

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels < 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 11, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.22 and is exempt from review under Executive Order 12866.

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

Dated: February 11, 2008.

Alan D. Risenhoover,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071029546–7546–02]

RIN 0648–AU85

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to modify the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery by revising regulations governing the use of commercial halibut quota share (QS) and the processing of non-IFQ species when processed halibut

is onboard a vessel. This action amends current regulations to allow persons holding category A halibut QS to process IFQ regardless of whether a QS holder with unused category B, C, or D halibut QS is onboard the vessel. This action also allows catcher/processor vessels to process non-IFQ species regardless of whether any processed IFQ species is onboard the vessel. This action is necessary to improve the efficiency of fishermen fishing on catcher/processor vessels. The action is intended to allow halibut QS holders greater flexibility in using their QS, allow use of crew who hold unused category B, C, or D halibut QS while onboard a category A halibut QS vessel, and increase the product quality of non-IFQ species harvested incidentally to IFQ halibut.

DATES: Effective March 17, 2008.

ADDRESSES: Copies of the Categorical Exclusion (CE) and the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action are available by mail from 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; or via the Internet at the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Becky Carls, 907–586–7228 or becky.carls@noaa.gov.

SUPPLEMENTARY INFORMATION:

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (72 FR 11792; March 14, 2007).

The Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop and submit regulations to the Secretary to allocate harvesting privileges among U.S. fishermen. Regulations developed

by the Council are implemented only with the approval of the Secretary. Like the original Halibut and Sablefish IFQ Program (IFQ Program) regulations and subsequent amendments to them, this action was developed by the Council under authority of the Halibut Act.

The Council, under the authority of the Halibut Act (with respect to Pacific halibut) and the Magnuson-Stevens Fishery Conservation and Management Act (with respect to sablefish), adopted the IFQ Program in 1991. The IFQ Program established a limited access system for managing the fixed gear Pacific halibut fishery in Convention waters in and off Alaska and sablefish fisheries in waters of the Exclusive Economic Zone, located between 3 and 200 miles off Alaska. The IFQ Program was approved by NMFS in January 1993, and promulgated in Federal regulation on November 9, 1993 (58 FR 59375). Fishing under the IFQ Program began on March 15, 1995, ending the open access fishery which preceded its implementation. Regulations implementing the IFQ Program are at 50 CFR part 679. In addition, Federal regulations at 50 CFR part 300, subpart E, also govern the halibut IFQ fishery.

Background and Need for Action

The background and need for this action were described in detail in the preamble to the proposed rule published in the **Federal Register** on November 14, 2007 (72 FR 64034). In summary, this final rule will relieve some of the restrictions affecting holders of commercial halibut QS.

Under the IFQ Program, QS represents a harvesting privilege for a person. On an annual basis, QS holders are authorized to harvest a specified poundage which is issued by NMFS as IFQ. Federal regulations at 50 CFR 679.40(a)(5) divide QS into vessel categories (A, B, C, and D for halibut) with unique restrictions designed to prevent excessive consolidation and regulate total harvest. With few exceptions, halibut QS or IFQ assigned to a vessel category may not be used to harvest IFQ species on a vessel of a different category.

The IFQ Program includes an economic protection measure prohibiting the processing of non-IFQ species (e.g., Pacific cod) onboard a vessel on which a person holds catcher vessel halibut IFQ. This prohibition resulted in the unanticipated waste of species caught incidentally to halibut, especially rockfish and Pacific cod. In addition, persons fishing halibut IFQ derived from category A QS could not process any species if a person onboard the vessel held unused halibut IFQ

derived from category B, C, or D QS. Also, operators of catcher/processor vessels fishing for Pacific cod, for example, would have to employ crew members who did not have unused catcher vessel IFQ (i.e., IFQ derived from category B, C, or D halibut QS) for halibut, or catcher/processor operators would have to delay fishing for non-IFQ species until all crew members onboard had fully used their catcher vessel IFQ for halibut. Hence, the processing restriction limited the crew that could be onboard catcher/processor vessels and the timing of fishing by catcher/processor vessels.

This action is intended to increase the revenue generated from harvested species by (1) allowing non-IFQ fish species to be processed on a vessel otherwise authorized to process fish, rather than allowing non-IFQ species to degrade into low value products or be wasted while IFQ species are sought; and (2) allowing processed and unprocessed IFQ species to be onboard the same vessel during the same fishing trip.

This action will allow the processing of non-IFQ and IFQ species on a vessel that is otherwise authorized to process non-IFQ species when any amount of halibut IFQ resulting from QS in categories B, C, or D are held by persons onboard the vessel. This action will not allow the processing of category B, C, or D halibut IFQ onboard a catcher/processor vessel. Instead, this action will allow persons possessing unused catcher vessel category B, C, or D halibut QS to be onboard a catcher/processor vessel when that vessel is harvesting and processing category A halibut or sablefish IFQ or is harvesting and processing non-IFQ species. This action will relieve a restriction on catcher/processor vessels which will increase their efficiency. The regulatory change will remove regulatory text currently at § 679.7(f)(13) and (14) and § 679.42(k). There is no new regulatory text.

Response to Comments

The proposed rule for this action was published in the **Federal Register** on November 14, 2007 (72 FR 64034). One commenter submitted a comment to NMFS in support of the rule.

Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule.

Classification

The Administrator, Alaska Region, NMFS, determined that this amendment is necessary for the conservation and management of the halibut fishery and

that it is consistent with the Halibut Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule also complies with the Secretary's authority under the Halibut Act to implement management measures for the halibut fishery.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A description of this action, why it is being considered, and the legal basis for this action are presented above in the preamble to this rule. NMFS received one public comment, and that was in support of the proposed rule. No comments were received in response to the IRFA or on the economic impacts of the rule and no changes were made in the proposed rule. A summary of the FRFA follows.

This action will directly regulate approximately 3,233 persons holding category B, C, or D halibut QS, 33 catcher/processor vessels, and 1,312 vessels that hold catcher vessel endorsements for vessels less than 60 ft (18.6 m) length overall on their license limitation program permits. NMFS does not possess sufficient ownership and affiliation information to determine the precise number of quota share holders considered small entities in the IFQ Program or the number of small entities that will be adversely impacted by this action. NMFS assumes that all directly regulated entities have gross revenues less than \$4 million, and that they are thus small entities for the purposes of the Regulatory Flexibility Act. In 2004, 1,335 unique IFQ vessels made IFQ landings.

Compared with status quo, this action may increase the revenue generated from non-IFQ species harvested by increasing the quality of offloaded product. This action will allow QS holders already authorized to process fish at-sea to optimize the revenue generated from harvested non-IFQ groundfish. Processing capacity is not expected to increase because the number of vessels currently authorized to process groundfish catch onboard while harvesting IFQ derived from category A quota share will not change. This action also may increase benefits to persons holding QS because it allows IFQ to be processed regardless of

whether another quota share holder is onboard, including crew holding catcher vessel category B, C, or D QS who are working onboard vessels with category A QS.

The purpose of this action is to relieve a restriction on small entities. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of this action, the Halibut Act, and other applicable statutes and that would minimize the economic impact of the action on small entities. The Council received two proposals on this issue, incorporated them into what became this final action, and evaluated them jointly after a preliminary review found that they were functionally the same. This action will completely repeal the subject requirements. Repeal will remove a restriction from directly regulated entities and potentially lead to increased profits. Other alternatives might have been designed to limit the ability of this action to accomplish the objectives, by limiting the scope of the repeal to particular species or halibut QS classes, or by providing for a delayed effective date. However, these alternatives would not have been significantly different from this action. They would not have involved substantively different approaches to addressing the problem that had been identified. Moreover, because this action relaxes a restriction on directly regulated small entities, these alternatives would have reduced the potential benefits of this action for these small entities or the classes of entities that might benefit from them.

According to NOAA Administrative Order (NAO) 216-6, including the criteria used to determine significance, this rule will not have a significant effect, individually or cumulatively, on the human environment beyond those effects identified in the previous National Environmental Policy Act (NEPA) analysis. An environmental impact statement (EIS; dated December 1992) was prepared for the final rule implementing the original halibut and sablefish IFQ and Community Development Quota Programs (58 FR 59375; November 9, 1993). The scope of the EIS includes the potential environmental impacts of this proposed rule because the EIS analyzed the original IFQ Program, which included analyses of biological and socioeconomic impacts on the environment, affected fishermen, and affected communities. Based on the nature of the proposed rule and the previous environmental analysis, this proposed rule is categorically excluded from the requirement to prepare either

an EIS or an environmental assessment, in accordance with Section 5.05b of NAO 216–6. Copies of the EIS for the original halibut and sablefish IFQ and Community Development Quota Programs and the categorical exclusion for this action are available from NMFS (see **ADDRESSES**).

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 FRFA, 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 this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.fakr.noaa.gov>.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 11, 2008.

Samuel D. Rauch III,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. 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.

§ 679.7 [Amended]

■ 2. In § 679.7, paragraph (f)(13) is removed and reserved, paragraph (f)(15) is removed, and paragraphs (f)(16) and (f)(17) are redesignated as paragraphs (f)(15) and (f)(16), respectively.

§ 679.42 [Amended]

■ 3. In § 679.42, paragraph (k) is removed and paragraph (l) is redesignated as paragraph (k).

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