

commercial fishery during the fishing periods established in Section 8 for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in Section 8 in Area 2A.

26. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, the notice-and-comment and delay-in-effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553, do not apply to this notice of the effectiveness and content of the IPHC regulations, *Jensen v. NMFS*, 512 F.2d 1189 (9th Cir. 1975). Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Catch Sharing Plan for Area 2A

An Environmental Assessment/Regulatory Impact Review was prepared on the proposed changes to the CSP. NMFS has determined that the proposed changes to the CSP and the management measures implementing the CSP contained in these regulations will not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(C) of the National Environmental Policy Act or its implementing regulations. At the proposed rule stage, the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis has been prepared.

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 773-773k.

Dated: March 15, 2000.

Andrew A. Rosenberg,
Deputy Asst. Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 00-6837 Filed 3-15-00; 2:31 pm]
BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325-0063-02; I.D. 100699A]

RIN 0648-AJ52

Fisheries of the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS establishes regulations to implement cost recovery for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Cost recovery is necessary because section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to collect fees to recover actual costs incurred for Federal management and enforcement of these IFQ fisheries. This action is intended to impose and provide for collection of such fees.

DATES: Effective March 15, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and the Final Regulatory Flexibility Analysis (FRFA) for this action may be obtained from NMFS, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668 Juneau, AK 99802-1668, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at (907) 586-7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7228.

SUPPLEMENTARY INFORMATION: Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual fishing quota program." Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected,

and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

The final rule will recover costs for the IFQ Program only. NMFS intends to implement cost recovery for the Community Development Quota (CDQ) program through separate rulemaking.

The Magnuson-Stevens Act specifies the following with respect to the imposition of IFQ cost-recovery fees:

1. Fees must recover actual costs directly related to actual enforcement and management of the IFQ Program;
2. Fees must not exceed 3 percent of the ex-vessel value of fish harvested under any such program;
3. Fees are in addition to any other fees charged under the Magnuson-Stevens Act;
4. With the exception of money reserved for the IFQ loan program, fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and
5. Fees must be collected at either the time of a legal landing of halibut or sablefish, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

Background

NMFS, Alaska Region, administers the IFQ Program. The IFQ Program is a limited access system authorized by section 303(b) of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982. NMFS implemented the IFQ Program in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679. NMFS published a proposed rule to recover costs of managing and enforcing the IFQ Program on December 27, 1999 (64 FR 72302), and solicited public comments through January 26, 2000.

Cost Recovery Program Description

An IFQ permit holder incurs a fee liability for every pound of IFQ halibut and sablefish that is landed on his or her permit. The IFQ permit holder must collect from himself or herself the amount due for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting this payment to NMFS on or before the due date of January 31 following the calendar year in which the landings were made. The dollar amount of the fee due is determined by multiplying the IFQ fee percentage (3 percent or less) by the ex-

vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

More information on the background and details of the program can be found in the preamble to the proposed rule (64 FR 72302, December 27, 1999).

Changes from the Proposed Rule in the Final Rule

In § 679.5(7)(ii)(C)(2)(ii), examples of documentation that could establish a factual basis for a revised IFQ fee liability are provided in response to comment 7.

The proposed rule published December 27, 1999, was corrected to replace four typographical errors with the correct regulatory text (65 FR 11756; March 6, 2000).

Response to Written Public Comments on the IFQ Cost Recovery Program Proposed Rule

NMFS, Alaska Region, received several written public comments regarding the IFQ Cost Recovery Program proposed rule. They are summarized and responded to as follows.

Comment 1: There is no mechanism or method to determine the amount (up to 25 percent) of the IFQ cost recovery collections that are directed to the IFQ loan program.

Response: In September 1997, the North Pacific Fishery Management Council (Council) recommended to the Secretary an IFQ loan program that would reserve 25 percent of the fees collected under section 303(d)(2) of the Magnuson-Stevens Act in the halibut and sablefish fisheries off Alaska to guarantee obligations that aid in financing the purchase of IFQs in that fishery by fishermen who fish from small vessels and the first-time purchase of IFQs by entry level fishermen. Section 303(d)(4) of the Magnuson-Stevens Act sets 25 percent as the maximum amount of the collected fees that may be reserved for loan program purposes. The Secretary has not yet acted to approve this Council recommendation. No deductions from collected fees will be made until the Council's loan program recommendation is approved. The absence of this revenue to the U.S. Treasury, however, does not prevent the U.S. Congress from appropriating any amount for purposes of the loan program.

Comment 2: NMFS should provide an accounting of how collected fees are spent.

Response: NMFS agrees. This rule provides for an IFQ Cost Recovery Program Annual Report that will

summarize the actual direct costs associated management and enforcement of the IFQ Program. This annual report will be made available to the public.

Comment 3: The International Pacific Halibut Commission (IPHC) should be eligible to receive part of the funds collected under the IFQ Cost Recovery Program.

Response: NMFS agrees. The IPHC is in the process of formally submitting to NMFS an estimate of reimbursable management costs incurred as a result of the IFQ Program. NMFS will include such costs in the annual determination of the revised IFQ fee percentage after receiving these submissions annually from the IPHC. Should such costs be submitted and included in any future IFQ fee percentage calculation, the IPHC would subsequently receive the appropriate portion of IFQ cost recovery collections as reimbursement for those IFQ Program related costs.

Comment 4: A cost recovery program for the Alaska Community Development Quota (CDQ) program should also be imposed in the future.

Response: NMFS agrees. The IFQ Program and the CDQ Program are different fishery management programs and, subsequently, have distinct costs eligible for Federal or state cost recovery. NMFS and the State of Alaska (State) are currently considering a CDQ cost recovery fee program that would be similar in design to, but implemented separately, from the IFQ program. Because the costs for the CDQ Program and the IFQ Program involve separate and distinct costs, the corresponding fee percentages would not necessarily be equal. The exception to this would be in years when costs of both programs individually equaled or exceeded the 3 percent limit established by Magnuson-Stevens Act and the fee percentage of each would, therefore, equal 3 percent during that year.

Comment 5: The IFQ Cost Recovery Program does not include a process for an "Oversight Committee" that would allow industry to review and comment on agency budgets and the associated fee percentage on an annual basis.

Response: A process exists for individual citizens or independent groups to provide comment to the Regional Administrator regarding possible adjustment of the IFQ fee percentage. NMFS will publish and distribute specific information regarding the actual management and enforcement cost of the IFQ Program during the most recently completed fiscal year, as well as such information regarding projected costs of the IFQ Program during the current fiscal year. In addition, the

Annual Report as described in § 679.45(i) of this rule will provide a summary of the actual annual budgetary expenditures by each of the relevant NMFS Divisions and the IPHC.

The Council has two oversight committees, the longstanding IFQ Implementation Committee and the more recently established IFQ/CDQ Fee Committee, either of which may provide the Regional Administrator with relevant new information. The IFQ/CDQ Fee Committee contributed significantly to the constructive development of this IFQ Cost Recovery Program rule. Both are Council Committees and can provide relevant information.

Comment 6: IFQ standard prices should be distributed to the fleet through industry associations.

Response: NMFS agrees and will provide industry associations with copies of the NMFS IFQ standard price list for distribution. This is in addition to making available to the public the NMFS IFQ standard price list via the **Federal Register** and other means of public notification such as direct mailing to all IFQ permit holders and IFQ registered buyers.

Comment 7: The rule should provide additional clarification of the "adequate documentation" that would be required for a fishermen seeking to establish a revised IFQ fee liability.

Response: NMFS agrees but does not want to overly constrain IFQ permit holders by limiting options for defensibly documenting transactions of initial sale of their IFQ landings. Clarification language that includes examples of such documentation is incorporated in this final rule in § 679.5(1)(7)(ii)(C)(2)(ii).

Comment 8: Making IFQ permit holders responsible for collecting from themselves and submitting the fees to NMFS rather than making IFQ registered buyers operating as shoreside processors the responsible fee collectors and submitters will preclude the ability to track fee amounts owed by fishery, IFQ permit holder, and species year after year.

Response: NMFS disagrees. NMFS has developed a new computerized system capable of integrating aspects of the IFQ fisheries, including IFQ landings by species, permit number, IFQ permit holder, location, ex-vessel value, and date, storing this information year after year. The Restricted Access Management Division will maintain and operate this computerized data management system for the IFQ Cost Recovery Program. Furthermore, this rule requires IFQ registered buyers operating as shoreside processors to collect and submit to NMFS ex-vessel

value information regarding IFQ landings. This volume and value information will be included in the new computerized IFQ cost recovery system and will help track the amount owed by IFQ permit holders through the determination of NMFS standard prices by species, port or port-group, and month.

Comment 9: One commentator assumed that NMFS plans to enforce payment from IFQ permit holders by withholding the following year's quota issuance.

Response: NMFS clarifies this incorrect assumption. NMFS will issue IFQ each year to IFQ permit holders. However, if the Regional Administrator determines that an IFQ permit holder has not paid the full IFQ fee liability incurred by the permit holder, then the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(4). The Regional Administrator's determination may be appealed by the IFQ permit holder pursuant to § 679.45(h). During the period of an appeal the IFQ permit will remain valid, although transfer restrictions may be imposed or, if already imposed, remain in place. The IFQ permit will remain valid until a final agency action (FAA) is issued to the IFQ permit holder. Upon issuance of a FAA which identifies a final IFQ fee liability amount still due by the IFQ permit holder as specified in §§ 679.45 and 679.5(l)(7)(ii), the IFQ permit (i.e., the authorization to fish the IFQ/QS) will immediately become invalid pursuant to § 679.4(d)(7).

Compliance Guide for Small Entities

In compliance with the Small Business Regulatory Enforcement Fairness Act of 1996, NMFS is publishing this paragraph as a compliance guide that explains how small entities must comply with regulatory changes made by this final rule. This final rule requires IFQ permit holders to collect and submit to NMFS their IFQ fees as established and described in these regulations. IFQ permit holders should be aware that all of their IFQ landings have an IFQ fee liability, at the default rate of 3 percent of ex-vessel value, for which they are responsible for collecting and submitting in accordance with § 679.5(l)(7)(ii) and § 679.45 of this regulation. Also, IFQ registered buyers should be aware that they must comply with the IFQ reporting and record-keeping requirements specified in § 679.5(l) and the landing report at § 679.5(i)(2), in particular.

Classification

The Regional Administrator has determined that this final rule is necessary to fulfil the requirement of section 304(d)(2) the Magnuson-Stevens Act. This action has been determined to be not significant for purposes of E.O. 12866.

The AA finds for good cause under 5 U.S.C. 553(d)(3) that the effectiveness of this rule should not be delayed for 30 days because a delay would be contrary to the public interest. The primary effect of this action will occur in January 2001 when the IFQ permit holders are required to submit fees based on the IFQ halibut and sablefish landings they made during the previous year. While submission of fees is not required until January 2001, fee liability starts with the effective date of the rule. Delayed effectiveness of the rule would prevent fee liability from being applied uniformly to all landings made during the IFQ fishing season, which starts March 15, 2000, and would cause substantial confusion and inequity as to which landings IFQ fee liability applies.

NMFS prepared an FRFA for this final rule in compliance with the Regulatory Flexibility Act. The FRFA describes the impact this final rule will have on small entities. A copy of the FRFA can be obtained from NMFS (see ADDRESSES).

The Magnuson-Stevens Act requires the Secretary to impose a fee to recover the actual management and enforcement costs of the Alaska IFQ Program. The objective of this rule is to collect revenue from fishermen participating in the IFQ Program to help recover the costs incurred by the Federal government as a result of the management and enforcement of the IFQ Program.

This rule applies to persons who possess and use IFQ Registered Buyer Permits or IFQ Permits (fishermen). IFQ registered buyer permit holders who do not operate as shoreside processors or those IFQ permit holders who do not land IFQ fish (i.e., possess unfished permits) would not be subject to this rule. In 1998, approximately 9 percent of IFQ pounds available remained unfished by the end of the season. As for IFQ registered buyers, generally, fewer than 40 percent of those who held IFQ Registered Buyer Permits actually reported landings (i.e., active buyer permit users). In addition, imposition of the cost recovery fees could indirectly impact the income of IFQ crew members if IFQ permit holders reduce the income to members of their crews due to the cost recovery fees. Detailed figures for the number of IFQ crew members are not available.

This action directly affects two types of registered small entities as defined by the Small Business Administration: (1) IFQ registered buyers who operate as shoreside processors and purchase IFQ halibut or sablefish from IFQ permit holders, and (2) halibut and sablefish IFQ permit holders. By year-end 1998, 3,978 persons held one or more IFQ permits (fishermen) and reported landings of at least 1 lb (0.45 kg) of IFQ fish. Also in 1998, NMFS issued 859 IFQ registered buyer permits, but only 309 were active IFQ registered buyers. Only 79 of the active IFQ registered buyers operated as shoreside processors that purchased IFQ halibut or sablefish. The 79 IFQ registered buyers identified themselves in 1998 as shoreside processors, and would be the only type of IFQ registered buyers regulated under the proposed action. The number of IFQ permits and IFQ registered buyer permits has decreased each year since 1995 when the program was initiated and is expected to stabilize near 1998 levels. For purposes of the IFRA, all 79 IFQ permits holders are considered small entities. Therefore, the total number of small entities that this rule would apply to IFQ registered buyers and permit holders would be expected to be equal to or less than 4,057. This rule imposes new Recordkeeping and reporting requirements. These are discussed below in the context of the Paperwork Reduction Act burden.

A broad variety of alternatives was considered in the development of the proposed regulations for IFQ cost recovery. The alternatives were considered in the context of combining various options associated with a specific set of necessary program elements. Some of the necessary program elements include the scope of the IFQ cost recovery regulations; identification of the IFQ fishery; the annual fee percentage value; the IFQ fish subject to the IFQ cost recovery fee; the method used to determine ex-vessel values of IFQ halibut and IFQ sablefish landings; the method used to establish standard ex-vessel prices for IFQ halibut and IFQ sablefish; the methods of accounting for post-season ex-vessel price adjustments and other corrections to ex-vessel value; IFQ fee collection and submission mechanisms and schedules; and the implementation date.

In selecting the preferred alternative, NMFS incorporated many elements designed to minimize negative impacts on small entities.

1. The fee would apply only to IFQ halibut and sablefish landings, and not to all species landed by IFQ fishermen.

2. Fishermen would be able to choose whether to use actual or standard ex-

vessel value of their IFQ landings whenever possible.

3. Standard prices would be primarily based on current year ex-vessel prices rather than previous year ex-vessel prices, and would be refined to represent ex-vessel prices by species, by month, and by port-group.

4. Registered buyers and IFQ permit holders would be required to submit recordkeeping and reporting information only once a year, rather than multiple mid-season submissions.

NMFS also considered the alternative of not implementing an IFQ cost recovery (status quo). The status quo alternative would minimize economic impacts on small entities in that no new fee would be imposed. However, this alternative would not be in compliance with the Magnuson-Stevens Act. Alternatives to the proposed recordkeeping and reporting requirements could reduce economic impacts on small entities. For instance, implementing an electronic reporting system could reduce the burdens associated with filing annual reports; however, NMFS has not ascertained whether electronic reporting would allow for comparable, easily interpreted data and costs associated with acquiring new software could counterbalance any benefits. NMFS also considered extracting data from reports currently required of AGF&G. The ADF&G reports would not provide all the necessary data in a sufficiently timely manner. NMFS also considered an alternative that would not have assessed a fee on retro-payments. While this approach would benefit permit-holders who accepted retro-payments, it would not be acceptable to those who do not. In addition, this approach might not comply with the spirit of the statute to assess a fee on the full amount of payment.

NMFS received no comments on the Initial Regulatory Flexibility Analysis prepared for this rule and no changes were made in the final rule.

Notwithstanding any other provision of law, no person is required to respond to and no person shall 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 Office of Management and Budget (OMB) Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0398.

The recordkeeping and reporting requirements will apply to the IFQ permit holder and the IFQ registered buyer operating as a shoreside processor and buying halibut or sablefish landed under the IFQ Program. The estimated time for an IFQ permit holder to complete the IFQ payment submission form package is 2.0 hours per response. The time required to complete the buyer report is estimated to be 2.0 hours per report. The estimated response times shown include the time to review the instructions, search existing sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

List of Subjects in 50 CFR Part 679

Alaska, Cost recovery, Fees, Fisheries, IFQ, and Recordkeeping and reporting requirements.

Dated: March 13, 2000

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended to read 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., and 3631 et seq.

2. In § 679.2, definitions for listed terms are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *
KIFQ actual ex-vessel value means the U.S. dollar amount of all compensation, monetary or non-monetary, including any IFQ retro-payments received by an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landing(s) on his or her permit(s) described in terms of IFQ equivalent pounds.

* * * * *
IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted weight for halibut.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S.

dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s) by the appropriate IFQ fee percentage.

IFQ fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use to calculate the IFQ cost recovery fee liability for an IFQ permit holder.

* * * * *

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made, as defined at § 679.4(d)(3)(B).

IFQ program means the individual fishing quota program for the fixed gear fisheries for Pacific halibut and sablefish in waters in and off Alaska and governed by regulations under this part.

IFQ registered buyer means the person identified on a registered buyer permit, as defined at § 679.4(d)(2).

IFQ retro-payment means the U.S. dollar value of a payment, monetary or non-monetary, made to an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landed at some previous time.

* * * * *

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

IFQ standard price means a price, expressed in U.S. dollars per IFQ equivalent pound, for landed IFQ halibut and IFQ sablefish determined annually by the Regional Administrator and documented in an IFQ standard price list published by NMFS.

* * * * *

Limited Access System Administrative Fund (LASAF) means the administrative account used for depositing cost recovery fee payments into the U.S. Treasury as described in the Magnuson-Stevens Act under section 304(d)(2)(C)(i) and established under section 305(h)(5)(B).

* * * * *

NMFS Person Identification Number means a unique number assigned by NMFS to any person who applied for, or who has been issued, a certificate, license, or permit under any fishery management program administered by the Alaska Region for purposes of the

NMFS/Alaska Region Integrated Regional Data System.

* * * * *

3. In § 679.4, paragraph (a)(5) is revised and paragraph (d)(7) is added to read as follows:

§ 679.4 Permits.

(a) * * *

(5) *Sanctions and denials.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904. Such procedures are required for enforcement purposes, not administrative purposes.

* * * * *

(d) * * *

(7) *Validity.* An IFQ permit issued under this part is valid only if all IFQ fee liability of the IFQ permit holder that is due as a result of final agency action has been paid as specified in §§ 679.45 and 679.5(l)(7)(ii).

* * * * *

4. In § 679.5, paragraph (l)(7) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(7) *IFQ cost recovery program—(i) IFQ buyer report.*

(A) *Applicability.* An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5 (l)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required.* A complete IFQ Buyer Report must include the following information:

(1) *IFQ registered buyer identification,* including:

- (i) Name,
- (ii) Registered buyer number,
- (iii) Social Security number or tax identification number,
- (iv) NMFS person identification number (if applicable),
- (v) Business address,
- (vi) Telephone number,
- (vii) Facsimile telephone number,
- (viii) Primary registered buyer activity,
- (ix) Other registered buyer activity, and
- (x) Landing port location;

(2) *Pounds purchased and values paid.* (i) The monthly total weights,

represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(ii) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(3) *Value paid for price adjustments.*

(i) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(ii) *Certification,* including the signature of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature.

(D) *Submission address.* A complete IFQ Buyer Report must be received at the following address by mail or facsimile transmission: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802-1668, Facsimile: (907) 586-7354.

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ permit holder Fee Submission Form—(A) Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form.* For each of the sections described here, a permit holder must provide the specified information.

(1) *Identification of the IFQ permit holder.* An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

- (i) The printed name of the IFQ permit holder;
- (ii) The NMFS person identification number;
- (iii) The Social Security number or tax ID number of the IFQ permit holder;
- (iv) The business mailing address of the IFQ permit holder; and
- (v) The telephone and facsimile number (if available) of the IFQ permit holder.

(2) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(C)(2)(i) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(i) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(ii) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(3) *Fee calculation section—(i) Information required.* An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in § 679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(ii) *Calculation of total annual fee amount.* An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits; multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee

liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(4) *Fee payment and certification section—(i) Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number and must sign and date and have notarized by a Notary Public the Fee Payment section and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

(ii) *Calculation of balance fee payment.* An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance of the fee amount due.

(D) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

* * * * *

5. In § 679.41, paragraph (c)(8) is revised and paragraph (c)(9) is added to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(8)(i) The person applying to make or receive the IFQ or QS transfer has paid all IFQ fees that have become due as a result of an initial administrative determination.

(ii) The person applying to make or receive the IFQ or QS transfer who has not paid all IFQ fees that are due (as provided under § 679.45(a)) has timely appealed the administrative determination that IFQ fees have not been paid in full and has submitted to NMFS an amount sufficient to satisfy any disputed liability pending a final agency action.

(9) Other pertinent information requested on the Application for Transfer has been supplied to the

satisfaction of the Regional Administrator.

* * * * *

6. Section 679.45 is added to Subpart D to read as follows:

§ 679.45 IFQ cost recovery program.

(a) *Cost recovery fees—(1) Responsibility.* The person documented on the IFQ permit as the permit holder at the time of an IFQ landing must comply with the requirements of this section. Subsequent transfer of QS or IFQ does not affect the permit holder's liability for noncompliance with this section.

(2) *IFQ Fee Liability Determination.* After each IFQ fishing year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ pounds landed during that IFQ fishing year for each permit as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(C)(2). The summary will include an estimated IFQ fee liability based on the standard ex-vessel values of the landings. The summary and estimated fee liability will include details of IFQ equivalent pounds landed by permit, port or port-group, species, date, and IFQ standard prices. The permit holder must either accept NMFS's estimate of IFQ liability or revise NMFS's estimate of IFQ fee liability using the Fee Submission Form described at § 679.5(l)(7)(ii). If the permit holder revises NMFS's estimate of his or her fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the permit holder fails to provide adequate documentation by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's fee liability based on standard ex-vessel values.

(3) *Fee Collection.* An IFQ permit holder with an IFQ landing is responsible for self-collecting his or her own fee during the calendar year in which the IFQ fish is harvested.

(4) *Payment—(i) Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided in this section at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ landings were made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802-1668, Facsimile: (907) 586-7354.

(iv) *Payment method.* Payment must be made by personal check drawn on a U.S. bank account, money order, or bank certified check.

(b) *IFQ ex-vessel value determination and use—(1) General.* An IFQ permit holder must use either the IFQ standard ex-vessel value or the IFQ actual ex-vessel value when determining the IFQ fee liability based on ex-vessel value. An IFQ permit holder must base all fee liability calculations on the ex-vessel value that correlates to landed IFQ fish that is recorded in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability must document actual ex-vessel value for each IFQ permit.

(c) *IFQ standard ex-vessel value determination and use—(1) Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability as part of a revised IFQ fee liability submission must use the corresponding standard price(s) as published in the **Federal Register**.

(2) *Duty to publish list—(i) General.* Each year the Regional Administrator will publish IFQ standard prices in the **Federal Register** during the last quarter of each calendar year. The standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(ii) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(iii) *Determination.* NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Buyer Reports as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

(d) *IFQ fee percentage.*—(1) *Default percentage.* The IFQ fee percentage is 3 percent (0.03) unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with § 679.45(d)(3).

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.

(i) *Factors.* In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the IFQ fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the IFQ program;

(D) The funds available for the IFQ program in the Limited Access System Administrative Fund (LASAF); and

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the methodology described here.

$[100 \times (DPC - AB) / V] / (1 - NPR)$
where:

DPC is the direct program costs for the IFQ fishery for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the IFQ program,

V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and

NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* (i) *General.* During or before the last quarter of each year, the Regional Administrator will consider adjusting the IFQ fee percentage. Consideration will be based on the calculations described in § 679.45(d)(2). The Regional Administrator may reduce the IFQ fee percentage at any time based on new information of the type set forth in § 679.45(d)(2).

(ii) *In-season effective period.* An in-season reduction in the IFQ fee percentage supersedes the IFQ fee percentage previously in effect for the calendar year and remains in effect through the end of the calendar year in which it was determined unless otherwise adjusted by the Regional Administrator.

(4) *Publication.* The Regional Administrator will publish notification in the **Federal Register** any adjustment of the IFQ fee percentage.

(5) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ landing is made to calculate his or her

fee liability for such landed IFQ pounds unless the percentage is subsequently adjusted as described in § 679.45(d)(3). The IFQ permit holder must use the IFQ percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* If an IFQ permit holder does not submit a complete Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(2) and (3), the Regional Administrator may:

(1) At any time thereafter send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2) is the amount of IFQ fee due from the IFQ permit holder.

(2) Disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(8)(i). Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(4). The Regional Administrator will notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount. The Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that

the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value.

(2) After expiration of the 30-day period, the Regional Administrator will issue an IAD and notify the IFQ permit holder. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal pursuant to § 679.43. In an appeal of an IAD made under this section, the IAD permit holder has the burden of proving his or her claim.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action. Once a fee liability determination becomes final, any IFQ fishing permit held by the IFQ permit holder will be deemed not valid until all IFQ fee liabilities have been paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(g) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the IFQ fee liability determined to be due by the final agency action will be returned to the IFQ permit holder unless the permit holder requests the agency to credit the excess amount against the IFQ permit holder's future IFQ fee liability.

(h) *Appeals and requests for reconsideration.* An IFQ permit holder who receives an IAD may either appeal the IAD pursuant to § 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake a reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates a reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an IFQ permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an IFQ permit holder has the burden of proving his or her claim.

(i) *Annual report.* NMFS will publish annually a report describing the status of the IFQ Cost Recovery Program.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039-0039-01; I.D. 031000A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 outside the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 outside the Shelikof Strait conservation area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 15, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT:

Mary Furuness, 907-586-7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the B season allowance of pollock TAC in Statistical Area 620 outside the Shelikof Strait conservation area is 273 metric tons (mt) as established by the Final 2000 Harvest Specifications for Groundfish (65 FR 8298, February 18, 2000) and subsequent correction (65 FR 11909, March 7, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the pollock TAC in Statistical Area 620 outside the Shelikof Strait conservation area will be reached and is necessary as incidental catch to support other anticipated groundfish fisheries. Consequently, the Regional Administrator establishes the B season directed fishing allowance as zero. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been

reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 outside the Shelikof Strait conservation area in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 620 outside the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: March 15, 2000.

Gary C. Matlock,

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

[FR Doc. 00-6831 Filed 3-15-00; 2:31 pm]

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