

percent lower, respectively, relative to the adjusted quotas for year 2007. The proposed recreational harvest limits (adjusted for RSA) would be 7.2-, 33.6-, and 14.6-percent lower than the adjusted recreational harvest limits for year 2007.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Dated: November 8, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 07-5647 Filed 11-8-07; 1:58 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071029545-7545-01]

RIN 0648-AU85

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery by revising regulations governing use of commercial halibut quota share (QS) and processing of non-IFQ species when processed halibut is onboard a vessel. This action would amend 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 would allow 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 intended effect of this action is 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: Comments must be received no later than December 14, 2007.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK;
- Fax: 907-586-7557;
- E-mail: OMNIV-PR-0648-AU85@noaa.gov. Include in the subject line of the e-mail the following document identifier: IFQ Halibut Sablefish 0648-AU85. E-mail comments, with or without attachments, are limited to 5 megabytes; or
- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809, or the NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://www.noaa.fakr.gov>.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7228 or jay.ginter@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 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 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 Halibut and Sablefish 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 Halibut and Sablefish IFQ Program began on March 15, 1995, ending the open access fishery which preceded its implementation. Regulations implementing the Halibut and Sablefish 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.

The Halibut and Sablefish IFQ Program was developed to reduce fishing capacity that had increased during years of management as an open access fishery, while maintaining the social and economic character of the fixed gear fishery that is relied on as a source of revenue for coastal communities in Alaska. The Council and the Secretary concluded that the Halibut and Sablefish IFQ Program would provide economic stability for the commercial hook-and-line fishery while reducing many of the conservation and management problems commonly associated with open access

fisheries. The proposed rule for the IFQ Program (57 FR 57130; December 3, 1992) describes, in detail, the background leading to the Council's adoption of the Halibut and Sablefish IFQ Program.

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. The specific amount of IFQ held by a person is determined by the number of QS units held, the total number of QS units issued in a specific regulatory area, and the total pounds of sablefish or halibut allocated for the IFQ fisheries in a particular year. Fishermen may harvest the IFQ over the entire fishing season, which in 2007 is March 10 through November 15 for halibut (72 FR 11792; March 14, 2007) and during the same period for the sablefish (72 FR 9676; March 5, 2007). Generally, an IFQ holder must be onboard at the time his or her IFQ is fished. This requirement was designed to maintain a predominantly owner-operated fishery that was a characteristic of the fishery prior to the implementation of the IFQ Program.

Federal regulations at 50 CFR 679.40(a)(5) divide QS into vessel categories (A, B, C, and D for halibut and A, B, and C for sablefish) with unique restrictions designed to prevent excessive consolidation and regulate total harvest. Category A QS holders are authorized to harvest and process either IFQ species on a vessel of any length. Category B QS holders may harvest either IFQ species from any size vessel, but may not process halibut or sablefish onboard. Category C QS holders may harvest, but may not process, either IFQ species on a vessel that is less than or equal to 60 ft (18.3 m) length overall (LOA). Finally, category D QS holders may harvest, but not process, halibut on vessels less than or equal to 35 ft (10.7 m) LOA. Vessels that harvest fish only and do not process those fish commonly are referred to as "catcher vessels" while vessels capable of harvesting and processing are referred to as "catcher/processors." Hence, vessels in category A are catcher/processor vessels and those in categories B, C, and D are catcher vessels.

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. Again, this vessel category system was intended by the Council and the Secretary to maintain a predominantly owner-operated fishery by protecting the QS and IFQ held by small vessel owners

from being purchased and used on large vessels.

The IFQ Program initially included other provisions designed to protect small catcher vessels from potential economic competition with larger catcher/processors. Among these economic protection measures was a prohibition against processing non-IFQ species (e.g., Pacific cod) onboard a vessel on which a person held catcher vessel IFQ for either IFQ species. This prohibition responded to a concern that owners of large catcher/processor vessels could harvest a large portion of halibut or sablefish that would ordinarily be harvested by smaller catcher vessels. The result could be an increase in harvesting of IFQ species on catcher/processor vessels and a decrease in harvesting of IFQ species on smaller catcher vessels that historically landed their catch at shoreside processors located in small coastal communities. This could have a detrimental socioeconomic effect on these small communities that rely on revenue generated from catcher vessel deliveries to shoreside processors located in these small coastal communities.

Although concern for the economic vitality of coastal communities remained strong, the Council recommended relaxing part of this prohibition with regard to sablefish soon after the initial implementation of the IFQ Program. The Council proposed and the Secretary approved Amendment 33 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 37 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. A proposed rule for Amendments 33 and 37 was published April 2, 1996 (61 FR 14547) and a final rule was published June 27, 1996 (61 FR 33382). These amendments and their implementing regulations allowed persons with category A QS to process non-IFQ species when a person with unused sablefish IFQ derived from QS categories B, C or D is onboard the catcher/processor vessel. The amendments also allowed holders of category A QS to harvest IFQ sablefish when persons holding unused catcher vessel sablefish IFQ were onboard the vessel.

The prohibition on processing non-IFQ species resulted in the unanticipated waste of species caught incidentally to halibut and sablefish, especially rockfish and Pacific cod. With some exceptions, Federal regulations require fishermen to retain all Pacific cod and rockfish caught incidentally in IFQ halibut and sablefish fisheries. The retention requirement

forces fishermen to consider the impact that their time at-sea will have on product quality if at-sea processing is not an option. This is especially problematic in the IFQ fisheries because non-IFQ species such as Pacific cod and rockfish are reported to degrade at a quicker rate than IFQ species. Thus, fishermen focus effort on valuable IFQ species and choose to not offload species of lesser value in a condition that would allow the product to be graded as high quality. In severe situations, non-IFQ species may be offloaded in such poor condition that they must be discarded or can only be processed into low value products.

Amendments 33 and 37 and their implementing regulations relieved the prohibition on processing of non-IFQ species only with regard to sablefish IFQ, but not halibut IFQ. The Council did not extend the regulations to the halibut fishery because (a) participation in the halibut fishery includes many small local vessels that do not have processing capabilities, and (b) the Council wanted to maintain a diverse fishing fleet where all segments continue to exist along with the social structures associated with those segments.

However, the same issues that led the Council to relieve the processing prohibition with regard to sablefish IFQ occurred with regard to halibut IFQ. In addition to the unanticipated waste of non-IFQ species, 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/process 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.

In October 2004, the Council reviewed two proposals requesting that regulations similar to the non-IFQ species processing exception provided for the sablefish IFQ fishery in Amendments 33 and 37 be applied also to the halibut IFQ fishery. One proposal recommended relieving restrictions that prohibit a catcher/processor vessel with category A QS from harvesting and processing halibut if a person with unused category B, C, or D QS is

onboard the vessel. A second proposal recommended allowing processed non-IFQ species to be onboard a vessel that is otherwise authorized to process IFQ species and non-IFQ species. Both proposals would require the same regulatory change, although each proposal was different.

This proposed action would satisfy both proposals and 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. For example, this proposed regulation would allow a person holding category A halibut IFQ to harvest halibut and process all incidentally caught fish species if a person onboard the vessel held unused category B, C, or D QS. Additionally, catcher/processor vessel operators could employ crew members who hold unused halibut IFQ derived from QS categories B, C, or D.

In December 2004, the Council initiated an analysis of the proposals presented at its October 2004 meeting. In February 2005, the Council combined the regulatory proposals into a single alternative for analysis. The Council released the analysis for public review in December 2005 and adopted a recommendation to the Secretary for this proposed regulatory amendment in June 2006.

This proposed action would 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 would not allow the processing of category B, C, or D halibut IFQ onboard a catcher/processor vessel. Instead, this action would 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 is proposed to relieve a restriction on catcher/processor vessels which would increase their efficiency. The proposed regulatory change would remove regulatory text currently at §§ 679.7(f)(13) and (14) and § 679.42(k). No new regulatory text is proposed.

Classification

The proposed rule does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules. This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This proposed rule also complies with the Halibut Act and the Secretary's authority to implement allocation measures for the management of the halibut fishery.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on directly regulated small entities. A business is considered a small entity if annual gross revenues are less than \$4.0 million. 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. A summary of the IRFA follows.

Summary of IRFA

The Council reviewed two alternatives: the "no action" alternative; and the "preferred alternative." The preferred alternative would 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 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 would 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, the preferred alternative may increase the revenue generated from non-IFQ species harvested by increasing the quality of offloaded product. The preferred alternative would 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 would not change. The preferred alternative 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.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the action and that would minimize the economic impact of the proposed rule on small entities. The Council received two proposals on this issue, incorporated them both into the preferred alternative, and evaluated them jointly after a preliminary review found that they were functionally the same. The Council's action alternative would completely repeal the subject requirements. Repeal would 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 the action alternative. They would not have involved substantively different approaches to addressing the problem that had been identified. Moreover, since this is an action to relax a restriction on directly regulated small entities, these alternatives would only 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 would 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 CDQ 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 CDQ programs and the categorical exclusion for this action are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 6, 2007.

John Oliver

Deputy Assistant Administrator for Operations, 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 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108 199, 118 Stat. 110.

§ 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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