

Correction

In the **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT** section of the Notice of availability FR Doc. 02-25171, in the issue of Thursday, October 3, 2002, (67 FR 62001), make the following corrections.

1. On page 62001, in the last paragraph in the second column, delete the given address for the Pacific Fishery Management Council and replace it with the following address:

“7700 NE Ambassador Place, Suite 200, Portland, OR 97220”.

2. On page 62001, in the third column under **FOR FURTHER INFORMATION CONTACT**, delete the phone number for the Pacific Fishery Management Council and replace it with the following phone number:

“503-820-2280”.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: October 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

50 CFR Part 679

[Docket No. 020920220-2220-01; I.D. 090302E]

RIN 0648-AL97

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the regulations governing the halibut fishery under the Western Alaska Community Development Quota (CDQ) Program. The proposed amendments would increase the Regulatory Area (Area) 4E trip limit from 6,000 lb. (2.72 metric tons (mt)) to 10,000 lb. (4.54 mt) and modify the Area 4 Catch Sharing Plan (CSP) to allow CDQ Program participants to harvest allocations of Area 4D halibut CDQ in Area 4E. This proposed action is intended to enhance harvesting opportunities for halibut CDQ fishermen and to further the goals

and objectives of the North Pacific Fishery Management Council (Council) with respect to the CDQ program and the Pacific halibut fishery, consistent with the regulations and resource management objectives of the International Pacific Halibut Commission (IPHC).

DATES: Comments on this proposed rule must be received by November 14, 2002.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Durall, or delivered to the Federal Building, 709 West 9th Street, Room 413-1, Juneau, AK. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this proposed regulatory action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228, e-mail obren.davis@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Commerce (Secretary) is responsible for implementing the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act), at 16 U.S.C. 773. Section 773(c) of the Halibut Act authorizes the Regional Fishery Management Council having authority for the geographical area concerned to develop regulations governing the allocation and catch of Pacific halibut (*Hippoglossus stenolepis*) in U.S. Convention waters. Such regulations must be approved by the Secretary before being implemented and may be in addition to regulations developed by the IPHC.

In December 1991, the Council adopted a limited access system for managing the halibut fishery in and off Alaska under authority of the Halibut Act. This limited access system included an Individual Fishing Quota (IFQ) program for Areas 2C through 4D, and the CDQ program for Areas 4B through 4E. These programs were designed to allocate specific harvesting privileges among U.S. fishermen and eligible western Alaska communities to resolve management and conservation problems associated with “open access” fishery management, and to promote the

development of fishery-based economic opportunities in western Alaska. The IFQ and CDQ programs initially were implemented by regulations published in the **Federal Register** on November 9, 1993 (58 FR 59375). Fishing for halibut under these two programs began March 15, 1995.

Under the regulations established for the halibut IFQ and CDQ programs, the catch limit of halibut that is annually established for each area by the IPHC is divided among qualified halibut quota share holders. Halibut catch limits in Areas 4B, 4C, and 4D are divided between the IFQ and CDQ programs. Twenty percent of the Area 4B, 50 percent of the Area 4C, and 30 percent of the Area 4D annual catch limits are allocated to the CDQ Program. One hundred percent of the Area 4E annual catch limit is allocated to the CDQ program. The halibut CDQ reserves are divided among eligible CDQ communities in accordance with Community Development Plans (CDP) submitted by CDQ managing organizations (CDQ groups) and approved by NMFS. This proposed action affects only halibut CDQ harvested in Areas 4D and 4E.

Since 1995, four different CDQ groups have received annual allocations of Area 4D halibut and two CDQ groups have received annual allocations of Area 4E halibut. Between 1995 and 2001, the annual halibut CDQ reserve ranged from 231,000 to 609,000 lb. (104.78 to 276.24 mt) in Area 4D and from 120,000 to 390,000 lb. (54.43 to 176.9 mt) in Area 4E. Amounts specified for halibut catch limits, reserves, and allocations are all in net (headed and gutted) weight. Halibut CDQ in Areas 4D and 4E must be allocated to the CDQ groups that represent eligible communities located in, or proximate to, Areas 4D and 4E, respectively.

Catch Sharing Plan (CSP) for Area 4

The CSP for Area 4 originally was developed by the Council to apportion the IPHC's halibut catch limit for Area 4 among Areas 4A, 4B, 4C, 4D, and 4E as necessary to carry out the socioeconomic objectives of the IFQ and CDQ programs. The Area 4 CSP was published in the **Federal Register** on March 20, 1996 (61 FR 11337), and implemented by the IPHC that same year.

NMFS subsequently modified the Area 4 CSP to remove Areas 4A and 4B from the CSP in 1998. This change was to allow the catch limits for these two areas and a combined Area 4C-4E to be set according to the IPHC's revised area specific biomass-based methodology. The IPHC considers that Areas 4A, 4B,

and 4C-E each have a separate halibut population. A complete description of the proposed revisions to the Area 4 CSP, catch limit apportionments, and geographical description of each subarea was published in the **Federal Register** on January 12, 1998 (63 FR 1812). These modifications were approved March 17, 1998 (63 FR 13000). Beginning in 1998, the IPHC has annually implemented the measures specified in the Area 4 CSP to apportion the combined Area 4C-E catch limit among Areas 4C, 4D, and 4E. The annual management measures for halibut fisheries in 2002 were published on March 20, 2002 (67 FR 12885).

Four out of six CDQ groups have received halibut CDQ allocations in Area 4D since 1995, including Bristol Bay Economic Development Corporation (BBEDC), Coastal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSED), and Yukon Delta Fisheries Development Association (YDFDA). Past and current allocations recommended by the State of Alaska and approved by the Secretary have allocated both Area 4D and Area 4E halibut CDQ to only two groups, BBEDC and CVRF, based on their historical participation in the Area 4E halibut fishery and the contents of their CDP applications. NSED and YDFDA have received only Area 4D halibut CDQ: residents of communities represented by these two groups (with the exception of two of NSED's communities) must travel extended distances offshore to harvest Area 4D halibut CDQ or the quota must be harvested by large, non-local vessels.

In 1999, CDQ groups that received Area 4D quota expressed a desire to increase the amount of halibut CDQ that could be harvested in their locally-based inshore halibut fishery by being allowed to harvest Area 4D halibut CDQ in Area 4E. All four of these groups represent communities along the western Alaska coast, ranging from Bristol Bay (south) to the Bering Strait (north). Almost all of the 56 communities represented by these groups are adjacent to Area 4E: only two are in Area 4D. In January 1999, these groups approached the IPHC at its annual meeting and requested a determination as to whether it would be acceptable to harvest halibut CDQ allocated to Area 4D in Area 4E. The IPHC had no objection to the request because it considers the halibut in Areas 4C, 4D, and 4E to be a single stock unit. This issue was also raised at the February 1999 Council meeting. The Council requested that NMFS prepare an analysis of the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. The Council also

recommended modifying the Area 4E halibut catch limit (see Area 4E Trip Limit, below).

NMFS prepared an EA/RIR/IRFA that examined the proposal to allow Area 4D halibut CDQ to be harvested in Area 4E. In October 2001, the Council approved the release of the EA/RIR/IRFA for public review. In December 2001, the Council recommended allowing halibut CDQ that was allocated in Area 4D to be harvested in Area 4E. In January 2002, the IPHC noted that allowing Area 4D halibut CDQ to be harvested in Area 4E would constitute a change to the Area 4 CSP that would need to be addressed by NMFS in rulemaking. Hence, if approved by the Secretary, this proposed rule would modify the Area 4 CSP to incorporate the Council's specific recommendation that Area 4D halibut CDQ may be harvested either in Area 4D or in Area 4E.

The Proposed Revision of the CSP

This rule proposes to change the Area 4 CSP to allow Area 4D halibut CDQ to be harvested in Area 4E. However, no changes are proposed to the existing Area 4 CSP framework that apportions the combined Area 4C-E annual catch limit among Areas 4C, 4D, and 4E. The authority to allocate the annual Area 4 catch limit according to the Area 4 CSP is specified at 50 CFR 300.63(b) and will continue to be implemented by the IPHC in its annual management measures pursuant to 50 CFR 300.62. The following paragraph would be added to the Area 4 CSP:

A CDQ group with an allocation of Area 4D halibut CDQ may harvest all or part of that allocation in Area 4E. This provision is based on the Council's recommendation in December 2001 to allow CDQ fishermen in Area 4E additional halibut CDQ harvesting opportunities. The framework that allocates the IPHC catch limits among Areas 4C, 4D, and 4E remains unchanged.

For example: under the existing Area 4 CSP, an annual combined Area 4C-E catch limit of 4,450,000 lb. (2,018.5 mt) would be apportioned as follows: 2,030,000 lb. (920.8 mt) to Area 4C, 2,030,000 lb. (920.8 mt) to Area 4D, and 390,000 lb. (176.9 mt) to Area 4E. These amounts are further split between the IFQ and CDQ halibut fisheries. Thirty percent, or 609,000 lb. (276.3 mt), of the Area 4D catch limit is allocated to the Area 4D CDQ reserve. One hundred percent of the Area 4E catch limit is allocated to the Area 4E CDQ reserve. Under the proposed revision to the Area 4 CSP, a combined total of 999,000 lb. (453.1 mt) of halibut potentially could be harvested in Area 4E, an amount equal to 22 percent of the combined Area 4C-E catch limit.

The Council recommended allowing the harvest of Area 4D halibut in Area 4E and allowing amounts of Area 4D halibut CDQ that had been transferred to Area 4E to be transferred back to Area 4D. NMFS proposes to implement the Council's intent without requiring the CDQ groups to submit documents requesting transfers of halibut CDQ between Areas 4D and 4E. The Council intended that the maximum amount of halibut CDQ that could be caught in Area 4D would be the amount of halibut CDQ allocated to each CDQ group for Area 4D. In addition, they intended that the maximum amount of halibut CDQ that could be caught in Area 4E would be the sum of the amount of halibut CDQ allocated for Areas 4D and 4E combined.

NMFS proposes to monitor each CDQ group's halibut CDQ catch in Areas 4D and 4E. If the catch in Area 4E exceeds the group's initial allocation for Area 4E, then NMFS will automatically subtract this additional catch from the group's Area 4D allocation. Halibut CDQ catch from Area 4D also will be subtracted from each group's Area 4D allocation. Any amount of halibut CDQ catch in Area 4E that exceeds the 4E allocation and is subtracted from the Area 4D allocation will no longer be available for harvest in Area 4D. This procedure would allow each CDQ group to decide where to catch its Area 4D halibut CDQ allocation without requiring transfers. Each CDQ group would be required to monitor the harvest of Area 4D and 4E halibut CDQ to ensure that: (1) its total catch in Area 4D does not exceed its Area 4D allocation, minus any portion of its Area 4D quota harvested in Area 4E, (2) its total catch in Area 4E does not exceed the sum of its Area 4D and Area 4E allocations, minus any portion of its Area 4D allocation harvested in Area 4D, and (3) its total catch in Areas 4D and 4E does not exceed the sum of its Area 4D and Area 4E allocations.

This proposed change would provide an opportunity for CDQ groups that receive Area 4D halibut CDQ to increase the amount of halibut CDQ available to local, nearshore fishermen. If the CDQ groups chose to do this, the halibut CDQ harvesting opportunities for large vessels in the Area 4D halibut CDQ fishery would have a corresponding decrease in available halibut CDQ because Area 4D quota could shift to local nearshore fishermen. However, most of the annual Area 4D halibut CDQ harvest in recent years has been made by large catcher/processors that are targeting groundfish CDQ species such as Pacific cod. These vessels catch halibut incidentally along with cod and

other groundfish. CDQ groups may choose to account for this incidentally caught halibut by accruing it towards either their annual Area 4D halibut CDQ allocation or to their annual halibut Prohibited Species Quota (PSQ). CDQ groups receive annual allocations of halibut PSQ to account for halibut catch in directed groundfish fisheries. If a group chooses to shift part or all of its Area 4D halibut CDQ allocation to its nearshore halibut fishery, it still has an alternative allocation of halibut to use for catch accounting purposes.

Area 4E Trip Limit

In 1988, the Council developed, and the Secretary of Commerce (Secretary) approved, fishing trip limits for Area 4C of 10,000 lb. (4.54 mt) and Area 4E of 6,000 lb. (2.72 mt) (53 FR 20327, June 3, 1988). In 1994, the Council recommended and the Secretary approved a fishing trip limit for Area 4B of 10,000 lb. (4.54 mt) (59 FR 22522, May 2, 1994). These provisions were intended to enhance fishing opportunities for operators of vessels that landed their total annual catch within either Areas 4B, 4C, or 4E. Specifically, the Area 4E trip limit was devised to protect fishermen who landed their total annual catch of halibut at ports in Area 4E from competition with fishermen using vessels large enough to land their Area 4E halibut catch at ports in other regulatory areas. The Area 4E trip limit was incorporated into the Pacific halibut fishery regulations in 1988, and into 50 CFR part 676 (now promulgated as 50 CFR part 679) in 1993, as one of the rules implementing the halibut and sablefish IFQ and CDQ programs (58 FR 59375, November 9, 1993).

In December 1994, the Council recommended eliminating the trip limits in Areas 4B, 4C, and 4E, as these limits were deemed unnecessary due to the forthcoming implementation of the IFQ and CDQ programs. Subsequently, these restrictions were removed from the Pacific halibut regulations at 50 CFR part 301 (now 50 CFR part 300) (60 FR 14651, March 20, 1995). The Area 4E trip limit restriction, however, was inadvertently kept in 50 CFR part 679. In October 1998, NMFS informed the Council that this oversight would be corrected by removing the Area 4E trip limit from 50 CFR part 679. The Council declined to approve this correction, and voted instead to retain the 6,000 lb. (2.72 mt) trip limit through September 1 of each year. The Council also recommended that CDQ groups with unharvested Area 4E halibut CDQ offer such quota to other CDQ groups during the last half of August, prior to the date

when the trip limit would be lifted. The Council's rationale for retaining an Area 4E trip limit was to prevent consolidation of the halibut fishery in this area, to the possible detriment of local fishermen.

In December 2001, the Council confirmed its intent to retain the trip limit in Area 4E, but recommended that it be increased to 10,000 lb. (4.54 mt) and that it be in effect annually only through September 1. The Council reasoned that retention of the trip limit would continue to foster the near-shore small-scale halibut CDQ fishery in western Alaska, which is typically conducted by small vessels under 32 feet (9.73 m) length overall. Moderately increasing the trip limit, however, could allow harvesters greater operational flexibility during the spring and summer months, particularly for local vessels capable of packing more than 6,000 lb. (2.72 mt) of halibut during a fishing trip. Eliminating the trip limit during the fall months would offer CDQ groups the ability to harvest halibut CDQ using vessels large enough to safely operate in adverse weather and sea conditions. Typically, the trip limit is an economic constraint to using larger vessels in the Area 4E halibut CDQ fishery. This proposed rule would modify the Area 4E trip limit to increase it from 6,000 to 10,000 lb. (2.72 to 4.54 mt) and would specify that the Area 4E trip limit would be effective only through September 1 of each year.

Classification

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Halibut Act. NMFS prepared an EA/RIR/IRFA for the proposed revisions to the Area 4 CSP and the Area 4E trip limit regulatory amendment that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives (see ADDRESSES).

The IRFA estimates the total number of small entities that would be affected by this action, and analyzes the potential economic impact of the proposed action on those small entities as required by the Regulatory Flexibility Act (RFA). A summary of the IRFA follows.

The Area 4 CSP modification and the proposed revision to 50 CFR part 679 would have no negative impacts in and of themselves, but are intended to increase the harvesting flexibility for participants in the halibut CDQ fishery in Areas 4D and 4E. These changes would allow CDQ groups with halibut CDQ in these areas to tailor their halibut

CDQ fishing operations to enhance economic opportunities for the western Alaska communities that they represent.

NMFS considers most of the fishing operations that would be affected by this proposed rule to be small entities, based on criteria established by the RFA. The universe of small entities is comprised of four CDQ groups, 58 CDQ-eligible villages, 224 catcher vessels, and 31 halibut registered buyers for a total of 317 small entities.

A range of alternatives was considered for each proposed action. Three alternatives were considered in association with the action that would modify the Area 4 CSP: a no action alternative; allowing Area 4D halibut CDQ to be harvested in Area 4E (the preferred alternative); and, allowing halibut CDQ specifically allocated to Area 4D or 4E to be harvested in either of these two areas. There are four alternatives associated with the action to modify the Area 4E trip limit: a no action alternative; increasing the trip limit to 10,000 pounds through September 1 each year (the preferred alternative); suspending the Area 4E trip limit predicated on a given CDQ group first making its unharvested Area 4E halibut CDQ available to other CDQ groups each fall; and, removing the trip limit entirely.

The IRFA shows that the selection of the no action alternative for either proposed action would unnecessarily limit the further development of the local inshore halibut CDQ fishery and the complete utilization of the Area 4D or Area 4E halibut CDQ allocations.

The preferred alternatives for Actions 1 and 2 constitute the least burdensome alternatives to regulated small entities, among the suite of options available, while simultaneously achieving the objectives of the proposed actions. In other words, no other alternatives were identified which would reduce the potential adverse impacts on small entities, while achieving the Council's objectives for the Area 4 Halibut CDQ Program.

This proposed rule does not contain a collection-of-information requirement subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. This proposed rule does not duplicate, overlap, or conflict with other Federal regulations.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 7, 2002.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

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

1. The authority citation for part 679 is amended to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub. L. 106–554, Sec. 209.

2. In § 679.31, paragraph (b)(3)(iv) is revised to read as follows:

§ 679.31 CDQ reserves

* * * * *

(b) * * *

(3) * * *

(iv) *Area 4E*. In IPHC regulatory area 4E, 100 percent of the halibut quota

shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing trip limit of 10,000 lb. (4.54 mt) applies to halibut CDQ harvested in IPHC regulatory area 4E through September 1.

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