

(i) Violation as specified (1988), maximum from \$49,467 to \$50,276.

(ii) Violation as specified (1988), maximum from \$23,744 to \$24,132.

(iii) Otherwise violation (1978), maximum from \$1,625 to \$1,652.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from \$178,156 to \$181,071.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,<sup>5</sup> violation, maximum from \$178,156 to \$181,071.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,<sup>6</sup> violation, maximum from \$178,156 to \$181,071.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from \$25,464 to \$25,881.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from \$637 to \$647.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,<sup>7</sup> violation, maximum from \$178,156 to \$181,071.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,<sup>8</sup> violation, maximum from \$178,156 to \$181,071.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from \$1,078 to \$1,096; maximum from \$10,781 to \$10,957.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,<sup>9</sup> violation, maximum from \$178,156 to \$181,071.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,<sup>10</sup> violation, maximum from \$178,156 to \$181,071.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,<sup>11</sup> violation, maximum from \$178,156 to \$181,071.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from \$154,742 to \$157,274.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,<sup>12</sup> violation, maximum from \$178,156 to \$181,071.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,<sup>13</sup> violation, maximum from \$178,156 to \$181,071.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,<sup>14</sup> violation, maximum from \$178,156 to \$181,071.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from \$27,500 to \$27,950.

(ii) Subsequent violation, maximum from \$81,250 to \$82,579.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from \$70,117 to \$71,264.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from \$70,117 to \$71,264.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,<sup>15</sup> violation, maximum from \$178,156 to \$181,071.

(33) 16 U.S.C. 7407(b)(1), Port State Measures Agreement Act of 2015,<sup>16</sup> violation, maximum from \$178,156 to \$181,071.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,<sup>17</sup> violation, maximum from \$178,156 to \$181,071.

#### **§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.**

The Department of Commerce's 2017 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2017, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2017 as provided in § 6.5.

#### **§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.**

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2016-31292 Filed 12-27-16; 8:45 am]

**BILLING CODE 3510-DP-P**

<sup>14</sup> See footnote 1.

<sup>15</sup> See footnote 1.

<sup>16</sup> See footnote 1.

<sup>17</sup> See footnote 1.

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 902**

#### **50 CFR Parts 300 and 679**

[Docket No. 151001910-6999-02]

RIN 0648-BF42

### **Fisheries of the Exclusive Economic Zone Off Alaska; Allow the Use of Longline Pot Gear in the Gulf of Alaska Sablefish Individual Fishing Quota Fishery; Amendment 101**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 101 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for the sablefish individual fishing quota (IFQ) fisheries in the Gulf of Alaska (GOA). This final rule authorizes the use of longline pot gear in the GOA sablefish IFQ fishery. In addition, this final rule establishes management measures to minimize potential conflicts between hook-and-line and longline pot gear used in the sablefish IFQ fisheries in the GOA. This final rule also includes regulations developed under the Northern Pacific Halibut Act of 1982 (Halibut Act) to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery. This final rule is necessary to improve efficiency and provide economic benefits for the sablefish IFQ fleet and minimize potential fishery interactions with whales and seabirds. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, the GOA FMP, and other applicable laws.

**DATES:** Effective January 27, 2017.

**ADDRESSES:** Electronic copies of Amendment 101 and the Environmental Assessment (EA)/Regulatory Impact Review (RIR) prepared for this action (collectively the "Analysis"), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action are available from [www.regulations.gov](http://www.regulations.gov) or from the NMFS Alaska Region Web site at [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may

<sup>5</sup> See footnote 1.

<sup>6</sup> See footnote 1.

<sup>7</sup> See footnote 1.

<sup>8</sup> See footnote 1.

<sup>9</sup> See footnote 1.

<sup>10</sup> See footnote 1.

<sup>11</sup> See footnote 1.

<sup>12</sup> See footnote 1.

<sup>13</sup> See footnote 1.

be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Rachel Baker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS manages U.S. groundfish fisheries of the GOA under the GOA FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the GOA FMP appear at 50 CFR parts 600 and 679. Sablefish (*Anoplopoma fimbria*) is managed as a groundfish species under the GOA FMP.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations at 50 CFR part 300, subpart E, established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773-773k. The IPHC regulations are subject to acceptance by the Secretary of State with concurrence from the Secretary. After acceptance by the Secretary of State and the Secretary, NMFS publishes the annual management measures in the **Federal Register** pursuant to 50 CFR 300.62. The final rule implementing the 2016 annual management measures published March 16, 2016 (81 FR 14000). The Halibut Act, at section 773c(c), also authorizes the Council to develop halibut fishery regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations.

The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). Under the IFQ Program, access to the non-trawl sablefish and halibut fisheries is limited to those persons holding quota share. The IFQ Program allocates sablefish and halibut harvesting privileges among U.S. fishermen. NMFS manages the IFQ Program pursuant to regulations at 50 CFR part 679 and 50 CFR part 300 under the authority of section 773c of the Halibut Act and section 303(b) of the Magnuson-Stevens Act. The proposed rule to implement Amendment 101 (81 FR 55408, August

19, 2016) and Sections 3.1 and 4.5 of the Analysis (see **ADDRESSES**) provide additional information on the IFQ Program and the GOA sablefish IFQ fishery.

The Council recommended Amendment 101 to amend provisions of the GOA FMP applicable to the sablefish IFQ fishery. The Council also recommended implementing regulations applicable to the sablefish IFQ fisheries. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary. This final rule also includes regulations developed by the Council under the Halibut Act to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery. Halibut fishery regulations developed by the Council may be implemented by NMFS only after approval of the Secretary in consultation with the United States Coast Guard.

NMFS published a Notice of Availability for Amendment 101 in the **Federal Register** on August 8, 2016 (81 FR 52394), with comments through October 7, 2016. The Secretary approved Amendment 101 on November 4, 2016, after accounting for information, views, and comment from interested persons, and determining that Amendment 101 is consistent with the GOA FMP, the Magnuson-Stevens Act, and other applicable law. NMFS published a proposed rule to implement Amendment 101 for the sablefish IFQ fisheries and regulations to authorize harvest of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery on August 19, 2016 (81 FR 55408), with comments invited through September 19, 2016. NMFS received 15 comment letters containing 29 unique substantive comments on the FMP amendment and proposed rule. NMFS summarizes and responds to these comments in the *Comments and Responses* section of this preamble.

A detailed review of the provisions of Amendment 101, the proposed regulations to implement Amendment 101 and to authorize harvest of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery, and the rationale for these regulations is provided in the preamble to the proposed rule (81 FR 55408, August 19, 2016) and is briefly summarized in this final rule preamble.

Amendment 101 and this final rule apply to the sablefish IFQ fisheries in the GOA. The IFQ fisheries are prosecuted in accordance with catch limits established by regulatory area. The regulatory areas for the sablefish IFQ fishery in the GOA are the

Southeast Outside District of the GOA (SEO), West Yakutat District of the GOA (WY), Central GOA (CGOA), and Western GOA (WGOA). The sablefish regulatory areas are defined and shown in Figure 14 to part 679. This preamble refers to these areas collectively as sablefish areas.

This final rule implements provisions that affect halibut IFQ fisheries in the GOA. The halibut regulatory areas (halibut areas) are defined by the IPHC, described in Section 6 of the annual management measures (81 FR 14000, March 16, 2016), and shown in Figure 15 to part 679. The halibut areas in the GOA include Areas 2C, 3A, 3B, and part of Area 4A. All of these areas except Area 4A are completely contained in the GOA. The portion of Area 4A in waters south of the Aleutian Islands, west of Area 3B and east of 170° W. longitude, is included in the WGOA sablefish area. This area includes the western part of the WGOA sablefish area and a small strip along the eastern border (east of 170° W. longitude) of the Aleutian Islands sablefish area in the Bering Sea and Aleutian Islands Management Area (BSAI). This final rule applies to the harvest of halibut IFQ when a vessel operator is using longline pot gear to fish sablefish IFQ in all areas of the GOA. For additional information on the sablefish and halibut areas in the GOA see the proposed rule (81 FR 55408, August 19, 2016) and Figure 1 and Figure 11 in the Analysis.

This final rule revises regulations to add longline pot gear as a new authorized gear for catcher vessels and catcher/processors participating in the GOA sablefish IFQ fishery. Prior to this final rule, § 679.2 authorized vessels in the GOA sablefish IFQ fishery to use only longline gear (*e.g.*, hook-and-line gear). Longline pot gear is pot gear with a stationary, buoyed, and anchored line with two or more pots attached. Longline pot gear is often deployed as a series of many pots attached together in a “string” of gear. For additional information on longline gear and longline pot gear, see the definition of Authorized Fishing Gear in § 679.2. For information on the history of gear use in the sablefish fishery in the GOA, see the proposed rule (81 FR 55408, August 19, 2016) and Section 2.1.1 of the Analysis.

### Need for Amendment 101 and This Final Rule

Beginning in 2009, the Council and NMFS received reports from sablefish IFQ fishermen that depredation was adversely impacting the sablefish IFQ fleet in the GOA. The reports indicated that whales were removing or damaging sablefish caught on hook-and-line gear

(deprecation) before the gear was retrieved. Depredation has been observed on sablefish longline surveys. Sperm whale depredation is most common in the SEO, WY, and CGOA sablefish areas and killer whale depredation is most common in the WGOA and BSAI. Section 3.4.1.1 of the Analysis provides the most recent information on depredation in the sablefish IFQ fishery, and Figure 17 in the Analysis shows a map of observed depredation on sablefish longline surveys.

Participants in the GOA sablefish IFQ fishery told the Council and NMFS that authorizing longline pot gear in the GOA sablefish IFQ fishery would reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line gear. Depredation negatively impacts the sablefish IFQ fleet through reduced catch rates and increased operating costs. Depredation also has negative consequences for whales through increased risk of vessel strike, gear entanglement, and altered foraging strategies. Longline pot gear prevents depredation because whales cannot remove or damage sablefish enclosed in a pot. The Council and NMFS determined that interactions with whales throughout the GOA could affect the ability of sablefish IFQ permit holders to harvest sablefish by reducing catch per unit of effort and decreasing fishing costs. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 101 and this final rule.

The following sections describe: (1) The sablefish IFQ fishery provisions implemented with Amendment 101 and this final rule, (2) the changes from proposed to final rule, and (3) NMFS' response to comments.

#### **GOA Sablefish IFQ Fishery Provisions Implemented With Amendment 101 and This Final Rule**

The objective of Amendment 101 and this final rule is to improve efficiency in harvesting sablefish IFQ and reduce adverse economic impacts on harvesters that occur from depredation. Amendment 101 and this final rule will also mitigate impacts on sablefish IFQ harvesters using hook-and-line gear by minimizing the potential for interactions between hook-and-line gear and longline pot gear. Finally, Amendment 101 and this final rule will reduce whale and seabird interactions with fishing gear in the GOA sablefish IFQ fishery.

This final rule implements regulations for the sablefish IFQ fisheries in the

GOA and regulations to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery.

This final rule revises regulations at 50 CFR parts 300 and 679 to (1) authorize longline pot gear in the GOA sablefish IFQ fishery, (2) minimize the potential for gear conflicts and fishing grounds preemption, and (3) require retention of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery. This final rule also includes additional regulatory revisions to facilitate the administration, monitoring, and enforcement of these provisions. This section describes the changes to current regulations implemented by this final rule.

#### *Authorize Longline Pot Gear*

This final rule revises §§ 300.61, 679.2, 679.24, and 679.42 to authorize longline pot gear for use in the GOA sablefish IFQ fishery. Additionally, this final rule revises the definition of "Fixed gear" under the definition of "Authorized fishing gear" at § 679.2(4)(i) to include longline pot gear as an authorized gear in the GOA sablefish IFQ fishery and as an authorized gear for halibut IFQ harvested in halibut areas in the GOA. Fixed gear is a general term that describes the multiple gear types allowed to fish sablefish IFQ and halibut IFQ under the IFQ Program and is referred to throughout 50 CFR part 679. This final rule adds § 679.42(b)(1)(i) to further clarify that trawl gear is not authorized for use in the sablefish and halibut IFQ fisheries in the GOA and the BSAI. This final rule also adds § 679.42(b)(1)(ii) to clarify that pot-and-line gear is not authorized for use in the GOA sablefish IFQ fishery. Pot-and-line gear is pot gear with a stationary, buoyed line with a single pot attached.

This final rule revises the definition of "Fishing" at § 300.61 to specify that the use of longline pot gear in any halibut area in the GOA to harvest halibut IFQ will be subject to halibut regulations at part 300. This final rule also revises the definition of "IFQ halibut" at § 300.61 to specify that halibut IFQ may be harvested with longline pot gear while commercial fishing in any halibut area in the GOA. As described in the *Require Retention of Halibut IFQ Caught in Longline Pot Gear Used in the GOA Sablefish IFQ Fishery* section below, this final rule also adds § 679.42(l)(6) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to retain legal size (32 inches or greater) halibut caught incidentally if any IFQ permit holder on

board has sufficient halibut IFQ pounds for the retained halibut for that halibut area.

This final rule revises Table 15 to part 679 to specify that authorized gear for sablefish IFQ harvested from any GOA reporting area includes longline pot gear in addition to all longline gear (*i.e.*, hook-and-line, jig, troll, and handline). This final rule also revises the table to specify that authorized gear for halibut harvest in the GOA is fishing gear composed of lines with hooks attached and longline pot gear.

#### *Minimize Potential Gear Conflicts and Grounds Preemption*

This final rule adds provisions at § 679.42(l) to minimize the potential for gear conflicts and grounds preemption and to create general requirements for using longline pot gear in the GOA sablefish IFQ fishery.

This final rule establishes pot limits in each GOA sablefish area at § 679.42(l)(5) and requirements for vessel operators to request pot tags from NMFS at § 679.42(l)(3). Under this final rule, a vessel operator must annually request pot tags from NMFS by submitting a complete IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags form, which will be available on the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/>. NMFS will issue the number of requested tags up to the pot limit authorized at § 679.42(l)(5)(ii) in a sablefish area. The vessel owner requesting pot tags must specify the vessel to which NMFS will assign the pot tags. Pot tags must be assigned to only one vessel each year. A valid pot tag that is assigned to the vessel must be attached to each pot on board the vessel before the vessel departs port to fish in the GOA sablefish IFQ fishery.

This final rule adds specific requirements for longline pot gear deployment and retrieval in the GOA sablefish IFQ fishery. This final rule implements § 679.24(a)(3) to require a vessel operator to mark each end of a set of longline pot gear with a cluster of four or more marker buoys, including one hard buoy marked with the capital letters "LP," a flag mounted on a pole, and a radar reflector. This requirement is in addition to current requirements at § 679.24(a)(1) and (2) for all hook-and-line, longline pot, and pot-and-line marker buoys to be marked with the vessel's Federal Fisheries Permit (FFP) number or Alaska Department of Fish and Game (ADF&G) vessel registration number.

Under this final rule, a vessel operator may deploy longline pot gear in the

GOA sablefish IFQ fishery only during the sablefish fishing period specified in § 679.23(g)(1). NMFS annually establishes the sablefish fishing period to correspond with the halibut fishing period established by the IPHC. Prior to this final rule, regulations at § 679.23(g)(2) authorized an IFQ permit holder to retain sablefish outside of the established fishing period if the permit holder had unused IFQ for the specified sablefish area. This final rule revises § 679.23(g)(2) to specify that IFQ permit holders using longline pot gear in the GOA are not authorized to retain sablefish outside of the established fishing period even if the IFQ permit holder has unused IFQ.

This final rule adds § 679.42(l)(5)(iii) to establish gear retrieval requirements for longline pot gear in each GOA sablefish area. This final rule requires a vessel operator using longline pot gear to redeploy longline pot gear within a certain amount of time after being deployed, or to remove the gear from the fishing grounds when making a sablefish landing.

This final rule allows multiple vessels to use the same longline pot gear during one fishing season but prevents use of the same longline pot gear simultaneously. To prevent use of the same longline pot gear simultaneously, this final rule adds § 679.42(l)(5)(iv) to require a vessel operator to: (1) Remove longline pot gear assigned to the vessel and deployed to fish sablefish IFQ from the fishing grounds, (2) return the gear to port, and (3) remove the pot tags that are assigned to that vessel from each pot before the gear may be used on another vessel. The operator of the second vessel is required to attach pot tags assigned to his or her vessel to each pot before deploying the gear to fish for GOA sablefish IFQ. This final rule requires that only one set of the appropriate vessel-specific pot tags may be attached to the pots at any time.

*Require Retention of Halibut IFQ Caught in Longline Pot Gear Used in the GOA Sablefish IFQ Fishery*

This final rule revises the definition of “IFQ halibut” in § 679.2 to specify

that halibut IFQ may be harvested with longline pot gear while commercial fishing in any halibut area in the GOA. Additionally, this rule adds § 679.42(l)(6) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to retain legal size halibut caught incidentally if any IFQ permit holder on board has sufficient halibut IFQ pounds for the retained halibut for that halibut area. Additionally, this final rule revises § 679.7(a)(13) to specify the requirements for handling and release of halibut that apply to vessels using longline pot gear in the GOA sablefish IFQ fishery.

*Recordkeeping and Reporting*

This final rule adds § 679.42(l)(7) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to comply with logbook reporting requirements at § 679.5(c) and vessel monitoring system (VMS) requirements at § 679.42(k).

The following table describes the revisions to § 679.5.

TABLE 1—DESCRIPTION OF REVISIONS TO § 679.5

Paragraph in § 679.5	Revision
(a)(4)(i) .....	Require the operator of a vessel less than 60 feet (18.3 m) length overall (LOA) using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook.
(c)(1)(vi)(B) .....	Clarify table footnote.
(c)(2)(iii)(A) .....	Add missing word.
(c)(3)(i)(B) .....	Revise paragraphs (1) and (2) and add paragraphs (3) through (5) to specify logbook reporting requirements for vessels in the GOA and BSAI.
(c)(3)(ii)(A) and (B) .....	Clarify tables describing current logbook reporting requirements.
(c)(3)(iv)(A)(2) and (B)(2) .....	Require the operator of a vessel using longline pot gear to record specific information in a Daily Fishing Logbook or Daily Cumulative Production Logbook each day the vessel is active in the GOA sablefish IFQ fishery.
(c)(3)(v)(G) .....	<ul style="list-style-type: none"> <li>Require the operator of a vessel using longline pot gear in the GOA or the BSAI fishery to record the length of a longline pot set, the size of the pot, and spacing of pots.</li> <li>Clarify logbook reporting requirements for gear information for all vessels using longline and pot gear.</li> </ul>
(l)(1)(iii) .....	Add paragraphs (H) and (I) to require the operator of a vessel using longline pot gear in the GOA sablefish IFQ fishery to record in the Prior Notice of Landing the gear type used, number of pots set, number of pots lost, and number of pots left on the fishing grounds still fishing in addition to the other information required under current regulations.

*Monitoring and Enforcement*

This final rule revises § 679.7(a)(6) to prohibit deployment of longline pot gear in the GOA outside of the sablefish fishing period. Additionally, this final rule revises § 679.7(a)(6)(i) to clarify that vessels in the halibut IFQ fishery are subject to gear deployment requirements specified by the IPHC in the annual management measures pursuant to § 300.62.

This final rule prohibits a vessel operator in the GOA from using longline pot gear to harvest sablefish IFQ or halibut IFQ in the GOA sablefish areas without having an operating VMS on board the vessel. Additionally, this final rule revises § 679.42(k)(2)(ii) to require

a vessel operator using longline pot gear to fish sablefish IFQ in the GOA to contact NMFS to confirm that VMS transmissions are being received from the vessel. The vessel operator is required to receive a VMS confirmation number from NMFS before fishing in the sablefish IFQ fishery.

*Other Revisions*

This final rule revises § 679.20(a)(4) to replace an incorrect reference to the sablefish total allowable catch (TAC) allocation to hook-and-line gear with the correct reference to fixed gear, as defined at § 679.2, which includes hook-and-line and longline pot gear. This final rule does not change the percent of

the TAC allocated to the sablefish IFQ fishery in the GOA. NMFS will continue to allocate 95 percent of the sablefish TAC in the Eastern GOA sablefish area, which includes the SEO and WY, to vessels using fixed gear, and allocate 80 percent of the sablefish TACs in each of the CGOA and WGOA sablefish areas to vessels using fixed gear.

This final rule revises § 679.42(b)(2) to specify that an operator of a vessel using hook-and-line gear to harvest sablefish IFQ, halibut IFQ, or halibut Community Development Quota (CDQ) must comply with seabird avoidance measures set forth in § 679.24(e). This final rule clarifies that vessel operators using longline pot gear in the GOA sablefish

IFQ fishery are not required to comply with seabird avoidance measures under this final rule.

This final rule revises § 679.51(a), which contains requirements for vessels in the partial coverage category of the North Pacific Groundfish and Halibut Observer Program. This final rule removes a specific reference to hook-and-line gear for vessels fishing for halibut. This revision is needed because this final rule authorizes the retention of halibut IFQ by vessels using longline pot gear in the GOA. It is not necessary to specify authorized gear for halibut IFQ in § 679.51(a) because § 679.50(a)(3) currently states that, for purposes of subpart E, when the term halibut is used it refers to both halibut IFQ and halibut CDQ, and the authorized gear for halibut is specified in § 679.2.

#### Changes From Proposed to Final Rule

NMFS made four changes to this final rule. The first change is in response to comments received on the proposed rule. NMFS added § 679.42(l)(5)(i)(C) to specify that the gear retrieval requirements in § 679.42(l)(5)(iii) and (iv) apply to all longline pot gear that is assigned to a vessel and deployed to fish sablefish IFQ and to all other fishing equipment attached to longline pot gear that is deployed in the water by the vessel to fish sablefish IFQ. This final rule also specifies that “all other fishing equipment attached to longline pot gear” includes, but is not limited to, equipment used to mark longline pot gear as required in this final rule at § 679.24(a)(3). This change is described in more detail in the response to Comment 23 in the *Comments and Responses* section below.

The second change clarifies the definition of *Authorized Fishing Gear* at § 679.2(4)(iv) to specify that this final rule authorizes a person using longline pot gear to retain halibut in the GOA if the vessel operator is fishing for IFQ sablefish in accordance with the provisions established at § 679.42(l) for the use of longline pot gear. These provisions establish area-specific pot limits and gear retrieval requirements in addition to requirements for using pot tags and marking longline pot gear on the fishing grounds. This change clarifies that authorization of longline pot gear for halibut is limited to longline pot gear used in the GOA sablefish IFQ fishery in accordance with § 679.42(l) and does not apply to other groundfish fisheries in the GOA.

The third change clarifies § 679.42(l)(6)(i)(A) to specify that a vessel operator using longline pot gear in the GOA sablefish IFQ fishery must retain legal size halibut if the halibut is

caught in the GOA sablefish IFQ fishery in accordance with the provisions established at § 679.42(l) for the use of longline pot gear and an IFQ permit holder on board the vessel has unused halibut IFQ for the appropriate regulatory area and vessel category. As described for the second change to this final rule in the previous paragraph, this change clarifies that the requirement to retain halibut caught in longline pot gear used in the GOA sablefish IFQ fishery in accordance with § 679.42(l) is limited to the GOA sablefish IFQ fishery and does not apply to other groundfish fisheries in the GOA.

The fourth change replaces “and” with “or” in § 679.7(f)(18)(i) in this final rule. This change clarifies that it is prohibited for a vessel operator to deploy, conduct fishing with, retrieve, or retain IFQ sablefish or IFQ halibut from longline pot gear in the GOA either in excess of the pot limits specified in § 679.42(l)(5)(ii) or without a pot tag attached to each pot in accordance with § 679.42(l)(4). The proposed rule incorrectly specified that a vessel operator would be in violation of § 679.7(f)(18) only if he or she deployed, conducted fishing with, or retrieved longline pot gear in the GOA in excess of the pot limits specified and without a pot tag attached to each pot. Changing “and” to “or” in § 679.7(f)(18)(i) in this final rule is necessary to implement the Council’s and NMFS’ intent that vessel operators are required to comply with both the pot limit and pot tag requirements, and that failure to comply with either of these requirements would be a violation of the regulations.

#### Comments and Responses

NMFS received 15 comment letters containing 29 specific comments, which are summarized and responded to below. The commenters consisted of individuals, sablefish IFQ fishery participants and industry groups representing fishermen using hook-and-line gear in the GOA, and an environmental organization.

*Comment 1:* I do not support this action because sablefish is being overharvested and this is having negative impacts on marine mammals. NMFS should ban all fishing in this area and cut the sablefish quota to zero.

*Response:* NMFS disagrees. Sablefish is not subject to overfishing, is not overfished, and TACs are set in a precautionary manner. The current harvest specifications process and authorities for in-season management prevent overfishing and provide for the GOA sablefish IFQ fishery to achieve optimum yield on a continuing basis. As described in the proposed rule and

Section 3.1.1.2 of the Analysis, under Amendment 101 and this final rule, harvest of sablefish IFQ will be authorized only during the sablefish fishing period specified at § 679.23(g)(1) and established by the Council and NMFS through the annual harvest specifications (81 FR 14740, March 18, 2016). Amendment 101 and this final rule do not change conservation and management of the GOA sablefish fishery.

Section 3.4 of the Analysis describes that the current GOA groundfish fisheries, which includes the sablefish IFQ fishery, do not have an adverse impact on marine mammals. The Council and NMFS considered the impacts of Amendment 101 and this final rule on marine mammals and determined that they do not have an effect on marine mammals beyond those already expected from the GOA groundfish fisheries (see the response to Comment 2).

*Comment 2:* NMFS should prepare an environmental impact statement (EIS) for Amendment 101 because of its potential effect on humpback whales and North Pacific right whales. The draft EA is inadequate because it fails to analyze potential impacts of sablefish pot gear in the GOA on marine mammals that are listed as endangered under the Endangered Species Act (ESA), specifically humpback whales (*Megaptera novaeangliae*) and North Pacific right whales (*Eubalaena japonica*).

*Response:* NMFS prepared a draft EA to determine whether the environmental impact of the proposed action was significant. Section 3.4 of the draft EA discussed the impact of the proposed action on marine mammals. In response to this comment, NMFS has revised this section of the EA to provide additional information on North Pacific right whales and humpback whales. Based on the analysis in the final EA, NMFS continues to conclude that Amendment 101 and this final rule will not have a significant impact on the human environment, including humpback whales and North Pacific right whales. Therefore, NMFS is not required to prepare an EIS under the requirements of the National Environmental Policy Act.

*Comment 3:* There is evidence of pot fishing gear entangling Atlantic right whales and humpback whales. NMFS should consider using entanglement information from other fisheries outside of Alaska as a proxy for potential impacts of the proposed action on North Pacific right whales.

*Response:* Section 3.4 of the EA presents information on observations of

marine mammal entanglements in Alaska. NMFS considered entanglement information from similar fisheries using pot gear in the GOA and Bering Sea as these fisheries are likely more analogous to the GOA sablefish IFQ longline pot gear fishery than fisheries in other regions where potential interactions between fisheries and marine mammal species may differ from interactions in Alaska. Species distribution and abundance information from the GOA provides more informative indications as to the probability of fishery interactions with marine mammals than data from other regions or oceans. While fishery interactions and entanglements of right whales are known to occur in the North Atlantic, no North Pacific right whale interactions are known to have occurred in the North Pacific fisheries despite considerable fishing effort. Therefore, NMFS disagrees that the North Atlantic data are a more reasonable proxy than the best available data on fishery interactions with North Pacific right whales in the North Pacific fisheries.

*Comment 4:* NMFS must consult under section 7 of the ESA and publish a biological opinion including an incidental take statement for ESA-listed species likely to interact with longline pot gear in the GOA sablefish fishery. The commenter states that due to the absence of a biological opinion on the effect of the proposed action on ESA-listed species, the draft EA does not provide the public with a complete documentation of the environmental impacts associated with this action. The commenter states that NMFS should reopen the public comment period if this consultation, or any other ongoing analysis that may affect NMFS' decision-making process, adds critical new information to the record.

*Response:* NMFS revised Section 3.4 of the EA to summarize information on ESA section 7 consultations (consultations) that have been conducted to assess the effects of the GOA groundfish fisheries on ESA-listed species. Although the EA describes these consultations, the results of these consultations have been publicly available on the NMFS Alaska Region Web site at:

[www.alaskafisheries.noaa.gov](http://www.alaskafisheries.noaa.gov). Amendment 101 and this final rule do not modify the GOA groundfish fisheries in a manner that will cause effects on listed species or designated critical habitat that have not been considered in previous consultations. Based on the information in section 3.4.1.2 of the analysis, the overall likelihood of entanglement of listed marine mammals in longline pot gear is

no greater than the likelihood of listed marine mammal entanglement in the hook-and-line gear currently used in the sablefish IFQ fishery.

The summary of information available in Section 3.4 of the EA does not affect NMFS' decision-making process or add critical new information to the record that would require NMFS to publish a new proposed rule or extend the public comment period.

*Comment 5:* NMFS should analyze whether a negligible impact determination (NID) is appropriate for the GOA sablefish IFQ longline pot gear fishery under the Marine Mammal Protection Act (MMPA) because of its similarity to the sablefish pot fishery along the west coast of the United States (California, Oregon, and Washington).

*Response:* NMFS publishes an annual List of Fisheries (LOF) in which all commercial fisheries in the United States are categorized according to the level of serious injury and mortality to marine mammals relative to the health of each marine mammal stock. Category I fisheries are considered to have the greatest impact on a marine mammal stock's health, Category II fisheries have some impact on a marine mammal stock's health, and Category III fisheries have the least impact. These categories are used to make management decisions, as needed, to monitor and adjust fisheries' impacts on marine mammal populations. Under MMPA section 118, participants in Category I through III commercial fisheries are granted an exemption from the MMPA prohibition on incidental takes of marine mammal not listed as threatened or endangered under the ESA. NMFS will include the GOA sablefish IFQ longline pot gear fishery in the 2018 LOF analysis to place this fishery in the appropriate LOF category. In the meantime, once this final rule becomes effective, the new GOA sablefish IFQ logline pot gear fishery will be automatically considered a Category II fishery, as directed by regulation (50 CFR 229.2).

Permits authorizing the incidental take of ESA-listed species in U.S. commercial fisheries may be granted under MMPA section 101(a)(5)(E). One criterion required to issue such permits is a NID. A NID is issued if NMFS determines that all commercial fisheries identified in the annual LOF, collectively, have a negligible impact on any ESA-listed marine mammal stock for which a take permit is proposed to be issued. A negligible impact is defined (50 CFR 216.103) as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival.

NMFS issued a NID for fishery impacts on marine mammals in Alaska on June 23, 2016, and NMFS issued permits under the authority of section 101(a)(5)(E) of the MMPA for the incidental taking of ESA-listed species effective for a three-year period (June 23, 2016, 81 FR 40870). Because the new GOA sablefish IFQ longline pot gear fishery has not yet commenced, information is not available to make a NID on the impacts of this fishery on ESA-listed marine mammals in Alaska. The use of the U.S. west coast sablefish pot fishery as a surrogate for the GOA sablefish IFQ longline pot gear fishery in a NID, as suggested by the comment, would be inappropriate due to differences in geography, fishery operations, and marine mammal species distribution. Information on marine mammal interactions with the new GOA sablefish IFQ longline pot gear fishery will be incorporated and considered when NMFS begins analysis during the review of the current NID applicable to Alaskan fisheries.

*Comment 6:* The commenter urges NMFS to set aside areas in the GOA where pot gear is prohibited in order to protect the North Pacific right whale from entanglement. The commenter states that the North Pacific right whale population is estimated to be very low, and that any serious injury or mortality would have population level effects. The commenter urged NMFS to close North Pacific right whale critical habitat in the GOA to minimize the extent of fishing gear interactions.

*Response:* As summarized in Section 3.4 of the EA, NMFS has concluded that this action is not likely to affect the North Pacific right whale or its designated critical habitat in a manner or to an extent not already considered in prior ESA section 7 consultations on the GOA groundfish fisheries. In 2006, NMFS determined that the GOA groundfish fisheries are not likely to adversely affect right whales. NMFS reaffirmed this determination when critical habitat was designated for the North Pacific right whale in 2008. There are no recorded instances of North Pacific right whale entanglements with hook-and-line gear or longline pot gear in the Alaska groundfish fishery. Section 3.4.1.2 of the EA analyzes the potential overlap of the sablefish fishery with areas of known North Pacific right whale observations and critical habitat. The analysis found that the sablefish fishery occurs at depths much deeper than designated North Pacific right whale critical habitat, so neither the hook-and-line gear nor the longline pot

gear sablefish fishery is likely to adversely affect North Pacific right whales or the designated critical habitat. Based on this analysis, NMFS concludes that there is likely to be no overlap between GOA sablefish longline pot gear and North Pacific right whale critical habitat. The commenter's proposal to close North Pacific right whale critical habitat to longline pot gear in the GOA sablefish IFQ fishery to protect North Pacific right whales from entanglement is not supported by the available data.

*Comment 7:* The use of pot gear in the GOA sablefish fishery is likely to entangle humpback whales based on comparisons to the sablefish pot fisheries operating off the west coast of the U.S. and in the BSAI. The EA must consider entanglement of humpback whales in the analysis of cumulative impacts. The use of sablefish pot gear in the GOA is likely to increase entanglements for the Hawaii, Mexico, and western North Pacific humpback whale ESA-listed distinct population segments and moderately reduce population size or growth rate.

*Response:* NMFS revised Section 3.4 of the EA to describe the anticipated effects of longline pot gear in the GOA sablefish IFQ fishery, including entanglement of marine mammals, in response to this comment. The analysis shows there were no documented marine mammal interactions in the Bering Sea IFQ sablefish longline pot fishery or the BSAI Pacific cod longline pot fishery from 2008 through 2012. Based on this best available data for longline pot gear in the BSAI sablefish IFQ pot fishery and in other existing longline pot fisheries in the GOA, NMFS determines that the longline pot gear that may be deployed under the final rule in lieu of hook-and-line gear is not likely to increase the risk of entanglements of humpback whales relative to status quo. Based on the information in the analysis, NMFS determined that the GOA groundfish fisheries are not likely to have population-level effects on humpback whales.

*Comment 8:* The biological opinions prepared for the west coast sablefish pot fishery include terms and conditions to mitigate potential entanglement with whales that should be required by NMFS for the GOA sablefish pot fishery. These terms and conditions include electronic monitoring and logbook reporting requirements to report lost gear, a database to track fishery effort, analysis on the magnitude of lost pot gear and factors that may influence loss, and analysis of gear deployment and

overlap with large whale migrations of aggregations.

*Response:* Many of the monitoring requirements and analyses referenced by the commenter in the biological opinions assessing the west coast sablefish pot fishery are addressed through existing regulations, or are required under this final rule. This final rule also includes additional monitoring provisions.

This final rule requires the use of logbooks to record data on pot gear deployment and loss at § 679.5(c). Specifically, a vessel operator using longline pot gear in the GOA must record the length of a longline pot set, the size of the pot, the spacing of pots, number of pots set, number of pots lost, and number of pots left on the fishing grounds still fishing, in addition to the other information required under current regulations. Additionally, this final rule at § 679.42(k) requires a vessel operator to use a VMS while using longline pot gear to fish for sablefish in the GOA. VMS monitors the location and movement of commercial fishing vessels in Federal fisheries off Alaska. Further, a vessel operator using longline pot gear in the GOA is subject to observer coverage under the North Pacific Groundfish and Halibut Observer Program.

NMFS has developed analytical tools and databases to analyze all fishery data that NMFS collects, including the new data collected under this final rule. NMFS is able to assess the amount of catch, effort, and areas where longline pot gear is deployed in the GOA sablefish IFQ fishery with existing analytic methods. NMFS will have the fishery data necessary to compare longline pot gear deployment with available information on areas of large whale migrations. The Council and NMFS are currently analyzing the use of electronic monitoring for pot gear. Under a separate analytical and regulatory process, the Council and NMFS may consider the use of electronic monitoring for vessels using longline pot gear in the GOA sablefish IFQ fishery.

*Comment 9:* Measures to protect Atlantic right whales from entanglement by pot gear have been recommended by the Marine Mammal Commission, and those should be considered by NMFS for the GOA sablefish pot fishery. These measures include gear marking requirements, and closing areas likely to be used by Atlantic right whales. NMFS also should consider the applicability of mitigation measures suggested in the Atlantic Large Whale Take Reduction Plan to the GOA sablefish pot fishery.

*Response:* This final rule implements additional gear marking requirements for vessels using longline pot gear in the GOA sablefish IFQ fishery. Under this final rule at § 679.24(a), each vessel operator must attach a cluster of four or more marker buoys, a flag mounted on a pole, and a radar reflector to each end of a longline pot set. This final rule requires vessel operators to add the initials "LP" for "Longline Pot" to one hard buoy in the buoy cluster in addition to the FFP number of the vessel deploying the gear, or the ADF&G vessel registration number. This will distinguish buoys for hook-and-line gear from buoys for longline pot gear. As stated in the response to Comment 6, closing areas to the use of longline pot gear in the GOA sablefish IFQ fishery is unnecessary. Section 3.4 of the EA summarizes the history of ESA section 7 consultations conducted for GOA groundfish fisheries. Based on these conclusions, additional management measures such as those described by the Atlantic Large Whale Take Reduction Plan do not appear to be applicable or warranted. However, if information becomes available that indicates whales are interacting with this fishery, NMFS will take appropriate measures pursuant to the MMPA and, for listed whales, the ESA.

*Comment 10:* NMFS should prohibit the use of hook-and-line gear in the sablefish fishery in favor of longline pot gear. NMFS should not allow fishermen to continue to use the gear just because they have made economic investments in using that harvesting method. NMFS must achieve maximum sustainable yield from the sablefish fishery with the greatest harvesting efficiency and lowest impact to the environment, and hook-and-line gear does not achieve this due to current levels of depredation and interactions with whales and seabirds. Furthermore, hook-and-line gear is inefficient from a fuel and manpower perspective because it requires constantly retrieving the lines. Longline pot gear allows pots to soak on the fishing grounds and provides for more efficient catch of fish because smaller fish can swim out of the pot and whales cannot get to the sablefish inside the pots. More efficient harvest benefits the end consumer because they can purchase fish at lower cost.

*Response:* Amendment 101 and this final rule are intended to balance multiple objectives: Improve harvesting efficiency and reduce adverse economic impacts from depredation to harvesters in the sablefish IFQ fishery, mitigate impacts on sablefish IFQ fishermen using hook-and-line gear by minimizing the potential for interactions between

hook-and-line gear and longline pot gear, and reduce sablefish IFQ fishery whale and seabird interactions with fishing gear. Amendment 101 and this final rule balance these objectives consistent with the requirements of the Magnuson-Stevens Act.

Amendment 101 and this final rule are consistent with National Standard 1 of the Magnuson-Stevens Act, which requires conservation and management measures to prevent overfishing while achieving optimum yield on a continuing basis (section 301(a) of the Magnuson-Stevens Act). Optimum yield is based on maximum sustainable yield, reduced as appropriate for social and economic factors for the relevant fishery (81 FR 71858, October 18, 2016). The Council and NMFS achieve optimum yield in the GOA sablefish IFQ fishery by establishing annual catch limits at sustainable levels and establishing management measures for the fishery that meet a number of social and economic goals, including maintaining a diverse fleet of fishing vessels and a broad distribution of economic benefits to fishermen, processors, and communities that participate in the fishery (see Sections 3.1 and 4.5 of the Analysis). As described in the response to Comment 1, Amendment 101 and this final rule do not change the current process for establishing annual catch limits or the management measures that have been established to meet specific social and economic goals for the GOA sablefish IFQ fishery.

As described in the response to Comment 1, the proposed rule, and Sections 3.4 and 3.5 of the Analysis, the Council and NMFS have determined that the current GOA sablefish IFQ fishery prosecuted with hook-and-line gear does not adversely affect whales and seabirds. Amendment 101 and this final rule do not change the management measures established for the hook-and-line sablefish IFQ fishery in the GOA that are intended to reduce fishery interactions with whales and seabirds.

The proposed rule and Section 2.1.1 of the Analysis describe that sablefish can be caught efficiently with hook-and-line and pot gear. In recommending Amendment 101 and this final rule, the Council and NMFS recognized that hook-and-line gear will continue to be an effective harvesting method for many vessels in the sablefish IFQ fishery. Authorizing fishermen to use longline pot or hook-and-line gear in the GOA sablefish IFQ fishery provides each vessel operator with the choice to determine which type of gear is appropriate for their operation and gives them the flexibility to determine the

most cost effective method for harvesting sablefish IFQ. The proposed rule and Section 4.9.2 of the Analysis describe that the costs of converting to longline pot gear can be substantial, and some vessels in the sablefish IFQ fishery will not be able to convert because of vessel length or other factors.

Amendment 101 and this final rule balance the needs of sablefish IFQ fishery participants by providing vessel operators with the opportunity to use longline pot gear if it would benefit their harvesting operation by reducing interactions with whales.

NMFS acknowledges that while the costs of harvesting operations could impact the price that consumers pay for sablefish in the market, fishing gear is just one cost component for a harvesting operation. NMFS does not have information indicating the sablefish harvested with longline pot gear will result in reduced consumer prices relative to sablefish caught with hook-and-line gear.

*Comment 11:* NMFS received comments that provided general support for Amendment 101, but noted specific concerns about the proposed rule. One commenter supported the authorization of longline pot gear in the GOA sablefish IFQ fishery to improve efficiency in harvesting sablefish, reduce adverse economic impacts on harvesters that occur from depredation, and reduce fishery interactions with whales. The commenter stated that a large number of vessels in the sablefish IFQ fleet will not be able to use the gear because the economic cost of converting to pots is uncertain and potentially substantial. The commenter stated that vessels that are 50 feet LOA or less generally cannot use longline pot gear because they cannot safely carry, deploy, and retrieve pots. The commenter expressed concern that the introduction of longline pot gear could result in gear conflicts and grounds preemption and disadvantage vessels that continue to use hook-and-line gear by reducing the amount of available fishing grounds and increasing the costs of harvesting sablefish IFQ for these vessels.

One commenter acknowledged that the use of longline pot gear likely would reduce depredation, but opposed the reintroduction of longline pot gear to the GOA sablefish fishing grounds, particularly in the SEO and WY. The commenter stated that the potential negative impacts of introducing longline pot gear on vessel operators that continue to use hook-and-line gear would outweigh the benefits because the proposed rule did not contain adequate measures to mitigate the

negative impacts of introducing longline pot gear to the GOA sablefish IFQ fishery.

*Response:* NMFS acknowledges the general support for Amendment 101. As described in the response to Comment 10, Amendment 101 and this final rule are intended to balance multiple objectives: Improve harvesting efficiency and reduce adverse economic impacts from depredation to harvesters in the sablefish IFQ fishery, mitigate impacts on sablefish IFQ fishermen using hook-and-line gear by minimizing the potential for interactions between hook-and-line gear and longline pot gear, and reduce sablefish IFQ fishery whale and seabird interactions with fishing gear.

The proposed rule (81 FR 55408, August 19, 2016) and the Analysis (see **ADDRESSES**) describe that the Council and NMFS considered the impacts of this action on vessels that continue to use hook-and-line gear. Although it is not possible to know how many sablefish fishermen will choose to use longline pot gear instead of hook-and-line gear in the GOA, the Council and NMFS considered information in the Analysis and public testimony to determine that the likelihood of gear conflicts and grounds preemption under Amendment 101 and this final rule is low.

Section 4.10 of the Analysis indicates that the Council recognized that pot gear had previously been permitted in the GOA sablefish fishery but was prohibited in 1985 by Amendment 14 to the GOA FMP (50 FR 43193, October 24, 1985). During deliberation on Amendment 101 and this final rule, the Council noted that its decision to prohibit pot gear in Amendment 14 was based on fishery data and scientific information on depredation that is not reflective of the present fishery. Reports and observations of depredation of hook-and-line gear have increased since 1985 (see Section 3.4 of the Analysis), and the fishery has been managed under the Halibut and Sablefish IFQ Program since 1995. The existing management program for the fishery provides substantially more flexibility on when and where to harvest sablefish and allows for coordination and cooperation within the fleet. In addition, all fishermen have an economic incentive to avoid gear conflicts on the fishing grounds because these conflicts can result in costs through lost gear and lost fishing time (see Section 4.10 of the Analysis).

In spite of these factors mitigating the potential for gear conflicts, the Council and NMFS received public testimony noting the potential negative impacts of



authorizing longline pot gear on vessels that continue to use hook-and-line gear. As a result, the Council recommended and NMFS included area-specific management measures in this final rule to address these concerns. These management measures are discussed in detail in the proposed rule, and in Sections 4.9.3, 4.9.4, and 4.9.5 of the Analysis. These area-specific management measures were developed with input from the Sablefish Gear Committee that included participants in the sablefish IFQ fishery. Input from the Sablefish Gear Committee, the Council's advisory bodies, public testimony, and the Analysis were used to develop the area-specific management measures implemented in this final rule to meet the Council's objective to provide an opportunity for fishermen to use longline pot gear while minimizing the potential for negative impacts on vessels that use hook-and-line gear.

The proposed rule and Section 4.9.2 of the Analysis describe that it is highly likely that a portion of the existing GOA sablefish IFQ fleet will continue to use hook-and-line gear, due to cost constraints, vessel size constraints, or both. NMFS agrees with the commenters that the costs of reconfiguration likely will be prohibitive for many vessel operators and this outcome is supported by the proposed rule and Section 4.9.8.1 of the Analysis. The proposed rule and the Analysis also describe the feasibility of converting to longline pot gear with respect to vessel size. Section 4.9.8.1 of the Analysis notes that based on information from other groundfish pot fisheries, vessels less than 50 feet LOA may be less likely to use longline pot gear in the GOA sablefish IFQ fishery than larger vessels. After considering this information, the Council determined and NMFS agrees that the number of vessels that convert to longline pot gear is likely to be small in comparison to those that will continue using hook-and-line gear, which will reduce the potential for gear conflicts and grounds preemption under Amendment 101 and this final rule.

The proposed rule and Section 4.10 of the Analysis describe that in recommending Amendment 101 and this final rule the Council expressed its intent to monitor the use of longline pot gear in the GOA sablefish IFQ fishery to determine if Amendment 101 and this final rule are meeting its objectives. The Council requested that NMFS provide an annual report on the use of longline pot gear in the GOA sablefish IFQ fishery following implementation of this final rule. The Council also indicated that it will conduct a review of the effects of authorizing longline pot gear

three years following implementation of this final rule. The Council stated that the intent of the review is to evaluate the impacts of this action on sablefish harvesting, depredation, and vessels that continue to harvest sablefish with hook-and-line gear. During deliberation on Amendment 101 and this final rule, the Council specifically noted that its three-year review will evaluate whether the use of longline pot gear has impacted fishing community participation in the fishery or prices of sablefish quota share that might adversely affect new entrants or small-scale operators looking to grow their business. This review will provide the Council and NMFS the opportunity to assess potential gear conflicts under this final rule. Nothing in Amendment 101 or this final rule would preclude the Council and NMFS from considering action to further reduce gear conflicts through a subsequent action if the review indicates that such action is necessary.

*Comment 12:* We think there is substantial risk for conflicts between longline pot and hook-and-line gear under Amendment 101 and the proposed rule. There is widespread evidence of past gear conflicts based on previous Council actions to prohibit longline pot gear as described in the proposed rule preamble. Although these conflicts occurred before the IFQ Program was implemented, they also occurred when the sablefish season was open throughout the spring and summer in the early 1980s.

The foreign fishing fleets (active prior to the 1980s) lost or abandoned a substantial amount of pot gear in the SEO many years ago and despite continued efforts by the fishing fleet to remove it from the fishing grounds, the lost and abandoned pot gear continues to preempt grounds off Sitka. Longline gear set near these lost pots still on occasion drift to tangle with the lost pots. Attempts to retrieve gear tangled with these pots are dangerous, with tremendous strain on the boat trying to haul the gear, and the end result is more lost gear and lost fish.

Letters submitted to the Pacific Fishery Management Council provide evidence of present gear conflicts, safety issues, and grounds preemption driven by the entrance of three boats using longline pot gear in what has historically been hook-and-line grounds. This issue is clearly important because the Council's Sablefish Gear Committee spent most of its time talking about gear conflicts and how to minimize anticipated conflicts.

*Response:* The Council and NMFS carefully considered the impacts of gear

conflicts and grounds preemption when developing Amendment 101 and this final rule, including input from the Council's Sablefish Gear Committee, its advisory bodies, and public testimony. Section 2.1.1 of the Analysis and the final rule to implement Amendment 14 to the GOA FMP (50 FR 43193, October 24, 1985) describe the issues summarized in the comment. As described in the response to Comment 11, the Council and NMFS believe that management under the IFQ Program has substantially changed the likelihood of gear conflicts, grounds preemption, and safety issues overall in the sablefish IFQ fishery, and particularly related to the introduction of longline pot gear.

The proposed rule and Section 5.1 of the Analysis describe that the Council and NMFS carefully considered the impacts of Amendment 101 and this final rule on the safety of human life at sea, consistent with National Standard 10 of the Magnuson-Stevens Act. The impacts of Amendment 101 and this final rule on safety are also considered in Section 4 of the Analysis. While some participants in the hook-and-line fleet raised safety concerns to the Council and NMFS related to carrying longline pot gear on small vessels, the use of longline pot gear will be voluntary, not mandatory, under this final rule. Section 2.4 of the Analysis describes that the Council and NMFS considered the impacts of this action on safety in developing the requirements for vessels to use longline pot gear instead of pot-and-line gear at § 679.2 and the gear retrieval requirements at § 679.42(l)(5)(iii).

The response to Comment 11 details the management measures included in this final rule to minimize the potential for gear conflicts and grounds preemption. This final rule limits the amount of longline pot gear that may be deployed to limit potential gear conflicts on an area-specific basis, and defines the maximum amount of time that longline pot gear may be left on the fishing grounds in the WY, CGOA and WGOA. This final rule requires vessels fishing in the SEO to remove their longline pot gear from the fishing grounds when making a delivery. In developing that recommendation for the SEO, the Council noted that SEO sablefish fishing grounds are limited relative to other areas, and allowing longline pot gear to be left on the grounds when a vessel leaves the fishing grounds to make a delivery may create safety hazards by increasing the likelihood of gear conflict relative to other areas in the GOA.

In addition, the Council recommended and NMFS is

implementing gear marking requirements in this final rule at § 679.24(a)(3) to make longline pot gear more visible on the fishing grounds to further minimize the potential for gear conflicts and grounds preemption, which promotes safety for all vessels.

The Council recommended and this final rule implements gear deployment and retrieval requirements that balance the objectives of Amendment 101 and this final rule.

*Comment 13:* We believe the Council and NMFS should not allow the use of longline pot gear throughout the GOA throughout the entire year. The Analysis repeatedly states that the impacts of allowing pots into the sablefish fishery are poorly understood. We request that the proposed rule be amended to prohibit the use of longline pot gear in the SEO and WY during April and again between August 15 and September 15 to provide two months of the year in which hook-and-line fishermen could harvest sablefish without the potential for gear conflicts or grounds preemption.

*Response:* NMFS did not change this final rule in response to this comment. This final rule authorizes longline pot gear at any time during the GOA sablefish IFQ season authorized by § 679.23(g). The Council and NMFS considered and rejected a prohibition on the use of longline pot gear in the SEO during specific months of the year as part of this action. As described in Section 2.4 of the Analysis, it is likely that the prohibition will have an undetermined impact on some sablefish IFQ fishermen using longline pot or hook-and-line gear that was not considered in the development of Amendment 101 or the proposed rule. Therefore, NMFS did not change this final rule in response to this comment.

*Comment 14:* We believe conservation arguments relative to whale predation have been exaggerated and our significant experience with sperm whale interactions with the sablefish fishery informs our conclusions. We think that proponents of Amendment 101 have overstated the negative impacts of depredation on the sablefish survey and on catch accounting in the sablefish fishery. The sablefish stock is neither overfished nor subject to overfishing. Studies on loss to sperm whale depredation in the commercial hook-and-line fisheries in Alaska is estimated at 2.2 percent of total groundfish catch based on visual evidence of torn or partial fish, which is likely a low estimate, but is still the best available information.

The Analysis identifies a number of unknown potential impacts on the use

of longline pot gear on both the sablefish survey (conflicts between the survey and pots have occurred in the past) and potential impacts on the sablefish stock of increased harvest with pots. The Analysis notes that sablefish length and possibly age composition information would be needed for harvests in pot gear before the stock assessment authors could evaluate the potential effects of introducing pot gear on the sablefish stock and stock assessment. These unknowns argue for a cautious, phased-in and experimental approach to allowing this new gear type.

*Response:* NMFS disagrees. The Council and NMFS considered the information in Section 4.8.1 of the Analysis and public testimony to determine that depredation is negatively impacting harvesting efficiency for some vessel operators. The Council determined and NMFS agrees that allowing vessel operators to voluntarily use longline pot gear could address the negative impacts described in the Analysis and in public testimony.

The Analysis describes that killer whale interactions are most common in the BSAI and the WGOA, while sperm whale interactions are most common in the CGOA, WY, and SEO. Section 3.4.1.1 of the Analysis provides best available information on depredation in this fishery. While depredation events are difficult to observe, fishery participants have testified to the Council that depredation continues to be a major cost to the sablefish IFQ fishery, and appears to be occurring more frequently. Industry groups have tested gear modifications to limit the impact of depredation on hook-and-line gear catch per unit effort, and reported those efforts to the Sablefish Gear Committee and the Council. Nevertheless, depredation continues to result in lost sablefish catch, increased fishing time as vessel operators wait for whales to leave the area before hauling gear, or increased time and fuel to relocate to avoid whales. Section 4.7 of the Analysis includes a summary of efforts to mitigate depredation in Alaska and elsewhere.

NMFS agrees with the commenter that the sablefish stock is not overfished and is not subject to overfishing. The Council and NMFS considered the impacts of Amendment 101 and this final rule on the sablefish stock. The proposed rule and Section 3.1.1.2 of the Analysis describe that Amendment 101 and this final rule are not expected to have significant impacts on the sablefish stock. The Analysis describes that although some benefit likely will occur because unaccounted fishing mortality due to depredation will be reduced as

sablefish IFQ fishermen voluntarily switch from hook-and-line longline gear to longline pot gear, the potential impact of reduced depredation may be difficult to measure given overall trends in sablefish recruitment.

Section 3.1.1.2 of the Analysis notes that the sablefish stock assessment authors considered the impacts of the introduction of longline pot gear on the sablefish stock assessment. The stock assessment authors considered whether the fish size selectivity of longline pot gear would be different from hook-and-line gear using information from the BSAI, where pot gear has been authorized in the sablefish IFQ fishery since 2008 (73 FR 28733, May 19, 2008). Some evidence exists to suggest a difference in the length frequency of sablefish caught with pot gear compared to hook-and-line gear, with hook-and-line gear producing slightly larger sablefish on average (see Figure 6 in Section 3.1.1.2 of the Analysis). However, the Analysis concludes that this difference in sizes was observed at the BSAI area-wide level and the size differences likely can be attributed to differences in sablefish sizes among sub-areas of the BSAI. The Analysis also notes that longline pot and hook-and-line gear are set at similar depths in the BSAI and the sex ratio of the catch is comparable for both gears. After considering this information, the sablefish stock assessment authors determined that the difference in lengths selected by longline pot and hook-and-line gear is not significant enough to affect population recruitment. Overall, existing evidence does not suggest that the introduction of longline gear pot under Amendment 101 and this final rule will impact the annual sablefish stock assessment.

NMFS notes that this final rule does not change observer coverage requirements for vessels fishing in the sablefish IFQ fisheries (§§ 679.50 through 679.55). Therefore, NMFS will collect information on length and age composition for sablefish caught in longline pot gear in the GOA sablefish IFQ fishery, and this information will be used in the annual assessment to determine that status of the sablefish stock.

*Comment 15:* The proposed rule cites reduced catch per unit effort as a result of depredation. We note that the catch per unit effort is currently more than twice as high in the SEO as it is in the WGOA, which indicates that depredation may not be negatively impacting catch per unit effort in some areas, and authorizing longline pot gear may not be necessary in those areas.

*Response:* NMFS agrees that it is not possible to determine if Amendment 101 and this final rule will increase sablefish catch per unit effort for those vessels that use longline pot gear relative to vessels that use hook-and-line gear. Section 4.9.2 of the Analysis describes that the relative benefit of using longline pot gear fishing as opposed to hook-and-line gear is either unclear or is conditional on factors that cannot be forecasted in the Analysis because longline pot gear has been prohibited in the fishery for many years. Those external factors include the local biomass distribution of sablefish in the future, changes in future product markets, and the future behavior of marine mammals, particularly depredating whales. Based on available information, the Analysis does not definitively state whether fishing with longline pot gear will generate a higher sablefish catch per unit effort in the GOA. The Analysis also notes that catch per unit effort is likely to differ across GOA management areas.

The Council received public testimony from sablefish fishermen in all areas of the GOA indicating that depredation had reduced catch per unit effort and increased costs for their fishing operations. The Council determined and NMFS agrees that Amendment 101 and this final rule will improve harvesting efficiency and reduce adverse economic impacts from depredation to harvesters in all GOA sablefish areas (see Section 4.10 of the Analysis).

*Comment 16:* The proposed rule states that groundfish bycatch and the incidental catch of seabirds may be reduced by authorizing the use of longline pot gear. The SEO sablefish hook-and-line fleet has collaborated since 2009 to reduce rockfish bycatch, and we are expanding bycatch avoidance to include other species. Bycatch in the sablefish hook-and-line fishery is primarily grenadiers and sharks, which are not target fisheries and are harvested in amounts well below the biological limits established for these species. Longline pot gear can also result in bycatch of some species, and NMFS should evaluate the potential bycatch of octopus by vessels using longline pot gear in the sablefish fishery.

Although pots are likely to reduce seabird takes, hook-and-line fisheries in the GOA typically account for only 10 percent to 20 percent of overall incidental catch of seabirds in the BSAI and GOA groundfish fisheries. The incidental catch of seabirds has been reduced significantly by the use of

streamer lines in the hook-and-line fishery.

*Response:* NMFS agrees with the commenter that the sablefish IFQ fleet has taken positive steps to reduce rockfish bycatch and interactions with seabirds. As described in the response to Comment 14, Amendment 101 and this final rule do not change the observer coverage requirements for GOA sablefish IFQ fishery participants. NMFS collects information on bycatch and seabird interactions through the North Pacific Observer Program and will continue to do so for vessels participating in the GOA sablefish fishery, including vessels in the longline pot fishery, following implementation of this final rule.

*Comment 17:* We believe that Amendment 101 and the proposed rule are inconsistent with National Standard 8 because they fail to provide for the sustained participation of fishery dependent communities. The Council and NMFS must preserve the historic hook-and-line gear, small boat nature of the GOA sablefish fleet in general and in the SEO in particular. Because relatively more IFQ is fished by small boats in the SEO and WY relative to the CGOA and WGOA, it is clear that the introduction of pots in these areas will reduce the fishing grounds available to these small boats using hook-and-line gear and therefore reduce the number of hook-and-line vessels that can participate in the fishery. Eliminating small vessels from this historically important fishery will negatively impact communities in the SEO and WY. The geographic, social, and economic characteristics of the SEO sablefish fishery demand different considerations for the SEO and WY, and we urge NMFS to provide for the sustained participation of these fishery dependent communities by rejecting Amendment 101 and the proposed rule.

*Response:* NMFS has determined that Amendment 101 and this final rule are consistent with National Standard 8. As described in the response to Comment 11, the Council developed this action based on input from its Sablefish Gear Committee, its advisory bodies, public testimony, and the Analysis. Amendment 101 and this final rule balance the needs of sablefish fishermen who want to use longline pot gear and those who will continue to use hook-and-line gear.

Section 5.1 of the Analysis describes that the Council's objectives for this action implicitly recognize the importance of the sablefish fishery to GOA fishing communities and their residents. Amendment 101 and this final rule could reduce depredation and

interactions, reduce bycatch of some species, reduce incidental catch of seabirds, and improve the long-term management of the resource by providing another harvesting option that likely will increase harvesting efficiency. Amendment 101 and this final rule are structured in a manner that does not inherently disadvantage fishery participants who choose not to switch from hook-and-line to longline pot gear. This final rule implements area-specific pot limits, gear redeployment and removal requirements, gear marking, and recordkeeping reporting requirements intended to minimize the potential for gear conflicts and grounds preemption.

Section 4.9.8 of the Analysis describes the impacts of Amendment 101 and this final rule on individual harvesters and fishing communities. The Analysis did not identify adverse impacts on individual harvesters or fishing communities because it does not anticipate a significant shift in the communities to which sablefish products are delivered, or from which sablefish vessels depart. The Analysis notes that Amendment 101 and this final rule will not alter the IFQ Program management measures that are designed to maintain a diverse fleet to benefit individual fishermen and communities that participate in the GOA sablefish IFQ fishery. These measures include area-specific quota share and IFQ, different quota share and IFQ allocations for vessel size categories, quota share use caps, and vessel IFQ caps.

*Comment 18:* The proposed rule and Analysis do not discuss how this action may displace crew or change the current composition of the fleet. The Council and NMFS have always placed a high priority on maintaining the benefits of the IFQ fisheries for small fishing communities. The current trend of quota share-holders hiring a master to harvest their IFQ provides more revenues for quota share-holders, but does not benefit other participants in the fishery such as hired skippers and crew members because more of the fishery revenues are going to quota share-holders. Amendment 101 will make this worse by allowing the hired master practice to continue and delay new entry into the fishery.

*Response:* This final rule does not change current regulations at § 679.42(c) that require the holder of sablefish catcher vessel quota share to be on board the vessel when their sablefish IFQ is harvested unless the quota share holder is eligible to hire a master or lease the IFQ under limited exceptions to the owner on board requirement.

Section 4.9.8.1 of the Analysis describes the potential for fleet consolidation following implementation of Amendment 101 and this final rule. The Analysis describes that if longline pot gear becomes the dominant gear in the sablefish IFQ fishery, it is possible that depredation would be concentrated on vessels that continue to use hook-and-line gear. This increased concentration could increase costs for these participants and, in the extreme, reduce profitability from fishing with hook-and-line gear. If profitability is substantially reduced, some operators that are unable to convert to longline pot gear might choose to sell their sablefish quota share, which could lead to consolidation in the fleet. However, as described in Section 4.9.2 of the Analysis and in the response to Comment 11, it is unlikely that a substantial number of vessel operators will switch to longline pot gear for economic or operational reasons. This makes it unlikely that Amendment 101 will cause fleet consolidation in the GOA sablefish IFQ fishery.

*Comment 19:* Most small boats will not be able to convert to longline pot gear. Any sperm whales present while gear is being hauled will concentrate effort on those vessels that continue to use hook-and-line gear, with no overall reduction in depredation. Since a reduction in depredation is the primary goal of this action and the least likely to be achieved in the SEO where the majority of the boats are small, NMFS must balance this low chance of success against the high likelihood of gear conflicts and grounds preemption associated with allowing pots.

*Response:* Section 4.11 of the Analysis notes that fishery participants who are not able to fish longline pot gear on their vessels—due to either economic or operational constraints—would not experience the benefits of reduced depredation from Amendment 101 and this final rule. The Analysis notes it is possible that these fishery participants could experience greater rates of depredation as the sablefish hooked on hook-and-line gear becomes concentrated on fewer vessels in a given area. Therefore, the Analysis describes that this action could result in some distributional impacts in the fishery. The Analysis notes that these potential impacts could affect smaller vessels in the sablefish IFQ fleet, though some large vessels may also find it difficult to convert to pot gear.

Section 4.9.8.1 of the Analysis describes that the Council received public testimony expressing concern that increased concentration of depredation onto remaining hook-and-

line gear and fleet consolidation were more likely in the SEO area due to the more constrained fishing grounds. The Council and NMFS determined that these outcomes were unlikely based on the estimated cost for converting a vessel to use longline pot gear (see Section 4.9.2 of the Analysis). As described in the response to Comment 11, the majority of fishermen in the SEO are not likely to switch to longline pot gear and would continue to use hook-and-line gear in the sablefish IFQ fishery.

As described in the response to Comment 11, it is not possible to determine how many vessels will use longline pot gear, but the existing economic and operations constraints of converting to longline pot gear make it likely that a limited number of vessels will convert under this action. Based on this information, the Council determined and NMFS agrees that the impacts on vessels that continue to use hook-and-line gear likely will be limited. Nevertheless, this final rule includes a number of provisions to mitigate the potential negative impacts on sablefish IFQ fishery participants that continue to use hook-and-line gear.

*Comment 20:* Four commenters recommended revisions to the proposed pot limits at § 679.42(l)(5)(ii). The commenters indicated that these revisions were necessary to minimize the potential negative impacts on fishery participants that continue to use hook-and-line gear. The commenters recommended that NMFS implement a limit of 120 pots in the CGOA and WGOA, instead of the proposed limit of 300 pots for these areas. The commenters suggested that allowing a vessel to deploy up to 300 pots was not equitable because it would disadvantage vessels that use hook-and-line gear by allowing a vessel using longline pot gear to have a larger “footprint,” or the amount of gear deployed on the sablefish fishing grounds, than vessels using hook-and-line gear.

*Response:* NMFS did not change this final rule in response to this comment. In the development of Amendment 101 and this final rule, the Council and NMFS considered a range of options for pot limits, including the specific requirements recommended by the commenters (see Sections 4.9.3 and 4.9.4 of the Analysis). The Council recommended, and NMFS is implementing, the pot limits at § 679.42(l)(5)(ii) and gear retrieval requirements at § 679.42(l)(5)(iii) after reviewing the Analysis and receiving input from the Sablefish Gear Committee, the Council’s advisory bodies, and public testimony. The

Council and NMFS also considered that current regulations do not limit the amount of hook-and-line gear that may be used by a vessel in the sablefish IFQ fishery.

As described in the response to Comment 11, the Council and NMFS reviewed this information and determined that the likelihood of gear conflicts and grounds preemption is low under Amendment 101 and this final rule. However, the Council and NMFS recognize that the likelihood of gear conflicts and grounds preemption is not possible to determine with certainty. Several stakeholders requested that the Council recommend specific measures to address this uncertainty and further minimize the likelihood of gear conflicts and grounds preemption. This final rule implements the measures recommended by the Council.

The proposed rule and Section 4.9.3 of the Analysis describe that the Council recommended area-specific pot limits to account for the physical nature of the sablefish fishing grounds and the composition of the IFQ sablefish fleet in each sablefish area. The Council also considered public testimony on the number of pots that vessels in the GOA could feasibly deploy in the sablefish IFQ fishery.

Section 4.9.3 of the Analysis shows that the Council considered options for pot limits that ranged from 60 to 400 pots for each sablefish area. Considering area-specific pot limits allowed the Council to develop pot limits that are appropriate for the make-up of the fleet and the physical nature of the fishing grounds in each sablefish area. The Council determined that smaller pot limits are appropriate in the SEO and WY because the fishing grounds are spatially concentrated and the potential for grounds preemption may be greater. The Council also determined that smaller pot limits are appropriate for the SEO because the local fleet has a historically participating component of small, short-range vessels lacking the capacity to deploy and retrieve longline pots or pack a large hold of sablefish for an extended period. The proposed rule and Section 4.9.8.1 of the Analysis show that approximately 30 percent of sablefish IFQ fishermen in the SEO use vessels 50 feet (15.2 m) or less LOA.

The Council determined and NMFS agrees that larger pot limits are appropriate in the CGOA and WGOA because Section 4.5.4.3 of the Analysis and public testimony indicated there are relatively more options for productive fishing grounds in the CGOA and WGOA than in the SEO and WY. In addition, Section 4.5.2 of the Analysis shows that the average size of vessels

participating in the CGOA and WGOA is larger and these vessels can deploy more pots than vessels used in the SEO and WY. The Council received public testimony that a pot limit of 300 in the CGOA and WGOA would allow vessel operators in these areas to deploy enough pots to efficiently harvest sablefish IFQ while maintaining an overall limit on the number of pots that can be deployed by one vessel.

In recommending pot limits for each GOA sablefish area, the Council and NMFS balanced the objectives to minimize the potential for gear conflicts and grounds preemption and improve harvesting efficiency of sablefish IFQ by authorizing longline pot gear. Section 4.9.3 of the Analysis describes that limiting the number of pots a vessel can use reduces operational efficiency if the limit is lower than what a vessel operator deems optimal for his or her vessel. A pot limit that is too low might increase variable fishing costs such as fuel and time. If the limit is too low, there may be little or no incentive for vessel owners to purchase new longline pot gear and invest in vessel reconfigurations. The Council and NMFS used the best available information to determine that the pot limits implemented by this final rule achieve the objectives of this action.

*Comment 21:* Five commenters recommended revisions to the proposed gear retrieval requirements at § 679.42(l)(5)(iii). The commenters indicated that these revisions were necessary to minimize the potential negative impacts on fishery participants that continue to use hook-and-line gear. The commenters did not support the requirements at § 679.42(l)(5)(iii)(C) and (D) for vessel operators using longline pot gear to redeploy or remove their longline pot gear within five days after deployment in the WY and within seven days after deployment in the CGOA and WGOA. These commenters recommend that NMFS extend the requirement for vessels in the SEO at § 679.42(l)(5)(iii)(A) to remove longline pot gear when leaving the fishing grounds to make a landing in the WY, CGOA, and WGOA. The commenters were concerned that allowing the gear to stay on the fishing grounds between landings in the WY, CGOA, and WGOA would preempt fishing grounds for use by vessels using hook-and-line gear and could result in lost gear due to inclement weather. In addition, one commenter was concerned that the proposed gear retrieval requirements for the WY, CGOA, and WGOA would allow multiple vessel operators to share longline pot gear and preempt fishing grounds for long periods.

*Response:* NMFS did not change this final rule in response to this comment. The proposed rule and Section 4.10 of the Analysis describe that the Council considered the Analysis and public testimony when recommending the gear retrieval requirements for the WY, CGOA, and WGOA. The Council and NMFS determined that the fishing grounds are less constrained in the WY, CGOA, and WGOA relative to the SEO due to fewer IFQ holders, larger fishing grounds, or both. Therefore, the Council and NMFS determined that it was not necessary to require fishermen using longline pot gear in these areas to remove their gear from the fishing grounds when making a landing. The Council and NMFS based this decision on testimony from operators in these areas indicating that fishing vessels were much further from port in these areas relative to the SEO and requiring a vessel to return to and retrieve its gear by a certain day could, in some circumstances, force vessels to operate in unsafe or unfavorable conditions. Aside from weather, limiting the amount of time that gear may be deployed (soak time) could reduce a vessel operator's ability to fish an optimal gear rotation if the vessel's longline pot gear is spaced out over a large geographical area, or if the vessel operator determines that a particularly long soak time yields larger fish in that area. Based on this public testimony and the pot soak times in the BSAI sablefish fishery presented in Section 4.8.2 of the Analysis, the Council determined that requiring vessel operators to tend their gear within a maximum period would meet its objective to minimize the potential for longline pot gear to be left unattended on the fishing grounds for an extended period of time in these areas.

This final rule implements regulations at § 679.42(l)(5)(iv) applicable to vessel operators who want to share longline pot gear during the fishing season to help reduce operating costs. To minimize the potential for grounds preemption by multiple vessels using the same longline pot gear, this final rule allows multiple vessels to use the same longline pot gear during one fishing season but prohibits use of the same longline pot gear simultaneously. In order for more than one vessel to use the same longline pot gear, this final rule requires a vessel operator to remove longline pot gear from the fishing grounds, return the gear to port, and remove the pot tags assigned to the vessel before pot tags assigned to another vessel are attached to the pots

and used on that vessel in the GOA sablefish IFQ fishery.

The Council and NMFS determined that vessel operators using longline pot gear have an incentive to reduce the likelihood of gear conflicts, or lost gear because fishing gear is expensive to purchase and replace (see Section 4.8.2 of the Analysis). This final rule establishes specific gear retrieval requirements to provide an additional incentive for operators using longline pot gear to closely monitor the amount of time their gear is left on the grounds and further minimize potential for gear conflicts or grounds preemption. The Council recommended and NMFS is implementing these provisions to balance the objectives of this action to improve harvesting efficiency and reduce depredation with the further objective to minimize potential negative impacts on fishermen that continue to use hook-and-line gear.

*Comment 22:* The proposed requirement for vessel operators to leave longline pot gear on the fishing grounds for no more than five days in the WY and CGOA and seven days in the WGOA will be difficult to enforce.

*Response:* The proposed rule and Sections 4.9.3.2, 4.9.4.1, 4.9.5.1, and 4.9.6.1 of the Analysis describe enforcement considerations for provisions of this final rule that are intended to minimize gear conflicts and grounds preemption. The Council considered the methods that would be used to enforce the restrictions on use of longline pot gear in the GOA sablefish IFQ fishery and advice from its Enforcement Committee.

This final rule implements three additional recordkeeping and reporting requirements to monitor and enforce provisions that are intended to minimize gear conflicts and grounds preemption. First, § 679.5(c)(3)(B) requires all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to report specific information in logbooks about fishing gear used and catch for all sablefish IFQ fishing trips. Second, § 679.42(k)(2) requires all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to have an operating VMS while fishing for sablefish IFQ. Third, this final rule adds additional Prior Notice of Landing (PNOL) reporting requirements at § 679.5(l)(1)(iii) for vessel operators using longline pot gear in the GOA sablefish IFQ fishery. These tools will provide NMFS with information on vessel activity during the sablefish fishing season. The Council and NMFS determined that these requirements will provide sufficient monitoring and enforcement

information to meet the Council's objectives for this action.

*Comment 23:* NMFS should revise the final rule to clarify that vessels using longline pot gear in the SEO must remove all longline pots in addition to anchors, buoys, buoy line, flags, and any other gear from the fishing grounds when they leave the grounds to make a delivery. As proposed, the rule only requires vessels using longline pot gear to remove pots from the grounds, allowing other components of a pot longline string to remain in the water and preempt fishing grounds.

*Response:* NMFS revised this final rule to address this comment. This final rule adds § 679.42(l)(5)(i)(C) to specify that the gear retrieval and removal requirements in § 679.42 (l)(5)(iii) and (iv) apply to all longline pot gear that is assigned to a vessel and deployed to fish IFQ sablefish and to all other fishing equipment attached to longline pot gear that is deployed by the vessel to fish IFQ sablefish in the GOA. This final rule also specifies that all other fishing equipment attached to longline pot gear includes, but is not limited to, equipment used to mark longline pot gear as required in this final rule at § 679.24(a)(3).

Although the Council and NMFS determined that the potential for grounds preemption is low under this final rule (see response to Comment 11), NMFS agrees with the commenter that the gear retrieval and removal requirements in the proposed rule applied to "longline pot" gear. Section 679.2 defines longline pot as "a stationary, buoyed, and anchored line with two or more pots attached." This definition does not include buoys, flags, or radar reflectors that must be used to mark longline pot gear in this final rule (§ 679.24(a)(3)) or other equipment that vessel operators may use to mark their gear. Although it is unlikely that vessel operators will remove only pots and leave other equipment to preempt fishing grounds as suggested by the commenter, NMFS agrees that the intent of this final rule is to require vessel operators using longline gear to retrieve or remove all fishing gear from the fishing grounds to minimize the potential for gear conflicts and grounds preemption. This revision to this final rule clarifies that the gear retrieval and removal requirements apply to all pots and associated equipment deployed by a vessel using longline pot gear in all sablefish areas of the GOA.

*Comment 24:* Allowing longline pot gear to stay on the fishing grounds between landings is not consistent with the intent of the owner onboard requirement of the IFQ Program. Section

679.42(c) requires most holders of sablefish catcher vessel IFQ to be on board the vessel on which their IFQ is harvested and present during the landing. Authorizing longline pot gear to stay on the fishing grounds while a vessel makes a landing in the WY, CGOA, or WGOA would be inconsistent with current operations of hook-and-line vessels and could allow vessel operators to set gear while the IFQ permit holder is not on board the vessel.

Under the proposed rule, a vessel operator in the WY, CGOA, or WGOA could deploy pots on the fishing grounds, leave the fishing grounds to pick up an IFQ permit holder in port, and then retrieve the pot gear and collect the sablefish while the IFQ permit holder is on board the vessel. Hook-and-line gear is not generally left on the fishing grounds unattended, so the proposed rule would allow a longline pot gear vessel to operate differently than a hook-and-line vessel.

*Response:* This final rule is consistent with the IFQ permit holder on board requirements at § 679.42(c). This final rule does not change the requirement for an IFQ permit holder to be aboard the vessel at all times during the fishing trip while his or her IFQ is harvested and to be present during the landing. This final rule does not change the definition of "fishing trip" at § 679.2 for purposes of the IFQ Program, which is the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species. Therefore, all IFQ permit holders subject to the permit holder on board requirements must be on board the vessel during the entire fishing trip whether the vessel is using longline pot or hook-and-line gear.

*Comment 25:* Longline pot gear should not have a larger footprint than hook-and-line gear. We recommend revising the rule to require that a longline pot set be no more than 9 miles from end to end. This would allow each vessel to have an average of three sets of longline gear that would be from 2.5 to 3 miles in length and would limit the length of a set of longline pot gear to correspond to the footprint of a hook-and-line set.

*Response:* NMFS did not change this final rule in response to this comment. The pot limits implemented by this final rule limit the amount of longline pot gear that a fishing vessel can use in the GOA sablefish IFQ fishery (see the response to Comment 20). The Council and NMFS determined that additional limits on the amount of longline pot gear that could be deployed are not necessary to meet the objectives of this final rule.

Section 4.9.3 of the Analysis describes that the pot limits specified in § 679.42(l)(5)(ii) limit the amount of longline pot gear that each vessel may deploy, which limits the footprint of that vessel on the fishing grounds. The Analysis describes that the Sablefish Gear Committee estimated that a vessel deploying from 180 to 300 longline pots would cover grounds similar to a hook-and-line set in the sablefish fishery, or approximately 10 to 12 miles. The Analysis also notes that current regulations do not limit the amount of hook-and-line gear that a vessel fishing IFQ sablefish may deploy. Based on information in the Analysis, the Council and NMFS determined that it is possible that the footprint of longline pot gear used by some vessels could be greater than the footprint of hook-and-line gear used by other vessels under this final rule. The Analysis describes that the Sablefish Gear Committee reviewed available information on the likely length of longline pot gear sets on the fishing grounds and considered whether gear specifications in addition to pot limits were necessary to minimize the potential for gear conflicts and grounds preemption. The Sablefish Gear Committee, Council, and NMFS considered the potential impacts of additional gear specifications on operations and monitoring and enforcement, and determined that additional gear specifications were not necessary to meet the objectives of this action. In addition, additional gear specifications could unnecessarily constrain individual fishing operations and reduce harvesting efficiency.

*Comment 26:* We do not support the proposed gear marking requirements because each vessel operator should be able to use the gear marking equipment that best meets the specifications of their operation. The proposed requirement to mark gear with buoys, a flag, and radar detector on each end of a longline pot set creates a large amount of surface area and makes it more likely that the wind or waves could catch the marking equipment and move the gear from the deployed location. This increases the likelihood of lost gear on the fishing grounds. In some areas, vessels using hook-and-line gear do not mark their gear with flagpoles or radar reflectors due to the known gear loss that results from a combination of wind and tide. While we believe that each vessel operator should have the discretion to determine what gear marking equipment is appropriate for their vessel, it is important that any vessel on the fishing grounds can differentiate between a hook-and-line

and longline pot gear set. We recommend revising the rule to require that the end of a longline pot set be marked with one yellow hard buoy a minimum of 13 inches in diameter and marked with an "LP" and the vessel name.

*Response:* NMFS did not change this final rule in response to this comment. This final rule maintains current regulations at § 679.24(a) that require all vessel operators using hook-and-line and pot gear (including longline pot gear) to mark buoys carried on board or used by the vessel to be marked with the vessel's Federal fisheries permit number or ADF&G vessel registration number. This regulation also specifies that the markings must be a specified size, shall be visible above the water line, and shall be maintained so the markings are clearly visible.

This final rule implements the following additional gear marking requirements: Each vessel operator using longline pot gear in the GOA sablefish IFQ fishery must attach a cluster of four or more marker buoys, a flag mounted on a pole, and a radar reflector to each end of a longline pot set.

The Council received recommendations from the Sablefish Gear Committee, its advisory bodies, and public testimony to develop the gear marking requirements implemented by this final rule. The Council and NMFS considered a broad suite of gear marking options during the development of Amendment 101 and this final rule. Section 4.9.5 of the Analysis describes the options considered, and Section 4.10 describes the anticipated impacts of the additional gear marking requirements implemented by this final rule.

The Council received public testimony that the marking requirements implemented by this final rule would enhance the visibility of the ends of a longline pot gear set to other vessels that are on the fishing grounds. As described in Section 4.9.5 of the Analysis, public testimony indicated that the gear marking equipment required by this final rule is commonly used by vessel operators that deploy pot gear in fisheries in Alaska and requiring the use of this equipment would not impose a substantial cost on vessel operators using longline pot gear in the GOA sablefish IFQ fishery. Section 4.9.5 of the Analysis describes public testimony indicating that using buoy clusters could be a viable method to keep surface gear from being submerged during strong tides and would minimize the potential for longline pot gear to move a substantial distance from its

deployed location. The testimony indicated that buoy clusters add buoyancy to surface gear by putting additional buoys on the main anchor line. The Analysis also describes that requiring a vessel operator to use a flag mounted on a pole and a radar reflector to mark each end of a longline pot gear set would enhance the visibility of the location of the gear and minimize the potential for gear conflicts. This was supported by public testimony from vessel operators who indicated they planned to use longline pots in the GOA sablefish IFQ fishery.

As described in the response to Comment 11, the Council intends to review the use of longline pot gear in the GOA sablefish IFQ fishery three years after the implementation of this final rule. NMFS anticipates that if the gear marking requirements in this final rule impose substantial costs on vessel operators or could be revised to better meet the Council's objectives, the Council will consider potential changes to the gear marking requirements in the future.

*Comment 27:* Vessels using longline pot gear should be equipped with a 25 watt, Class A Automatic Identification System (AIS) to enable other boats to identify and communicate with the vessel about the location of their deployed longline pot gear.

*Response:* Section 4.9.5 of the Analysis describes that the Council and NMFS considered an option to require both ends of a longline pot set in the GOA sablefish IFQ fishery to be marked with buoys, flagpoles, and a transponder that is compatible with a location and identification system such as AIS. Gear transponders could allow a fishery participant to view the location of deployed gear in order to avoid setting gear in the same area. Additional information on the AIS technology, application, approximate cost, and relevant regulations are described in Appendix 2 of the Analysis.

Section 4.9.4 of the Analysis describes the key challenges involved in requiring the use of AIS as a buoy transponder. The challenges include limited operational time due to limited battery capacity, potentially inadequate seaworthiness, and the requirement for regulatory approval by the United States Coast Guard and international oversight bodies. The Analysis notes that implementing a longline pot gear tracking system using technology such as AIS or a scannable pot tag to locate longline pot gear on the fishing grounds is beyond the scope of available NMFS resources in the Alaska Region. In addition, anecdotal reports suggest that AIS or other scannable systems may not

be effective in all weather and sea conditions (e.g., signals can be blocked or greatly attenuated in high seas). Section 4.9.4.1 of the Analysis concludes that given that these factors and that the total costs of fitting longline pot gear can be substantial, gear tracking systems, including AIS, are not appropriate at this time.

The Analysis describes that the Council did not adopt the option to require AIS transponders in this final rule due to the current challenges related to using AIS transponders in the GOA sablefish IFQ fishery and stakeholder willingness to pursue a voluntary program to report longline pot gear locations (see the response to Comment 29). The Council intends to review the use of longline pot gear three years following implementation of this final rule. This review will provide an opportunity for the Council and NMFS to evaluate whether additional gear marking requirements may be necessary for longline pot gear in the future.

*Comment 28:* The proposed rule incorrectly claims on page 55416 (81 FR 55408, August 19, 2016) that "most vessel operators in the GOA sablefish IFQ fishery are currently required to complete logbooks." This is incorrect because vessels less than 60 feet in length are exempt from logbook reporting requirements and the median vessel length in the sablefish IFQ fleet is less than 60 feet. The proposed rule discriminates against vessels that choose to use pot gear because it would require vessels less than 60 feet LOA to complete a logbook. The proposed rule would require all vessels using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook. The rule should be revised to require all vessels in the sablefish IFQ fishery to complete a logbook for consistency with the requirements for the halibut IFQ fishery. The same vessel operators that are declining to complete a logbook for sablefish are completing logbooks for their halibut fishing. Recordkeeping and reporting requirements cannot be inequitably applied to one gear type over another. All users have an obligation to supply information on their catch of this public resource to the stock assessment scientists.

*Response:* NMFS did not change this final rule in response to this comment. NMFS agrees with the commenter that the statement on page 55416 (81 FR 55408, August 19, 2016) of the proposed rule preamble is incorrect. Notwithstanding that it is a misstatement, as explained below, the misstatement does not require revisions to this final rule.

The statement on page 55416 of the proposed rule preamble should have stated that most vessel operators in the GOA sablefish IFQ fishery currently complete logbooks. The commenter is correct that most vessels in the sablefish IFQ fleet are less than 60 feet (18.3m) LOA, and these vessels are not required to complete a logbook (§ 679.5(a)(4)(i)). In 2015, 85 percent of the vessels participating in the BSAI and GOA sablefish IFQ fishery were less than 60 feet LOA. While these vessels are not required to complete a logbook for sablefish fishing, Section 4.9.3.2 of the Analysis notes that many vessel operators voluntarily complete and submit logbooks. Logbook participation increased sharply in 2004 in all areas primarily because the IPHC collects, edits, and enters logbooks electronically. In 2015, 68 percent of the 252 vessels less than 60 feet LOA in the sablefish IFQ fishery submitted logbooks.

The Council and NMFS determined that this final rule should include a requirement for all vessels using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook. The proposed rule and Section 4.9 of the Analysis describe that NMFS uses logbooks to collect detailed information from vessel operators participating in the IFQ fisheries. The proposed rule and Analysis also describe that NMFS will use logbooks as one tool to monitor and enforce the management measures in this final rule intended to minimize the potential for gear conflicts and grounds preemption, such as the gear redeployment and removal requirements.

This final rule adds a requirement at § 679.5(c)(3)(i)(B) for an operator of a vessel using longline pot gear in the GOA sablefish IFQ fishery to report in a Daily Fishing Logbook (for catcher vessels) or Daily Cumulative Production Logbook (for catcher/processors) the number of pots and location of longline pot sets deployed on a fishing trip. This final rule removes the exemption from the logbook submission requirements for the operator of a vessel less than 60 feet LOA using longline pot gear in the GOA sablefish IFQ fishery. While this is a new regulatory requirement for these vessels, Section 4.9.3.2 of the Analysis explains that many operators of vessels less than 60 feet (18.3 m) in the sablefish IFQ fishery voluntarily complete and submit logbooks. Therefore, the Council and NMFS anticipate this additional reporting requirement will not negatively impact operators of vessels less than 60 feet (18.3 m) that choose to use longline pot gear.

*Comment 29:* We suggest that the coordinates of lost pots reported to NMFS are posted and available for the public to access. This will allow vessel operators using hook-and-line gear to avoid setting gear on lost pots and losing gear in those areas.

*Response:* Section 4.9.4.1 of the Analysis describes that the Council and NMFS considered and rejected a requirement for vessel operators to report the coordinates of lost longline pot gear to NMFS in an electronic form for release to the public. The Council and NMFS did not adopt this option for two reasons. First, the coordinates of lost longline pot gear pots are confidential under section 402(b) of the Magnuson-Stevens Act and potentially other laws, as well. Second, NMFS cannot enforce a requirement to report the loss of longline pot gear because it is not possible to verify that fishing gear is lost.

Section 4.9.4 of the Analysis describes a proposal for a voluntary pot gear reporting program for vessels that use longline pot gear in the GOA sablefish IFQ fishery. GOA sablefish IFQ fishery participants who advocated before the Council for the ability to use longline pot gear presented the proposal to assure the Council of their ability and willingness to report the location of longline pot gear on the fishing grounds, in as close to real-time as is practicable, and without placing additional cost burdens on the hook-and-line fleet. These proponents presented a voluntary measure in the form of a written agreement that would set out expectations of, and best practices by, those who opt to use longline pot gear.

While the Council did not recommend the formalization of a voluntary pot gear reporting program in its recommendation of Amendment 101 and this final rule, Section 4.10 of the Analysis describes that the Council encouraged fishery participants to work cooperatively to develop electronic reporting protocols for reporting the location of pots being fished and/or pots left on the fishing grounds, as well as any other methods that may enhance the GOA sablefish IFQ longline pot fishery. The Council determined and NMFS agrees that the expressed willingness of fishermen who intend to use longline pot gear to work beyond the gear specifications and gear retrieval requirements specified in this final rule, combined with the Council's commitment to review the use of longline pot gear three years after implementation of this final rule, will minimize the potential for gear conflicts and grounds preemption.

This final rule requires vessel operators using longline pot gear to report the number of lost pots to NMFS in the vessel's PNOL submitted prior to landing. In addition, if a vessel operator loses pots and intends to replace those pots to harvest IFQ sablefish, they must request replacement pot tags from NMFS consistent with the requirements at § 679.42(l)(3)(iii). The vessel owner will be required to provide NMFS with the pot tag numbers that were lost and describe the circumstances under which the pot tags were lost.

### Classification

The Administrator, Alaska Region, NMFS, determined that this rule is necessary for the conservation and management of the GOA sablefish IFQ fishery and that it is consistent with the Magnuson-Stevens Act, the Halibut Act, and other applicable law.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (81 FR 55408, August 19, 2016) and the preamble to this final rule serve as the small entity compliance guide for this action.

### Final Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) (see ADDRESSES) and the summary of the IRFA in the proposed rule (81 FR 55408, August 19, 2016), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA describes the impacts on small entities, which are defined in



the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). The FRFA must contain:

1. A statement of the need for, and objectives of, the rule;
2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the 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 will be considered the universe for purposes of this analysis.

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

#### Need for and Objectives of This Final Rule

A statement of the need for and objectives of this rule is contained earlier in the preamble and is not repeated here. This FRFA incorporates the IRFA (see **ADDRESSES**) and the summary of the IRFA in the proposed rule (81 FR 55408, August 19, 2016), a summary of the significant issues raised by the public comments, NMFS’ responses to those comments, and a summary of the analyses completed to support the action.

#### Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule to implement Amendment 101 on August 19, 2016 (81 FR 55408), with comments invited through September 19, 2016. An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to this rule as a result of comments on the IRFA. NMFS received several comments on the potential impacts of this final rule on the operators of sablefish vessels that cannot convert to longline pot gear due to economic or operational constraints. Several comments expressed concerns about the impacts of this action on small fishing operations that will continue to use hook-and-line gear to fish for sablefish in specific areas of the GOA. NMFS summarized and responded to these comments in the section above titled “Comments and Responses.” The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

#### Number and Description of Small Entities Regulated by This Rule

NMFS estimates that there are a total of 310 small catcher vessels and 1 small catcher/processor that participate in the GOA sablefish IFQ fishery using hook-and-line gear. These entities will be directly regulated by this rule because they will be subject to the requirements for using longline pot gear if they choose to use longline pot gear in the GOA sablefish IFQ fishery. Thus, NMFS estimates that 311 small entities are directly regulated by this rule.

#### Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. Small entities will be required to comply with the requirements for using longline pot gear in the GOA sablefish IFQ fishery, which

include using only longline pot gear, pot limits, and gear retrieval and gear marking requirements. Authorizing longline pot gear in this rule provides an opportunity for small entities to choose whether to use longline pot gear to increase harvesting efficiencies and reduce operating costs in the GOA sablefish IFQ fishery.

Based on public testimony to the Council and NMFS, and Section 4.9 of the Analysis, the requirements for using pot gear are not expected to adversely impact small entities because each entity can choose to use longline pot gear or continue to use hook-and-line gear. In addition, the requirements for using longline pot gear are not expected to unduly restrict sablefish harvesting operations. The Council and NMFS considered requirements that would impose larger costs on directly regulated small entities. These alternatives included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring more sophisticated and costly satellite-based gear marking systems. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of this action. These additional requirements could adversely impact small entities by reducing sablefish harvesting efficiency and increasing sablefish harvesting costs, contrary to the intent of this rule. This rule implements pot limits and gear retrieval and gear marking requirements that meet the objectives of this action while minimizing adverse impacts on fishery participants.

Small entities will be required to comply with additional recordkeeping and reporting requirements under this rule if they choose to use longline pot gear in the GOA sablefish IFQ fishery. Section 4.9 of the Analysis notes that directly regulated small entities using longline pot gear will be required to request pot tags from NMFS, maintain and submit logbooks to NMFS, have an operating VMS on board the vessel, and report additional information in a PNOL. The Analysis notes that these additional recordkeeping and reporting requirements are not expected to adversely impact directly regulated small entities because the costs of complying with these requirements is de minimis to total gross fishing revenue. In addition, NMFS anticipates that many of the vessels that choose to use longline pot gear under this rule currently comply with the logbook and VMS reporting requirements when participating in the sablefish IFQ fishery and in other fisheries. The Council and NMFS considered alternatives to implement additional requirements to

report locations of deployed and lost gear in an electronic database to reduce the likelihood that sablefish IFQ fishery participants would deploy fishing gear in these locations. The Analysis describes that the information reported in the electronic database would be confidential under section 402(b) of the Magnuson-Stevens Act and could not be provided to participants in the sablefish IFQ fishery to meet the intended purpose. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of this action. This rule meets the objectives of this action while minimizing the reporting burden for fishery participants.

Thus, there are no significant alternatives to this rule that accomplish the objectives to authorize longline pot gear in the GOA sablefish IFQ fishery and minimize adverse economic impacts on small entities.

#### Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements will be increased slightly under this rule. This rule contains new requirements for vessels participating in the longline pot fishery for sablefish IFQ in the GOA.

Prior to this final rule, NMFS required catcher vessel operators, catcher/processor operators, buying station operators, tender vessels, mothership operators, shoreside processor managers, and stationary floating processor managers to record and report all FMP species in logbooks, forms, eLandings, and eLogbooks. This rule revises regulations to require all vessels using longline pot gear in the GOA sablefish IFQ fishery to report information on fishery participation in logbooks, forms, and eLandings.

NMFS currently requires vessels in the BSAI to have an operating VMS on board the vessel while participating in the sablefish IFQ fishery. This rule revises regulations to extend this requirement to vessels using longline pot gear in the GOA sablefish IFQ fishery.

NMFS currently requires all vessels in the sablefish and halibut IFQ fisheries to submit a PNOL to NMFS. This rule revises regulations to require vessels using longline pot gear in the GOA sablefish IFQ fishery to report the number of pots deployed, the number of pots lost, and the number of pots left deployed on the fishing grounds in the PNOL, in addition to other required information.

#### Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB). The collections are listed below by OMB control number.

##### OMB Control Number 0648-0213

Public reporting burden is estimated to average 35 minutes per individual response for Catcher Vessel Longline and Pot Gear Daily Fishing Logbook; and 50 minutes for Catcher/processor Longline and Pot Gear Daily Cumulative Production Logbook.

##### OMB Control Number 0648-0272

Public reporting burden is estimated to average 15 minutes per individual response for Prior Notice of Landing.

##### OMB Control Number 0648-0353

Public reporting burden is estimated to average 15 minutes per individual response to mark longline pot gear; 15 minutes for IFQ Sablefish Longline Pot Gear; Vessel Registration and Request for Pot Gear Tags; and 15 minutes for IFQ Sablefish Longline Pot Gear; Request for Replacement of Longline Pot Gear Tags.

##### OMB Control Number 0648-0445

Public reporting burden is estimated to average 2 hours per individual response for VMS operation; and 12 minutes for VMS check-in report.

##### OMB Control Number 0648-0711

The cost recovery program is mentioned in this rule. The cost to implement and manage the sablefish IFQ longline pot gear fishery, including the cost of the pot tags, will be included in the annual calculation of NMFS' recoverable costs. These costs will be part of the total management and enforcement costs used in the calculation of the annual fee percentage. For example, when the pot gear tags are ordered, the payment of those tags is charged 100 percent to the IFQ Program for cost recovery purposes. This rule will not change the process that harvesters use to pay cost recovery fees.

The public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to

[OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

##### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 19, 2016.

#### Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 300 and 679 as follows:

### Title 15—Commerce and Foreign Trade

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”:

- a. Remove entry for “679.24(a)”;
- b. Revise entry for “679.42(a) through (j)”;
- c. Add entries in alphanumeric order for “679.24”, “679.42(b), (k)(2), and (l)”.

The additions and revisions read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	* * * * *
50 CFR:	
* * * * *	* * * * *
679.24 .....	-0353
* * * * *	* * * * *
679.42(a), and (c) through (j) .....	-0272 and -0665
679.42(b), (k)(2), and (l) ....	-0353
* * * * *	* * * * *

**Title 50—Wildlife and Fisheries**

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart E—Pacific Halibut Fisheries**

■ 3. The authority citation for part 300, subpart E, continues to read as follows:  
**Authority:** 16 U.S.C. 773–773k.

■ 4. In § 300.61, revise the definitions of “Fishing” and “IFQ halibut” to read as follows:

**§ 300.61 Definitions.**

\* \* \* \* \*

*Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including:

(1) The deployment of any amount or component part of setline gear anywhere in the maritime area; or

(2) The deployment of longline pot gear as defined in § 679.2 of this title, or component part of that gear in Commission regulatory areas 2C, 3A, 3B, and that portion of Area 4A in the Gulf of Alaska west of Area 3B and east of 170°00' W. long.

\* \* \* \* \*

*IFQ halibut* means any halibut that is harvested with setline gear as defined in this section or fixed gear as defined in § 679.2 of this title while commercial fishing in any IFQ regulatory area defined in § 679.2 of this title.

\* \* \* \* \*

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

■ 5. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 6. In § 679.2:

- a. In the definition of “Authorized fishing gear,” revise paragraphs (4)(i) and (iii), and add paragraph (4)(iv); and
- b. Revise the definition of “IFQ halibut.”

The additions and revisions read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Authorized fishing gear* \* \* \* \* \*  
 (4) \* \* \* \* \*

(i) For sablefish harvested from any GOA reporting area, all longline gear, longline pot gear, and, for purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.

\* \* \* \* \*

(iii) For halibut harvested from any IFQ regulatory area, all fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

(iv) For halibut harvested from any GOA reporting area, all longline pot gear, if the vessel operator is fishing for IFQ sablefish in accordance with § 679.42(l).

\* \* \* \* \*

*IFQ halibut* means any halibut that is harvested with setline gear as defined in § 300.61 of this title or fixed gear as defined in this section while commercial fishing in any IFQ regulatory area defined in this section.

\* \* \* \* \*

■ 7. In § 679.5:

- a. Revise paragraph (a)(4)(i);
- b. Revise note to the table at paragraph (c)(1)(vi)(B), and revise paragraphs (c)(2)(iii)(A), (c)(3)(i)(B), (c)(3)(ii)(A)(1) and (B)(1), (c)(3)(iv)(A)(2), (c)(3)(iv)(B)(2), (c)(3)(v)(G); and (l)(1)(iii)(F) and (G); and
- c. Add paragraphs (l)(1)(iii)(H) and (I).

The additions and revisions read as follows.

**§ 679.5 Recordkeeping and reporting (R&R).**

(a) \* \* \*

(4) \* \* \*

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using longline pot gear as described in paragraph (c)(3)(i)(B)(1) of this section and the vessel activity report described

at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(vi) \* \* \*

(B) \* \* \*

\* \* \* \* \*

**Note:** CP = catcher/processor; CV = catcher vessel; pot = longline pot or pot-and-line; lgl = longline; trw = trawl; MS = mothership.

\* \* \* \* \*

(2) \* \* \*

(iii) \* \* \*

(A) If a catcher vessel, record vessel name, ADF&G vessel registration number, FFP number or Federal crab vessel permit number, operator printed name, operator signature, and page number.

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (1) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section.

(2) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the GOA must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using longline gear or longline pot gear to harvest IFQ sablefish and when using gear composed of lines with hooks attached, setline gear (IPHC), or longline pot gear to harvest IFQ halibut.

(3) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using hook-and-line gear or pot gear to harvest IFQ sablefish, and when using gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

(4) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor in the GOA must use a combination of a catcher/processor longline and pot gear DCPL and eLandings according to paragraph (c)(3)(iv)(B)(2) of this section, when using longline gear or longline pot gear to harvest IFQ sablefish and when using gear composed of lines with hooks attached, setline gear (IPHC), or longline pot gear to harvest IFQ halibut.

<p>(5) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor in the BSAI must use a combination of a catcher/processor longline and pot gear DCPL</p>	<p>and eLandings according to (c)(3)(iv)(B)(2) of this section, when using hook-and-line gear or pot gear to harvest IFQ sablefish, and when using gear composed of lines with hooks</p>	<p>attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut. * * * * * (ii) * * * (A) * * *</p>
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**REPORTING TIME LIMITS, CATCHER VESSEL LONGLINE OR POT GEAR**

Required information	Time limit for recording
(1) FFP number and/or Federal crab vessel permit number (if applicable), IFQ permit numbers (halibut, sablefish, and crab), CDQ group number, halibut CDQ permit number, set number, date and time gear set, date and time gear hauled, beginning and end positions of set, number of skates or pots set, and estimated total hail weight for each set.	Within 2 hours after completion of gear retrieval.
* * * * *	* * * * *

(B) \* \* \*

**REPORTING TIME LIMITS, CATCHER/PROCESSOR LONGLINE OR POT GEAR**

Required information	Record in DCPL	Submit via eLandings	Time limit for reporting
(1) FFP number and/or Federal crab vessel permit number (if applicable), IFQ permit numbers (halibut, sablefish, and crab), CDQ group number, halibut CDQ permit number, set number, date and time gear set, date and time gear hauled, beginning and end positions of set, number of skates or pots set, and estimated total hail weight for each set.	X	.....	Within 2 hours after completion of gear retrieval.
* * * * *	* * * * *	* * * * *	* * * * *

\* \* \* \* \*  
(iv) \* \* \*  
(A) \* \* \*

(2) If a catcher vessel identified in paragraph (c)(3)(i)(A)(1) or (c)(3)(i)(B)(1) through (3) of this section is active, the operator must record in the longline and pot gear DFL, for one or more days on each logsheet, the information listed in paragraphs (c)(3)(v), (vi), (viii), and (x) of this section.

\* \* \* \* \*

(B) \* \* \*

(2) If a catcher/processor identified in paragraph (c)(3)(i)(A)(2) or (c)(3)(i)(B)(4) through (5) of this section is active, the operator must record in the catcher/processor longline and pot gear DCPL the information listed in paragraphs (c)(3)(v) and (vi) of this section and must record in eLandings the information listed in paragraphs (c)(3)(v), (vii), and (ix) of this section.

\* \* \* \* \*

(v) \* \* \*

(G) *Gear type*. Use a separate logsheet for each gear type. Place a check mark in the box for the gear type used to harvest the fish or crab. Record the information from the following table for the appropriate gear type on the logsheet. If the gear type is the same on subsequent logsheets, place a check mark in the box instead of re-entering the gear type information on the next logsheet.

If gear type is . . .	Then . . .
(1) Other gear .....	If gear is other than those listed within this table, indicate "Other" and describe.
(2) Pot gear (includes pot-and-line and longline pot).	(i) If using longline pot gear in the GOA, enter the length of longline pot set to the nearest foot, the size of pot in inches (width by length by height or diameter), and spacing of pots to the nearest foot. (ii) If using longline pot gear in the GOA, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (iii) If using pot gear, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).
(3) Hook-and-line gear .....	Indicate: (i) Whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (ii) Number of hooks per skate (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title), length of skate to the nearest foot (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title), size of hooks, and hook spacing in feet. (iii) Enter the number of skates set and number of skates lost (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (iv) Seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part).

If gear type is . . .	Then . . .
	<p>(v) Enter the number of mammals sighted while hauling gear next to the mammal name: Sperm, orca, and other (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p> <p>(vi) Enter the number of sablefish, halibut, other fish, or hooks damaged found while hauling gear (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).</p>

\* \* \* \* \*

(F) IFQ regulatory area(s) in which the IFQ halibut, CDQ halibut, or IFQ sablefish were harvested;

(G) IFQ permit number(s) that will be used to land the IFQ halibut, CDQ halibut, or IFQ sablefish;

(H) Gear type used to harvest the IFQ sablefish or IFQ halibut (see Table 15 to this part); and

(I) If using longline pot gear in the GOA, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

\* \* \* \* \*

■ 8. In § 679.7:

a. Revise paragraph (a)(6) introductory text, paragraph (a)(6)(i), paragraph (a)(13) introductory text, paragraph (a)(13)(ii) introductory text, and paragraph (a)(13)(iv); and

b. Add paragraphs (f)(17) through (25). The additions and revisions read as follows:

§ 679.7 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

(6) *Gear*. Deploy any trawl, longline, longline pot, pot-and-line, or jig gear in an area when directed fishing for, or retention of, all groundfish by operators of vessels using that gear type is prohibited in that area, except that this paragraph (a)(6) shall not prohibit:

(i) Deployment of fixed gear, as defined in § 679.2 under “Authorized fishing gear,” by an operator of a vessel fishing for IFQ halibut during the fishing period prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

\* \* \* \* \*

(13) *Halibut*. With respect to halibut caught with fixed gear, as defined in § 679.2 under the definition of “Authorized fishing gear,” deployed from a vessel fishing for groundfish, except for vessels fishing for halibut as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title:

\* \* \* \* \*

(ii) Release halibut caught with longline gear by any method other than—

\* \* \* \* \*

(iv) Allow halibut caught with longline gear to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

\* \* \* \* \*

(f) \* \* \*

(17) Deploy, conduct fishing with, or retrieve longline pot gear in the GOA before the start or after the end of the IFQ sablefish fishing period specified in § 679.23(g)(1).

(18) Deploy, conduct fishing with, retrieve, or retain IFQ sablefish or IFQ halibut from longline pot gear in the GOA:

(i) In excess of the pot limits specified in § 679.42(l)(5)(ii); or

(ii) Without a pot tag attached to each pot in accordance with § 679.42(l)(4).

(19) Deploy, conduct fishing with, or retain IFQ sablefish or IFQ halibut in the GOA from a pot with an attached pot tag that has a serial number assigned to another vessel or has been reported lost, stolen, or mutilated to NMFS in a request for a replacement pot tag as described in § 679.42(l)(3)(iii).

(20) Deploy longline pot gear to fish IFQ sablefish in the GOA without marking the gear in accordance with § 679.24(a).

(21) Fail to retrieve and remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel to fish IFQ sablefish in the Southeast Outside District of the GOA when the vessel makes an IFQ landing.

(22) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the Southeast Outside District of the GOA.

(23) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the West Yakutat District of the GOA and the Central GOA regulatory area.

(24) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within seven days of deploying the gear to fish IFQ sablefish in the Western GOA regulatory area.

(25) Operate a catcher vessel or a catcher/processor using longline pot gear to fish IFQ sablefish or IFQ halibut in the GOA and fail to use functioning VMS equipment as required in § 679.42(k)(2).

\* \* \* \* \*

■ 9. In § 679.20, revise paragraphs (a)(4)(i), (a)(4)(ii) heading, and (a)(4)(ii)(A) to read as follows:

§ 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(i) *Eastern GOA regulatory area*—(A) *Fixed gear*. Vessels in the Eastern GOA regulatory area using fixed gear will be allocated 95 percent of the sablefish TAC.

(B) *Trawl gear*. Vessels in the Eastern GOA regulatory area using trawl gear will be allocated 5 percent of the sablefish TAC for bycatch in other trawl fisheries.

(ii) *Central and Western GOA regulatory areas*—(A) *Fixed gear*. Vessels in the Central and Western GOA regulatory areas using fixed gear will be allocated 80 percent of the sablefish TAC in each of the Central and Western GOA regulatory areas.

\* \* \* \* \*

■ 10. In § 679.23, revise paragraph (g)(2) to read as follows:

§ 679.23 Seasons.

\* \* \* \* \*

(g) \* \* \*

(2) Except for catches of sablefish with longline pot gear in the GOA, catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ permit and unused IFQ in the account on which the permit was issued.

\* \* \* \* \*

■ 11. In § 679.24:

- a. Add paragraphs (a)(3) and (b)(1)(iii); and
- b. Revise paragraphs (c)(2)(i)(A) and (B); and (c)(3).

The additions and revisions read as follows.

**§ 679.24 Gear limitations.**

\* \* \* \* \*

(a) \* \* \*

(3) Each end of a set of longline pot gear deployed to fish IFQ sablefish in the GOA must have attached a cluster of four or more marker buoys including one hard buoy ball marked with the capital letters "LP" in accordance with paragraph (a)(2) of this section, a flag mounted on a pole, and radar reflector floating on the sea surface.

(b) \* \* \*

(1) \* \* \*

(iii) While directed fishing for IFQ sablefish in the GOA.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) No person may use any gear other than hook-and-line, longline pot, and trawl gear when fishing for sablefish in the Eastern GOA regulatory area.

(B) No person may use any gear other than hook-and-line gear and longline pot gear to engage in directed fishing for IFQ sablefish.

\* \* \* \* \*

(3) *Central and Western GOA regulatory areas; sablefish as prohibited species.* Operators of vessels using gear types other than hook-and-line, longline pot, and trawl gear in the Central and Western GOA regulatory areas must treat any catch of sablefish in these areas as a prohibited species as provided by § 679.21(a).

\* \* \* \* \*

■ 12. In § 679.42:

- a. Revise paragraphs (b)(1) and (2), and paragraphs (k)(1) and (k)(2); and
- b. Add paragraph (l).

The addition and revisions read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

\* \* \* \* \*

(b) \* \* \*

(1) *IFQ Fisheries.* Authorized fishing gear to harvest IFQ halibut and IFQ sablefish is defined in § 679.2.

(i) *IFQ halibut.* IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area in the BSAI.

(ii) *IFQ sablefish.* IFQ sablefish must not be harvested with trawl gear in any IFQ regulatory area, or with pot-and-line gear in the GOA. A vessel operator using longline pot gear in the GOA to fish for

IFQ sablefish must comply with the GOA sablefish longline pot gear requirements in paragraph (l) of this section.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using hook-and-line gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

\* \* \* \* \*

(k) \* \* \*

(1) *Bering Sea or Aleutian Islands.* (i) *General.* Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish.

(ii) *VMS requirements.* (A) The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5); and

(B) The operator of the vessel must contact NMFS at 800-304-4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish in the Bering Sea or Aleutian Islands.

(2) *Gulf of Alaska.* (i) *General.* A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish.

(ii) *VMS requirements.* (A) The operator of the vessel must comply with VMS requirements at § 679.28(f)(3), (f)(4), and (f)(5); and

(B) The operator of the vessel must contact NMFS at 800-304-4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska.

(l) *GOA sablefish longline pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ sablefish in the GOA using longline pot gear are set out under: § 300.61 Definitions, § 679.2 Definitions, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.23 Seasons, § 679.24 Gear limitations, and § 679.51 Observer requirements for vessels and plants.

(1) *Applicability.* Any vessel operator who fishes for IFQ sablefish with longline pot gear in the GOA must comply with the requirements of this paragraph (l). The IFQ regulatory areas in the GOA include the Southeast Outside District of the GOA, the West Yakutat District of the GOA, the Central GOA regulatory area, and the Western GOA regulatory area.

(2) *General.* To use longline pot gear to fish for IFQ sablefish in the GOA, a vessel operator must:

(i) Request and be issued pot tags from NMFS as specified in paragraph (l)(3);

(ii) Use pot tags as specified in paragraph (l)(4);

(iii) Deploy and retrieve longline pot gear as specified in paragraph (l)(5);

(iv) Retain IFQ halibut caught in longline pot gear if sufficient halibut IFQ is held by persons on board the vessel as specified in paragraph (l)(6); and

(v) Comply with other requirements as specified in paragraph (l)(7).

(3) *Pot tags.* (i) *Request for pot tags.*

(A) The owner of a vessel that uses longline pot gear to fish for IFQ sablefish in the GOA must use pot tags issued by NMFS. A vessel owner may only receive pot tags from NMFS for each vessel that uses longline pot gear to fish for IFQ sablefish in the GOA by submitting a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form according to form instructions. The form is located on the NMFS Alaska Region Web site at [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov).

(B) The vessel owner must specify the number of requested pot tags for each vessel for each IFQ regulatory area in the GOA (up to the maximum number of pots specified in paragraph (l)(5)(ii) of this section) on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form.

(ii) *Issuance of pot tags.* (A) Upon submission of a completed IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form, NMFS will assign each pot tag to the vessel specified on the form.

(B) Each pot tag will be a unique color that is specific to the IFQ regulatory area in the GOA in which it must be deployed and imprinted with a unique serial number.

(C) NMFS will send the pot tags to the vessel owner at the address provided on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form.

(iii) *Request for pot tag replacement.*

(A) The vessel owner may submit a request to NMFS to replace pot tags that are lost, stolen, or mutilated.

(B) The vessel owner to whom the lost, stolen, or mutilated pot tag was issued must submit a complete IFQ Sablefish Request for Replacement of Longline Pot Gear Tags form according to form instructions. The form is located on the NMFS Alaska Region Web site at [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov).

(C) A complete form must be signed by the vessel owner and is a sworn

affidavit to NMFS indicating the reason for the request for a replacement pot tag or pot tags and the number of replacement pot tags requested by IFQ regulatory area.

(D) NMFS will review a request to replace a pot tag or tags and will issue the appropriate number of replacement pot tags. The total number of pot tags issued to a vessel owner for an IFQ regulatory area in the GOA cannot exceed the maximum number of pots authorized for use by a vessel in that IFQ regulatory area specified in paragraph (l)(5)(ii) of this section. The total number of pot tags issued to a vessel owner for an IFQ regulatory area in the GOA equals the sum of the number of pot tags issued for that IFQ regulatory area that have not been replaced plus the number of replacement pot tags issued for that IFQ regulatory area.

(iv) *Annual vessel registration and pot tag assignment.* (A) The owner of a vessel that uses longline pot gear to fish for IFQ sablefish in the GOA must annually register the vessel with NMFS and specify the pot tags that NMFS will assign to the vessel. Pot tags must be assigned to only one vessel each year.

(B) To register a vessel and assign pot tags, the vessel owner must annually submit a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form to NMFS.

(1) The vessel owner must specify the vessel to be registered on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form. The specified vessel must have a valid ADF&G vessel registration number.

(2) The vessel owner must specify on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form either that the vessel owner is requesting that NMFS assign pot tags to a vessel to which the pot tags were previously assigned or that the vessel owner is requesting new pot tags from NMFS.

(4) *Using pot tags.* (i) Each pot used to fish for IFQ sablefish in the GOA must be identified with a valid pot tag. A valid pot tag is:

- (A) Issued by NMFS according to paragraph (l)(3) of this section;
- (B) The color specific to the regulatory area in which it will be used; and
- (C) Inscribed with a legible unique serial number.

(ii) A valid pot tag must be attached to each pot on board the vessel to which the pot tags are assigned before the vessel departs port to fish.

(iii) A valid pot tag must be attached to a pot bridge or cross member such

that the entire pot tag is visible and not obstructed.

(5) *Restrictions on GOA longline pot gear deployment and retrieval—(i) General.*

(A) A vessel operator must mark longline pot gear used to fish IFQ sablefish in the GOA as specified in § 679.24(a).

(B) A vessel operator must deploy and retrieve longline pot gear to fish IFQ sablefish in the GOA only during the sablefish fishing period specified in § 679.23(g)(1).

(C) The gear retrieval and removal requirements in paragraphs (l)(5)(iii) and (iv) of this section apply to all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish and to all other fishing equipment attached to longline pot gear that is deployed in the water by the vessel to fish IFQ sablefish. All other fishing equipment attached to longline pot gear includes, but is not limited to, equipment used to mark longline pot gear as required in § 679.24(a)(3).

(ii) *Pot limits.* A vessel operator is limited to deploying a maximum number of pots to fish IFQ sablefish in each IFQ regulatory area in the GOA.

(A) In the Southeast Outside District of the GOA, a vessel operator is limited to deploying a maximum of 120 pots.

(B) In the West Yakutat District of the GOA, a vessel operator is limited to deploying a maximum of 120 pots.

(C) In the Central GOA regulatory area, a vessel operator is limited to deploying a maximum of 300 pots.

(D) In the Western GOA regulatory area, a vessel operator is limited to deploying a maximum of 300 pots.

(iii) *Gear retrieval.* (A) In the Southeast Outside District of the GOA, a catcher vessel operator must retrieve and remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish when the vessel makes an IFQ landing.

(B) In the Southeast Outside District of the GOA, a catcher/processor must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

(C) In the West Yakutat District of the GOA and the Central GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

(D) In the Western GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all

longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within seven days of deploying the gear.

(iv) *Longline pot gear used on multiple vessels.* Longline pot gear assigned to one vessel and deployed to fish IFQ sablefish in the GOA must be removed from the fishing grounds, returned to port, and must have only one set of the appropriate vessel-specific pot tags before being deployed by another vessel to fish IFQ sablefish in the GOA.

(6) *Retention of halibut.* (i) A vessel operator who fishes for IFQ sablefish using longline pot gear must retain IFQ halibut if:

(A) The IFQ halibut is caught in any GOA reporting area in accordance with paragraph (l) of this section; and

(B) An IFQ permit holder on board the vessel has unused halibut IFQ for the IFQ regulatory area fished and IFQ vessel category.

(ii) [Reserved]

(7) *Other requirements.* A vessel operator who fishes for IFQ sablefish using longline pot gear in the GOA must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Comply with Vessel Monitoring System (VMS) requirements specified in paragraph (k)(2) of this section.

■ 13. In § 679.51, revise paragraphs (a)(1)(i) introductory text and (a)(1)(i)(B) to read as follows:

**§ 679.51 Observer requirements for vessels and plants.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels and catcher/processors are in the partial observer coverage category when fishing for halibut or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

\* \* \* \* \*

(B) A catcher vessel when fishing for halibut while carrying a person named on a permit issued under § 679.4(d)(1)(i), (d)(2)(i), or (e)(2), or for IFQ sablefish, as defined at § 679.2, while carrying a person named on a permit issued under § 679.4(d)(1)(i) or (d)(2)(i); or

\* \* \* \* \*

14. In Table 15 to part 679, revise entries for “Pot”, “Authorized gear for

sablefish harvested from any GOA reporting area”, and “Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI”, and “Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI” to read as follows:

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE  
[X indicates where this code is used]

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:		
	Alpha gear code	NMFS logbooks	Electronic check-in/check-out	Numeric gear code	IERS eLandings	ADF&G COAR
<b>NMFS AND ADF&amp;G GEAR CODES</b>						
Pot (includes longline pot and pot-and-line).	POT		X	91	X	X
<b>FIXED GEAR</b>						
Authorized gear for sablefish harvested from any GOA reporting area.	All longline gear (hook-and-line, jig, troll, and handline) and longline pot gear. For purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.					
Authorized gear for halibut harvested from any IFQ regulatory area in the GOA.	All fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached and longline pot gear.					
Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI.	All fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.					

[FR Doc. 2016-31057 Filed 12-27-16; 8:45 am]  
BILLING CODE 3510-22-P

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

[Release No. 33-10075A; 34-77757A; File No. S7-12-14]

RIN 3235-AL40

**Changes to Exchange Act Registration Requirements To Implement Title V and Title VI of the JOBS Act; Correction**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document makes technical corrections to a rule that was published in the *Federal Register* on May 10, 2016 (81 FR 28689). The Commission adopted revisions to Rule 12g-1 under the Securities Exchange Act of 1934 (“Exchange Act”) in light of the statutory changes made by Title V and Title VI of the Jumpstart Our Business Startups Act and Title LXXXV of the Fixing America’s Surface Transportation Act. This document is being published to correct language in that rule to more precisely reflect the

holder of record threshold established by Exchange Act Section 12(g)(1).  
**DATES:** Effective December 28, 2016.  
**FOR FURTHER INFORMATION CONTACT:** Steven G. Hearne, Senior Special Counsel, at (202) 551-3430, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are making technical corrections to Rule 12g-1<sup>1</sup> under the Exchange Act.<sup>2</sup>

**List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements, Securities.

**Text of the Amendments**

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is amended as follows:

**PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

■ 1. The general authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q,

<sup>1</sup> 17 CFR 240.12g-1.  
<sup>2</sup> 15 U.S.C. 78a *et seq.*

78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

■ 2. Amend § 240.12g-1 by revising paragraph (b)(1) to read as follows:

**§ 240.12g-1 Registration of securities; Exemption from section 12(g).**

\* \* \* \* \*

(b)(1) The class of equity securities was held of record by fewer than 2,000 persons and fewer than 500 of those persons were not accredited investors (as such term is defined in § 230.501(a) of this chapter, determined as of such day rather than at the time of the sale of the securities); or

\* \* \* \* \*

Dated: December 21, 2016.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-31286 Filed 12-27-16; 8:45 am]

BILLING CODE 8011-01-P