\$223.52	\$11.95
2014	Average	\$1,348.24	\$2,187.22	\$2,339.01	\$330.43	\$8,486.80	\$2,981.64
	Maximum	\$8,526.90	\$39,553.38	\$34,555.13	\$1,252.10	\$36,619.74	\$30,488.82
	Minimum	\$32.19	\$7.92	\$6.09	\$24.49	\$1,247.74	\$7.87

Table 5. Average, maximum, and minimum of cost recovery payments under CR Program cost recovery.

		In-House Fedwire	In-House Check	Online ACH	Online Credit card
2012	Average	*	\$219,071.99	\$167,052.62	*
	Maximum	*	\$965,598.20	\$646,890.06	*
	Minimum	*	\$3,430.99	\$16,201.58	*
2013³	Average	-	-	-	-
	Maximum	-	-	-	-
	Minimum	-	-	-	-
2014	Average	*	\$102,471.07	\$49,646.19	*
	Maximum	*	\$443,763.36	\$270,375.12	*
	Minimum	*	\$5,664.77	\$2,227.34	*

* Data withheld due to confidentiality.

³ The fee liability percentage was zero in 2013, therefore there were no fees assessed. There was one payment made in advance for 2014; this payment has been aggregated into the 2014 payments.

Alternative 1

Under Alternative 1, there would be no change to the existing payment methods for cost recovery fee payment for the IFQ Program or CR Program. Permit holders would be able to pay by credit card, paper check, money order, or Fedwire. Permit holders could make payments online, over the phone, by mail, in-person, or by fax. Under Alternative 1, permit holders who made credit card payments over the phone, in-person, by mail, and by fax would continue to be at risk of a data security breach due to the transmission of sensitive financial information over the Alaska Region information network. The baseline costs of maintaining network security continue to increase as there are increasing threats and breaches to electronic systems and information. Therefore, under Alternative 1, NMFS expects the administrative costs for complying with security needs to continue to increase, costs that are recouped by the agency through the direct program costs included under both the IFQ and CR Program cost recovery programs.

In 2014 for the IFQ Program, 528 credit card payments were processed in-house (

Table 2). This represented 26 percent of the total cost recovery payments made that year. The number of payments made through in-house credit card processing increased slightly from 2013 to 2014. The average payment size in 2014 for in-house credit card payments was \$2,187 (

Table 4). There were also 986 payments made by paper check (48 percent of payments) and 19 made by money order (0.9 percent of payments). Overall, in-house credit card, paper check, and money order payments represented 75 percent of payments made under the IFQ cost recovery program (1,533 payments). The average payment size in 2014 for IFQ cost recovery permit holders that used a method that resulted in in-house credit card processing was \$2,187 (

Table 4). The average payment size for payments made with paper checks in 2014 was \$2,339. The average payment size for payments made by money order in 2014 was \$330.

There were no cost recovery payments made from 2012 through 2014 by CR Program permit holders that required in-house credit card processing (Table 3). This may be because the CR Program payments are considerably larger than the IFQ Program payments, due to the different payment liability structure. In 2014, the average payment made for the CR Program cost recovery was \$78,310 (

Table 5). While for the IFQ Program, the average payment size was \$2,440 (Table 4). In 2014, 10 CR Program permit holders made payments using a paper check (Table 3). This represented 50 percent of payees. The average cost recovery payment by paper check was \$102,471 in 2014 (

Table 5).
Alternative 2

Under Alternative 2, permit holders who paid by credit card over the phone, in-person, by mail, or by fax would be required to use an alternative payment method. These alternative payment method choices would include paying online by credit or debit card, or by direct debit, paper check, money order, or Fedwire. Alternative 2 would affect an estimated 528 IFQ permit holders (

Table 2). CR Program permit holders would not be affected under Alternative 2, because there were no cost recovery payments made from 2012 through 2014 that required in-house credit card processing (Table 3).

Alternative 3

Under Alternative 3, permit holders who paid by credit card over the phone, in-person, by mail, or by fax would be required to use an alternative payment method. Additionally, permit holders who paid by paper check or money order would also need to choose an alternate payment method. Under Alternative 3, the authorized payment methods would include paying online through pay.gov by credit, debit, or direct debit; or by paying through Fedwire. Alternative 3 would affect an estimated 1,533 IFQ permit holders (

Table 2) and 10 CR Program permit holders (Table 3).

Option 1 (Preferred alternative)

The effects of Option 1 mirror those of Alternative 3, except Option 1 offers a different timeline. While under Alternative 3, the changes to the payment methods would be immediate; under Option 1, the changes would occur in two stages. Option 1 would have the immediate effect of ending payment methods that include in-house credit card processing, which would affect an estimated 528 IFQ permit holders. In the second stage, Option 1 would end the use of paper checks, money orders, and bank certified checks as payment methods beginning in 2020, which would affect an estimated additional 1,005 IFQ permit holders and 10 CR Program permit holders.

Table 6. Summary of alternatives and major impacts

	Alternative 1	Alternative 2	Alternative 3
	Status quo. No action.	Remove option for in-house credit card processing	Remove option for in-house credit card processing and payment by paper check, money order, or bank certified check
Differences in Alternatives (Section 2.4)			
Authorizes payment by credit card over the phone, by mail, or in-person	Yes	No	No
Authorizes payment by paper check, money order, or bank certified check	Yes	Yes	No; Option 1 (Preferred alternative) — sunset provision in 2020
Authorizes payment by credit card online	Yes	Yes	Yes
Authorizes payment by debit card or direct debit/Automated Clearing House online (pay.gov)	Yes	Yes	Yes
Authorizes payment by Fedwire	Yes	Yes	Yes
Economic Impacts			
Number of IFQ permit holders that would be affected	0	528 (26%)	1,533 (75%)
Number of CR Program permit holders that would be affected	0	0	10 (50%)
Administrative Impacts	Permit holders and NMFS remain at risk of data security breach	Data security risk is mitigated — if payments by check increase, program costs increase —if payments by pay.gov increase, programs costs decrease	Mitigation of data security risk; program costs decrease Option 1 (Preferred alternative) — program costs decrease after 2020

2.4.1 Rationale for the Preferred Alternative

NMFS has identified the proposed rule as necessary to improve data security procedures for permit holders' sensitive financial information and to reduce administrative costs of processing cost recovery payments. The Preferred Alternative (Alternative 3 Option 1) accomplishes the stated objectives, while making accommodations for the transition costs to permit holders of complying with the proposed rule by delaying full implementation until 2020.

3 Regulatory Impact Review and Probable Economic and Socioeconomic Impacts

This RIR examines the benefits and costs of a proposed regulatory amendment to change the payment methods for the IFQ Program and CR Program cost recovery programs. An Environmental Assessment is not provided because this action qualifies for a Categorical Exclusion.⁴

The preparation of an RIR is required under Presidential Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following Statement from the E.O.:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and Benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

3.1 Statutory Authority

Under the Magnuson-Stevens Fishery and Conservation Act (Magnuson-Stevens Act) (16 U.S.C. 1801, *et seq.*), the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the regional fishery management councils. In the Alaska Region, the Council has the responsibility for preparing Fishery Management Plans (FMP) and FMP amendments for the marine fisheries that require conservation and management, and for submitting its recommendations to the Secretary. Upon approval by the Secretary, NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine and anadromous fish.

⁴ The proposed action has no potential to effect individually or cumulatively on the human environment (as defined in NAO 216-6). The only effects of the action are economic, as analyzed in this RIR/IRFA. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Halibut are managed under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773-773k), included in that convention, defines the Secretary of Commerce as having the general responsibility to carry out the Convention and the Halibut Act. Fishing for Pacific halibut is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Such Council-recommended regulations may be implemented by NMFS only after approval by the Secretary. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program for the sablefish fishery is implemented by the FMP for Groundfish of the Gulf of Alaska (GOA), the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), and Federal regulations at 50 CFR part 679, under the authority of the Magnuson-Stevens Act. The Council recommended and NMFS approved the GOA FMP in 1978 and the BSAI FMP in 1982. Regulations implementing the FMPs and general regulations governing the IFQ Program appear at 50 CFR part 679.

Bering Sea and Aleutian Islands crab fisheries in the EEZ off Alaska are managed under the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs. The cost recovery fee measures under consideration would amend Federal regulations at 50 CFR 679 and 50 CFR 680. Actions taken to amend regulations governing these fisheries must meet the requirements of Federal law and regulations. The key provisions of the Magnuson-Stevens Act that are relevant for consideration in this analysis are provided below.

The Magnuson-Stevens Act authorizes and requires the collection of cost recovery fees for limited access privilege programs (LAPP) and Community Development Quota (CDQ) programs. Section 3 of the Magnuson-Stevens Act defines a “limited access privilege” as including “an individual fishing quota.” An “individual fishing quota” is defined as “a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.” The quota shares allocated under both the IFQ and the CR Program are considered to be a limited access privilege and, therefore, these programs are subject to cost recovery. Cost recovery fees are defined as a fee on the directly allocated fish that are harvested by participants of each LAP and CDQ program, not to exceed a maximum of three percent of the ex-vessel gross value. The fee percentage is determined by the direct cost of management, data collection, and enforcement of each program, divided by the ex-vessel gross value of the landings of species subject to the fee.

3.2 Purpose and Need for Action

The purpose of this action is to address potential security vulnerabilities and administrative costs that result from NMFS staff manually processing credit card, paper check, and money order payments for cost recovery fees. The Magnuson-Stevens Act authorizes and requires the collection of cost recovery fees for fishery management programs that issue a permit allocating exclusive harvest privileges. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Permit holders are required to submit cost recovery fee payments to NMFS annually. The existing regulations for the cost recovery programs for the IFQ Program and the CR Program allow permit holders to submit credit card information for manual processing by NMFS staff (in-house credit card processing). This results in the possession and electronic transmission of sensitive financial information on the NMFS Alaska Region’s information network, which represents a potentially significant data security vulnerability, and cost, to both the permit holder and to NMFS. As a result of this data security vulnerability, the Alaska Region has been directed by the NOAA’s Office of the Chief

Information Officer to cease manual processing of credit card payments for cost recovery fees. All manual processing of cost recovery payments generates significant costs for the administration of these programs. Therefore, the purpose of this action is also to reduce administrative costs by eliminating payment methods that require in-house processing.

3.3 Alternatives

Alternative 1 (*Status quo, no action*) Make no change in the authorized cost recovery fee payment methods for the IFQ Program and the CR Program. Cost recovery fee payment methods would continue to include in-house credit card processing using the NMFS payment form submitted by mail or by facsimile, as well as credit card information given to NMFS staff over the phone or in-person. Permit holders would continue to be authorized to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system. Permit holders would continue to be authorized to submit payment, made in U.S. dollars, by paper check drawn on a U.S. bank account, money order, or bank certified check.

Alternative 2 Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. This would eliminate in-house credit card processing. Permit holders would continue to be authorized to submit payment made in U.S. dollars by paper check drawn on a U.S. bank account, money order, or bank certified check. Permit holders would continue to be authorized to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system.

Alternative 3 Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. Permit holders would no longer be able to submit payment by paper check, money order, or bank certified check. Permit holders would be required to submit payments electronically through the pay.gov system or by wiring money through the Fedwire system.

Option 1 (*Preferred alternative*) Revise the current cost recovery regulations to eliminate the option for permit holders to submit credit card payment information by mail or facsimile, and end the current practice of NMFS staff accepting credit card information over the phone or in-person. Revise the current cost recovery regulations to eliminate submission of cost recovery payment by paper check, money order, and bank certified checks beginning in 2020. All permit holders would be required to submit payments through the pay.gov system or the Fedwire system beginning in 2020.

3.4 Methods for Analysis of Impacts

The evaluation of impacts in this analysis is designed to meet the requirement of E.O. 12866, which dictates that an RIR evaluate the costs and benefits of the alternatives, to include both quantifiable and qualitative considerations. Additionally, the analysis should provide information for decision-makers “to maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” The costs and benefits of this action with respect to these attributes are described in the sections that follow, which compare Alternative 1, the no-action alternative, with the action alternatives. The analysis then provides a qualitative assessment of the net benefit to the Nation of each action alternative, compared to no action.

The analysis is framed around the permit holders billed directly by NMFS under the IFQ Program and CR Program cost recovery structure. These include IFQ permit holders for the IFQ Program and RCRs for the CR Program. This action is administrative in nature and would not impact the other groups involved in cost recovery, such as the Registered Buyers for IFQ halibut and sablefish or harvesters under the CR Program, who are not directly billed by NMFS for cost recovery fees.

This analysis was prepared using data from cost recovery fee payments made to NMFS for the IFQ and CR fisheries. These data represent the best available information for describing the IFQ and CR Program cost recovery programs and the impacts of the proposed alternatives. Community data were accessed from the Division of Community and Regional Affairs at the State of Alaska Department of Commerce, Community, and Economic Development, which sourced the specific data used from Connected Nation, an organization that provides broadband planning and mapping services.

3.5 Description of Fisheries

Fisheries and sectors subject to the proposed changes in cost recovery fee payments are described in this section. These descriptions include information about the structure of each management program, species allocated under each program, and information on participants in the program.

3.5.1 Halibut and Sablefish IFQ

3.5.1.1 Description of the IFQ Program

The IFQ Program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in the North Pacific Halibut Convention waters off Alaska. Implementing regulations for the IFQ Program were published in the *Federal Register* on November 9, 1993 (58 FR 59375). Fishing began under the program in 1995.

In 2014, NMFS calculated the ex-vessel value of the IFQ halibut and sablefish fishery to be \$176,983,090. The direct program costs of management and enforcement were calculated to be \$4,530,572. Therefore, the annual fee percentage for 2014 was 2.6 percent. Under cost recovery regulations, IFQ permit holders who used their permits to record landings of halibut or sablefish during the 2014 IFQ fishery were obligated to pay 2.6 percent of the total ex-vessel value from the sale of IFQ halibut and sablefish.

3.5.1.2 Description of the Cost Recovery Program

The basic structure of the cost recovery program involves six steps. To calculate the annual fee liability for each permit holder, NMFS (1) calculates the standard price for each fishery species allocated under the program; (2) calculates the ex-vessel value of each fishery species allocated under the program by multiplying the standard price by the total amount of landings in each fishery under a program; (3) calculates the total ex-vessel value of all fish landed under the program by adding together the ex-vessel values of each fish species under the program; (4) calculates the total program cost by adding together the costs of managing each fish species under the program; (5) calculates a fee percentage for the program (not to exceed three percent of the ex-vessel value of fish harvested under any such program) by dividing total program costs by the total ex-vessel value for all fishery species under the program; and (6) calculates the fee amount that will be assessed for each permit holder by multiplying the fee percentage by the permit holder's total ex-vessel value of the fishery landings under the program. The final figure is the annual fee owed by each permit holder.

For the IFQ Program cost recovery, standard prices are calculated by month and port group, using information obtained from Registered Buyers who must report the monetary value and amount of

purchased pounds of halibut and sablefish, by species, month, and port. Reports are due to NMFS by October 15 each year and can be submitted electronically or on paper forms. The program costs are determined by compiling all costs directly related to the management, data collection, and enforcement of the IFQ Program. Costs associated with the management and enforcement of the program are compiled annually. These costs are incremental, that is, costs that would not have been incurred but for the IFQ Program. To arrive at these costs, in early September, NMFS agency units and the IPHC each calculate their own IFQ-associated costs. Within NMFS, the two highest cost components are NMFS Office of Law Enforcement and Information Services Division, respectively. Between years, costs fluctuate due to changes within the programs, such as new contracts, required trainings, personnel changes, and equipment purchases.

Permit holders are mailed a notice, annually, that informs them of their fee liability for the calendar year, with an itemization of all of their landings. Additionally, a notice of the annual fee percentage is published in the *Federal Register* in the last quarter of the calendar year. Permit holders must pay their fee liability no later than January 31 of the year after the calendar year of the landings. IFQ permit holders are responsible for fees owed for all landings on their permits, regardless of whether their IFQ pounds were from their own quota share (QS) or leased from another QS holder, and regardless of whether a permit holder or a hired skipper made the landings.

If a permit holder fails to pay their fee liability on time, NMFS is obligated to take a series of actions against the permit holder until the fee liability is paid (see 50 CFR § 679.45(e) through (h)). If a permit holder fails to submit payment by the January 31 due date, the NMFS Office of Operations and Management will issue an Initial Administrative Determination (IAD) to which the permit holder must respond within 30 days. Additionally, if a permit holder fails to pay their full fee liability by January 31, the NMFS Office of Restricted Access Management will not approve transfers of any QS or IFQ to or from the permit holder until the fee liability is paid. The permit holder may appeal the IAD or pay the fee liability. Unpaid accounts accrue administrative fees, interest, and penalties. If the account is not paid within the 30 days provided by the IAD, in addition to penalties, interest, and fees, the permit holder's IFQ permit account will be sanctioned and the permit holder will be unable to harvest IFQ until the fee liability is satisfied. If after 180 days, the fee remains unpaid, the unpaid balance is forwarded to the U.S. Department of the Treasury for collection.

3.5.2 CR Program

3.5.2.1 Description of the CR Program

In August 2005, fishing in the BSAI crab fisheries began under the CR Program, a new share-based management program (70 FR 10174, March 2, 2005). The CR Program is a catch share program that allocates QS for nine crab fisheries under the BSAI FMP:

1. Bristol Bay red king crab,
2. Bering Sea *C. opilio* (snow crab),
3. Eastern Bering Sea *C. bairdi* (Tanner crab),
4. Western Bering Sea *C. bairdi* (Tanner crab),
5. Pribilof Islands blue and red king crab,
6. St. Matthew Island blue king crab,
7. Western Aleutian Islands (Adak) golden king crab,
8. Eastern Aleutian Islands (Dutch Harbor) golden king crab, and
9. Western Aleutian Islands (Adak) red king crab.

NMFS originally issued QS to eligible harvesters as determined by eligibility criteria and participation in the CR Program fisheries during qualifying years. Additionally, NMFS issued processor quota shares (PQS) to eligible processing entities that met the criteria based on their processing activities during the qualifying years. Each year, individual QS holders are issued individual fishing quota (IFQ) that is based on the number of QS units they hold as a proportion of the annual total allowable catch in a CR Program fishery. PQS holders are similarly issued annual individual processing quota (IPQ) that allow entities to receive deliveries of CR Program crab. NMFS issues three classes of IFQ: A shares, B shares, and C shares. Three percent of the total IFQ pool for each fishery is issued as C shares for captains and crew. The remaining IFQ pool is split with 90 percent issued as A shares and 10 percent issued as B shares. Class A shares carry the requirement of matching, on a one-to-one basis, with IPQ. Class B shares do not have a matching requirement. Both Class B and Class C shares may be delivered to any RCR. RCRs include shoreside processors, catcher/processors, entities holding PQS with custom processing agreements with other shoreside processors, and communities holding PQS.

For the 2014/2015 crab fishing year, NMFS calculated the value of the CR Program fisheries to be \$229,198,505. The direct program costs of management and enforcement were calculated to be \$3,392,286. Therefore, the annual fee percentage for 2014/2015 was 1.48 percent.

3.5.2.2 Description of the Cost Recovery Program

Differing from the IFQ Program cost recovery process, the CR Program requires RCRs to collect and submit fees, rather than requiring payment by each CR Program permit holder. In the CR Program, a permit holder incurs a cost recovery fee liability for every pound of crab landed. The RCR must collect the fee from the crab permit holder landing crab. Additionally, the RCR must self-collect his or her own fee for all crab delivered to the RCR. The RCR must annually submit an Ex-vessel Volume and Value Report to NMFS, no later than May 31. The Report includes the CR Program crab pounds purchased and the ex-vessel value paid. NMFS then computes the annual fee percentage based on the total ex-vessel value of crab landings in money, goods, or services and the annual program costs. Additionally, the Ex-vessel Volume and Value Report is used to calculate standard prices by month and by crab species. These standard prices are multiplied by the landings of catcher/processors to determine the ex-vessel value for that sector.

The program costs are determined by compiling all costs directly related to the management, data collection, and enforcement of the CR Program. These costs are incremental, that is, costs that would not have been incurred but for the CR Program. The annual fee percentage is then applied to all landings of CR crab. NMFS provides a summary of fee liabilities to all RCR permit holders during the last quarter of the crab fishing year. The summary explains the fee liability determination including the current fee percentage, details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices. The RCR permit holder is responsible for submitting payment to NMFS on or before the due date of July 31, following the crab fishing year in which payment for the crab is made.

NMFS publishes a notice of fee percentage in the *Federal Register* during the last quarter of the crab fishing year. Each RCR is responsible for and pays fees based on actual value given for all crab received under the CR Program in dollars, goods, and services. The annual fee liability percentage is determined by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt. Funds collected under the CR Program vary yearly, because annual ex-vessel value and costs fluctuate.

If an RCR fails to pay on time, NMFS may take action against the permit holder's QS holdings and assess additional monetary charges, fines, or permit sanctions. If an RCR fails to pay by the July 31 due date, the

Regional Administrator may disapprove any transfer of IFQ, IPQ, QS, or PQS to or from the RCR permit holder. The RCR may not be issued IFQ or IPQ for that crab fishing year if they fail to submit payment. The Office of Operations and Management will issue an IAD to which the permit holder must respond within 30 days. If an account is unpaid for 30 days after the due date, administrative fees, interest, and penalties start to accrue. If after 180 days, the fee remains unpaid, the unpaid balance is forwarded to the U.S. Department of the Treasury for collection.

3.6 Analysis of Impacts: Alternative 1, No Action

Under Alternative 1, there would be no change to how NMFS accepts and processes cost recovery cost recovery payments. NMFS would continue to be at risk of a data security breach with the practice of processing and transmitting sensitive financial information over the Alaska Region information network. Although NMFS Alaska Region believes that all proper security measures are in place to protect credit card information, NMFS's Office of the Chief Information Officer has expressed concern about the security of NMFS staff processing credit card information in-house. Since the IFQ and CR Program cost recovery fee programs were implemented, the security requirements and liabilities for credit card processing have increased dramatically. NMFS Alaska Region has never had a data breach of cost recovery information, however, NMFS is directly affected by increasing costs to implement, test, document, and report security precautions to protect the information it processes. Specifically, the system components necessary to comply with the recommended security protocols, the Payment Card Industry Data Security Standards, are extensive.

The *2015 Cost of Data Breach Study* estimates that the average total cost of a data breach in the United States is \$6.5 million (Ponemon Institute 2015). NMFS is financially liable for compromised information, including fines and restitution, and loss of public confidence. It is difficult to assess the specific costs of a data security breach to individual permit holders. If there were a data security breach, permit holders' credit card information may be compromised. The baseline costs of maintaining network security continue to increase as there are increasing threats and breaches to electronic systems and information. Therefore, under Alternative 1, NMFS expects the administrative costs for complying with security needs to continue to increase. When these costs are directly related to a program subject to cost recovery, permit holders are financially responsible for reimbursing these costs. Under Alternative 1, costs related to administering the current cost recovery programs would likely continue to increase, resulting in increased costs assessed on industry. NMFS staff are also preparing for the implementation of an expansion of the cost recovery program to additional fisheries. The expanded cost recovery program will include the American Fisheries Act, Community Development Quota, Amendment 80, and Aleutian Islands pollock fisheries (80 FR 936, January 7, 2015). This will add additional burdens to staff that support the IFQ Program and CR Program cost recovery programs.

3.7 Analysis of Impacts: Alternative 2

Under Alternative 2, while losing any perceived benefits associated with using a credit card, by phone or in-person, to pay accrued fees, permit holders who previously made payments with a credit card over the phone or in-person would benefit from increased security of their financial information when paying their fee liability. NMFS would also benefit from the mitigation of risk, relative to the processing and electronic transmission of sensitive financial information over the Alaska Region information network. The affected permit holders who use in-house credit card processing would lose the customer service interaction during the payment process that they may be accustomed to. The administrative cost-savings under this alternative would be determined by how the affected permit holders modify their payment behavior, which is difficult to predict. In general, processing paper checks and money orders for cost recovery fee liabilities is more time-intensive than in-house credit card processing, due to the need for manually updating the payment tracking system, as well as managing insufficient funds issues and

discrepancies in payment amounts. Online credit card payments made through pay.gov are the least time-intensive for NMFS staff and therefore most cost-efficient because the payment tracking system is automatically updated and there is no direct staff processing of payments.

IFQ Program permit holders would be most affected under Alternative 2, because around a quarter of payments for IFQ fee liabilities made in 2014 involved in-house credit card processing. Using 2014 data, an estimated 528 IFQ permit holders would need to choose an alternative payment method. Alternatively, no in-house credit card payments were made for the CR Program from 2012 through 2014; so NMFS expects that Alternative 2 would have no effect on CR Program permit holders.

If under Alternative 2, the majority of the estimated 528 affected permit holders changed to paying by paper check or money order, there would be an increase in staff time, and therefore cost, required to process payments. There is more opportunity for human error in payments made by paper check and money order. Any discrepancies between the amount paid and the amount owed must be individually reconciled by NMFS staff. These costs are directly attributable to the IFQ and CR Programs, so would result in greater administrative costs for permit holders. Under Alternative 2, if the majority of affected permit holders changed to paying through pay.gov, there would be a decrease in staff time, and therefore cost, required to process cost recovery payments. This would reduce administrative costs charged to the permit holders. It is possible that under Alternative 2, more cost recovery payments may be delinquent as a result of some permit holders failing to change successfully to a new payment method that may be unfamiliar to them. An increase in the annual delinquency rates would increase staff time devoted to collecting and processing cost recovery fee payments. Additionally, it is likely that there would be a short-term increase in administrative costs for NMFS staff to assist affected cost recovery permit holders in changing to a new payment method. NMFS staff are also preparing for the implementation of an expansion of the cost recovery program to additional fisheries. The expanded cost recovery program will include the American Fisheries Act, Community Development Quota, Amendment 80, and Aleutian Islands pollock fisheries (80 FR 936, January 7, 2015). This will add additional burdens to staff that support the IFQ Program and CR Program cost recovery programs.

Overall, Alternative 2 would directly address the existing data security vulnerabilities caused by in-house credit card processing. However, it would not directly address the concern about rising administrative costs associated with cost recovery payment processing, because it would not restrict permit holders from switching to paying by paper check or money order.

3.8 Analysis of Impacts: Alternative 3

Under Alternative 3, while losing any perceived benefits associated with using a credit card to pay accrued fees, permit holders who made payments with a credit card over the phone or in-person would benefit from increased data security of their financial information when paying their fee liability. NMFS would also benefit from the mitigation of risk relative to the processing and transmission of sensitive financial information over the Alaska Region information network. The affected permit holders might also lose the customer service interaction during the payment process that they may be accustomed to and value. Under Alternative 3, permit holders would have the option of paying electronically or by using the Fedwire system. To pay electronically, permit holders would need to learn how to use the pay.gov system and have access to a computer and an internet connection. Permit holders without access to a computer or internet connection could make payments using the Fedwire system, which would require access to a financial institution to complete the transaction. Permit holders with fee liabilities greater than \$25,000 would not be able to pay with a credit card through pay.gov, because payments are capped pursuant to the Department of the Treasury policy. This limit would likely be an issue for some CR Program permit holders who have significantly greater cost recovery payments than IFQ payees. Under Alternative 3, any permit holders who were assessed a fee liability greater than \$25,000 would have the option of paying

with a debit card or direct debit/ACH payment in the pay.gov system or through the Fedwire system. Based on 2014 data, this limit would impact 11 CR Program permit holders. There is currently no cap on debit card or direct debit/ACH payments made through pay.gov.

Under Alternative 3, an estimated 1,533 IFQ Program permit holders would need to change their payment method. This estimate includes 528 who made in-house credit card payments, 986 who paid by paper check, and 19 who paid by money order in 2014. These permit holders represent 75 percent of all IFQ liability payees. For the CR Program, no in-house credit card payments were made for the CR Program in 2014. However, 10 permit holders paid by paper check in 2014, which represents 50 percent of payees. Therefore, Alternative 3 would potentially affect an estimated 75 percent of IFQ permit holders and 50 percent of CR Program permit holders.

Alternative 3 may more acutely impact permit holders from communities without access to the internet. IFQ permit holders reside in numerous locations across Alaska, Washington, Oregon, and a scattering of other states. In 2014, permit holders from 21 communities in Alaska exclusively made in-house credit card payments or paper check payments. In most of these communities, there were only a few permit holders. Five communities had four or more permit holders who paid their fee liabilities using paper checks or in-house credit cards; these were Port Alexander, Ouzinkie, Ward Cove, Sterling, and Seldovia. All communities, except Port Alexander, have broadband internet or a public library (DCCED Community Database 2014). Most RCRs are seafood processing companies and, as such, are assumed to have reliable access to the internet, because current regulations require seafood processing companies to use an online system to report landings to NMFS. The cost to permit holders of changing their payment method is difficult to assess. Both IFQ Program and CR Program participants have existing electronic reporting requirements; so it is assumed that changing to electronic cost recovery payments would be a *de minimus* cost for most participants. Maintaining the Fedwire payment option also provides a viable alternative for those participants that could not easily change to electronic payments.

Alternative 3 would have a positive effect on the mitigation of risk associated with processing and transmitting sensitive financial information over the Alaska Region information network. Ending in-house credit card processing would eliminate the possibility of a security breach specific to permit holders' credit card information. Under Alternative 3, permit holders would be restricted to paying electronically or using Fedwire. Over the long term, this would reduce NMFS staff time processing cost recovery payments, which would reduce the incremental administrative costs associated with recoverable program costs. However, it is likely that there would be a short-term increase in administrative costs for NMFS staff to assist affected cost recovery permit holders in changing to a new payment method. These initial costs are expected to dissipate as affected permit holders become familiar with and adopt alternative payment methods.

Delinquency of cost recovery payments could increase under Alternative 3, because of the need to use a new payment method that may be unfamiliar to affected permit holders. Changes to the annual delinquency rate would affect staff time devoted to collecting and processing cost recovery fee liabilities. In addition, concurrent with the proposed changes, NMFS staff are also preparing for the implementation of an expansion of the cost recovery program to additional fisheries. The expanded cost recovery program will include the American Fisheries Act, Community Development Quota, Amendment 80, and Aleutian Islands pollock fisheries (see the proposed rule at 80 FR 936, January 7, 2015). This will add additional workload burdens to staff that support the existing cost recovery programs.

Overall, Alternative 3 would directly address the existing data security vulnerabilities caused by in-house credit card processing. Additionally, by requiring all payments to be made electronically or by Fedwire, it would directly address the concern about rising administrative costs associated with cost recovery payment processing, by reducing the staff time needed to process payments.

3.8.1 Option 1 (*Preferred alternative*)

Option 1 would postpone elimination of the paper check and money order method of fee payment provision of Alternative 3, until 2020. This option would create an adjustment period, during which permit holders could become familiar with the pay.gov system and/or the Fedwire system, easing transition to a new payment method. Option 1 would also spread out any transition costs for NMFS staff in providing customer service to help permit holders affected by the change. Option 1 would address the immediate need to ensure that permit holders' sensitive financial data are secure, by eliminating the processing and transmission of credit card information over the Alaska Region network. This option would also provide a long-term means of reducing administrative costs for NMFS cost recovery payment processing, by transitioning away from in-house credit card processing and high cost payment methods such as paper checks.

Option 1 would require the estimated 528 IFQ permit holders who made in-house credit card payments to adopt an alternative payment method. Beginning in 2020, the 1,005 IFQ permit holders and 10 CR Program permit holders who previously paid by paper check or money order would be required to use an alternative payment method.

Option 1 would directly address the existing data security vulnerabilities caused by in-house credit card processing. Additionally, by requiring all payments to be made electronically or by Fedwire by 2020, it would directly address the concern about rising administrative costs associated with cost recovery payment processing by reducing the staff time needed to process payments. Option 1 would also give permit holders a transition period during which they could take steps necessary to comply with the new regulations.

3.9 Summation of the Alternatives with Respect to Net Benefit to the Nation

The proposed revisions to authorized methods of payment for cost recovery fees will have minimal impacts on net benefits to the Nation. Cost recovery fees are payments made by fish harvesters who have been awarded exclusive access privileges to public resources through the IFQ Program and CR Program. The purpose of these payments is to reimburse taxpayers for the cost of managing, monitoring, and enforcing these LAPPs. These payments are considered transfers. Net national benefits are not affected by transfer payments. Overall, this action will likely reduce the total amount of cost recovery fees collected, due to lower administrative costs attributable to processing payments.

4 Initial Regulatory Flexibility Analysis

4.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) addresses the statutory requirements of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601-612). This IRFA evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action.

The 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 agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse economic impacts on small entities as a group distinct from other entities, and on the consideration of alternatives that may minimize adverse economic impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either “certify” that the action will not have a significant adverse economic impact on a substantial number of small entities, and support that certification with the “factual basis” upon which the decision is based; or it must prepare and make available for public review an IRFA. When an agency publishes a final rule, it must prepare a Final Regulatory Flexibility Analysis, unless, based on public comment, it chooses to certify the action.

In determining the scope, or “universe,” of the entities to be considered in an IRFA, NMFS generally includes only those entities that are directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis.

4.2 IRFA Requirements

Until the North Pacific Fishery Management Council (Council) makes a final decision on a preferred alternative, a definitive assessment of the proposed management alternatives cannot be conducted. In order to allow the agency to make a certification decision, or to satisfy the requirements of an IRFA of the preferred alternative, this section addresses the requirements for an IRFA. Under 5 U.S.C., section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;

- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with 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.

In preparing an IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed action (and alternatives to the proposed action), or more general descriptive statements, if quantification is not practicable or reliable.

4.3 Definition of 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 Small Business Act has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. . . . A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The Small Business Administration (SBA) has established size standards for all major industry sectors in the United States, including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$20.5 million, for all its affiliated operations worldwide. For commercial shellfish harvesters, the same qualifiers apply, except the combined annual gross receipts threshold is \$5.5 million. For other commercial marine harvesters, for-hire fishing businesses, and marinas, the same qualifiers apply, except the combined annual gross receipts threshold is \$7.5 million.

A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in

excess of 500 employees⁵ for all its affiliated operations worldwide. For seafood dealers/wholesalers, the same qualifiers apply, except the employment threshold is 100 employees.

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

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

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners, 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 “small organizations” as any not-for-profit enterprise that is independently owned and operated, and is not dominant in its field.

Small governmental jurisdictions. The RFA defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

⁵ In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the Internal Revenue Service for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. Where the size standard is number of employees, the method for determining a concern's size includes the following principles: (1) the average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months; (2) Part-time and temporary employees are counted the same as full-time employees. [PART 121—SMALL BUSINESS SIZE REGULATIONS §121.106]

4.4 Reason for Considering the Proposed Action

The purpose of this action is to address potential data security vulnerabilities and administrative costs that result from NMFS staff manually processing credit card, paper check, and money order payments for cost recovery fees. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes and requires the collection of cost recovery fees for fishery management programs that issue a permit allocating exclusive harvest privileges. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Permit holders are required to submit cost recovery fee payments to NMFS annually. The existing regulations for the cost recovery programs for the IFQ Program and the CR Program allow permit holders to submit credit card information for manual processing by NMFS staff (in-house credit card processing). This results in the possession and electronic transmission of sensitive financial information on the NMFS Alaska Region's information network, which is a significant security vulnerability and administrative cost to both the permit holder and to NMFS. As a result of this security vulnerability, the Alaska Region has been directed by NOAA's Office of the Chief Information Officer to cease manual processing of credit card payments for cost recovery fees. All manual processing of cost recovery payments generates significant costs for the administration of these programs. Therefore, the purpose of this action is also to reduce administrative costs by eliminating payment methods that require in-house processing.

4.5 Objectives of Proposed Action and its Legal Basis

Under the authority of the Magnuson-Stevens Act, the Secretary of Commerce (NMFS Alaska Regional Office) and the Council have the responsibility to prepare fishery management plans and associated regulations for the marine resources found to require conservation and management. NMFS is charged with carrying out the Federal mandates of the Department of Commerce with regard to marine fish, including the publication of Federal regulations. The NMFS Alaska Regional Office and Alaska Fisheries Science Center research, draft, and support the management actions recommended by the Council. Section 304(d)(2)(A) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) requires the Secretary of Commerce to "collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any (i) limited access privilege program." The fee cannot exceed 3 percent of the annual ex-vessel value in dollars, goods, and services. The proposed action is consistent with this mandate.

4.6 Number and Description of Directly Regulated Small Entities

The thresholds that define a small entity are described in Section 4.3. The entities directly regulated by the proposed action are permit holders who make halibut and/or sablefish landings in the IFQ Program fisheries, and registered crab receivers (RCRs) in the CR Program fisheries. The universe of entities was defined based on who is directly billed by NMFS for cost recovery fees, and therefore who would be directly regulated by a change in the authorized payment methods. For the purpose of this discussion, the two groups of entities are considered separately.

All of the permit holders under the IFQ Program component of the proposed action have reported landed IFQ halibut and sablefish. Therefore, these entities are evaluated under the finfish harvesting size criteria for small businesses, described in Section 4.3. In 2014, the maximum cost recovery payment was \$39,553.38 (Table 4). In 2014, the fee liability percentage was 2.6 percent (79 FR 73046, December 9, 2014).

While some permit holders considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and sablefish fisheries likely represent the largest single source of annual gross

receipts for many of these operations. Based upon the best available scientific and commercial data, and more general information concerning the probable economic activity of vessels in this IFQ fishery, the maximum individual ex-vessel revenue, for the purposes of cost recovery, was estimated to be \$1,521,283. On this basis, no entity (or at most a *de minimis* number) could have landed more than \$20.5 million in combined gross receipts in 2014. Therefore, all 2,038 IFQ permit holders are classified as small entities. This simplifying assumption may overestimate the number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

For the CR Program, 18 RCRs were directly billed for cost recovery fee liabilities in the crab fishing year 2014/2015. Table 7 lists the types of RCRs and how they were assessed under the SBA business size criteria. Nine of these RCRs are shoreside processing entities and were evaluated under the seafood processor size criteria. NMFS estimates that 3 of these RCRs qualify as small entities, because they are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 500 employees. One RCR is a catcher/processor and was evaluated under the shellfish harvesting size criteria. This RCR exceeds the entity size criterion of \$5.5 million in combined annual gross receipts and does not qualify as a small business. One RCR is a non-profit entity that acts as an eligible crab community (ECC) under the CR Program. ECCs are identified under the CR Program as communities with a historical reliance on the crab fisheries. Under the CR Program, ECCs are authorized to purchase and lease out QS or PQS. This RCR qualifies as a small organization as it is a not-for-profit enterprise that is independently owned and is not dominant in its field. The other 7 RCRs are entities that hold IPQ and use custom processing agreements with other companies to process the crab they receive. Therefore, these businesses were evaluated under the seafood dealer size criteria. NMFS does not have employment data for these 7 RCRs, so all are considered to be small businesses for the purposes of classification under the SBA. Across all of the business size categories, there are 11 RCRs that are estimated to be small entities.

Table 7. Business size criteria estimates for CR Program RCRs.

RCR	Entity type used for evaluation	Number of RCRs	Number of small entities
Shoreside processors	Seafood processor	9	3
Catcher/processor	Shellfish harvester	1	0
Eligible Crab Communities	Non-profit entity	1	1
IPQ holders with custom processing arrangements	Seafood dealer	7	7
Total		18	11

4.7 Recordkeeping and Reporting Requirements

This action will require modifications to the existing recordkeeping or reporting requirements for the IFQ and CR Program cost recovery programs in the Alaska Cost Recovery and Observer Fee collection (OMB Control No. 0648-0711). Specifically, this action will eliminate the option for payment by credit card using the paper form. Beginning in 2020, the paper forms will be eliminated and permit holders will be required to submit payment electronically or through Fedwire.

4.8 Federal Rules that may Duplicate, Overlap, or Conflict with Proposed Action

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

4.9 Description of Significant Alternatives to the Proposed Action that Minimize Economic Impacts on Small Entities

An IRFA should include “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 (implicitly adverse) economic impact of the proposed rule on small entities.” The Magnuson-Stevens Act requires that participants in limited access privilege and Community Development Quota programs pay up to 3 percent of the ex-vessel value of the fish they are allocated to cover specific costs that are incurred by the management agencies as a direct result of implementing the programs. NMFS has identified the proposed rule as necessary to improve data security procedures for permit holders’ sensitive financial information and to reduce administrative costs of processing cost recovery payments. There are not any alternatives outside those analyzed here that consistent with applicable law, will accomplish the objectives of the rule, and result in lower adverse economic impacts on directly regulated small entities.

5 Magnuson-Stevens Act Considerations

Below are the 10 National Standards as contained in the Magnuson-Stevens Fishery and Conservation Act (Magnuson-Stevens Act), and a brief discussion of how each alternative is consistent with the National Standards, where applicable. In recommending a preferred alternative, the Council must consider how to balance the national standards.

National Standard 1 — Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery

The overall amount of IFQ halibut and sablefish and BSAI crab caught and the timing of the fisheries under each program is not expected to change as a result of this action. Persons allocated the fishing privilege will continue to be required to submit cost recovery fees based on their landings of these species. The total value of the fisheries and the costs incurred by participants under the cost recovery programs will not change as a result of this action.

National Standard 2 — Conservation and management measures shall be based upon the best scientific information available.

The proposed action modifies the requirements of how cost recovery fees are submitted. No additional conservation and management measures are imposed under this action.

National Standard 3 — To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

Nothing in this action would change the manner in which individual stocks are managed as a unit throughout their range, and interrelated stocks are managed as a unit or in close coordination.

National Standard 4 — Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The cost recovery programs collect fees from persons that have previously been allocated fishing privileges. Nothing in the alternatives alters the residency criterion that was initially used to establish the programs. Therefore, no discriminations are made among fishermen based on residency or any other criteria.

National Standard 5 — Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as its sole purpose.

Efficiency in the context of this amendment refers to economic efficiency. When the IFQ and CR Programs subject to the cost recovery fee were developed, efficiency was considered. Implementing changes to cost recovery fee payment methods will not impact utilization of the resource.

National Standard 6 — Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

The cost recovery fee takes into account the differences in the fisheries. These differences include the ex-vessel value of individual fisheries by species, month, and port when determining the fee and the timing of when fisheries allocations must be made to each program. All of the proposed alternatives are consistent with this standard.

National Standard 7 — Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

The Magnuson-Stevens Act requires that Limited Access Privilege programs be subject to cost recovery. This action will minimize costs by streamlining the administration of cost recovery fee collection.

National Standard 8 — Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

The proposed action would not change the overall amount of cost recovery fees charged to program participants; it would change how participants may make cost recovery payments. A summary of the potential impacts of the proposed action on permit holders from different communities is included in the RIR.

National Standard 9 — Conservation and management measures shall, to the extent practicable, (A) minimize bycatch, and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

The proposed action is not expected to impact bycatch or bycatch avoidance.

National Standard 10 — Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The proposed alternatives are consistent with this standard. None of the proposed alternatives would change safety requirements for fishing vessels or timing of fisheries. No safety issues have been identified that would result from the proposed action.

6 Preparers and Persons Consulted

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