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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 150430410-6340-02]**

**RIN 0648-BF05**

**Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development 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 implement Amendment 109 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). This final rule amends regulations governing the Western Alaska Community Development Quota (CDQ) Program to support increased participation in the groundfish CDQ fisheries (primarily Pacific cod) by catcher vessels less than or equal to 46 feet (ft) (14.0 meters (m)) length overall (LOA) using hook-and-line gear.

Specifically, this final rule exempts operators of registered catcher vessels greater than 32 ft (9.8 m) LOA and less than or equal to 46 ft LOA using hook-and-line gear from the requirement to obtain and carry a License Limitation Program (LLP) license when

groundfish CDQ fishing. This final rule also reduces observer coverage requirements for catcher vessels less than or equal to 46 ft LOA when groundfish CDQ fishing, and implements new in-season management and catch accounting requirements to properly account for the harvest of groundfish and halibut and the accrual of halibut prohibited species catch in these fisheries. In addition to the regulations necessary to implement Amendment 109, this final rule removes from the regulations a table and some explanatory text that are no longer necessary. This final rule is intended to facilitate increased participation by residents of CDQ communities in the groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI), and to support economic development in western Alaska. This final rule also is intended to promote the goals of the CDQ Program, the goals and objectives of the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

**DATES:** Effective [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian,

Records Officer; in person at NMFS Alaska Region, 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK; and by e-mail to *OIRA\_Submission@omb.eop.gov* or faxed to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Sally Bibb, 907-586-7389.

**SUPPLEMENTARY INFORMATION:**

**Background**

This final rule implements Amendment 109 to the BSAI FMP. NMFS published a notice of availability (NOA) for Amendment 109 in the **Federal Register** on January 21, 2016 (81 FR 3374), with comments invited through March 21, 2016. The Secretary of Commerce approved Amendment 109 on April 15, 2016, after considering information from the public, and determining that Amendment 109 is consistent with the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law. NMFS published a proposed rule to implement Amendment 109 and the regulatory amendments on February 8, 2016 (81 FR 6489). The comment period on the proposed rule ended on March 9, 2016. NMFS received one letter of comment on proposed Amendment 109 and one letter of comment on the proposed rule. NMFS responds to these comments in the section titled Comments and Responses. No changes were made from the proposed rule in response to these comments. Several minor editorial revisions are made in the amendatory instructions of this final rule to be consistent with two final rules that were implemented since the proposed rule for

Amendment 109 was published. These revisions are described in the section titled Changes from the Proposed Rule.

### **Summary of Amendment 109**

This section summarizes background information about the CDQ Program and the regulatory constraints on the small catcher vessel hook-and-line halibut and groundfish CDQ fisheries that led the North Pacific Fishery Management Council (Council) to recommend Amendment 109 and this final rule. Additional background is included in the proposed rule (81 FR 6489; February 8, 2016) and is not repeated here.

The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The purpose of the CDQ Program is to provide western Alaska communities with the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska. The CDQ Program also is a catch share program that allocates a portion of the BSAI total allowable catch limits for specific target crab and groundfish species, a portion of the commercial catch limits for halibut, and portions of certain prohibited species catch (PSC) limits to the CDQ Program. These amounts are then further allocated among the six CDQ groups as allocations that may be transferred among the CDQ groups. The primary focus of Amendment 109 is on the halibut CDQ allocations, the Pacific cod CDQ allocations, and the halibut PSC in the groundfish CDQ fisheries.

The successful harvest of CDQ Program allocations is integral to achieving the goals of the CDQ Program and the community development plans of each CDQ group. One of the most effective ways the CDQ groups provide benefits to residents of their CDQ communities is to use the CDQ allocations to create local small-scale commercial fisheries. For purposes of this final rule, “local small-scale” means CDQ fisheries prosecuted by catcher vessels that are less than or equal to 46 ft LOA, using hook-and-line gear, and homeported or operated from CDQ communities. These local small-scale fisheries provide opportunities for residents of the CDQ communities to earn income from the sale of the commercially harvested fish.

Certain Federal regulations have restricted the ability of fishermen in CDQ communities to harvest allocations of Pacific cod CDQ with small hook-and-line catcher vessels. In particular, requirements for full observer coverage and an LLP license limit the ability of CDQ community fishermen to retain Pacific cod CDQ when participating in the halibut CDQ fisheries or to develop separate local small-scale directed fisheries for Pacific cod CDQ. These regulatory constraints are described in more detail in the preamble to the proposed rule (81 FR 6489; February 8, 2016).

This final rule amends regulations governing the CDQ Program to support increased participation in the groundfish CDQ fisheries (primarily Pacific cod) by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear as intended by Amendment 109. Specifically, this final rule:

- Exempts operators of registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear from the requirement to obtain and carry an LLP license when groundfish CDQ fishing (catcher vessels less than or equal to 32 ft LOA already are exempt from the LLP requirements in the BSAI under existing regulations);
- Implements new in-season management and catch accounting procedures to properly account for the harvest of groundfish and halibut and the accrual of halibut PSC by operators of catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when halibut or groundfish CDQ fishing;
- Allows halibut caught by operators of catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing to accrue as either halibut CDQ, halibut individual fishing quota (IFQ), or halibut PSC, on a trip-by-trip basis; and
- Places catcher vessels less than or equal to 46 ft LOA using hook-and-line gear in the partial observer coverage category when they are groundfish CDQ fishing. In addition to these changes for Amendment 109, the final rule removes a table and some explanatory text from observer program regulations at § 679.51(f) that are no longer necessary.

This final rule is intended to facilitate increased participation by residents of CDQ communities in the BSAI groundfish CDQ fisheries and to support economic

development in western Alaska. This final rule benefits the six CDQ groups and the operators of the small hook-and-line catcher vessels that the CDQ groups authorize to fish on their behalf by reducing the costs of participating in the groundfish CDQ fisheries. More information about the Council's and NMFS' rationale for this final rule and its expected impacts are provided in the proposed rule (81 FR 6489; February 8, 2016). The elements of this final rule are summarized in the following section of this preamble.

## **The Final Rule**

### *LLP Exemption*

Regulations exempting specific vessels from LLP license requirements are codified at § 679.4(k)(2). This final rule adds a new paragraph (vi) to § 679.4(k)(2) to establish an LLP exemption for registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing. The operators of catcher vessels eligible for the LLP exemption are not required to obtain and carry an LLP license when they are groundfish CDQ fishing provided that certain vessel registration requirements are met prior to groundfish CDQ fishing.

This final rule adds a new paragraph at § 679.5(m) that includes the vessel registration requirements that must be met to receive an LLP exemption. To receive an LLP exemption, a CDQ group representative must register each eligible catcher vessel through NMFS' online CDQ vessel registration system ("the CDQ vessel registration system"). To successfully register a catcher vessel, the CDQ group representative must

log into the CDQ vessel registration system using the CDQ group's existing NMFS ID and password and provide the information required on the computer screen. NMFS will add each catcher vessel successfully registered to the CDQ vessel registration list, and NMFS will post that list on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The CDQ group representative may add eligible catcher vessels to the CDQ vessel registration list at any time during the groundfish fishing year (January 1 through December 31); there is no deadline for vessel registration with NMFS.

With each successful registration, the CDQ vessel registration system will provide the CDQ group representative with an LLP exemption letter documenting that the vessel is eligible for the LLP exemption when groundfish CDQ fishing. The CDQ group representative must provide a copy of the LLP exemption letter to the vessel operator. NMFS will not provide the LLP exemption letter directly to vessel operators. The vessel operator must maintain a legible copy of the LLP exemption letter on board the named vessel at all times when that vessel is groundfish CDQ fishing. Because registered vessels must have a legible copy of the LLP exemption letter on board the vessel before the vessel operator starts groundfish CDQ fishing, the CDQ group representative and the vessel operator must allow sufficient time to complete the registration process prior to the start of groundfish CDQ fishing by the vessel.

The LLP exemption letter also will provide printable confirmation to the CDQ group of a successfully completed vessel registration. Once registered, a vessel will



remain on the CDQ vessel registration list until removed by the CDQ group. The CDQ groups are not required to re-register vessels annually.

A CDQ group representative may remove a vessel from the CDQ vessel registration list at any time by logging into the CDQ vessel registration system and following the applicable instructions. To remove a vessel from the CDQ vessel registration list, the CDQ group representative must certify to NMFS that 1) the vessel operator has been given notice by the CDQ group that the vessel is being removed from the list, and 2) the vessel operator is not groundfish CDQ fishing at the time of removal. The CDQ vessel registration system will provide a printable confirmation that a vessel has been removed from the CDQ vessel registration list. Once a vessel is removed from the CDQ vessel registration list, that vessel is no longer exempt from the LLP requirements, even if the operator still possesses the LLP exemption letter. This final rule does not require a CDQ group representative to remove registered vessels from the CDQ vessel registration list when they are participating in a non-CDQ fishery.

To further clarify the vessel operator's responsibility, this final rule adds a new prohibition at § 679.7(d)(9) to prohibit the operator of a vessel eligible for the LLP exemption from conducting groundfish CDQ fishing without having a legible copy of the LLP exemption letter issued to a CDQ group for that vessel on board the vessel. In addition, this final rule adds a new prohibition at § 679.7(d)(10) to prohibit a CDQ group representative from removing a vessel from the CDQ vessel registration list without first

providing notice to the operator of the registered vessel that the vessel is being removed from the CDQ vessel registration list, or when the vessel is groundfish CDQ fishing.

*Catch Accounting and Fishery Monitoring Requirements*

This final rule adds a new paragraph at § 679.32(c)(3)(iii) to establish the catch accounting and fishery monitoring requirements that apply to catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing and to the CDQ groups authorizing these vessels. Current regulations at § 679.32(c)(3)(i)(D) and (c)(3)(ii)(D) will continue to apply to catcher vessels greater than 46 ft LOA using hook-and-line gear when groundfish CDQ fishing.

This final rule also establishes catch accounting procedures in § 679.32(c)(3)(iii) that provide CDQ groups and vessel operators with the opportunity to retain halibut CDQ or halibut IFQ when groundfish CDQ fishing. If the vessel operator is relying on halibut CDQ from a CDQ group to support the retained catch of legal-size halibut during a fishing trip, the CDQ group must provide adequate halibut CDQ to this vessel operator to account for all the legal-size halibut caught by the vessel during the entire fishing trip. A CDQ group's halibut prohibited species quota (PSQ) will not be reduced if halibut is present in the landing. Landed halibut CDQ or halibut IFQ will accrue to the account balance of the permit holder identified by the processor in the landing report based on the permits held by the vessel operator or persons on board the vessel.

The operator of a hook-and-line catcher vessel less than or equal to 46 ft LOA who retains any halibut CDQ or halibut IFQ during the groundfish CDQ fishing trip must

retain all legal-size halibut caught during that fishing trip. NMFS will continue to consider sub-legal-size halibut as wastage associated with the halibut fishery. As long as at least one halibut (IFQ or CDQ) is included in the groundfish CDQ landing, NMFS will not accrue any estimates of halibut PSC from the small catcher vessel groundfish CDQ fisheries to the CDQ group's halibut PSQ or to any component of the BSAI halibut PSC limit.

If no halibut are included in a groundfish CDQ landing, NMFS will accrue an estimate of halibut PSC to the CDQ group's small catcher vessel halibut PSC limit (described below). NMFS will estimate the halibut PSC associated with these types of groundfish CDQ fishing trips using halibut PSC rates as calculated by NMFS, and apply the halibut PSC rates when halibut fishing is closed or when halibut fishing is open but no halibut are included in a landing.

Under this final rule, NMFS will create a new quota category available to each CDQ group called the "small catcher vessel halibut PSC limit." If a CDQ group wants to have a small hook-and-line catcher vessel groundfish CDQ fishery, the CDQ group must transfer halibut PSQ from its halibut PSQ to its small catcher vessel halibut PSC limit through a CDQ Transfer Request. The CDQ Transfer Request requirements are described under § 679.5(n). CDQ groups that do not want to have a local small-scale groundfish CDQ fishery do not have to transfer any halibut PSQ to this account. Each CDQ group will, in collaboration with NMFS, decide the appropriate amount of halibut PSQ to transfer to the small catcher vessel halibut PSC limit based on the amount of

groundfish CDQ it wants to allocate to its small hook-and-line catcher vessel groundfish CDQ fishery and the expected use of halibut PSC in that fishery.

With the exception of sablefish CDQ fishing, which will continue to be managed under § 679.32(c)(1), this final rule will prohibit groundfish CDQ fishing by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear unless NMFS publishes notification in the **Federal Register** authorizing a CDQ group to conduct such fishing. In deciding whether to authorize groundfish CDQ fishing by these vessels, NMFS will consider whether a CDQ group has sufficient halibut in its small catcher vessel halibut PSC limit to support groundfish CDQ fishing by these catcher vessels.

If NMFS determines that a CDQ group's small catcher vessel halibut PSC limit has been or will be reached, NMFS will issue a notice in the **Federal Register** prohibiting groundfish CDQ fishing by the small hook-and-line catcher vessels fishing for that CDQ group. NMFS will be responsible for issuing fishing closures to the small hook-and-line catcher vessel groundfish CDQ fisheries to maintain halibut PSC by these vessels within the small catcher vessel halibut PSC limit established by a CDQ group. NMFS will manage these fisheries to stay within the applicable CDQ groups' halibut PSC amount to the best of its ability, and will manage the small hook-and-line catcher vessel groundfish CDQ fishery conservatively to ensure that these PSC limits are not exceeded.

Even with conservative management, it is possible that a small catcher vessel halibut PSC limit could be exceeded due to the high degree of variability in halibut PSC

rates that can occur in hook-and-line fisheries. If NMFS is unable to close a CDQ group's small catcher vessel groundfish CDQ fishery before it exceeds the amount of halibut PSC allocated to the small catcher vessel halibut PSC limit, NMFS will not consider this a violation, and NMFS will not require the CDQ group to transfer an amount of halibut PSQ needed to cover the negative balance. However, this final rule will allow a CDQ group to voluntarily choose to transfer additional halibut PSQ to bring the balance of its small catcher vessel halibut PSC limit to zero.

If a CDQ group's small catcher vessel halibut PSC limit has a negative balance at the end of the groundfish fishing year (December 31), and if the CDQ group has remaining halibut PSQ on that date, NMFS will transfer an amount of halibut PSQ into the CDQ group's small catcher vessel halibut PSC limit to bring the balance of the small catcher vessel halibut PSC limit to zero. NMFS will make this administrative transfer only after all fishing by a CDQ group is completed for the year, after data from the fishing year is finalized, and if the CDQ group has sufficient remaining halibut PSQ.

This final rule also will permit a CDQ group to transfer halibut from its small catcher vessel halibut PSC limit back to the CDQ group's halibut PSQ. In reviewing a request to transfer halibut from the small catcher vessel halibut PSC limit back to the CDQ group's halibut PSQ, NMFS will consider the status of CDQ fisheries through the end of the year and anticipated halibut PSC rates for any remaining groundfish CDQ fishing by vessels managed under the small catcher vessel halibut PSC limit for the requesting CDQ group.

### *Observer Coverage*

This final rule adds paragraph (a)(1)(i)(D) to § 679.51 and revises § 679.51(a)(2)(i)(C)(2) to place catcher vessels less than or equal to 46 ft LOA that are using hook-and-line gear when groundfish CDQ fishing in the partial observer coverage category. Under current regulations, the owners or operators of vessels in the partial observer coverage category are placed in an observer selection pool based on the requirements of the Annual Deployment Plan (ADP). Since implementation of the ADP process in 2013, vessels less than 40 ft (12.2 m) LOA have been placed in the “no selection pool.” These vessels are not required to carry observers or register fishing trips with NMFS. Vessels 40 ft LOA or greater are in the “trip selection pool” and must log all of their fishing trips in the Observer Declare and Deploy System (ODDS). This is an online system for registering fishing trips and receiving information about whether a particular trip is selected for observer coverage. If selected for observer coverage, the catcher vessel is required to carry an observer. Operators of vessels selected for observer coverage are required to comply with all vessel responsibilities in § 679.51(e)(1). More information about logging trips in ODDS is on the NMFS Alaska Region Web site under “Frequently Asked Questions” about the Observer Program (<http://alaskafisheries.noaa.gov/sustainablefisheries/observers/>).

### *Other Regulatory Change*

This final rule removes the table in § 679.51(f) that summarizes the observer coverage requirements for different management programs and industry sectors, and the

introductory text about the table that is at the beginning of § 679.51. Prior to Observer Program Restructuring (77 FR 70062, November 21, 2012), this table was located at the beginning of subpart E as a table of contents or guide to observer coverage requirements. However, with the reorganization of observer coverage requirements in 2012 and the placement of this table at the end of § 679.51, it no longer serves its previous function as a table of contents for the section. Therefore, this table is removed.

### **Comments and Responses**

During the public comment periods for the NOA for Amendment 109 and the proposed rule to implement Amendment 109, NMFS received one letter of comment on the NOA and one letter of comment on the proposed rule. Both of these letters were from one member of the public. NMFS' responses to these comments are presented below.

*Comment 1:* Both letters of comment expressed concern about overfishing and opposition to the overall management of the BSAI groundfish fisheries, including allocations to the CDQ Program to support economic development in Western Alaska and any regulations to increase participation in the CDQ fisheries.

*Response:* This final rule does not change the overall harvest levels or allocations in the BSAI groundfish fisheries, or the total amount of groundfish, halibut, or PSC allocated to the CDQ Program. Therefore, the comments expressing concern about overfishing, or expressing opposition about the overall management of the BSAI groundfish fisheries are outside of the scope of the NOA and proposed rule. As for the comments in opposition to increased participation in the CDQ Program, NMFS supports

the Council's and CDQ groups' efforts to increase participation in the CDQ fisheries by owners and operators of small catcher vessels using hook-and-line gear. Participation in the CDQ Program by small, local fishing fleets is consistent with the goals and objectives of the CDQ Program in the Magnuson-Stevens Act and the BSAI FMP. Any increased participation by small, local hook-and-line catcher vessels in the groundfish CDQ fisheries will be conducted within the existing allocations to the CDQ Program and to the CDQ groups, and within other applicable conservation and management regulations.

### **Changes from the Proposed Rule**

The paragraph numbers for two additions to prohibitions at § 679.7(d) are renumbered from paragraphs (d)(8) and (d)(9) to paragraphs (d)(9) and (d)(10), respectively, because a new paragraph (d)(8) was recently added to § 679.7 under the cost recovery program final rule (81 FR 150, January 5, 2016).

The final rule includes three revisions to § 679.51(a)(1)(i) to insert additional punctuation and make minor wording changes (moving placement of the word "or") to the list of vessels that are in the partial observer coverage category. These minor changes are needed to reflect the addition of paragraph (a)(1)(i)(C) in § 679.51 through the final rule for Amendment 112 to the BSAI FMP and Amendment 102 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (81 FR 17403; March 29, 2016).

### **Classification**

The Administrator, Alaska Region, NMFS, determined that Amendment 109 and this final rule are necessary for the conservation and management of the BSAI groundfish



fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable law.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

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

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (81 FR 6489; February 8, 2016) and the preamble to this final rule serve as the small

entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following Web site: <http://alaskafisheries.noaa.gov>.

*Final Regulatory Flexibility Analysis (FRFA)*

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

Section 604 describes the required contents of a FRFA: 1) a statement of the need for, and objectives of, the rule; 2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of

professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

#### Need for and Objectives of the Rule

A description of the need for, and objectives of, the rule is contained in the preamble to the proposed rule and this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) (see **ADDRESSES**) and the summary of the IRFA in the proposed rule (81 FR 6489; February 8, 2016).

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

NMFS published a proposed rule to implement Amendment 109 and the regulatory amendments on February 8, 2016 (81 FR 6489). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on March 9, 2016. NMFS received one letter of comment on the proposed rule. This letter did not address the IRFA or the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

#### Number and Description of Small Entities Regulated by the Action

This final rule will directly regulate two classes of small entities: 1) the six CDQ groups, which are non-profit corporations that represent the 65 western Alaska communities that are eligible to participate in the CDQ Program; and 2) the owners and operators of small hook-and-line catcher vessels who are authorized by a CDQ group to harvest groundfish or halibut CDQ allocations.

The RFA recognizes and defines three kinds of small entities: 1) small businesses, 2) small non-profit organizations, and 3) small government jurisdictions. The CDQ groups are considered small entities due to their status as non-profit corporations. The Small Business Administration has established size standards for all major industry sectors in the United States. A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$20.5 million, for all its affiliated operations worldwide.

It is difficult to predict how many small hook-and-line catcher vessels may participate in the future under this final rule because no catcher vessels less than or equal to 46 ft LOA using hook-and-line gear currently are conducting directed fishing for groundfish CDQ. The best estimate of the upper bound of the number of future participants in the small catcher vessel Pacific cod CDQ fisheries is the maximum of 278 vessels less than or equal to 46 ft LOA that participated in the halibut CDQ fisheries from 2000 through 2013. NMFS assumes that all of the vessels that could be directly regulated

by this action would be small entities based on estimated revenues of less than \$20.5 million for all vessels and their known affiliations.

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

This final rule contains three new reporting and recordkeeping requirements that affect small entities. First, each CDQ group that authorizes catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear to fish for groundfish CDQ with an exemption from the LLP must register the vessel in an online CDQ vessel registration system developed and maintained by NMFS. All six CDQ groups will be subject to the vessel registration requirement if they have vessels participating.

Second, the operator of any registered catcher vessels greater than 32 ft LOA and less than or equal to 46 ft LOA using hook-and-line gear that is exempt from the LLP license requirements must maintain a legible copy of an LLP exemption letter on board the vessel at all times when groundfish CDQ fishing. The LLP exemption letter is generated through the CDQ vessel registration system when a CDQ group registers an eligible vessel. The CDQ group representative must provide this letter to the registered vessel operator. Depending on the level of participation, all six CDQ groups and all vessel operators could be subject to this requirement.

Third, small catcher vessels fishing for groundfish CDQ under this final rule will be placed in the partial observer coverage category. Vessels subject to observer coverage are determined annually through the Observer Program's ADP. Since inception of the

ADP process in 2013, vessels less than 40 ft LOA have been placed in the “no selection pool” and have had no additional reporting or recordkeeping requirements. Vessels 40 ft LOA or greater are in the “trip selection pool” and must log all of their fishing trips in ODDS. This is an online system for registering fishing trips and receiving information about whether a particular trip is selected for observer coverage.

Vessels between 40 ft LOA and 46 ft LOA already log their halibut CDQ and halibut IFQ fishing trips in ODDS. Therefore, if these vessels are combining groundfish CDQ fishing with halibut CDQ or halibut IFQ fishing, they will not incur any additional reporting requirements associated with placement in the partial observer coverage category because the halibut trips already are in partial observer coverage. However, if any of these vessels start fishing for groundfish CDQ separate from their halibut CDQ or halibut IFQ fishing trips, then those additional fishing trips must be logged in ODDS. The cost of logging trips in ODDS represents an additional cost associated with the new small catcher vessel groundfish CDQ fisheries.

#### Description of Significant Alternatives to the Final Action that Minimize Adverse Impacts on Small Entities

The RFA requires identification of any significant alternatives to the final rule that would accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. As noted in the IRFA, this final rule is expected to create a net benefit for the directly regulated small entities. The benefits of this action are

expected to outweigh the reporting, recordkeeping, and other compliance costs described in the previous section.

The Council considered a status quo alternative (Alternative 1), and two action alternatives (Alternatives 2 and 3) in addition to this final rule (which was Alternative 4, the Council's preferred alternative). Neither Alternative 2 nor 3 would have provided more benefits to the directly regulated small entities or reduced reporting, recordkeeping, or compliance costs more than the preferred alternative that is implemented by this final rule.

Under Alternative 2, the maximum retainable amount (MRA) of Pacific cod in the halibut CDQ fisheries would have been increased so the operators of the small hook-and-line vessels could retain more Pacific cod when halibut CDQ fishing and still be considered directed fishing for halibut rather than directed fishing for Pacific cod. Alternative 2 was considered because the more costly LLP license requirements, observer coverage requirements, and vessel monitoring system (VMS) requirements do not apply to vessels halibut CDQ fishing in the BSAI (except that the VMS requirements apply to vessels halibut fishing in the Aleutian Islands). Increasing the MRAs for Pacific cod when halibut CDQ fishing would allow the small vessels to retain more Pacific cod without triggering requirements that apply to vessels directed fishing for Pacific cod. The Council did not select Alternative 2 because this final rule accomplishes a similar outcome to Alternative 2 without creating a situation where vessels with the same catch composition are defined as fishing for halibut in the CDQ fisheries and fishing for Pacific

cod in the non-CDQ fisheries. Also, Alternative 2 would have increased monitoring and enforcement costs relative to this final rule.

Alternative 3 would have created a new type of LLP license specific to the small CDQ vessels in contrast to this final rule which provides an exemption to the LLP. However, Alternative 3 would not have resulted in a reduction in reporting, recordkeeping, and compliance costs in comparison to this final rule. Issuing a new CDQ LLP license would have required applications to NMFS and the issuance of a CDQ LLP license with certain conditions. Alternative 3 would have increased costs relative to this final rule.

#### *Collection-of-Information Requirements*

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB) under control numbers 0648-0269, 0648-0318, and 0648-0334. The information collections are presented by OMB control number.

OMB Control No. 0648-0269

Public reporting burden for CDQ Vessel Registration to add or remove vessels online that are exempt from the LLP license requirements is estimated to average five minutes per individual response and five minutes for maintenance of the LLP exemption letter on board a vessel that is groundfish CDQ fishing.



The Groundfish/Halibut CDQ and Prohibited Species Quota (PSQ) Transfer Request is mentioned in this final rule, but no changes occur in the individual response for each requirement.

OMB Control No. 0648-0318

The Observer Declare and Deploy System is mentioned in this final rule, but the individual response for each requirement is not changed.

OMB Control No. 0648-0334

The individual response for each requirement of the LLP mentioned in this final rule is not changed.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

*[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html)*.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 28, 2016.

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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;

Pub. L. 111-281

2. In § 679.4:

a. In paragraph (k)(2)(iv), remove the words “license; or” and add in their place “license;” and in paragraph (k)(2)(v), remove “Area.” and add in its place “Area; or”; and

b. Add paragraph (k)(2)(vi).

The addition reads as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(vi) The operator of a catcher vessel that is greater than 32 ft (9.8 m) LOA, that does not exceed 46 ft (14.0 m) LOA, and that is registered by a CDQ group following the procedures described in § 679.5(m) may use hook-and-line gear to conduct groundfish CDQ fishing without a groundfish license.

\* \* \* \* \*

3. In § 679.5, add paragraph (m) to read as follows:

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

\* \* \* \* \*

(m) *CDQ Vessel Registration—(1) Registration.* The representative for a CDQ group must register each vessel that is to receive the exemption from the LLP license

requirements at § 679.4(k)(2)(vi) through the CDQ vessel registration system available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>). The CDQ group representative must log into the CDQ vessel registration system and provide the information required on the computer screen. NMFS will add each vessel successfully registered to the CDQ vessel registration list on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(2) *Responsibility.* The CDQ group representative must successfully complete vessel registration through the CDQ vessel registration system before the vessel may be used to conduct groundfish CDQ fishing under § 679.32(c)(3)(iii) without an LLP license. By using the CDQ group's NMFS ID and password and submitting the vessel registration request, the CDQ group representative certifies that all information is true, correct, and complete.

(3) *LLP exemption letter.* The CDQ vessel registration system will provide the CDQ group representative with an LLP exemption letter documenting that the registered vessel is exempt from the LLP when groundfish CDQ fishing. The CDQ group representative must provide a copy of the LLP exemption letter to the operator of the registered vessel named in the LLP exemption letter. The operator of the registered vessel named in the LLP exemption letter must maintain a legible copy of the LLP exemption letter on board the registered vessel at all times when that vessel is groundfish CDQ fishing.

(4) *Removing a vessel from the CDQ vessel registration list.* A CDQ group representative may remove a vessel from the CDQ vessel registration system by logging into the online system and following the applicable instructions. A CDQ group representative may remove a registered vessel from the CDQ vessel registration list at any time but must certify at the time of removal that the vessel operator had been given notice by the CDQ group that the vessel is going to be removed from the list and that the vessel is not groundfish CDQ fishing at the time of removal. A vessel that is successfully removed from the CDQ vessel registration list is no longer exempt from the LLP requirements under § 679.4(k).

\* \* \* \* \*

4. In § 679.7, add paragraphs (d)(9) and (10) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(d) \* \* \*

(9) For an operator of a catcher vessel greater than 32 ft (9.8 m) LOA and less than or equal to 46 ft (14.0 m) LOA using hook-and-line gear and that is registered by a CDQ group under § 679.5(m), to conduct groundfish CDQ fishing without a legible copy of the LLP exemption letter issued to a CDQ group for that vessel on board the vessel.

(10) For a CDQ group representative, to remove a vessel from the CDQ vessel registration list under § 679.5(m)(4) without first providing notice to the operator of the

registered vessel that the vessel is being removed from the CDQ vessel registration list or when the vessel operator is groundfish CDQ fishing.

\* \* \* \* \*

5. In § 679.32, add a new first sentence to paragraphs (c)(3)(i)(D) and (c)(3)(ii)(D) and add paragraph (c)(3)(iii) to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(D) *Observed catcher vessels using nontrawl gear.* This paragraph applies to all observed catcher vessels using nontrawl gear, except those catcher vessels regulated under paragraph (c)(3)(iii) of this section. \* \* \*

(ii) \* \* \*

(D) *Observed catcher vessels using nontrawl gear.* This paragraph applies to all observed catcher vessels using nontrawl gear, except those catcher vessels regulated under paragraph (c)(3)(iii) of this section. \* \* \*

(iii) *Groundfish CDQ fishing by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear—(A) Applicability.* Regulations in this paragraph apply to the operators of catcher vessels less than or equal to 46 ft (14.0 m) LOA using hook-and-line

gear when groundfish CDQ fishing and to the CDQ groups authorizing the operators of these vessels to harvest groundfish CDQ or halibut CDQ.

(B) *Halibut CDQ or halibut IFQ*. If any halibut CDQ or halibut IFQ are retained during a fishing trip on board a vessel described in paragraph (c)(3)(iii)(A) of this section, the following requirements apply:

(1) The vessel operator must retain all legal-size halibut caught during that entire fishing trip.

(2) The vessel operator must have sufficient halibut IFQ or halibut CDQ available to account for the catch of all legal-size halibut caught during the entire fishing trip.

(3) If the vessel operator is relying on halibut CDQ from a CDQ group to support the retained catch of legal-size halibut during a fishing trip, the CDQ group must provide adequate halibut CDQ to this vessel operator to account for all of the legal-size halibut caught by the vessel during the entire fishing trip.

(C) *Halibut PSC*. If halibut CDQ or halibut IFQ are not retained during a fishing trip on board a vessel described in paragraph (c)(3)(iii)(A) of this section, the following requirements apply:

(1) The vessel operator must discard all halibut caught during the fishing trip.

(2) *Small catcher vessel halibut PSC limit*. The CDQ group representative may transfer halibut from a CDQ group's halibut PSQ to its small catcher vessel halibut PSC limit. To do so, the CDQ representative must submit a transfer request using the

procedures described in § 679.5(n). In reviewing a request to transfer halibut PSQ to a CDQ group's small catcher vessel halibut PSC limit, NMFS will consider whether the amount of halibut to be transferred to the small catcher vessel halibut PSC limit is sufficient to support groundfish CDQ fishing by the catcher vessels that the CDQ group plans to authorize to conduct groundfish CDQ fishing. The transfer is not effective until approved by NMFS. The CDQ group representative also may transfer halibut from a CDQ group's small catcher vessel halibut PSC limit back to its halibut PSQ by submitting a transfer request using the procedures described in § 679.5(n). In reviewing a request to transfer halibut from the small catcher vessel halibut PSC limit back to the CDQ group's halibut PSQ, NMFS will consider the status of CDQ fisheries through the end of the year and anticipated halibut PSC rates for any remaining groundfish CDQ fishing by vessels managed under the small catcher vessel halibut PSC limit for the requesting CDQ group.

(3) *Fishery closures.* Directed fishing for groundfish CDQ, except sablefish CDQ managed under paragraph (c)(1) of this section, by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear is prohibited unless the Regional Administrator publishes notification in the **Federal Register** authorizing such directed fishing. In deciding whether to authorize directed fishing, NMFS will consider whether a CDQ group has sufficient halibut in its small catcher vessel halibut PSC limit to support directed fishing for groundfish CDQ by these catcher vessels. Upon determining that a CDQ group's small catcher vessel halibut PSC limit has been or will be reached, the



Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for all groundfish CDQ species, except sablefish CDQ, by catcher vessels less than or equal to 46 ft LOA using hook-and-line gear fishing for that CDQ group. If the estimated halibut PSC by vessels described in paragraph (c)(3)(iii)(A) of this section exceeds the balance of the small catcher vessel halibut PSC limit on December 31 of any year, and if the CDQ group has remaining halibut PSQ on that date, NMFS will transfer an amount of halibut PSQ into the CDQ group's small catcher vessel halibut PSC limit to bring the balance of the small catcher vessel halibut PSC limit to zero. NMFS will make the determination about whether such an administrative transfer is necessary after data from the fishing year is finalized.

\* \* \* \* \*

6. In § 679.51:

a. Remove the introductory text;

b. In paragraphs (a)(1)(i)(A) and (B) remove “or” and in paragraph (a)(1)(i)(C) remove the period and add in its place “; or”;

c. Add paragraph (a)(1)(i)(D);

d. Revise paragraph (a)(2)(i)(C)(2); and

e. Remove paragraph (f).

The addition and revision read as follows:

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

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) A catcher vessel less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing under § 679.32(c)(3)(iii).

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) \* \* \*

(2) Using trawl gear or hook-and-line gear when groundfish CDQ fishing (see § 679.2), except for catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing under § 679.32(c)(3)(iii); or

\* \* \* \* \*

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