

DRAFT FOR FINAL ACTION

Environmental Assessment/Regulatory Impact Review
For proposed
IFQ Omnibus Amendments

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For further information contact: Sara Cleaver, North Pacific Fishery Management Council
1007 West Third, Suite 400, Anchorage, AK 99501
(907) 271-2809

Abstract: This Environmental Assessment/Regulatory Impact Review analyzes several proposed management measures that would apply to fishery participants in the halibut and sablefish individual fishing quota (IFQ) fisheries off Alaska. First, the proposed management measures include changes to requirements specific to the pot fisheries, such as the biodegradable panel, pot gear configuration, gear retrieval, and pot limits, for the purpose of increasing operational efficiency for vessels in the BSAI and GOA and to reduce administrative burden. Another element of the action alternative would authorize jig gear as a legal gear type for harvesting sablefish IFQ, to increase access to entry-level fishing opportunities. Lastly, the proposed management measure would temporarily remove the Adak community quota entity (CQE) residency requirement for five years to provide more opportunity for the Adak CQE to fully harvest its allocation.

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Executive Summary

This Environmental Assessment/Regulatory Impact Review analyzes several proposed management measures that would apply to fishery participants in the halibut and sablefish Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) Programs off the coast of Alaska. The proposed management measures include changes to requirements specific to pots used to fish IFQ/CDQ, such as the biodegradable panel, tunnel opening size, gear retrieval, and pot limits. The purpose of these measures is to increase operational efficiency for vessels in the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) and to reduce administrative burden. Another element of the action alternative would authorize jig gear as a legal gear type for harvesting sablefish IFQ in the GOA, and for harvesting sablefish IFQ/CDQ in the BSAI. This element is intended to increase access to entry-level fishing opportunities. The other proposed management measure would temporarily remove the Adak community quota entity (CQE) residency requirement for five years to provide more opportunity for the Adak CQE to fully harvest its allocation.

Purpose and Need

In 2017, longline pots became a legal gear type for fishing sablefish in the GOA.¹ This action also required a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to retain legal size (32 inches or greater) halibut caught incidentally if any IFQ permit holder on board has sufficient halibut IFQ pounds for the retained halibut for that halibut area. In 2020, the retention of halibut in pots was authorized in the BSAI,² where using pots to harvest sablefish IFQ was already authorized. In the BSAI, retention of halibut in pots was not limited to incidentally caught halibut. These actions, described further in Section 1.2, afforded IFQ fishery participants the flexibility to use pot gear to fish for both IFQ halibut and sablefish; an important transition for many vessels and quota share (QS) holders to avoid killer and sperm whale depredation on hook and line (HAL) gear. Due to this regulatory flexibility, many IFQ participants in the GOA and BSAI have reconfigured their vessels or operations to use pot gear either instead of, or in addition to HAL gear. Other vessels continue to fish for IFQ sablefish and halibut with HAL gear, either because the benefits of using HAL continue to outweigh the costs of switching gear (some areas do not experience high levels of whale depredation and therefore HAL gear is more effective), or they may intend to switch gear types in the future but have not yet done so.

The analyses for the previous management changes referenced above (GOA Amendment 101 and BSAI Amendment 118) evaluated the potential socioeconomic and environmental impacts of a redistribution of effort from vessels using HAL gear to those using pot gear in the IFQ/CDQ fisheries. Since then, fishery participants have experimented with a variety of gear configurations and designs and increased their knowledge of how to improve harvesting efficiency for their operations. Testimony provided at the IFQ Committee, Advisory Panel, and Council meetings has identified the need for adjustments to management measure in the halibut and sablefish fisheries.

In April 2021, the Council adopted the following purpose and need statement to initiate this action.

IFQ stakeholders, the IFQ Committee, and NMFS have identified regulatory revisions that could increase operational efficiency, reduce administrative burden, and clarify how harvesters can meet existing regulatory requirements. In addition, the Council is considering revisions to pot limits and gear tending restrictions also identified through the recent 3-year GOA sablefish pot review to determine whether they are serving their intended purpose.

¹ [81 FR 95435](#), December 28, 2016; NPFMC 2016 (GOA Amendment 101)

² [85 FR 840](#), January 8, 2020; NPFMC 2019 (BSAI Amendment 118)

The Community Quota Entity (CQE) program was modified in 2014 to include the Aleutian Islands. This allowed the community of Adak to form a CQE and purchase halibut and sablefish quota. Since the implementation of the Aleutian Islands CQE in 2014, Adak has faced challenges being able to harvest its IFQ. The Council is considering temporarily broadening who is eligible to harvest IFQ held by the Adak CQE to provide more opportunities for more fully harvesting its allocation.

Alternatives

The Council adopted the following revised alternatives, elements, and options in October 2021. Additions to the April 2021 motion are shown in **bold underline** and deletions shown in ~~strike through~~.

Alternative 1: No action

Alternative 2: Revise IFQ program regulations to address the following regulatory clarifications

Element 1: Clarify that “slinky pots” are a legal gear for the IFQ fishery **and CDQ fisheries**, and revise regulations to allow the use of biodegradable twine in the door latch or pot tunnel.

Element 2: Remove buoy configuration, **radar reflector**, and flagpole requirements in regulation but retain “LP” marking requirement.

Element 3: Authorize jig gear as a legal gear type for the harvest of sablefish IFQ **and CDQ**.

Element 4: Revise the pot gear configuration requirements to remove the nine-inch maximum width of tunnel opening so it does not apply when a vessel **begins a trip with** ~~has~~ unfished halibut IFQ onboard.

Option: Remove the nine-inch maximum width of the tunnel opening for vessels targeting IFQ sablefish.

Element 5: Pot Limits

Option 1: Change the Pot Limit for Western Yakutat and/or Southeast Outside to

Suboption a) 160 pots per vessel

Suboption ~~ab)~~ **200** pots per vessel

Suboption ~~bc)~~ 300 pots per vessel

Element 6: Gear Retrieval requirements

Option 1: Remove the gear retrieval requirement

Option 2: Modify the gear retrieval requirement to 7 days for all GOA areas

Suboption: 3 days in SEO

Alternative 3: Remove Adak CQE residency requirement for a period of five years.

Note: Alternatives 2 and 3 are not mutually exclusive.

Comparison of Alternatives and Impacts

The alternative and elements included in this action, while specific to the IFQ/CDQ Programs, can be logically grouped based on the directly regulated participants, and those who could potentially be affected by associated impacts. In analyzing the impacts of the alternatives, it is helpful to think of the alternatives and elements in the following ways:

Alternative 1- status quo, would maintain current gear requirements for participants who use pot gear to fish sablefish and halibut IFQ. This alternative would provide no additional flexibility in terms of specific gear configurations, pot limits, and gear retrieval requirements, which could hinder the ability of harvesters to efficiently harvest IFQ. Alternative 1 would also retain the status quo that jig gear is not authorized for the harvest of sablefish IFQ/CDQ, which offers less flexibility (when compared to Alternative 2) for IFQ holders to choose gear most suitable to their sablefish harvesting operations. Lastly, Alternative 1 would maintain the Adak CQE residency requirement and would require that an individual must have maintained domicile in Adak for 12 consecutive months to be an eligible community resident and receive QS from a CQE. Alternative 1 is further described in Section 2.1.

Alternative 2 -Use of Pot Gear in IFQ Fishery (Elements 1, 2, 4, 5, 6)

Elements 1, 2, 4, 5, and 6 under Alternative 2 are applicable to fishery participants using pots to harvest IFQ/CDQ. There exist several nuances regarding the way each element applies to each management area, and how the elements apply to fishing for sablefish or halibut IFQ (see Section 2.2 and Table 2-1). Element 1 and the option under Element 4 would apply to the GOA and BSAI, while Elements 2, 4, 5, and 6 would be specific to the GOA. These elements would provide increased operational flexibility for vessel operators using pot gear to fish for IFQ/CDQ sablefish and halibut. It is also expected that Elements 5 and 6 could increase the potential for gear conflicts between the pot and HAL fleets if vessels using pots to fish IFQ increase their footprint on the fishing grounds in the GOA. Alternatively, Section 4.7.5 explains how some of these elements could increase harvesting efficiency for some vessels in such a way that the amount of time pot gear is deployed on the fishing grounds could decrease. This could minimize the fishing footprint and ultimately minimize the likelihood of gear conflicts with HAL vessels. However, data are lacking to determine the likelihood of gear conflicts and magnitude of potential impacts, as the impacts are partially dependent upon fishing behavior, which can be difficult to predict. As described in Section 4.9, implementing elements that are consistent across areas could also improve enforceability and compliance. Environmental impacts of these elements (Section 5) mainly relate to potential changes in catch composition but are difficult to quantify based on limited data. Section 4.9 highlights some of the data collection and reporting difficulties regarding the use of pot gear in the IFQ fisheries, and potential avenues for navigating these challenges.

The action analyzed in this document provides additional flexibilities for harvesters fishing IFQ/CDQ with pot gear, in response to testimony and the experiences of fishery participants using pot gear thus far. Therefore, the analysis of Elements 1, 2, 4, 5, and 6 focuses on any incremental increase in the use of pot gear to harvest sablefish and halibut IFQ/CDQ that would occur as a result of this action when compared with the current status of regulations for pot gear used to fish IFQ/CDQ. The scope of this document is described further in Section 3.

Alternative 2- Authorize jig gear for sablefish IFQ (Element 3)

Alternative 2, Element 3 would authorize jig gear as a legal gear type for the harvest of sablefish IFQ in the GOA, and for the harvest of sablefish IFQ/CDQ in the BSAI. Similar to the other elements under Alternative 2, this element would offer increased flexibility for sablefish QS holders to harvest IFQ/CDQ in a way that is most effective for their operation. It is likely that impacts of this element would be limited to a small group of IFQ/CDQ holders.

For the purposes of decision-making, it is also important to consider how elements under Alternative 2 could cumulatively impact fishery participants and the environment. Section 4.7.6 highlights some scenarios that could occur if certain elements are selected together or separately, and the potential impacts that could result from these interactions.

Alternative 3- Adak CQE Residency Requirement

Alternative 3 would allow Adak Community Development Corporation (ACDC), the non-profit who has purchased and holds halibut and sablefish IFQ for use by residents of Adak, to lease QS to non-residents on an annual basis for five years, in an effort to increase utilization of CQE-held quota and stimulate a stable fishing economy in the community.

Broadly, changes to the document from the October 2021 version include:

- Updates throughout the document to reflect Council’s revisions to Alternatives and Elements (Sections 2.2 and 4.3)
 - Inclusion of CDQ data
 - Including the elimination of radar reflectors under Element 2
 - Clarification on the scope of Element 4 and associated impacts
 - Changes to proposed pot limits under Element 5
- Additional information included from sablefish pot review (NPFMC 2021) on vessel size by area (Section 4.5.2)
- Additional clarification on the scope of analysis for Alternative 2 (Section 3)
- Addition of 2021 data as available
- Updates on monitoring, enforcement, and reporting from NMFS (Section 4.9)
- Description of affected small entities for Regulatory Flexibility Act (Section 4.9)
- Pacific Halibut Act Considerations (Section 6.2)
- National Environmental Policy Act (NEPA) Summary (Section 5.6)
- Consistency of the Alternatives with National Standards (Section 6.1)

4.9 Management, Monitoring, and Enforcement Considerations

4.9.1 Alternative 2

This section describes the management, monitoring, and enforcement considerations for each element of Alternative 2. This section also highlights challenges for regulatory changes and some of the current challenges with collecting survey and fishery-level data on tunnel shaped collapsible pots, herein referred to as “slinky pots” (refer to Section 4.5.2 for a description of this novel gear type).

Regulatory considerations for Alternative 2

The scope of regulatory changes that may be necessary for this action could be extensive, depending on the options selected by the Council. Regulations defining or referencing the definition of authorized fishing gear exist throughout § 679. Authorized fishing gear is defined in 679.2 and references additional regulations in Table 15 to Part 679 (Gear codes) and § 679.24 for additional gear limitations. Regulations at § 679.7 include prohibitions specific to the use of fixed gear for the purpose of harvesting halibut as well as prohibitions specific to the use of gear in the IFQ fisheries. Regulations at § 679.42 include further detail about authorized fishing gear in the halibut IFQ and sablefish IFQ fisheries as well as additional gear limitations and gear marking requirements. Additionally, many other regulations apply based upon which gear is being used; for example, record keeping and reporting requirements at 679.5 are defined based upon which authorized gear type is being used. Regulations at § 679.51 define observer coverage requirements based upon a combination of vessel type, gear use, and fishery management program. To modify authorized fishing gear definitions, NMFS must consider the potential implications as they may percolate throughout the extensive regulations as well as the recordkeeping and reporting requirements. In February 2022, the Council requested a discussion paper to explore regulatory changes to simplify pot gear regulations, allow for flexibility to use pots in the BSAI and the GOA groundfish fisheries.⁵⁵ While the scope of this action is limited to specific changes to the use of pot gear in the IFQ/CDQ fisheries, the discussion paper requested by the Council would provide a more holistic evaluation of existing regulations and identify areas where streamlining could occur.

Element 1

Beginning with the 2017 fishing season, the Council recommended and NMFS implemented regulations to authorize, but not require, the use of longline pot gear in the GOA IFQ sablefish fishery and allow retention of halibut. Since this authorization in the GOA, there has been an increase in pot gear use, as well as an increase in gear modifications, such as slinky pots. In April 2021, the Council asked for NMFS to clarify if slinky pots were a legal gear type for IFQ/CDQ fisheries, in part, due to the increase in pot gear and the widespread use of slinky pots. NMFS clarified that slinky pots may be used as long as the pot is equipped with an 18-inch biodegradable panel. These requirements are described in detail in the Frequently Asked Questions webpage published by NMFS in 2021.⁵⁶

Element 1: Data Collection on Slinky Pots

NMFS is working to gather more data on slinky pots to determine a suite of effects of using this gear type over HAL gear or conventional pots (Table 4-18). Specifically, the AFSC is working to explore the differences between slinky pots and square pots for catch rates, catch composition, and size selectivity through projects in 2021 and 2022. Pot catch per unit effort (CPUE) is currently not included in the

⁵⁵ <https://meetings.npfmc.org/CommentReview/DownloadFile?p=0ec25cb3-90d8-4b5c-ba4a-6c9e0a8b89f6.pdf&fileName=E%20Motion%20-%20Pot%20Gear%20Discussion%20Paper.pdf>

⁵⁶ <https://www.fisheries.noaa.gov/alaska/commercial-fishing/longline-pot-gear-gulf-alaska-ifq-sablefish-fishery-frequently-asked>

sablefish fishery CPUE index, and stock assessment authors are continuing to explore development of a catch rate index for HAL and pot gear (Goethel et al. 2021).

In the summer of 2021, AFSC conducted a three-day pilot experiment in the West Yakutat region using slinky pots. The objective of this pilot study was to compare catch rates and catch composition between standard longline survey HAL gear and slinky pots. Each day, two sets were deployed in comparable geographic areas, depth profiles, and habitats. One set was composed of standard survey HAL gear with 90 skates, and the other set was composed of 90 slinky pots, each fitted with four 3.5-inch escape rings. To obtain catch rates and species composition, the catch on each hook and within each pot was recorded to species level. Additionally, length data were collected to examine the length compositions of the catch. This pilot study was a small-scale experiment, but provided preliminary data needed to design future experiments on catch rates, catch composition (e.g. bycatch), and size-selectivity of slinky pots. In 2022, the Observer Program will conduct a special project to explore pot gear attributes in the sablefish IFQ /CDQ fishery. This project will provide data on pot types and configurations that are needed if pot data are added to stock assessments in the future.

Table 4-22. Options and challenges for collecting data on slinky pots.

Data set	Change	Data Resolution	Challenges	Status, Timeline, and Feasibility
Catch Accounting System (CAS)	Identify slinky pots in catch data	Trip	<ul style="list-style-type: none"> • Currently does not differentiate pot “type” • Pot type data collected through eLandings, EM, and observer data incorporated into CAS 	Longer term. Data is available starting with collection in 2021.
eLandings	New pot type added in 2021. Users can differentiate between rigid and collapsible (i.e., slinky pots)	Trip	<ul style="list-style-type: none"> • Confusion around gear codes, need to improve outreach strategies with the implementation of a new data entry field • Use of multiple types of pots challenging and requires multiple landing reports. 	Implemented as of fall 2021. Education and outreach are ongoing. NMFS and ADF&G are continuing to explore ways to collect necessary data more efficiently.
Federal logbooks	New checkbox or entry on Daily Fishing Logbook (DFL)	Haul	<ul style="list-style-type: none"> • Would require changes to regulations and an update to the logbook • Requires reprinting of logbooks 	Longer term

			<ul style="list-style-type: none"> • Logbook data are not entered into a database for the entire fleet • Self-reported and potential issues with data quality would require outreach strategies to fishery participants 	
IPHC logbooks	New field	Haul	<ul style="list-style-type: none"> • Funding and complications with providing additional data 	Not a feasible option
Fixed gear electronic monitoring	Include ID of pot type in PSMFC video review data	Haul	<ul style="list-style-type: none"> • Only available for trips selected for EM monitoring • Limited to type of pot and configurations are difficult to collect. 	Already exists in video review protocol and NMFS needs to modify data structures to incorporate the information. In place for 2022.
Observer data	Observers will collect data on pot gear attributes (types, configurations, and numbers)	Haul	<ul style="list-style-type: none"> • Haul level, not trip level • Short term project 	Pot Gear Attributes Project will run for the duration of the 2022 IFQ sablefish fishery
Prior notice of landing (PNOL)	Data clerk asks what type of gear fishermen is using at time of PNOL reporting	Trip	<ul style="list-style-type: none"> • This OLE dataset is typically used by NMFS • Would replicate the information that could be gathered in eLandings 	Would require changing Standard Operation Procedures (SOPs) for data entry/what's reported out, doesn't fit into the description of the contract, and would likely require a regulatory change

Element 1: Biodegradable Panel

Currently, the requirements for a biodegradable panel state that each pot used to fish groundfish must be equipped with an 18-inch biodegradable panel that is within 6 inches of the bottom of the pot and is sewn with untreated cotton thread no larger than No. 30 (50 CFR part 679.2(15)(i)). This is described in greater detail in Section 2.2. When drafting any change to regulations, NMFS considers the scope of the regulation change and how the new regulations would be enforced by OLE.

Regulatory changes necessary to implement Element 1 would apply to the halibut and sablefish IFQ/CDQ fisheries in the BSAI and GOA IFQ regulatory areas. The current regulatory requirement for a biodegradable panel in pot gear applies to groundfish pots and does not specify exemptions specific to IFQ/CDQ fisheries. To implement the language in the motion, NMFS would add a paragraph to the existing definition of authorized pot gear at § 679.2(15)(i) that would describe the use of a biodegradable twine to tie the door on the end of a slinky pot shut as an acceptable alternative to the current definition of a biodegradable panel when using slinky pots in the IFQ/CDQ fisheries in the BSAI and GOA. Given the current scope of this action, this element would not allow vessels using slinky pots to harvest federally managed non-IFQ groundfish to use gear biodegradable twine around the door in lieu of a biodegradable panel sewn into the mesh of the pot.

Element 1: Escape Rings

Escape rings, their use, and associated benefits in pot fisheries are described in greater detail in section 5.2.2 of the EA. Federal regulations do not prohibit the use of escape rings in pot gear, and many participants use pot gear with escape rings. The addition of an escape ring is not a substitute for a biodegradable panel as required in Federal regulation. State regulations require at least two circular escape rings, with a minimum diameter of 4 inches installed on opposing vertical or sloping walls of the pot.⁵⁷ There is a Board of Fisheries proposal to reduce the minimum diameter from 4 inches to 3.75 inches.⁵⁸ At the initial review, the Council did not select an option to include escape rings as a requirement in IFQ/CDQ halibut and sablefish fisheries. However, in February 2022, the Council requested a discussion paper to analyze gear configuration requirements for pot gear.⁵⁹ As part of this discussion paper, NMFS could explore options for escape rings separate from this action.

Element 2

Element 2 would remove the buoy configuration, radar reflector, and flagpole requirements at § 679.24 but retain “LP” marking requirement. This would be implemented by simply removing these requirements from paragraph 679.24(a)(3). Marking requirements for longline pot gear used to fish sablefish IFQ in the GOA would continue to include a requirement for at least one hardball buoy marked with the capital letters “LP” on each end of the set. This would result in a clearly defined regulation which aids enforcement officers, agents, and other vessel operators in readily identifying gear types during at-sea inspections.

Element 3

Element 3 would authorize jig gear as a legal gear type for the harvest of sablefish IFQ/CDQ. In October 2021, the Council received an explanation specific to sablefish IFQ using the information paper provided to the Council in June of 2020. This paper concluded that jig gear is not an authorized gear type in the IFQ sablefish fisheries (NMFS 2020). Three conclusions were provided based on gear definitions at § 679.2 and gear restrictions at § 679.24 for each area (i.e., EGOA, CGOA, WGOA, and BSAI). While jig gear is not an authorized gear type for IFQ sablefish, it is an authorized gear type for IFQ/CDQ halibut in the GOA and BSAI. The Council then requested further analysis of jig gear as an authorized gear type in the IFQ/CDQ sablefish fisheries. This section expands the IFQ/CDQ sablefish discussion to include the applicability of the BSAI FMP, GOA FMP, sablefish TAC allocations, and how this change may be implemented in regulation.

⁵⁷ <https://www.adfg.alaska.gov/static/applications/dcfnewsrelease/1029668426.pdf>

⁵⁸ <http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2020-2021/proposals/221.pdf>

⁵⁹ <https://meetings.npfmc.org/CommentReview/DownloadFile?p=0ec25cb3-90d8-4b5c-ba4a-6c9e0a8b89f6.pdf&fileName=E%20Motion%20-%20Pot%20Gear%20Discussion%20Paper.pdf>

In the BSAI⁶⁰ and GOA⁶¹ FMPs, sablefish fisheries are categorized as *fixed gear* and managed under the IFQ Program. For the BSAI FMP fixed gear sablefish fisheries under *Definitions* at § 3.7.1, fixed gear is defined to include all HAL fishing gears (longline, **jigs**, handlines, troll gear, and pot gear). In the GOA FMP for the fixed gear sablefish fishery, legal gears for taking sablefish in the GOA at § 3.4.2 are longline gear, longline pot gear, and trawl gear. For the GOA FMP, longline gear is defined generally at § 3.4.1 as HAL, **jig**, troll, and handline. Both the BSAI FMP and GOA FMP refer to gear restrictions necessary for conservation and management at § 679. Throughout § 679, there are gear definitions and restrictions specific to sablefish for both the BSAI and GOA. Implementation of Element 3 is unlikely to require changes to the language included in the BSAI and GOA FMPs as they both defer to gear restrictions at § 679 and do not explicitly prohibit jig gear. Additionally, the BSAI FMP does not describe additional gear limitations specific to the fixed gear sablefish fishery and the GOA FMP only prohibits pot-and-line gear as an authorized gear type for sablefish which is a separate fixed gear definition from jig gear.

Under regulations at § 679, as deferred to by the FMPs, sablefish TAC is allocated based on gear type for fixed gear in the GOA subareas, HAL or pot gear in the BS and AI subareas, and trawl gear for both the GOA and BSAI subareas (50 CFR 679.20(a)(4)). For sablefish TAC in the GOA subareas, allocations are based on two categories; fixed gear and trawl gear. For sablefish harvested from any GOA reporting area, fixed gear is defined as longline gear, longline pot gear, and all pot gear (§ 679.2). Although longline gear can include jig gear (§ 679.2), it is a restricted gear type for sablefish under § 679.24(c). For sablefish TAC in the BSAI subareas, allocations are based on two categories; fixed gear (which is defined at 679.2(4)(ii) as all HAL gear and all pot gear) and trawl gear. Additionally, CDQ reserves are specific only to the BSAI subareas and gear types. As with the GOA, if a vessel operator with IFQ or CDQ uses any other gear types other than the gear types authorized for sablefish harvested from any BSAI subareas they are considered prohibited species (50 CFR 679.24(c)).

To authorize jig gear as a legal gear type for IFQ/CDQ fisheries, regulations would need to be modified for the sablefish TAC gear allocations at § 679.20(a)(4). These changes would not alter the allocation structure for sablefish TAC but modify the definition of allowable gear types for each subarea. Since the definition, *fixed gear* is already used for the EGOA, CGOA, and WGOA subareas, no changes would be required. However, since the definition, *hook-and-line or pot gear* is used for the BS and AI subareas, it is recommended that the gear allocation descriptor is changed to *fixed gear*. Additionally, under § 679.2, the definition of fixed gear for sablefish harvested from any GOA or BSAI subarea would need to be modified to include either jig or longline gear (which includes jig gear) and restrictions would need to be lifted at § 679.24(c) so that jig or longline gear is not a restricted gear for GOA and BSAI subareas and so that harvests of sablefish using jig or longline gear would not be considered prohibited species provided by § 679.21(a). Contrary to the rationale above, there is currently one location in regulations, Table 15 to § 679, that incorrectly states that jig gear is an authorized gear type for sablefish harvested from any GOA reporting area. Table 15 to Part 679 was last updated by the final rule implementing Amendment 101 to the GOA FMP (81 FR 95435, January 27, 2017). The primary purpose of this table is to define the gear codes, descriptions, and use of these gear codes for recordkeeping and reporting purposes. NMFS interprets the inclusion of jig gear in the description of authorized gear for sablefish harvested from any GOA reporting area included in Table 15 to Part 679 as an error. However, if Element 3 is recommended by the Council to authorize jig gear for sablefish IFQ and sablefish CDQ fisheries, this table would not need to be modified; however, regulations throughout § 679 would be updated.

Implementation of Element 3 to authorize the use of jig gear in the sablefish IFQ/CDQ fisheries could result in less observer data depending upon the amount of IFQ harvested with jig gear. Under current observer coverage levels at § 679 Subpart E and the Annual Deployment Plan (ADP) for observers and

⁶⁰ <https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf>

⁶¹ <https://www.npfmc.org/wp-content/PDFdocuments/fmp/GOA/GOAfmppdf>

EM in the partial coverage category, all vessels greater than 40 ft. LOA harvesting sablefish IFQ with pot or HAL gear are in either the observer or EM selection pools. Under the ADP, vessels of all sizes fishing with jig gear have been and are currently placed in the no-selection pool. Vessels in the no-selection pool are not required to log fishing trips in ODDS, nor are they required to comply with observer or EM requirements. In the ADP, since 2013, vessels of any length in the partial coverage category and exclusively fishing with jig gear have been in the no selection pool. Observer or EM coverage for vessels using jig gear could be required under a future ADP; however, observer sampling and EM data review protocols would need to be developed for this gear type.

Element 4

Element 4 would revise pot gear configuration requirements for tunnel openings for pots used to fish IFQ halibut and sablefish in the GOA and BSAI Element 4, without the option, would remove the maximum tunnel opening requirement for a vessel that begins a trip with unfished halibut IFQ onboard. The option included in the October 2021 Council Motion would remove the maximum tunnel opening requirement for vessels fishing IFQ sablefish. Paragraph (15)(ii) of the definition of Authorized fishing gear at 50 CFR § 679.2 describes the current tunnel opening requirements for pots used to fish groundfish in the federally managed fisheries. This definition does not differentiate between pots used to fish groundfish and pots used to harvest IFQ/CDQ sablefish and halibut. For implementation of Element 4, interpretation of existing and new regulations should be considered. For example, an exception to the maximum tunnel opening requirements already exists for pot gear used to harvest halibut IFQ in the BSAI. Adding yet another exception to the maximum tunnel opening requirements for pot gear used in Federal fisheries could create additional confusion for fishermen and enforcement. Upon encounter with a fishing vessel using pot gear, an enforcement officer would need to be able to determine which regulations apply (e.g., at the dock, while in transit to or from fishing grounds, as well as during fishing). When the Council provides a recommendation, they should consider how this exception will be implemented and enforced. Regardless of which option the Council selects for this element, if a vessel operator wants to move between the Pacific cod pot fishery and the sablefish IFQ or CDQ pot fisheries, the vessel could not use the same set of pot gear without modifications to comply with the different tunnel opening requirements.

If the Council recommends Element 4 without the option, an exception to the tunnel opening requirement would be added for vessels that begin a trip with unfished halibut IFQ or CDQ onboard a vessel in the BSAI or GOA.

If the Council recommends Element 4 with the option, as described in the October 2021 motion, an exception would be added for vessels that begin a fishing trip with sablefish IFQ or CDQ onboard a vessel in the BSAI or GOA. The motion language uses “targeting”, NMFS interprets this to mean--if a vessel begins a fishing trip to harvest sablefish IFQ or CDQ from any IFQ regulatory area, they would be exempt from the tunnel opening requirement. Element 4 with the option would result in a more consistent exception for fishermen and enforcement because the exception would apply to both IFQ species in all IFQ regulatory areas in the BSAI and GOA.

Element 5 and Element 6

Element 5 would revise pot limits for Western Yakutat and/or Southeast Outside to 160 pots per vessel (Suboption a), 200 pots per vessel (Suboption b), or 300 pots per vessel (Suboption c). Element 6 would revise the gear retrieval requirements to remove the requirement (Option 1) or modify the requirement to 7 days for all GOA areas (Option 2) with a suboption of 3 days in the Southeast Outside District of the GOA. For Amendment 101 to the GOA FMP, The Council considered a range of options (60 to 400 pots) for WY and SEO areas and established varying gear retrieval requirements for longline pot gear in each GOA sablefish area (81 FR 95435, December 28, 2016). During the development of Amendment 101, the

Enforcement Committee reviewed pot limits, gear retrieval, and gear specifications.⁶² The Committee determined pot limits are not a means to address vessel overloading as every vessel is different and have varying capacities for gear. For final action for Element 5 and 6, if the Council determines that varying pot limits and gear retrieval requirements across areas are a means of preventing grounds preemption and gear conflicts across GOA areas, they may wish to consider how this range will be enforced. The Enforcement Committee provided law enforcement precepts intended as general guidance for the Council to assist in a rulemaking project.⁶³ In this guide, the committee noted that improving consistency across all areas is preferred as vessels operate across multiple regulatory areas. The committee also highlighted disadvantages to enforcing restrictions on gear deployment (i.e., soak time, hook/pot counts, etc.) because they are challenging to monitor during at-sea boardings, for vessel operators to interpret, and for enforcement officers to manage violations. For improved enforceability and compliance, the committee recommended ensuring consistency across FMPs and regulatory areas.

4.9.1.1 Additional Regulatory Considerations Recommended by NMFS

Daily Fishing Logbook (DFL) requirements for vessels less than 60 ft LOA using more than one gear type

This section includes information about a regulatory clarification that NMFS recommends to clarify logbook requirements for vessels under 60 ft LOA, which participate in the longline pot sablefish IFQ fishery. Existing recordkeeping and reporting regulations for vessels under 60 ft LOA were developed and implemented under Amendment 101 to the GOA FMP ([81 FR 95435, December 28, 2016](#)). Since implementation of Amendment 101, some vessels using pot gear in the GOA have also used H&L gear either on the same trip or on subsequent trips. NMFS has interpreted recordkeeping and reporting requirements as implemented under Amendment 101 to require these vessels to maintain a longline and pot DFL for the entire year following the first deployment of pot gear. The following description summarizes the applicability of the logbook requirements for vessels in this fishery:

- Per IPHC regulations at 20(1) vessels operating in the IFQ sablefish fishery, which are greater than or equal to 26 ft LOA are required to use one of the following logbooks: groundfish/IFQ longline and pot gear DFL; Alaska H&L logbook; ADF&G online-pot logbook; or IPHC logbook.
- Per Federal regulations at 50 CFR part 679.5(a)(4) for CVs less than 60 ft LOA, except for vessels using pot gear (as described in paragraph (c)(3)(i)(B)(1) and the vessel activity report in paragraph (k)), they are not required to comply with the reporting requirements of this section.
- Per Federal regulations at 50 CFR part 679.5(c)(3)(i)(B)(I) CVs less than 60 ft LOA, operating in the IFQ or CDQ sablefish fisheries and using longline pot gear in the GOA, or pot gear in the BSAI must maintain a longline and pot gear DFL.

Therefore, if a vessel is using longline pot gear to harvest IFQ/CDQ sablefish or IFQ/CDQ halibut, they are constrained to the requirement of using a DFL. If a vessel is not using longline pot gear, then they are not required to maintain a DFL.

There are active periods for different vessel types (i.e., CV using longline or pot gear) as established by 50 CFR 679.5(c)(2)(i)(A). A CV is active when gear is fishing in a reporting area, with the exception of

⁶² <https://meetings.npfmc.org/CommentReview/DownloadFile?p=217d70a2-8703-428e-9884-fb659b523f28.pdf&fileName=Enforcement%20Minutes%20April%202015.pdf>

⁶³ https://www.npfmc.org/wp-content/PDFdocuments/membership/Enforcement/Enforcement_Precepts_1215.pdf

areas 300, 400, 550, or 690. If a vessel is active, they must record all pertinent information in the longline and pot gear DFL. If the vessel is inactive, they need to record periods of inactivity.

Additionally, regulations require vessels to maintain a separate DFL for longline pot gear and HAL line gear. A common practice is for vessels to record both gear types in the IPHC logbook, not in the Federal DFL because it is likely more user-friendly. *NMFS would clarify these regulations so that vessels may record trip information for both pot and H&L gear in the same DFL on two different pages.*

Fishing effort information recorded in the Daily Fishing Logbook

NMFS recommends revisions to the recordkeeping and reporting requirements for vessels using H&L or pot gear to change how the start of gear deployment and end of gear deployment are defined in regulation. Federal regulations in 50 CFR 679.5(c)(3)(vi) state that fishermen must record the start of deployment, when the first HAL gear for a set enters the water. After a haul, the fisherman then records the end of retrieval, where the last HAL gear of a set leaves the water, regardless of where the majority of the set took place. The current regulations that specify the gear set and retrieval information to be reported in the logbook creates confusion for vessel operators and observers. This confusion can result in inconsistency in the type of spatial information reported in the DFL by different vessel operators and can reduce the usefulness of this spatial data to NMFS stock assessment authors. Oftentimes, the location for the start of where the HAL gear is misreported as the same location where the HAL gear ends. This is likely due to a vessel retrieving gear opposite from how they set it. This results in the same location being reported. There are many factors a vessel operator considers when choosing how to deploy and retrieve gear, most common are currents which change with the tides.

NMFS is in the process of conducting in-depth review of regulations that define when gear deployment and retrieval starts for hook-and-line and pot gear. This will enable the agency to better describe the information about fishing effort and fishing gear use from logbooks and either confirm the existing regulations or propose revisions. If a revision is advised, outreach and education will occur to ensure the data are usable moving forward.

4.9.2 Alternative 3

NMFS does not have management concerns for Alternative 3. This alternative would be straightforward to implement by changing the date specified at 50 CFR 679.42(e)(8)(ii) to five years after the final rule is effective.

4.9.3 Cost Recovery

Section 304(d)(2)(A) of the MSA authorizes and requires NMFS to recover the actual costs directly related to the management, data, collection, and enforcement of the IFQ Program which includes time spent on this action. NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). IFQ fishermen pay an annual fee based on direct program costs and the ex-vessel value of fish landed under the IFQ Program. The MSA limits the fee to 3 percent of the annual ex-vessel value of the IFQ fisheries.

NMFS assesses cost recovery fees only for fish that are landed and deducted from the total allowable catch in the IFQ fisheries. NMFS publishes the IFQ standard prices and fee percentage for cost recovery for the IFQ Program for the halibut and sablefish fisheries in the Federal Register. The fee percentage for 2021 was 2.3 percent (86 FR 74071, December 29, 2021).

4.10 Affected Small Entities (Regulatory Flexibility Act Considerations)

Section 603 of the Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis (IRFA) be prepared to identify whether a proposed action will result in a disproportionate and/or