

Initial Review Draft

Regulatory Impact Review/Initial Regulatory Flexibility Analysis
Proposed Regulatory Amendment to the
Halibut and Sablefish Individual Fishing Quota Program to
Prohibit Use of hired skippers for Future Transfers of Halibut and Sablefish B, C, and D
Class Quota Shares after Control Date of February 12, 2010

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Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis was prepared to evaluate the economic and socioeconomic effects of a proposed Federal regulatory amendment, as required under Presidential Executive Order 12866. It evaluates the costs and benefits of a regulatory amendment to the Halibut/Sablefish Individual Fishing Quota (IFQ) Program that would narrow restrictions for initial recipients of quota share (QS) to use a hired master to harvest their IFQs in all areas where hired skippers are allowed. In February 2010 the Council initiated an analysis to prohibit use of hired skippers for transfers of halibut and sablefish B, C, and D class QS, after a control date of February 12, 2010. This action would not affect category A QS or individual initial recipients in Area 2C (halibut) and Southeast (sablefish) (who are not allowed to use hired skippers).

The Council approved a problem statement and alternatives for analysis of a stakeholder proposal submitted to the Council during its 2010 call for proposals. The Council is concerned about the apparent consolidation and reduced opportunities for new entrants/second generation fishermen to enter the fishery. This action is necessary to promote an owner/operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and to further the objectives of the IFQ Program.

This analysis considers two alternatives. Alternative 1 is the No Action Alternative. Alternative 2 would prohibit the use by a hired master for QS transferred after the control date. The proposed action would apply to all (corporation and individual) initial recipients. For non-individual (corporate) QS holders, the effect of the proposed action would be a prohibition on transfers of additional QS, as NMFS would not process transfers that would be prohibited for use, except by operation of law. For individual initial recipients, the effect of the proposed action would be a requirement that the QS holder fish the IFQs themselves or transfer them to another QS holder (who also would be required to fish them).

NMFS staff has identified a high administrative burden for revising regulations (and administration of transfers) for a date in the past. The Council may wish to revise the control date to one coincident with the effective date of the final rule.

1 Background

The North Pacific Fishery Management Council recommended a limited access system for the fixed gear halibut and sablefish fisheries off Alaska in 1992. NMFS approved the Halibut/Sablefish Individual Fishing Quota (IFQ) Program in January 1993 and implemented the program on November 9, 1993 (58 FR 59375). Fishing under the IFQ Program began on March 15, 1995. The Council and NMFS developed the IFQ Program to resolve the conservation and management problems commonly associated with open access fisheries. The preamble to the proposed rule, published on December 3, 1992 (57 FR 57130), describes the issues leading to the Council's recommendation for the IFQ Program to the Secretary.

Federal regulations at 50 CFR part 679, established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act of 1976, implement the IFQ Program for the halibut and sablefish fisheries. Additional federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679, established under the authority of the Northern Pacific Halibut Act of 1982, also govern the halibut fishery.

The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding quota share (QS) in specific management areas. The Council and NMFS designed the IFQ Program to provide economic stability to the commercial halibut and sablefish fixed gear fisheries. The IFQ approach was chosen to provide fishermen with the authority to decide how much, and what type, of investment they wished to make to harvest halibut or sablefish. Quota shares equate to individual harvesting privileges, given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of an IFQ species in a regulatory area. The specific amount (in pounds) is determined by the number of QS units held for that species, the total number of QS units issued for that species in a specific regulatory area, and the total amount of the species allocated for IFQ fisheries in a particular year. If the abundance of halibut or sablefish decreases over time, the total allowable catch (TAC) for that species will decrease and, subsequently, the number of pounds on a person's annual IFQ permit also will decrease. By ensuring access to a certain amount of the TAC at the beginning of the season and by extending the season over a longer period, QS holders may determine where and when to fish, how much gear to deploy, and how much overall investment to make in harvesting.

The Council and NMFS also intended the IFQ Program to improve the long-term productivity of the halibut and sablefish fisheries by further promoting the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act, while retaining the character and distribution of the fishing fleets as much as possible. The IFQ Program includes several provisions, such as ownership caps and vessel use caps, to protect small producers, part-time participants, and entry-level participants that could be adversely affected by excessive consolidation. The IFQ Program also includes other restrictions intended to prevent the fishery from being dominated by large vessels or by any particular vessel class.

One design feature of the program requires IFQ permit holders to be on board the vessel, to maintain a predominantly owner-operated fishery, with a narrow exception for initial QS recipients. The requirement that a catcher vessel IFQ holder be on board the vessel while fishing is a key element of maintaining the owner/operator nature of this fishing fleet. Hence, this requirement is intended to ensure that catcher vessel IFQ continues to be held by professional fishermen, instead of by absentee owners or investment speculators. An exception to the owner-on-board requirement is provided, however, for persons who received initial QS allocations in vessel category B, C, and D (also known as catcher vessel QS) (i.e., the "grandfather provision"). Initial recipients of catcher vessel QS may be absent from a vessel conducting IFQ halibut or sablefish fishing, provided the QS holder can demonstrate ownership of the vessel which harvests the IFQ halibut or sablefish and representation on the vessel by a hired master. This exception allows fishermen who, before the implementation of the IFQ Program, traditionally operated their fishing businesses using hired masters to retain the flexibility of using hired masters under the IFQ Program. By limiting this exception to initial recipients, the owner-on-board exception will expire with the eventual transfer of all QS from initial recipients to new entrants ("second generation") to the IFQ fisheries.

The Council also has noted that some initial recipients who had not previously hired a master subsequently are doing so, and that some had increased the amount of QS they hold and were subsequently hiring a master to fish the associated IFQs. The Council feels that while these practices are in conformance with federal regulations, they are counter to its policy for an owner-operator fleet.

The aforementioned activity is legal, as NMFS implemented the program by flagging the QS holder as holding the privilege to hire a master, rather than flagging the initially issued QS as associated with the hired skipper privilege. This was done for operational reasons as QS units were allowed to be swept up, blocked, and separated out again. Each QS unit would have had to be flagged as having/not having the hired skipper privilege associated with it; this would have placed additional costs and a high burden on NMFS to administer QS transfers.

1999 regulatory amendment The Council has forwarded four previous regulatory actions to the Secretary to revise the hired skipper provisions of the IFQ Program. Soon after its implementation in 1995, NMFS noted that some initial recipients were hiring masters to fish the former's IFQs, but claiming to be an owner of the hired master's vessel rather than using the QS holder's vessel. Some initial recipients of QS purchased a nominal interest in a vessel, as little as one percent or less, and thereby saved the costs of operating a wholly-owned vessel and crew. Although such nominal vessel ownership served the objective of fishing capacity reduction, it compromised the Council's social and economic intent for an owner-operator fishery in which QS holders actually participate in harvesting operations. Also, such nominal vessel ownerships created the potential for excessive loss of crew member jobs. In October 1997, the Council recommended a 20 percent minimum interest in vessels for QS holders wishing to hire skippers. An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual owns at least a 20-percent interest in the vessel and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20 percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997¹. The final rule became effective in June 1999 (<http://www.alaskafisheries.noaa.gov/frules/skipper.pdf>).

2002 regulatory amendment In 1998, the Council recommended a modification to the hired skipper provision under Amendments 54/54 to allow a QS holder to substitute indirect ownership of a vessel through corporate or other ties for direct vessel ownership by the QS holder for purposes of hiring a skipper to fish the QS holder's IFQ. This final rule also allows corporate QS holders to employ a hired skipper on a vessel owned by a shareholder in the corporation. The purpose of this action was to revise IFQ Program regulations to explicitly reflect management practices that have been in effect since the IFQ Program started in 1995. It allowed a QS holder to continue to hire a skipper through a corporation or partnership provided that certain minimum levels of vessel ownership are maintained by an individual QS holder who is a shareholder in a corporation or a partner in a partnership. Existing regulations require an individual QS holder to maintain a minimum of 20 percent ownership interest in the vessel. These regulations prevent a QS holder from employing a hired skipper unless the QS holder directly owns at least 20 percent of the vessel on which the hired skipper will fish the QS holder's IFQ. This final rule extended the 20-percent ownership standard to QS holders who indirectly own a vessel through a corporation, partnership, or other entity. This final rule codified the existing management policy and methodology currently used by NMFS to determine the ownership interest a QS holder has in a vessel. This final rule became effective in May 2002 (http://www.alaskafisheries.noaa.gov/frules/fr5454_ifq.pdf).

¹The Council updated the proposed April 17, 1997 control date, included in the analysis, to the date of final action.

2007 regulatory amendment In 2004, the Council recommended that QS holders be required to submit specific documentation that they own at least 20 percent of the vessel that will be used to harvest their IFQs. This clarification was necessary because the Council concluded that the prior regulatory requirement simply for written documentation was inadequate. It was concerned that some QS holders were abusing the hired skipper provision through vessel ownership arrangements that were informal and unverifiable. The Council also was responding to NMFS staff reports that NMFS had difficulty verifying the required ownership under the prior regulation which simply required written documentation. The final rule addressed the Council's concerns by requiring that the QS holders submit specified formal documents that are issued by the government to prove that they are an owner of the vessel that will be used to harvest their IFQ. If these formal documents do not show percentage ownership, the final rule requires QS holders to supplement those formal documents with other written documentation. The final rule became effective in August 2007 (<http://www.alaskafisheries.noaa.gov/frules/72fr44795.pdf>).

Pending regulatory amendment Two Council recommendations that were part of its 2004 preferred alternative were not implemented. These included: 1) documentation of the 20 percent minimum vessel ownership be required for 12 months prior to using a hired skipper on that vessel and 2) allow an exception to the documentation requirement in the event of a constructive loss of such a vessel. The Council provided its clarifications to NMFS in December 2007. NMFS determined that new rulemaking was required to implement those clarifications. In July 2009 the Council submitted an RIR/IRFA to NMFS on its recommendations that were deferred from the 2007 rulemaking. Rulemaking for the December 2007 clarifications is pending Secretarial action.

2 What is a Regulatory Impact Review?

This RIR is required under Presidential Executive Order (E.O.) 12866. The requirements for all regulatory actions are summarized in the following statement from the order.

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

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 Statutory authority for this action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Halibut Act. The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention, signed at Washington, D.C., on March 29, 1979.

Regulations that are not in conflict with approved IPHC regulations may be recommended by the Council. Council action must be approved and implemented by the Secretary of Commerce. Regulations implementing the Halibut Act in waters in and off Alaska appear at 50 CFR part 300.60-300.66.

4 Purpose and need for this action

The Council received a proposal during its 2009 call for IFQ proposals that requested a sunset date on QS transfers for the use of hired skippers. The IFQ Implementation Team recommended that the Council consider “sunsetting” the hired skipper provisions for halibut and sablefish QS transferred by individual initial recipients, excluding leased (A) shares. In the course of reviewing the proposal the Council and its committees received public testimony that suggested that some individual initial recipients who used to own and operate their own fishing vessels have since retired from the fishery (i.e., sold their vessels) and now hire skippers to harvest their IFQs, instead of transferring (i.e., selling) their QS as was intended by the Council. Others go on board the vessel as if they were crew (to legally fish their IFQs, but do not actively participate in fishing. The Council also heard anecdotal evidence that some initial recipients continue to transact “paper” ownership arrangements with vessel owners to give the appearance of ownership in a vessel for the purpose of using a hired skipper on that vessel, despite previous regulatory actions implemented and under review to curtail such practices.

The Council has forwarded four regulatory amendments to the Secretary to tighten the “hired skipper” privilege for catcher vessel QS². Each has proven insufficient to meet Council intent for an owner-operator fleet, with a limited exception for initial recipients to hire a master to fish the former’s IFQs. The Council adopted the following problem statement in February 2010.

A key element of the IFQ program is the requirement for catcher vessel QS holders to be on board the vessel during harvest and offloading of IFQ halibut and sablefish. The Council did not wish to constrain existing small business practices and therefore created an exception for initial recipients of catcher vessel QS. The Council is concerned about the apparent consolidation and reduced opportunities for new entrants/second generation fishermen to enter the fishery. This reduced opportunity may be attributable to provisions that allow initial recipients to harvest not only their initially issued quota, but also new quota acquisitions without having to be onboard the vessel. Amending the hired skipper privileges for catcher vessel quota in the halibut/sablefish IFQ program to extend these privileges only to current QS holdings is not expected to be disruptive to existing hired skipper arrangements, but would prevent further consolidation of QS to initial recipients using hired skippers and the associated extraction of rents from the fishery.

This action is necessary to promote an owner/operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and to further the objectives of the IFQ Program.

5 Description of the alternatives under consideration

Alternative 1. No action

Alternative 1 is the No Action Alternative. The IFQ Program would continue without additional limitations placed on the use of hired skippers. Time alone will result in the extinction of the hired skipper

² The Council’s fourth regulatory amendment has not been submitted to the Secretary.

provision, as IFQ fisheries will be prosecuted by second generation fishermen who do not hold the hired skipper privilege.

A central policy of the IFQ Program is that more of those who hold catcher-vessel QS and receive annual IFQ permits should, over time, exercise the harvest privilege themselves or transfer those QS to those who would harvest the QS themselves. This is the so-called “owner-onboard” policy, which applies to initial recipients of catcher-vessel QS/IFQ in categories B, C, and D, but not to category A (“freezer vessel”) shares that may be leased without restriction. The IFQ Program is designed so that eventually all catcher-vessel IFQ will be fished by the QS/IFQ permit holders and not by hired skippers.

An element of the program is that, during a transitional period, some persons may, and others must, designate an “IFQ Hired Master” (more commonly referred to as a “hired skipper” or “skipper”) to do the fishing authorized by their annual IFQ permit. Under regulations established in 1998, the QS holder may not hire a skipper, unless the QS holder holds a documented ownership interest of at least 20 percent in the vessel upon which the IFQ is to be fished by that skipper. The “grandfather” provision enables vessel owners (who traditionally hired someone else to run their boat prior to the IFQ program) to continue to hire skippers. However, as persons depart the fishery and as corporations and partnerships dissolve over time, new entrants who take their places must be onboard when the IFQ fish are caught. It is inevitable that over time the number of QS holders who may hire skippers to fish their IFQ will decrease. By both consolidation and regulation, eventually all catcher vessel QS/IFQ will be held by (second generation) persons who must be onboard during harvest of their IFQs.

Alternative 2. Prohibit use of hired skippers of halibut and sablefish B, C, and D class QS³ after February 12, 2010.

The Council’s February 2010 included the following statement, which has been interpreted by the analysts as guidance for the analysis. Some of the requested information is not available (e.g., #2, #7); the remainder is addressed, quantitatively or qualitatively, in this analysis.

“It is expected that the analysis will include the following elements:

- 1) A comparison of the attrition rate of initial recipients of halibut and sablefish QS in regulatory areas 2C and SE where hired skipper privileges are allowed only for non-individuals, against the attrition rate in other regulatory areas.*
- 2) The effect of hired skipper provisions on QS prices, compared to other factors.*
- 3) The kinds of business models and relationships that have developed around the use of the hired skipper provision.*
- 4) Changes in the way IFQ is harvested by all types of QS holders over time, relative to the program goal of evolving towards an owner on board or owner-operated fleet.*
- 5) Program elements, and factors outside the program, that provide incentives or disincentives for QS holders to retire from the fishery.*
- 6) Changes in QS held over time by different types of QS holders.*
- 7) Changes in the availability of QS on the market that might result from this action.”*

The proposed action would restrict the use of hired skippers by initial recipients after a control date specified by the Council. The Council selected the date that it initiated this analysis as that control date. While the Council may adopt his date as part of its preferred alternative at a future meeting, NMFS staff has identified administrative burdens of separating those QS units transferred after a past date, as those

³ For clarity, Category “A” IFQ is excluded from this action because they are fully leasable and the ability to lease A shares confounds analysis of use of hired skippers. A second category of catcher vessel quota not subject to this action is held by individuals who only acquired QS by transfer. These “second generation” QS holders must be onboard a vessel when their catcher vessel IFQ fish are caught and, thus, may not hire skippers to fish their shares.

QS units may have been swept up combined with other QS units and perhaps subsequently transferred to a different QS holder (initial recipient or second generation). The Council may wish to consider adopting a control date coincident with the effective date⁴ of a final rule for this action to allow NMFS to modify its computer programming algorithms to flag each QS unit and corresponding IFQ permit.

Recent recommendations for increased documentation requirements for hiring a skipper by individual and non-individual initial recipients of halibut or sablefish QS/IFQ have failed to curtail hired skipper activities as intended by the Council. The Council has been frustrated by continued attempts by initial recipients to circumvent the intent of the IFQ program, that is, to transition towards an owner-operated fleet. The requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of these IFQ species constitutes a key element of the halibut and sablefish IFQ Program. This requirement was intended to ensure that catcher vessel QS would continue to be held by professional fishermen, instead of absentee owners or investment speculators. The Council provided an exception to this owner-on-board requirement for persons who received initial allocations of catcher vessel QS. This exception allows initial recipients of catcher vessel QS, who had operated their fishing business using hired masters before the IFQ Program was implemented, to retain the flexibility of using hired masters under the IFQ Program. This exception may be exercised only by QS holders who can demonstrate ownership of the vessel used by the hired master for IFQ fishing. That requirement is intended to require a QS holder to hire a skipper to fish the IFQs on the QS holder's vessel and to prevent leasing of those IFQs to the owner or skipper of another vessel. Further, by limiting this exception to initial recipients, the exception to the owner-on-board requirement will expire with the eventual transfer of all QS from initial recipients (except as provided under the surviving heir provisions).

The Council remains concerned about alleged continued abuses of the exemption. The Council has recommended several revisions to the hired skipper privilege since the program was implemented. The Council never intended that this feature of the IFQ program be a "retirement program" for initial recipients or their heirs. The Council intended that active initial recipients would transfer (i.e., sell) their QS when they chose to no longer fish their own holdings. A summary of past attempts at limiting the use of hired skippers by initial recipients is provided in Section 1.

This proposed action would prohibit transfers to increase the QS holdings by initial recipients for use by hired skippers. It would not prohibit transfers of QS by initial recipients to harvest the IFQs themselves. It would have little effect on decisions to hire a skipper to fish IFQs that had previously been fished by the initial recipient (i.e., the "tipping point" for the size of QS holdings for which to hire a skipper likely is less important than the physical condition or age of the initial recipient and/or his/her vessel and information on those characteristics is lacking).

6 Analysis of the alternatives

Alternative 1 would not change the Halibut/ Sablefish IFQ Program. Alternative 1 (or taking no action) would result in continued expansion of the hired skipper provisions. The No Action alternative is contrary to the intent of the Council and a major tenet of the IFQ program (i.e., an owner-on-board fleet). It does not meet Council intent for an owner-operator fleet.

For the 2009 IFQ season, 325 distinct skippers participated in the IFQ fisheries for both species in all areas and QS categories (Table 1). Of these skippers, 295 persons harvested 20,363,769 pounds of IFQ halibut (head off, gutted), which was approximately 47 percent of the entire IFQ TAC. Also 197 hired skippers harvested 15,478,724 pounds of sablefish (round weight), which was approximately 58 percent of the IFQ TAC. It provides a first, general look at hired skipper use for all QS and by all types of IFQ permit holders. Specifically, it displays the number of hired skippers who fished during 2009 by species, area, TAC, and IFQ pounds and percent TAC landed. Individuals who initially received QS may not hire a skipper to fish their IFQ permit in Area 2C (halibut) or SE (sablefish), although they may in other areas.

⁴ 30 days after the publication date

The data are not additive across areas because some skippers fished in more than one area for the same or other IFQ permit holders.

To more effectively evaluate the potential and actual use of hired skippers, it is important to focus on a subset of data, excluding and qualifying information as follows.

Eligible Person and QS/IFQ type⁵: This section focuses on persons holding catcher vessel QS and IFQ. The primary focus of this section is on eligible “persons,” their hired skippers, harvestable pounds (and percent of TAC landed), and landings.⁶

A number of additional data assumptions and qualifiers follow.

Effects of time: There has been a general decrease over time of QS holders, including initial recipients. Such persons typically are replaced by IFQ crew members or heirs of deceased individual QS holders, neither of whom may hire skippers. Tables include 2009 year-end data⁷. Although hired skipper and QS/IFQ transfer applications may be approved at any time, skippers are presumed to have been hired for an IFQ holder for the entire year, and IFQ pounds available to eligible persons and their hired skippers as of year-end are assumed to have been fully available to both persons for the entire year.

Changes in program privileges⁸: Several program changes or provisions and other factors fall into this category.

- From 1995 through 1998, recipients were not required to formally hire skippers to fish their IFQ. For clarity and comparability, some data reflect changes or comparisons among years only for 1998 on.
- For 1995 through 1997, a small fraction of catcher vessel QS could be leased. This provision was little-used and is ignored herein. Under federal regulations, at any time an individual initial recipient may form a new solely owned corporation and transfer in QS holdings. In such cases, the individual loses his/her initial recipient status.
- As discussed above, from 1995 through 1999, otherwise qualified individuals who received NMFS loans to purchase or refinance QS were considered to have permanently lost the ability to hire skippers; as a result, data for those years include only persons who had not received NMFS loans. Thereafter, such persons are included in counts of persons eligible to hire skippers.
- Hired skippers may not be used by otherwise eligible individual IFQ permit holders for Areas 2C and

⁵ A person “eligible” to hire a skipper means an *individual initial recipient* who held catcher vessel QS/IFQ for areas other than Area 2C (halibut) or SE (sablefish) and (for 1995–1999 only) did not have a NMFS loan, or a *non-individual person* that held catcher vessel QS/IFQ.

With some exceptions, *eligible person* means a person who could, or has, hired a skipper to fish catcher vessel IFQ. This group includes all recipients (who must hire skippers) and individual initial recipients who hold QS in areas other than Area 2C (halibut) and SE (sablefish). Excluded from “eligible” for years prior to 2000 are individuals who used NMFS loan funds to purchase QS. Before that year, such persons were required to be onboard during all of their IFQ harvests, even if they held initial recipient status and QS outside of 2C and SE. After 1999, a legal review of regulations and MSA loan provisions resulted in a policy change: the requirement to be onboard is now a NMFS loan contract provision rather than a permanent change of hired skipper privileges; in subsequent years, these individuals are not excluded from eligible “persons.”

⁶ Category “A” IFQ is excluded as fully leasable; these data mask the effects of skipper use. The group of QS holders who may never hire skippers are “IFQ crewmembers,” individual citizens who demonstrated 150 days of U.S. commercial fishing experience, who only acquired QS by transfer; these persons must be onboard a vessel when their IFQ is harvested.

⁷ Year-end data for 2010 are not yet available.

⁸ As a consequence of all these factors, NMFS data must be viewed as estimates of the use and activities of hired skippers, of persons who hired them, and of relevant quota and landings.

SE. Such individuals are excluded from “eligible to hire skippers” if all the IFQ they hold is in one or both areas; however, they may purchase QS in other areas at any time.

Data anomalies: This includes results of data rounding, missing data, and fishing violations, such as fishing in prohibited areas.

Fishing activity: Each year, a number of persons do not use (fish) their IFQ or do not hire skippers, even if eligible. In the following data, we note these distinctions and inclusions/exclusions.

Hired skipper data for skippers hired by individual QS holders fishing are summarized for halibut (Tables 2 and 3) and sablefish (Tables 4 and 5), showing eligible person pools over time, annual TACs, fishable pounds, and landings by skippers fishing for individuals. Program averages and percent change include fishing years 1998 through 2009 due to different data-retrieval methods used in 1995 through 1997. In these tables the difference between the “number of all individuals eligible to hire skippers” and the “number of individual QS holders eligible to hire skippers and had IFQ landings” is the difference between the number that could hire skippers and the number of that list who actually had landings (fished). But data is lacking regarding why they chose not to fish.

Total annual IFQ TAC is the entire IFQ allocation for all areas. As Table 6 indicates, over time, specified TACs have fluctuated. Total IFQ TACs for halibut have changed by ± 20 percent and for sablefish, much less from 1998 levels. TACs are shown in head off-gutted pounds for halibut and round pounds for sablefish. TAC minus A share pounds are provided as an estimate of “unleasable” TAC.

“Fishable pounds” are slightly different from TAC pounds in that they include IFQ permit pounds available for harvest (pounds from QS lb \pm adjustments from prior-year fishing) whether or not fished. In every IFQ Program year, adjusted carryover from the prior year has been greater than underage adjustments, so that fishable pounds have been greater than the specified TAC. .” Tables 7 and 8 show the number of catcher vessel pounds available to individual persons who are “eligible” to hire skippers. Landings by skippers on permits held by “eligible” individuals are provided in Table 9. Use of hired skippers by non-individuals is reported in Table 10.

The row labeled “Landed IFQ lb by anyone for individuals eligible to hire skippers and that had permit landings” includes total landed pounds whether by the IFQ permit holder or their hired master, but chose not to (i.e., total number of B, C, and D IFQ lb landed for individuals eligible to hire skippers, whether or not they chose to do so).

The row labeled “Landed IFQ lb by skippers for individuals eligible to hire skippers and that had landings” is the subset of landed IFQ lb by hired skippers. Some skippers could also hold their own QS individually, but the landings of the hired skippers own IFQ is not included in this data.

The row labeled “Percent of Total IFQ TAC landed by Skippers” represents only the landings activity of the hired skipper, not the IFQ permit holder landing their own pounds.

Tables 10 through 13 show hired skipper data for skippers hired by non-individual QS holders fishing for halibut and sablefish, showing eligible person pools over time, annual TACs, fishable pounds, and landings by skippers hired by non-individuals, who, from 1998 on, must hire a skipper to fish their IFQ. Program averages and percent change include fishing years 1998 through 2009 due to different data-retrieval methods used in 1995 through 1997.

Tables 2.19 and 2.20 show the numbers of catcher vessel pounds available to individual persons who are “eligible” to hire skippers. Landings by skippers on permits held by non-individuals are reported in Table 2.21. This table does not include pounds landed by a person debiting their own IFQ permit

even if they happen to be a hired skipper for someone else at other times. It includes only the pounds they landed when acting as another IFQ permit holder's hired skipper.

Tables 17 and 18 provide some general characteristics of the skippers themselves. Some skippers have been QS/IFQ holders in their own right, some were at least part owners of the vessels on which they were hired to fish another person's IFQ, and some have been shareholders, partners, or "owners" of the non-individual QS holding entity that hired them. In addition to data issues described at the start of this section, this examination requires some additional data assumptions and is subject to a data completeness issue. First, we must assume that QS holdings as of the end of the year existed the entire year. Next, for older data only year-end 2008 vessel and "non-individual" ownership information was available, and was therefore used for all previous data years. Finally, ownership was examined only to the "first level" of ownership; in reality, these relationships are often complex, spanning multiple "levels" for any person and vessel. As a result, vessel and quota ownership by skippers are likely underestimated.

Over time, increasing numbers of skippers hold their own QS and would fish even if not hired by other QS holders. Skipper QS can be of any kind and is not limited to one species; they may fish both halibut and sablefish. Note that skippers fishing IFQ halibut cannot be hired by individuals in Area 2C and those skippers fishing for IFQ sablefish cannot be hired by individuals in Southeast Alaska (SE). Table 18 shows that by the end of 2009, of those hired skippers hired by individuals to fish B, C, and D shares, 42.5 percent of IFQ halibut skippers and 52.1 percent of sablefish skippers held their own QS. Since 2000, 9 more hired skippers fishing IFQ halibut and 10 more fishing sablefish held their own QS. However, since 2008, the numbers of hired skippers not holding their own QS and fishing for IFQ halibut doubled from 60 to 120; skippers having no QS, also hired by individuals, and fishing for sablefish increased by 24, a 57 percent increase over the previous year. Table 19 shows that the numbers of hired skippers hired by recipients to fish B, C, and D Shares and who held their own QS at year-end were almost the same percentage of skippers (55.5 and 57.8 percent, respectively) for halibut and sablefish skippers, nearly a 9 percent increase over the 2000 fishing year percentages for this skipper category. However, in 2009 the number of skippers that did not hold their own QS (hired by non-individuals) were the lowest during all Program years for both halibut (72) and sablefish (46).

Table 20 shows vessel ownership by hired skippers for the last ten years. A reasonable presumption is that skippers would fish on vessels they own, especially if they are QS holders in their own right. Hirers also must own the vessels used to fish their catcher vessel IFQ. RAM's use of only "first level" ownership data underrepresents skipper vessel ownership. Although the number of IFQ vessels is decreasing, the number of vessels used by skippers for IFQ fishing is increasing. While the number of skippers fishing IFQ halibut is increasing, numbers of sablefish skippers have fluctuated but overall remained essentially unchanged over time. As fewer IFQ vessels entered the water in 2009 (1,090 for halibut; 363 for sablefish), numbers of skippers who owned the vessels used to fish IFQ increased, accounting for approximately 32 and 21 percent of IFQ vessels, respectively.

Table 21 demonstrates, a large percentage of skippers hired to fish for "non-individual entities" (that were required to hire a skipper to fish their IFQ) were, in whole or in part, owners of the hiring entity. Evaluation of ownership only at the first level underrepresents skipper's hirer ownership. From 2002 to 2009, the numbers of non-individual entities with IFQ decreased. As a result, numbers of hirers, skippers, and skipper-owners all decreased. NMFS tracks the "first level" of hierarchical ownership structure with respect to vessel documentation, or articles of incorporation or other legal documentation. To illustrate Company "A" is owned by Mickey Mouse (30% shareholder) and Disney, Inc., (70% shareholder). Disney, Inc. has shareholders Goofy, Donald, and HDL Partnership. HDL Partnership has three partners: Huey, Dewie, and Louie. This represents three levels of ownership of entity Company A:

Level 1 = Mickey Mouse and Disney Inc.
Level 2 = Goofy, Donald, and HDL Partnership
Level 3 = Huey, Dewie, and Louie

NMFS can only query the RAM to the first level of ownership, which finds only that hired skipper Mickey Mouse is an owner of Company A. The query does not find that hired skippers Goofy, Donald, Huey, Dewie, or Louie are owners of Company A. Thus, these queries underrepresent the number of skippers that are second, third, or “lower” level owners of the business that hired them, or of vessels on which they fished, etc. Stated another way, more hired skippers than can be documented are actually fishing their own IFQs because they are already part of the non-individual QS holder.

NMFS RAM Division does not collect vessel ownership data; federal fishery permit data provides “first level” but not beyond that level unless the vessel owner happens to also be a QS holder for IFQ or crab. For the purpose of approving hired skipper applications, the hiring person has to prove they own the required (almost always 20%) of the vessel the skipper will use to fish the IFQ. But often, they establish *their* ownership percent and do not provide additional information on other ownership information (that would allow the determination of the percent of everyone on the ownership list (even at the first level)). Or, the ownership is indirect, through a non-individual entity. NMFS RAM Division saves the proof/ownership information in the paper copy files, but not in the database in a retrievable format.

Over the years, two trends are clear:

- the number of both non-individual and individual QS holders who are eligible to hire skippers has been declining through attrition while the reliance on hired skippers has been increasing. The latter is evident by the increase in hired skippers and of the higher percentages of hirers and hired skipper harvests and QS holdings.
- hired skippers have a substantial (and increased) ownership in both vessels they used to fish for others and entities for which they fish.

Conclusions

The ability to hire a skipper to fish catcher vessel IFQ remains an important element of the IFQ Program. Under status quo, the practice will eventually disappear as QS/IFQ holders are replaced by new entrants who are required to be onboard when the IFQ is harvested. Until that happens, however, an increasing percentage of the annual IFQ will be harvested by persons other than the QS/IFQ holder even though many such persons are owners of the entities that “hire” them, of the vessels they use for skipper activities, or are IFQ holders and active fishermen in their own right. The fact that the numbers of catcher vessel QS holding entities are declining does not, in itself, result in fewer IFQ pounds being fished by hired skippers (although the numbers of such skippers may decline). The size of each eligible individual and non-individual QS holder’s IFQ allocations may increase through transfers up to the individual caps, even as the numbers of QS holders decline through consolidation and program regulation.

Alternative 2 may directly affect multiple orders of entities (and the skippers):

- 1) those eligible to hire skippers;
- 2) those who have used hired skippers; and
- 3) those who have hired a skipper and transferred QS after the control date.

Order 1. If implemented in 2009, Alternative 2 could have affected a maximum of 1,122 halibut QS holders and 335 sablefish QS holders who are eligible to hire a skipper. Table 2 lists 1,002 individual halibut QS holders and Table 10 lists 120 non-individual halibut QS holders that year; Table 4 lists 253 individual sablefish QS holders and Table 12 lists 82 non-individual sablefish QS holders.

Order 2. Table 22 demonstrates that 295 halibut IFQ permit holders, and 325 skippers whom they hired, and 197 sablefish IFQ permit holders, and 190 skippers whom they hired, would have been directly affected if the proposed action has been in effect in 2009. Information is not available to determine if some of these same skippers were hired by both individual and non-individual QS holders, or by both halibut and sablefish QS holders, but it is likely that there is some overlap. These hired skippers landed 20,363,729 lb of halibut in 2009, which represents over 48 percent of catcher vessel halibut IFQ landings, and 15,478,724 lb of sablefish, which represents over 64 percent of total catcher vessel sablefish IFQ landings. It includes pounds landed by persons other than the person who held the IFQ permit debited in that landing.

The number of initial recipients who hire skippers, number of skippers, and associated landings varied widely by area and species (Table 22). The top management areas in numbers of hired skippers for halibut were Area 3A with 224 and Area 3B with 163. In terms of total halibut IFQ landed, Area 4C/D led with 83 percent, followed by Area 4B with 68 percent. The top areas in numbers of hired skippers for sablefish were Central Gulf with 130 and West Yakutat with 76. In terms of total sablefish IFQ landed, Western Gulf led with greater than 93 percent, followed by Central Gulf and Aleutian Islands, with 81 and 79 percent, respectively.

It is unknown what percent of over 20 million lb of landed halibut IFQs and over 15 million lb of landed sablefish IFQs would have been foregone by hired skippers, if the preferred alternative had been in effect in 2009. Instead, those IFQ pounds could have been landed by: 1) the QS holder; 2) another initial recipient upon transfer; or 3) a second generation IFQ permit holder(s) upon transfer, who must be on board the fishing vessel. So while this is a loss of fishing opportunity to harvest IFQ pounds as a hired skipper, the proposed changes from this action will have distributional effects on both parties, which will not affect production from the fisheries noticeably (i.e., someone will harvest the IFQs). As a consequence, this action is likely to have little or no effect on net benefits to the Nation. Net benefits to the nation may increase, to the extent that the Council's objectives for an "owner-operator" fishery are more fully realized through this action.

Order 3. Table 23 examines the effect of the proposed action on those who would be directly affected by the control date in the proposed action (i.e., has used a hired skipper and transferred QS after the control date). Since the control date 3,684,470 halibut QS units, which convert to 331,514 lb, were transferred to as many as 58 eligible⁹ initial recipients; 7 percent of initial recipients and 9 percent of QS units and pounds were from non-individuals. For sablefish 3,732,694 QS units, which convert to 208,320 lb, were transferred to as many as 35 eligible¹⁰ initial recipients; 17 percent of initial recipients and 18 percent of QS units and 19 percent of pounds were from non-individuals.

Table 24 lists the potentially affected initial recipients who received transferred QS after the control date but have not hired a skipper in the past. As many as 115 halibut individual initial recipients were transferred 6,960,005 QS units for 702,946 lb. As many as 41 sablefish individual initial recipients were transferred 5,374,508 QS units for 432,062 lb. Under Alternative 2 they would be prohibited from hiring a skipper to fish the transfers.

Table 20 shows vessel ownership by hired skippers. A reasonable presumption is that skippers would fish using vessels they own, especially if they are QS holders. Although the number of IFQ vessels used for IFQ fishing is decreasing for halibut, the number of vessels used by hired skippers for IFQ fishing is increasing for halibut and sablefish. As fewer IFQ vessels fished in 2009 (1,090 for halibut; 363 for sablefish), numbers of hired skippers who owned the vessels used to fish IFQ increased, accounting for approximately 32 and 21 percent of IFQ vessels, respectively.

⁹ Excludes Area 2C.

¹⁰ Excludes Southeast.

Control Date

Implementation of a control date creates a new kind of QS and corresponding IFQ permit. This new type must be flagged as having been transferred after the control date to distinguish it from QS that may be used by an initial recipient which may be used by a hired skipper. It cannot be combined (swept up or blocked) with other QS; therefore some policy questions arise.

First, some QS units transferred to initial recipients after the control date already have been swept up into blocks (and will continue to be until the proposed action is implemented). It would be administratively burdensome to undo these actions. The control date affects a relative small amount of QS (for a tally of swept up QS after the control date by initial recipients see Table 23 for those who have hired a skipper and Table 24 for those who have not (but may) hire a skipper); therefore the Council may choose to leave those QS units (and others swept up in the interim) swept up into their existing blocks.

Second, the proposed action could result in putting initial recipients over the respective limits for halibut and sablefish blocks of QS if the Council prefers to unblock those blocks that were created after the control date. The Council should clarify whether it accepts that initial recipients would be allowed to hold an additional block of QS that is prohibited from being used by a hired skipper or whether (unswept) amounts of QS that were transferred after the control date must be transferred to a second generation fisherman.

If the Council updates the control date to the effective date of the final rule this would provide lead time for NMFS to modify computer software programs to flag individual QS units transferred after the control date. The cost to such a delay is the possibility that additional QS transfers could occur to beat the deadline, which would conflict with Council intent. An alternative would be for the Council to request that NMFS freeze temporarily all QS transfers to initial recipients until the final rule for the Council's preferred alternative is effective; however a preliminary response to proceeding with such a request is that NMFS lacks the authority to delay processing QS transfer requests.

Enforcement Issues

The IFQ program has numerous restrictions on the transfer and use of QS to maintain an owner-operated fleet and to prevent consolidation into too few hands. Although many features promote this goal (e.g., active participant requirements for new entrants, prohibitions on separating IFQ from QS, ownership caps, etc.), there is no specific prohibition against leasing IFQ or QS. While leasing was allowed during the first three years of the program, no specific prohibition was implemented once this expired.

NOAA Office of Law Enforcement (OLE) has found several indications of leasing in the IFQ program. OLE has found a vessel interest sale where no true ownership interest was conveyed. The sale price was one dollar; the specified re-sale price was to be one dollar. The buyer received no income from the vessel (other than a share of his IFQ that was fished), paid none of the vessel expenses, had no say in the hiring of the captain or crew, and was not responsible for the acts of the captain or crew. Additionally, there is anecdotal information of vessel "owners" who have no connection to a vessel other than having their IFQ fished on the vessel.

Council concerns about alleged abuses of the hired skipper provision are well documented. Council efforts have focused on tightening ownership requirements, but these efforts are by nature reactive. The fundamental problem of these efforts is that they do not address the fundamental purpose of the sham ownership arrangements, that is, to lease IFQ. OLE recommends a prohibition on leasing IFQ to address the problems of sham ownership and address the other ways that leasing could be effected. (This is not to say that the work to tighten ownership arrangements should be stopped.)

At present, leasing is only addressed tangentially in regulation at 50 CFR 679.41(g)(4), which reads, "The Regional Administrator will not approve an Application for Transfer of QS assigned to vessel categories B, C, or D subject to a lease." RAM looks for indications of a lease during transfers and has

disapproved transfers that appear to be a lease. However, RAM recognizes (and as the sham ownership problem demonstrates), there are other ways to lease IFQ.

Leasing is defined in Black's Law Dictionary as "A contract by which a rightful possessor of real property conveys the right to use and occupy that property in exchange for consideration, usu. rent." While it would be helpful, and probably necessary, to define leasing in regulation, the definition needs to be broad enough to encompass the variety of ways a lease can be affected. Similar to the definition of "control," which was taken from Maritime Administration regulations, the NMFS could research definitions from other industries and regulatory agencies.

There are arrangements in the IFQ fisheries that use the term "lease," but are not actually a lease. These are usually contracts where the holder of the IFQ, usually a legitimate vessel owner or someone on board the harvesting vessel, take a percentage of the landing proceeds before other expenses of the trip (bait, fuel, groceries, etc.) are deducted. This arrangement would not be prohibited, since the term is describing the payment terms from the fishing trip and is not transferring any fishing rights or privileges. Likewise, leasing of A shares, medical waivers, etc. would be excepted from the prohibition.

OLE acknowledges that enforcement of a leasing prohibition will be difficult. Nonetheless, OLE has prosecuted two cases of "control" involving AFA processors (cases that involve aspects similar to leasing) and is currently investigating an alleged LLP lease. Successful prosecution of these cases has a deterrent effect throughout the industry. A leasing prohibition will give OLE a significant tool to further the Council's vision for the IFQ program.

Conclusions

The combination of the decline in the number of initial recipients who use hired skippers and the increased reliance on hired skippers by those who do (through increases in QS holdings), while superficially contradictory, actually demonstrates the problem that the Council is attempting to address through multiple regulatory actions.

Increased holdings by hired skippers suggest that they may be second generation QS holders who are willing to be hired as a skipper, because they hold insufficient QS to meet the margin for economic profitability in their operations. Hired skippers (as a class) are expected to benefit more from the full retirement of those initial recipients who hire them, by the release of those QS in the market place. It is reasonable to assume that the practice of hiring skippers keeps QS prices higher than they would be if QS held by inactive initial recipients was placed in the market.

In summary, the Council is faced with a trade-off between its owner on board policy and grandfathering initial recipients whose practices it was to hire a skipper *with* narrowing the grandfather provision when used by persons in new vessel ownership arrangements. The ability to hire a skipper to fish catcher vessel IFQ remains an important element of the IFQ Program to those who traditionally used hired skippers; however, it appears that more initial recipients who traditionally did not hire skippers are now doing so, instead of retiring and transferring (i.e., selling) their QS. The IFQ program was implemented in such a way that it did not differentiate between individual initial recipients, whose practice it was to hire a skipper, and those who traditionally did not hire a skipper. Therefore, the Council has repeatedly attempted to tighten the hired skipper provision to prevent its abuse. These abuses have been reported to be "paper" ownership transactions in which perhaps only one dollar may have "purchased" an ownership share of a fishing vessel.

Until all initially issued QS are held by second generation (owner-on-board) fishermen, however, more IFQs may be harvested by persons other than the QS/IFQ holder, which is counter to the tenets of the IFQ program. Stated bluntly, the period when a skipper is hired often occurs 1) during "retirement" of a formerly active QS holder and 2) after transfer of QS/IFQ upon the death of the QS holder to his or her heirs for a limited period. The fact that the numbers of catcher vessel QS holders is declining does not, in

itself, result in fewer IFQ pounds being fished by hired skippers (although the numbers of such skippers may decline). The size of each entity's holdings may increase, even as the numbers of entities with holdings decline through consolidation and program regulation. Holdings, however, remain limited by the use cap.

7 Initial regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980, and codified at 5 U.S.C. 600-611, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, 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 impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either, (1) "certify" that the action will not have a significant adverse effect on a substantial number of small entities, and support such a certification declaration with a "factual basis," demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

This IRFA has been prepared instead of seeking certification. Analytical requirements for the IRFA are described below in more detail. The IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and the legal basis for, the proposed rule;
3. 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);
4. 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;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule;
6. 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 adverse 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:
 - a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 - b. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;
 - c. The use of performance rather than design standards;
 - d. An exemption from coverage of the rule, or any part thereof, for such small entities.

The "universe" of entities to be considered in an IRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

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

Reason for the action, objectives, and the legal basis for, the proposed rule

This IRFA describes the potential adverse economic impacts on directly regulated small entities from the proposed alternative to set a control date after which transferred halibut and sablefish QS to eligible initial recipients of QS may not hire a skipper to fish the associated IFQs. A key element of the IFQ program for halibut and sablefish is the requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of IFQ species; an exception is provided for initial QS recipients who meet specified documentation requirements. The Council is concerned about the apparent consolidation and reduced opportunities for new entrants/second generation fishermen to enter the fishery.

The objective of the preferred alternative is to cap the potential use of hired skippers by eligible initial QS recipients to levels in existence as of February 12, 2010. The Council's problem statement is presented in Section 4, above.

When establishing the IFQ program, the Council considered the traditional practices of initial recipients of QS, some of whom did not actively fish their IFQs but hired a skipper to do so. In some cases, these QS holders owned multiple vessels and could not be aboard all the vessels at the same time. To achieve its goals of an owner-operated fleet, the Council expected that this hired skipper provision would end, as initial recipients left the fishery and transferred their QS to second generation fishermen who would be required to be onboard, when their IFQs were fished. This transition has been delayed as active fishermen who otherwise would have transferred their QS have instead hired skippers to harvest their IFQs while they stay on land, as described elsewhere in this analysis. Because the IFQ Program awarded the privilege to hire a skipper to the QS holder and not the QS holding, initial recipients have been allowed to increase their holdings eligible for use by hired skippers. The proposed action intends to cap those QS holdings to those held as of February 12, 2010.

The Halibut Act, along with the Magnuson-Stevens Act, grants the Council authority to oversee allocations of the halibut fishery in Alaska and federal waters. Designing and amending the Halibut IFQ Program is under that authority. Amendments to the sablefish IFQ program, herein, are taken under authority of the Magnuson-Stevens Act.

Description and estimate of small entities

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and 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 dominate in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor... A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust, or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The U.S. Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, and those size standards can be found in 13 CFR 121.201. The size standards are matched to North American Industry Classification System industries. A business involved in providing fishing charter services is a small business if it is independently owned and operated and not dominant in

its field of operation and if it has combined annual receipts not in excess of \$7.0 million. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4 million for all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4 million criterion for fish harvesting operations.

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

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

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors, or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint ventures if the ostensible subcontractor would 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. .Businesses operating in the commercial halibut and fixed gear sablefish fisheries would be directly regulated by this action. Halibut IFQ holders are directly regulated by the Council requesting the IPHC to implement a combined commercial and charter catch limit it creates a single pool of fish from which the two commercial setline and charter sectors would harvest halibut in Area 2C and Area 3A. Halibut QS holders would also be directly regulated by allowing Area 2C and Area 3A commercial QS holders to lease IFQ to the charter sector as GAF. Finally, all halibut and sablefish QS holders in Alaska would be directly regulated because they would be required to pay the cost recovery fee to help cover the costs of the management of the IFQ/GAF programs.

The preferred alternative could directly regulate a maximum of 1,447 entities holding halibut and sablefish QS, which are eligible to hire skippers; however, the actual number of such entities that may be directly regulated is expected to be much smaller, because many of these participants fishing their own IFQs, without a hired skipper. As few as 91 eligible entities, who transferred QS for use by hired skippers after the control date would be directly affected (if was in effect in 2009).

For the purpose of this discussion, small entities affected by the proposed action may be divided into two, mutually exclusive groups. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not). The Alaska Fisheries Science Center publishes data that allow for the estimation of the total gross revenues, by entity, from all sources in and off Alaska for these operations. There are also operations that harvest halibut, but no groundfish. These entities may also harvest species such as herring or salmon.

The 2010 SAFE report contains data on revenues from all sources, for operations harvesting groundfish in 2007. Table 36 of the report indicates that no hook-and-line catcher vessels had more than \$4 million in gross revenues from all fishing sources in and off Alaska. That was also the case since 2003. The average gross revenue for the small hook-and-line catcher vessels has been about \$500,000. Thus, all of the entities that harvest both groundfish and halibut are under the threshold. This includes all of the entities that harvest any sablefish. Because of regulatory limits on the size of halibut QS and sablefish QS, and the amounts that may be used, NMFS believes that few vessels that harvest halibut but no groundfish, would exceed the \$4 million threshold, either. The IFQ program limits the amount of annual IFQ that any single vessel may be used to harvest and the maximum number of QS units an entity may use. NMFS annually publishes the number of QS units that an entity may use. A vessel may be used to land up to 1 percent of all IFQ issued for halibut in Area 2C (62,100 net lb in 2009); the same percentage cap is set for sablefish in Southeast (70,988 round lb in 2009). The vessel cap is 0.5 percent of the IFQ issued for halibut in Area 3A (240,204 net lb in 2009); the same percentage cap is set for sablefish in Southcentral (299,671 round lb in 2009).

NMFS annually publishes “standard prices” for halibut that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating the permit holder’s cost recovery fee. In 2010, the ex-vessel price per pound for halibut and sablefish was \$4.86 and \$3.76, respectively (RAM data). While some operations considered here participate in other revenue generating activities (e.g., other fisheries), the halibut and sablefish fisheries likely represent the largest single source of annual gross receipts for many of these operations. Based upon available data, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a *de minimus* number) directly regulated by these restrictions could have been used to land more than \$4.0 million in combined gross receipts in 2010. Therefore, all halibut and sablefish vessels have been assumed to be “small entities,” for purposes of the IRFA. 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.

Based on the low revenues for the average groundfish vessel, and the low cap on maximum halibut and sablefish revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of vessels. Therefore, the available data and analysis suggest that there are few, if any, large entities among the directly regulated entities subject to the proposed action.

Description of reporting and record keeping compliance requirements

Current requirements include: 1) catcher vessel QS holders who wish to hire a skipper to catch their IFQs on a federally-licensed vessel would be required to file an Abstract of Title, issued by the US Coast Guard, with RAM and 2) catcher vessel QS holders who wish to hire a skipper to catch their IFQs on a State-licensed vessel would be required to file the State of Alaska vessel registration with RAM. Both documents would be required to be in effect for the previous 12 months, under a pending Secretarial action. No additional requirements are anticipated under this action.

Identification of relevant federal rules that may duplicate, overlap, or conflict with the proposed rule

NMFS is not aware of any other federal rules that would duplicate, overlap, or conflict with this action.

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

A third approach that has been discussed during scoping of previous hired skipper actions would sunset (i.e., end) the hired skipper privilege. Following a transition period of 16 years, such an approach would facilitate the transfer of QS from individual initial recipients who are no longer actively fishing to second generation fishermen, which is consistent with Council objectives. Such an approach also could be applied to non-individual initial recipients, although it would be more disruptive on those businesses, as they *must* hire a skipper to harvest their IFQs. If implemented all non-individual QS holders would be required to exit the fishery and transfer all their QS holdings.

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

8 References

North Pacific Fishery Management Council. 2004. Regulatory Impact Review for a Regulatory Amendment for Proposed Amendments to Halibut and Sablefish IFQ Fishery Regulations (Omnibus IV). Avail. from NPFMC, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501. 84 pp.
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Table 1 Number of Hired Skippers with landings by species and area, with pounds landed, IFQ TAC, and percent TAC and IFQ landed, 2009

Species/Area ^{a,b}	Number of Hired Skippers	Number of Hirers	Total Skipper IFQ Pounds Landed	Average IFQ Pounds Per Skipper	IFQ TAC	Percent TAC	Total IFQ Landed	Percent Total Skipper IFQ Pounds Landed
Halibut 2C	28	27	105,065	3,752	5,020,000	2.1	4,832,092	2.17
3A	224	271	10,136,150	45,251	21,700,000	46.7	21,354,893	47.46
3B	163	164	6,426,159	39,424	10,900,000	58.9	10,662,931	60.26
4A	65	64	1,412,184	21,726	2,550,000	55.4	2,454,444	57.53
4B	31	35	840,646	27,118	1,496,000	56.2	1,232,219	68.22
4C/ 4D ^a	26	27	1,443,525	55,520	1,882,800	83.1	1,737,668	83.07
Totals for Halibut	295	325	20,363,729	69,030	43,548,800	48.2	42,274,247	48.17
Sablefish AI	33	31	1,314,918	39,846	2,910,072	45.2	1,660,126	79.20
BS	37	31	1,063,155	28,734	2,398,605	44.3	1,495,680	71.08
CG	130	143	7,111,129	54,701	8,800,763	80.8	8,737,945	81.38
SE	44	50	921,098	20,934	6,053,832	15.2	6,069,025	15.18
WG	52	56	2,637,871	50,728	2,892,435	91.2	2,830,907	93.18
WY	76	97	2,430,553	31,981	3,432,562	70.8	3,408,722	71.30
Totals for Sablefish	197	190	15,478,724	78,572	26,488,269	64.0	24,202,405	63.95

^a Area 4C can be fished in 4D, which accounts for irregular percentages in these areas. Areas 4C and 4D are combined due to confidentiality.

^b Area 4E has no IFQ allocation.

Table 2 Number of individual halibut QS holders and their use of Hired Skippers, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all individuals	2,861	2,790	2,615	2,452	2,364	2,242	2,179	2,162	2,135	2,059	2,011	1,970	1,845	1,724	1,675	-31.7%	2,068
Number of all individuals eligible to hire Skippers	2,664	2,387	2,127	1,949	1,815	1,675	1,576	1,521	1,445	1,349	1,295	1,233	1,141	1,051	1,002	-48.6%	1,421
Individual QS holders eligible to hire Skippers and had IFQ landings	1,327	1,296	1,209	1,005	982	942	859	845	798	749	727	715	733	711	679	-32.4%	812
Eligible Individual QS holders with landings and who hired skippers	76	108	125	110	116	125	137	135	153	159	172	181	187	201	210	90.9%	157
Number of Skippers hired by eligible individuals with	72	93	103	98	110	135	147	143	158	149	174	185	187	198	209	113.3%	158

Table 3 Percent of individual halibut QS holders and their use of Hired Skippers, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all individuals	2,861	2,790	2,615	2,452	2,364	2,242	2,179	2,162	2,135	2,059	2,011	1,970	1,845	1,724	1,675	-31.7%	2,068
Percent of all individuals eligible to hire Skippers	93%	86%	81%	79%	77%	75%	72%	70%	68%	65%	64%	63%	62%	61%	60%	-24.7%	68.0%
Percent of individual QS holders eligible to hire Skippers and had IFQ landings	50%	54%	57%	52%	54%	56%	55%	56%	55%	56%	56%	58%	64%	68%	68%	31.4%	58.0%
Percent of eligible individual QS holders with landings and who hired skippers	6%	8%	10%	11%	12%	13%	16%	16%	19%	21%	24%	25%	26%	28%	31%	182.6%	20.2%
Average number of Skippers hired per eligible individual with landings	0.95	0.86	0.82	0.89	0.95	1.08	1.07	1.06	1.03	0.94	1.01	1.02	1.00	0.99	1.00	11.7%	100.3

Table 4 Number of individual sablefish QS holders and their use of Hired Skippers, 1995–2009

Sablefish	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and	Average 1998–
Number of all individuals	528	521	505	486	473	459	459	465	471	464	464	459	448	450	441	-9.3%	462
Number of all individuals eligible to hire Skippers	496	467	423	401	376	341	324	314	298	287	279	268	261	259	253	-35.9%	305
Individual QS holders eligible to hire Skippers and had IFQ landings	317	296	269	232	214	195	185	179	161	157	154	156	155	151	154	-33.6%	174
Eligible individual QS holders with landings and who hired skippers	30	44	51	46	53	56	64	65	71	77	85	94	90	86	91	97.8%	73
Number of Skippers hired by eligible individuals with landings	30	43	52	45	55	71	80	82	95	91	101	110	105	105	117	160.0%	88

Table 5 Percent of individual sablefish QS holders and their use of Hired Skippers, 1995–2009

Sablefish	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all individuals	528	521	505	486	473	459	459	465	471	464	464	459	448	450	441	-9.3%	462
Percent of all individuals eligible to hire Skippers	94%	90%	84%	83%	79%	74%	71%	68%	63%	62%	60%	58%	58%	58%	57%	-30.5%	65.9%
Percent of individual QS holders eligible to hire Skippers and had IFQ landings	64%	63%	64%	58%	57%	57%	57%	57%	54%	55%	55%	58%	59%	58%	61%	5.2%	57.2%
Percent of eligible Individual QS holders with landings and who hired skippers	9%	15%	19%	20%	25%	29%	35%	36%	44%	49%	55%	60%	58%	57%	59%	198.0%	43.9%
Average number of Skippers hired per eligible individual with landings	1.00	0.98	1.02	0.98	1.04	1.27	1.25	1.26	1.34	1.18	1.19	1.17	1.17	1.22	1.29	31.4%	119.6

Table 6 Annual IFQ TACS in thousands of pounds, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between	Average 1998–
Total Annual IFQ TAC	37,422	37,422	51,116	55,708	58,390	53,074	58,534	59,010	59,010	58,942	56,976	53,308	50,212	48,041	43,549	-21.8%	54,563
Total Annual IFQ TAC Minus A Share lb	36,499	36,375	49,632	54,095	56,644	51,411	56,724	57,205	57,211	57,230	55,339	51,795	48,781	46,638	42,271	-21.9%	52,945
Sablefish	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Total TAC	45,646	35,320	30,234	29,846	27,154	29,926	29,121	29,388	34,864	37,937	35,765	34,546	33,450	29,967	26,488	-11.3%	31,538
Total TAC Minus A Share lb	38,035	29,506	24,856	24,437	21,876	23,709	22,858	22,847	26,940	29,454	28,111	26,693	25,895	23,365	20,573	-15.8%	24,730

Table 7 Annual fishable halibut pounds and percent total catcher vessel IFQ TAC held by persons who could hire Skippers, 1995–2009

Halibut – Individuals	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Fishable IFQ lb held by individuals eligible to hire Skippers and had landings	15,923	16,371	22,663	23,995	25,174	21,650	23,747	24,273	23,346	22,268	20,524	19,007	19,309	19,333	17,579	-26.7%	21,684
Percent of total IFQ TAC as fishable lb held by Individuals eligible to hire Skippers and had landings	42.5%	43.7%	44.3%	43.1%	43.1%	40.8%	40.6%	41.1%	39.6%	37.8%	36.0%	35.7%	38.5%	40.2%	40.4%	-6.3%	39.7%

Table 8 Annual fishable sablefish pounds and percent total catcher vessel IFQ TAC held by persons who could hire Skippers, 1995–2009

Sablefish – Individuals	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Fishable IFQ lb held by individuals eligible to hire	12,668	10,210	8,849	8,388	7,652	7,486	7,292	7,641	8,616	9,257	8,666	7,968	7,711	6,881	6,177	-26.4%	7,811
Percent of total IFQ TAC as fishable lb held by individuals eligible to hire Skippers and that had landings	27.8%	28.9%	29.3%	28.1%	28.2%	25.0%	25.0%	26.0%	24.7%	24.4%	24.2%	23.1%	23.1%	23.0%	23.3%	-17.0%	24.8%

Table 9 Landed IFQ pounds and percent of TAC/fishable pounds by individuals and Skippers, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Landed IFQ lb by anyone for individuals eligible to hire Skippers and that had permit landings	14,680	15,757	22,033	22,509	24,165	21,174	22,755	23,773	22,890	21,765	20,087	18,773	19,036	19,115	17,132	-23.9%	21,098
Percent of Total IFQ TAC as landed IFQ lb on permits held by individuals eligible to hire Skippers and that had landings	39.2%	42.1%	43.1%	40.4%	41.4%	39.9%	38.9%	40.3%	38.8%	36.9%	35.3%	35.2%	37.9%	39.8%	39.3%	-2.6%	38.7%
Landed IFQ lb by Skippers for individuals eligible to hire Skippers and that had landings	1,352	2,476	3,964	4,419	5,219	5,800	7,414	7,713	8,412	8,358	8,319	8,083	8,613	8,455	8,386	89.8%	7,433
Percent of landed IFQ lb by Skippers for individuals eligible to hire Skippers and that had landings	9.2%	15.7%	18.0%	19.6%	21.6%	27.4%	32.6%	32.4%	36.8%	38.4%	41.4%	43.1%	45.2%	44.2%	48.9%	149.3%	36.0%
Percent of Total IFQ TAC landed by Skippers	3.6%	6.6%	7.8%	7.9%	8.9%	10.9%	12.7%	13.1%	14.3%	14.2%	14.6%	15.2%	17.2%	17.6%	19.3%	142.7%	13.8%
Percent of available fishable lb (held by individuals eligible to hire Skippers and that had permit landings) landed by Skippers	8.5%	15.1%	17.5%	18.4%	20.7%	26.8%	31.2%	31.8%	36.0%	37.5%	40.5%	42.5%	44.6%	43.7%	47.7%	159.0%	35.1%

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Table 9 continued

Sablefish	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Landed IFQ lb by anyone for individuals eligible to hire Skippers and that had permit landings	11,798	9,816	8,460	7,892	6,932	7,077	6,840	7,093	7,967	8,736	8,108	7,535	7,305	6,569	5,866	-25.7%	7,327
Percent of Total IFQ TAC as landed IFQ lb on permits held by individuals eligible to hire Skippers and that had landings	25.8%	27.8%	28.0%	26.4%	25.5%	23.6%	23.5%	24.1%	22.9%	23.0%	22.7%	21.8%	21.8%	21.9%	22.1%	-16.2%	23.3%
Landed IFQ lb by Skippers for individuals eligible to hire Skippers and that had landings	765	2,359	1,971	2,286	1,968	2,387	2,985	3,273	3,901	4,609	4,830	4,969	4,855	4,339	3,983	74.3%	3,699
Percent of landed IFQ lb by Skippers for individuals eligible to hire Skippers and that had permit landings	6.5%	24.0%	23.3%	29.0%	28.4%	33.7%	43.6%	46.1%	49.0%	52.8%	59.6%	65.9%	66.5%	66.1%	67.9%	134.4%	50.7%
Percent of Total IFQ TAC landed by Skippers	1.7%	6.7%	6.5%	7.7%	7.2%	8.0%	10.3%	11.1%	11.2%	12.1%	13.5%	14.4%	14.5%	14.5%	15.0%	96.3%	11.6%
Percent of available fishable lb (held by individuals eligible to hire Skippers and that had permit landings) landed by Skippers	6.0%	23.1%	22.3%	27.2%	25.7%	31.9%	40.9%	42.8%	45.3%	49.8%	55.7%	62.4%	63.0%	63.1%	64.5%	136.6%	47.7%

Table 10 Number of non-individual halibut QS holders and their use of Hired Skippers, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all eligible non-individuals	348	322	301	229	204	182	173	168	157	151	146	141	135	123	120	-47.6%	161
Number of non-individuals that had permit landings	210	189	177	150	136	128	121	121	114	113	112	110	108	99	98	-34.7%	118
Number of non-individuals that had permit landings and did hire Skippers	81	86	132	143	129	128	121	121	114	113	112	110	108	100	98	-31.5%	116
Number of Skippers hired by recipients	84	94	148	165	147	176	181	190	181	181	184	195	178	168	162	-1.8%	176

Table 11 Percent of non-individual halibut QS holders and their use of Hired Skippers, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all eligible non-individuals	348	322	301	229	204	182	173	168	157	151	146	141	135	123	120	-47.6%	161
Percent of non-individuals that had permit landings	58%	59%	59%	66%	67%	71%	70%	72%	73%	75%	77%	79%	81%	81%	82%	24.7%	74.1%
Percent of non-individuals that had permit landings and did hire Skippers	40%	46%	75%	95%	95%	100%	100%	100%	100%	100%	100%	100%	100%	101%	100%	4.9%	99.3%
Average number of Skippers hired per non-individual that had permit landings and hired Skippers	1.04	1.09	1.12	1.15	1.14	1.38	1.50	1.57	1.59	1.60	1.64	1.77	1.65	1.68	1.65	43.3%	152.7

Table 12 Number of non-individual sablefish QS holders and their use of Hired Skippers, 1995–2009

Sablefish	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all eligible non-individuals	160	156	149	133	128	120	115	112	105	102	97	95	88	84	82	-38.3%	105
Number of non-individuals that had permit landings	119	107	104	96	87	85	80	72	69	66	60	61	58	57	57	-40.6%	71
Number of non-individuals that had permit landings and did hire Skippers	52	67	87	94	81	84	80	72	69	66	60	61	58	57	57	-39.4%	70
Number of Skippers hired by recipients	51	67	93	106	95	118	122	110	112	114	115	121	109	104	109	2.8%	111

Table 13 Percent of non-individual sablefish QS holders and their use of Hired Skippers, 1995–2009

Sablefish	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Number of all eligible non-individuals	160	156	149	133	128	120	115	112	105	102	97	95	88	84	82	-38.3%	105
Percent of non-individuals that had permit landings	74%	69%	70%	72%	68%	71%	70%	64%	66%	65%	62%	64%	66%	68%	70%	-3.7%	67.0%
Percent of non-individuals that had permit landings and did hire Skippers	44%	63%	84%	98%	93%	99%	100%	100%	100%	100%	100%	100%	100%	100%	100%	2.1%	99.2%
Average number of Skippers hired per non-individual that had permit landings and did hire Skippers	0.98	1.00	1.07	1.13	1.17	1.40	1.53	1.53	1.62	1.73	1.92	1.98	1.88	1.82	1.91	69.6%	163.5

Table 14 Annual fishable halibut catcher vessel pounds and percent total catcher vessel IFQ TAC held by persons who could hire Skippers, 1995–2009

Halibut Non-individuals	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and	Average 1998–
Fishable IFQ lb held by non-individuals with landings	8,947	8,810	12,691	13,985	14,876	13,354	14,246	14,166	13,550	12,659	11,606	10,495	9,935	9,866	9,153	-34.5%	12,324
Percent of total IFQ TAC as fishable lb held by non-individuals with Landings	23.9%	23.5%	24.8%	25.1%	25.5%	25.2%	24.3%	24.0%	23.0%	21.5%	20.4%	19.7%	19.8%	20.5%	21.0%	-16.3%	22.5%

Table 15 Annual fishable sablefish catcher vessel pounds and percent total catcher vessel IFQ TAC held by persons who could hire Skippers, 1995–2009

Sablefish Non-individuals	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and	Average 1998– 2009
Fishable IFQ lb held by recipients with landings	13,049	9,858	9,039	8,986	7,763	7,888	7,300	6,896	7,739	8,452	8,158	7,465	7,090	6,226	5,313	-40.9%	7,440
Percent of total IFQ TAC as fishable lb held by non-individuals with landings	28.6%	27.9%	29.9%	30.1%	28.6%	26.4%	25.1%	23.5%	22.2%	22.3%	22.8%	21.6%	21.2%	20.8%	20.1%	-33.4%	23.7%

Table 16 Landed IFQ pounds (in thousands of round pounds) and percent of TAC/fishable pounds by recipients and Skippers, 1995–2009

Halibut	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and 2009	Average 1998–2009
Landed IFQ lb on permits held by non-individuals	8,411	8,486	12,388	13,140	14,394	13,088	13,973	13,970	13,347	12,445	11,468	10,376	9,971	9,698	8,959	-31.8%	12,069
Percent of total IFQ TAC as landed IFQ lb on permits held by non-individuals	22.5%	22.7%	24.2%	23.6%	24.7%	24.7%	23.9%	23.7%	22.6%	21.1%	20.1%	19.5%	19.9%	20.2%	20.6%	-12.8%	22.0%
Landed IFQ lb by Skippers for non-individuals	2,748	3,907	10,370	12,838	13,482	13,079	13,973	13,970	13,347	12,378	11,507	10,409	9,971	9,698	8,898	-30.7%	11,962
Percent of landed IFQ lb by Skippers for non-individuals	32.7%	46.0%	83.7%	97.7%	93.7%	99.9%	100.0%	100.0%	100.0%	99.5%	100.3%	100.3%	100.0%	100.0%	99.3%	1.7%	99.2%
Percent of total IFQ TAC landed by Skippers	7.3%	10.4%	20.3%	23.0%	23.1%	24.6%	23.9%	23.7%	22.6%	21.0%	20.2%	19.5%	19.9%	20.2%	20.4%	-11.3%	21.8%
Percent of available fishable lb (held by recipients eligible to hire Skippers and that had landings) landed by Skippers	30.7%	44.3%	81.7%	91.8%	90.6%	97.9%	98.1%	98.6%	98.5%	97.8%	99.1%	99.2%	100.4%	98.3%	97.2%	5.9%	97.3%

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Table 16 continued

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Percent Change between 1998 and	Average 1998–2009
Sablefish																	
Landed IFQ lb on permits held by non-individuals	12,385	9,526	8,705	8,342	7,187	7,415	6,975	6,576	7,079	7,979	7,726	7,092	6,726	6,056	5,176	-37.9%	7,027
Percent of total IFQ TAC as landed IFQ lb on permits held by non-individuals	27.1%	27.0%	28.8%	27.9%	26.5%	24.8%	24.0%	22.4%	20.3%	21.0%	21.6%	20.5%	20.1%	20.2%	19.5%	-30.1%	22.4%
Landed IFQ lb by Skippers for non-individuals	2,336	3,874	6,502	8,150	6,808	7,416	6,975	6,575	7,070	7,979	7,726	7,073	6,726	6,056	5,176	-36.5%	6,977
Percent of landed IFQ lb by Skippers for non-individuals	18.9%	40.7%	74.7%	97.7%	94.7%	100.0%	100.0%	100.0%	99.9%	100.0%	100.0%	99.7%	100.0%	100.0%	100.0%	2.4%	99.3%
Percent of total IFQ TAC landed by Skippers	5.1%	11.0%	21.5%	27.3%	25.1%	24.8%	24.0%	22.4%	20.3%	21.0%	21.6%	20.5%	20.1%	20.2%	19.5%	-28.4%	22.2%
Percent of available fishable lb (held by recipients eligible to hire Skippers and that had landings) landed by Skippers	17.9%	39.3%	71.9%	90.7%	87.7%	94.0%	95.5%	95.3%	91.4%	94.4%	94.7%	94.7%	94.9%	97.3%	97.4%	7.4%	94.0%

Table 17 Catcher Vessel (CV) Category B, C, and D QS holders, their ability to hire Skippers, and their percentages of the CV QS pool as of the end of 2009

Species	Number of persons who must hire Skippers	“Must hire” persons as percent of total B, C, D holders	Percent B, C, and D QS pool held by “must hire” persons	Number of persons who may hire Skippers	“May hire” persons as percent of total B, C, D holders	Percent B, C, and D QS pool held by “may hire” persons	Number of persons who may not hire Skippers	“May not hire” persons as percent of total B, C, D holders	Percent B, C, and D QS pool held by “may not hire” persons	Total number of B, C, D QS holders
Halibut	126	4.5	19.6	1,084	38.6	40.1	1,599	56.9	40.3	2,809
Sablefish	82	10.6	27.9	256	32.9	33.5	438	56.4	38.6	776

Table 18 Hired Skippers hired by individuals to fish B, C, and D shares and who held their own QS^a, as of each year-end, 2000–2009

Species	Year	Total number of individual holders of B, C, D QS other than 2C/SE	Total Number of Skippers hired by individuals to fish B, C, D QS	Number of Skippers having their own QS of any kind	Percent of Skippers hired having their own QS of any kind	Numbers of Skippers not having their own QS	Percent of Skippers hired not having their own QS
Halibut	2000	1,722	136	80	58.8	56	41.2
	2001	1,634	147	88	59.9	59	40.1
	2002	1,575	148	96	64.9	52	35.1
	2003	1,506	160	117	73.1	43	26.9
	2004	1,413	150	105	70.0	45	30.0
	2005	1,354	175	120	68.6	55	31.4
	2006	1,294	185	128	69.2	57	30.8
	2007	1,211	188	133	70.7	55	29.3
	2008	1,119	198	138	69.7	60	30.3
	2009	1,076	209	89	42.5	120	57.4

Species	Year	Total number of individual holders of B, C, D QS other than 2C/SE	Total Number of Skippers hired by individuals to fish B, C, D QS	Number of Skippers having their own QS of any kind	Percent of Skippers hired having their own QS of any kind	Numbers of Skippers not having their own QS	Percent of Skippers hired not having their own QS
Sablefish	2000	334	77	51	66.2	26	33.8
	2001	325	80	54	67.5	26	32.5
	2002	314	83	60	72.3	23	27.7
	2003	299	97	71	73.2	26	26.8
	2004	291	94	64	68.1	30	31.9
	2005	277	103	74	71.8	29	28.2
	2006	270	112	81	72.3	31	27.7
	2007	263	110	83	75.5	27	24.5
	2008	258	113	81	71.7	32	28.3
	2009	253	126	87	69.0	39	40.0
Unique number overall (both species)	2009	1,132	219	147	67.1%	72	32.9%

^a Skippers' QS could be of any species.

Table 19 Hired Skippers hired by recipients to fish B, C, and D shares and who held their own QS^a, as of each year-end, 2000–2009

Species	Year	Total number of non-individual holders of B, C, D QS	Total Number of Skippers hired by recipients to fish B, C, D QS	Number of Skippers having their own QS of any kind	Percent of Skippers hired having their own QS of any kind	Numbers of Skippers not having their own QS	Percent of Skippers hired not having their own QS
Halibut	2000	184	178	83	46.6	95	53.4
	2001	175	193	86	44.6	107	55.4
	2002	170	197	90	45.7	107	54.3
	2003	160	188	87	46.3	101	53.7
	2004	155	189	90	47.6	99	52.4
	2005	149	191	100	52.4	91	47.6
	2006	145	200	100	50.0	100	50.0
	2007	139	186	100	53.8	86	46.2
	2008	128	175	97	55.4	78	44.6
	2009	126	167	89	53.3	78	46.7
Species	Year	Total number of non-individual holders of B, C, D QS	Total Number of Skippers hired by recipients to fish B, C, D QS	Number of Skippers having their own QS of any kind	Percent of Skippers hired having their own QS of any kind	Numbers of Skippers not having their own QS	Percent of Skippers hired not having their own QS
Sablefish	2000	119	130	64	49.2	66	50.8
	2001	114	139	63	45.3	76	54.7
	2002	111	135	66	48.9	69	51.1
	2003	105	130	61	46.9	69	53.1
	2004	102	129	63	48.8	66	51.2
	2005	98	130	73	56.2	57	43.8
	2006	95	132	72	54.5	60	45.5
	2007	88	120	69	57.5	51	42.5
	2008	84	113	63	55.8	50	44.2
	2009	82	113	61	54.0	52	46.0
Unique number overall (both species)	2009	139	170	90	52.9	80	47.1

^a Skippers' QS could be of any species.

Table 20 Hired Skippers' Ownership^a of Vessels used to fish IFQ halibut and sablefish, 2000–2009

Species	Year ^b	Total number of vessels used for IFQ Fishing ^c	Total number of vessels used by Skippers for IFQ Fishing ^c	Total number of Skippers that IFQ Fished	Number of Skippers that owned (1 st level) IFQ vessel used by Skippers	Percent of IFQ vessels used and owned by Skippers	Number of Skippers that did not own (1 st Level) the IFQ vessel used by Skipper	Percent of IFQ vessels used by Skippers not owned by Skippers
Halibut	2000	1,586	243	267	45	18.5	222	81.5
	2001	1,460	243	259	42	17.3	217	82.7
	2002	1,393	241	265	49	20.3	216	79.7
	2003	1,338	247	271	61	24.7	210	75.3
	2004	1,304	250	277	64	25.6	213	74.4
	2005	1,276	248	278	72	29.0	206	71.0
	2006	1,255	256	292	76	29.7	216	70.3
	2007	1,211	252	279	75	29.8	204	70.2
	2008	1,157	259	287	79	30.5	208	69.5
	2009	1,090	269	295	87	32.3	208	67.7

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Table 20 continued

Species	Year ^b	Total number of vessels used for IFQ Fishing ^c	Total number of vessels used by Skippers for IFQ Fishing ^c	Total number of Skippers that IFQ Fished	Number of Skippers that owned (1 st level) IFQ vessel used by Skippers	Percent of IFQ vessels used and owned by Skippers	Number of Skippers that did not own (1 st Level) the IFQ vessel used by the Skipper	Percent of IFQ vessels used by Skippers not owned by Skippers
Sablefish	2000	450	171	201	20	11.7	181	88.3
	2001	436	156	178	20	12.8	158	87.2
	2002	416	156	178	23	14.7	155	85.3
	2003	409	164	193	23	14.0	170	86.0
	2004	396	161	190	26	16.1	164	83.9
	2005	378	163	191	31	19.0	160	81.0
	2006	372	168	203	38	22.6	165	77.4
	2007	373	172	196	40	23.3	156	76.7
	2008	359	163	184	35	21.5	149	78.5
	2009	363	175	197	37	21.1	160	81.2
Unique number overall (both species)	2009	1120	297	336	93	31.3	243	68.7

^a Vessel ownership is evaluated to the “first level” only.

^b RAM does not store vessel ownership by year and cannot re-create ownership at any historical point in time; therefore, RAM used current first-level vessel ownership data as of the end of 2008 for all years prior to 2009.

^c Includes all IFQ fishing (all areas, categories, for all IFQ holder types)

Table 21 Skippers Ownership^{a,b} of Their Nonindividual Hirers for B, C, and D Shares, Halibut and Sablefish, 2000–2009

Species	Year ^b	Total number of non-individual holders of B, C, and D fishable Lb ^c	Total number of Skippers hired by recipients to fish B, C, D QS	Number of Skipper owners	Percent of Skippers that are owners	Number of nonowner Skippers	Percent of nonowner Skippers
Halibut	2000	183	178	78	43.8	100	56.2
	2001	174	193	88	45.6	105	54.4
	2002	169	197	82	41.6	115	58.4
	2003	159	188	80	42.6	108	57.4
	2004	154	189	78	41.3	111	58.7
	2005	148	191	75	39.3	116	60.7
	2006	144	200	76	38.0	124	62.0
	2007	139	186	73	39.2	113	60.8
	2008	128	175	66	37.7	109	62.3
	2009	126	167	56	33.5	111	66.5

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Table 21 continued

Species	Year ^b	Total number of non-individual holders of B, C, and D fishable Lb ^c	Total number of Skippers hired by recipients to fish B, C, D QS	Number of Skipper owners	Percent of Skippers that are owners	Number of nonowner Skippers	Percent of nonowner Skippers
Sablefish	2000	118	130	61	46.9	69	53.1
	2001	113	139	65	46.8	74	53.2
	2002	110	135	56	41.5	79	58.5
	2003	104	130	57	43.8	73	56.2
	2004	101	129	51	39.5	78	60.5
	2005	97	130	48	36.9	82	63.1
	2006	94	132	46	34.8	86	65.2
	2007	88	120	45	37.5	75	62.5
	2008	84	113	43	38.1	70	61.9
	2009	82	113	34	30.0	79	70.0
Unique number overall (both species)	2009	139	170	56	40.3	83	59.7

^a Ownership is evaluated to the “first level” only.

^b RAM does not store corporate ownership by year and cannot re-create ownership at any historical point in time; therefore, RAM used current first-level vessel ownership data as of the end of 2008 for all years prior to 2009.

^c Total number of non-individual QS holders excludes A shares.

Table 22 Summary of Skipper IFQ landings with TAC and numbers of Skippers and hirers during 2009 by species and area^a

Species	Area ^a	TAC	IFQ Landed total	Skipper Pounds Landed	Skipper Percent of IFQ Landed Total	Average IFQ Pounds Landed Per Skipper	Number of Distinct Skippers	Number of Distinct Hirers
Halibut	2C	5,020,000	4,832,092	105,065	2.17	3,752	28	27
	3A	21,700,000	21,354,893	10,136,150	47.47	45,251	224	271
	3B	10,900,000	10,662,931	6,426,159	60.27	39,424	163	164
	4A	2,550,000	2,454,444	1,412,184	57.54	21,726	65	64
	4B	1,496,000	1,232,219	840,646	68.22	27,118	31	35
	4C/4D ^a	1,882,800	1,737,668	1,443,525	83.07	55,520	26	27
	Total	43,548,800	42,274,247	20,363,729	48.17	69,030	295	325
Sablefish	AI	2,910,072	1,660,126	1,314,918	79.21	39,846	33	31
	BS	2,398,605	1,495,680	1,063,155	71.08	28,734	37	31
	CG	8,800,763	8,737,945	7,111,129	81.38	54,701	130	143
	SE	6,053,832	6,069,025	921,098	15.18	20,934	44	50
	WG	2,892,435	2,830,907	2,637,871	93.18	50,728	52	56
	WY	3,432,562	3,408,722	2,430,553	71.30	31,981	76	97
	Total	26,488,269	24,202,405	15,478,724	63.96	78,572	197	190

^a Some Area 4C data are confidential; therefore, halibut data for Areas 4C and 4D are combined for confidentiality.

Table 23 Catcher vessel category quota share after February 12, 2010 transfers to initial recipients with no history of hired skipper use.

Halibut Area 2C and sablefish Southeast data are excluded. Person counts are not additive.

Person Type	Swept up	AREA	Number	Hired Skipper	QS units	IFQ lb
Individual	No	Area 3A	26	Yes	1,235,027	79,350
Individual	Yes	Area 3A	4	Yes	29,655	1,346
Non-Individual	No	Area 3A	2	Yes	209,390	7,309
Individual	No	Area 3B	12	Yes	710,366	123,874
Non-Individual	No	Area 3B	1	Yes	109,502	20,000
Individual	No	Area 4A	6	Yes	661,847	44,132
Individual	No	Area 4B	4	Yes	454,437	37,487
Non-Individual	No	Area 4B	1	Yes	11,675	2,361
Individual	No	Area 4C	1	Yes	98,997	10,091
Individual	No	Area 4D	1	Yes	163,574	5,564
Total Halibut			≤58		3,684,470	331,514
Individual	No	Aleutian Islands	3	Yes	201,918	19,327
Individual	Yes	Aleutian Islands	1	Yes	2,927	279
Individual	No	Bering Sea	5	Yes	692,425	98,758
Individual	No	Central Gulf	8	Yes	728,981	20,732
Individual	Yes	Central Gulf	1	Yes	2,703	214
Non-Individual	No	Central Gulf	3	Yes	372,886	16,574
Individual	No	West Yakutat	4	Yes	356,763	12,709
Non-Individual	No	West Yakutat	2	Yes	147,416	8,566
Individual	No	Western Gulf	7	Yes	1,063,838	17,429
Non-Individual	No	Western Gulf	1	Yes	162,837	13,732
Total Sablefish			≤35		3,732,694	208,320

Table 24 Catcher vessel category quota share after February 12, 2010 transfers to initial recipients with no history of hired skipper use.

Halibut Area 2C and sablefish Southeast data are excluded. Person counts are not additive.

Person Type	Swept up	AREA	Number	Hired Skipper	QS units	IFQ lb
Individual	No	Area 3A	66	No	4,487,301	360,370
Individual	Yes	Area 3A	10	No	189,235	15,711
Individual	No	Area 3B	14	No	957,256	142,482
Individual	No	Area 4A	17	No	764,558	86,083
Individual	No	Area 4B	2	No	68,062	12,920
Individual	No	Area 4C	2	No	244,768	45,920
Individual	No	Area 4D	4	No	248,825	39,460
Total Halibut			≤115		6,960,005	702,946
Individual	No	Aleutian Islands	4	No	1,134,981	103,110
Individual	No	Bering Sea	7	No	1,619,471	201,309
Individual	Yes	Bering Sea	1	No	90,461	13,308
Individual	No	Central Gulf	18	No	1,789,304	57,593
Individual	No	West Yakutat	3	No	96,819	6,117
Individual	No	Western Gulf	7	No	625,516	49,022
Individual	Yes	Western Gulf	1	No	17,956	1,603
Total Sablefish			≤41		5,374,508	432,062

Table 25 Summary of the cost and benefit analysis of Action 2

	Alternative 1. No Action	Alternative 2. Catcher vessel QS transferred after a control date of February 12, 2010 may not be used by a hired skipper.
Who may be affected?	Baseline	All initial individual QS recipients ‘who may hire skippers’ and all initial non-individual QS recipients ‘who must hire skippers’ are subject to the proposed action. The directly affected entities include a <i>maximum</i> of 1,122 halibut QS holders and 325 sablefish QS holders (as of 2009) who are eligible to hire skippers. Only 26 percent of halibut permit holders and 78 percent of sablefish permit holders hired skippers in 2009, so about one-quarter of eligible halibut permit holders and three-quarters of eligible sablefish permit holders are expected to be directly affected by the action. This translates to a maximum of 295 halibut initial QS recipients 253 sablefish initial recipients, along with 325 halibut hired skippers and 82 sablefish hired skippers (as of 2009) who would be directly affected. Approximately 58 (7 percent) halibut eligible initial recipients have hired a skipper to fish QS transferred since the control date; 35 (17 percent) sablefish eligible initial recipients did the same. As many as 115 halibut individual initial recipients and 41 sablefish individual initial recipients transferred additional QS but did not hire a skipper to fish them ¹¹ .
Impacts to the resource	Baseline	None
Benefits	Baseline	The economic benefits resulting from this amendment are unknown, but, assuming the Council’s objectives for this action reflect society’s preferences, net benefits to the nation would be expected to increase as owner-onboard becomes the norm. As Alternative 2 furthers the Council’s goal of owner-operated vessels in the halibut and sablefish IFQ fisheries, second generation owner-operators and crew may benefit from QS placed on the market, due to further limits imposed on the hired skipper provision. Alternative 2 may also serve as a disincentive for speculative investment in halibut and sablefish QS, contributing to stability in market prices over time.
Costs	Baseline	Some QS holders would forgo future opportunities to increase their holdings to hire a skipper to fish their IFQ that were transferred after the control date. Some hired skippers who own QS, but not a vessel, would lose future fishing opportunities to harvest their IFQ, but holdings transferred prior to the control date would not be affected.
Net benefits	Baseline	Some additional transfers likely would be made to second generation participants and new entrants who would be subject to owner on board requirements. Net benefits to the nation may increase to the extent that Council objectives for an “owner-operator” fishery are fully realized.
Action objectives	Does not address access to QS for second generation participants.	Alternative 2 would best meet the objectives of the proposed action.

¹¹ all non-individual QS who transferred QS after the control date must have hired a skipper to fish those QS.

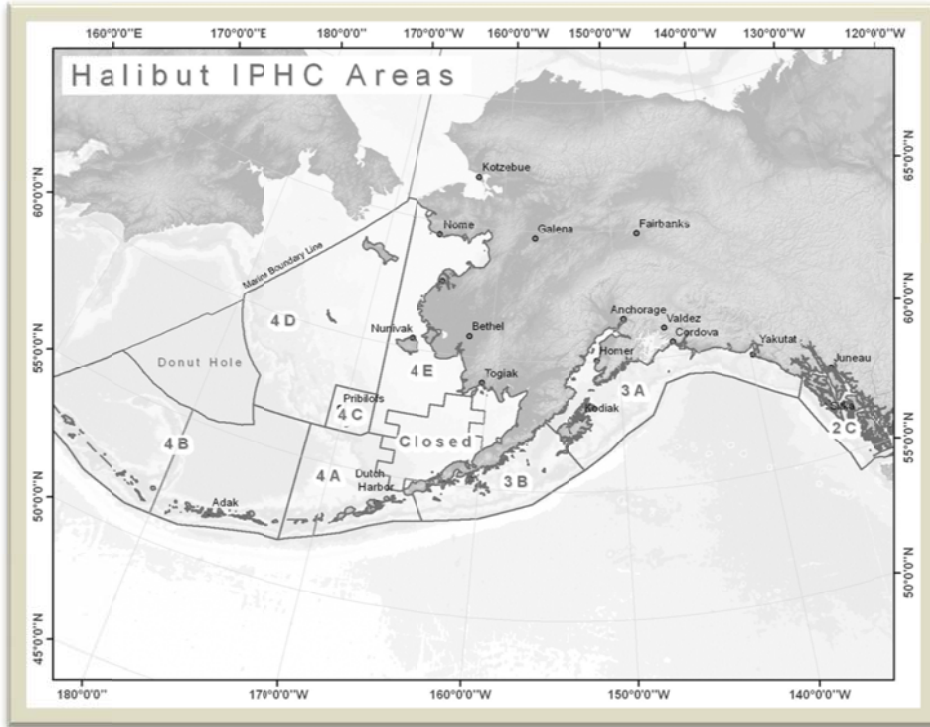


Figure 1 Halibut IFQ Regulatory Areas

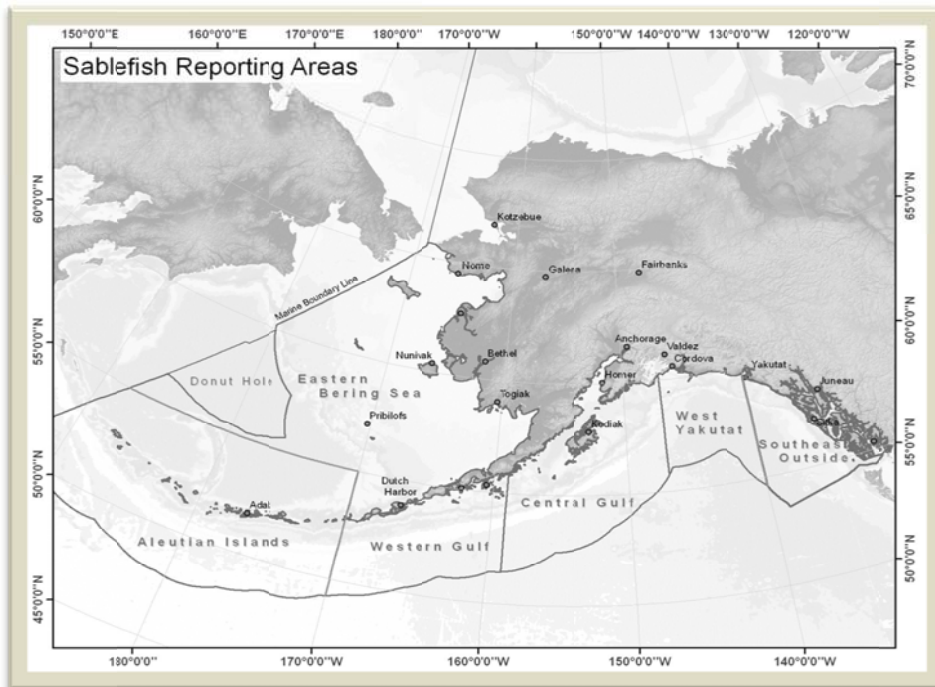


Figure 2 Sablefish IFQ Regulatory Areas