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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300 and 679

[Docket No. 170626590-8785-02]

RIN 0648-BG94

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Halibut and Sablefish

Individual Fishing Quota Program; Community Development Quota Program;

Modifications to Recordkeeping and Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that modifies regulations governing the Halibut and Sablefish Individual Fishing Quota (IFQ) Program. This rule includes three actions. The first action allows Western Alaska Community Development Quota (CDQ) groups to lease (to receive by transfer) halibut IFQ in IFQ regulatory areas 4B, 4C, and 4D in years of extremely low halibut commercial catch limits. This action is necessary to provide additional harvest opportunities to CDQ groups and community residents, and provide IFQ holders with the opportunity to receive value for their IFQ when the halibut commercial catch limits may not be large enough to provide for an economically viable fishery for IFQ holders. The second action removes an obsolete reference in the IFQ Program regulations. The third action clarifies IFQ vessel use cap regulations. This final rule is intended to promote the goals and objectives of the

Northern Pacific Halibut Act of 1982 (Halibut Act), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area, and other applicable laws.

DATES: This rule is effective on *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Electronic copies of the Regulatory Impact Review (Analysis) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region website 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 by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99082-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by email to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Halibut Act. The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of

State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary.

The Council developed the IFQ Program for the commercial halibut and sablefish fisheries. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of section 773 of the Halibut Act. The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of section 303(b) of the Magnuson-Stevens Act.

Background

On February 23, 2018, NMFS published a proposed rule (83 FR 8028) and invited public comment. The following summarizes the IFQ Program, the CDQ Program, the need for this final rule, and the anticipated effects of the final rule. Additional detail about the action is provided in the preamble of the proposed rule and in the Analysis.

The IFQ Program

The IFQ Program for the management of the fixed gear (hook-and-line and pot gear) halibut and sablefish fisheries off Alaska was implemented by NMFS in 1995 (58 FR 59375, November 9, 1993). A central objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these

fisheries are based. A detailed description of the IFQ Program can be found in the proposed rule for this action (83 FR 8028, February 23, 2018) and the Analysis.

Under the IFQ Program, access to the fixed gear sablefish and halibut fisheries is limited to those persons holding quota share (QS). QS is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of either the total allowable catch (TAC) in the sablefish fishery or the annual commercial catch limit in the halibut fishery. QS is designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category).

This final rule uses the term “Area” to refer to a specific IFQ regulatory area. The IFQ Program designates four vessel categories of halibut QS: Category A shares designated for catcher/processors, vessels that process their catch at sea, and do not have a vessel length restriction; Category B shares designated for catcher vessels greater than 60 feet length overall (LOA); Category C shares designated for catcher vessels greater than 35 feet but less than or equal to 60 feet LOA; and Category D shares designated for catcher vessels less than or equal to 35 feet LOA.

NMFS annually issues IFQ permits to each QS holder. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. The Council and the public frequently use the terms “IFQ lease” or “lease” to refer to the transfer of IFQ without a transfer of the underlying quota shares (QS). However, NMFS does not generally use the term “lease” in its IFQ Program regulations governing the transfer of IFQ. Therefore, for consistency with the terminology used in the existing regulations and for clarity, this rule uses the term “transfer of IFQ.”

NMFS issues halibut IFQ consistent with the IPHC's regulatory areas. NMFS' IFQ regulatory areas (Areas) are defined in 50 CFR part 679 and described in Figure 15 to part 679 and Section 1.3 of the Analysis. The first action in this rule pertains to Areas 4B, 4C, 4D, and 4E. Area 4B includes waters in the Central and Western Aleutian Islands. Areas 4C, 4D, and 4E include waters north of the Aleutian Islands, in the Bering Sea, and around the Pribilof Islands. The IPHC considers Areas 4C, 4D, and 4E a single stock unit for assessment and management purposes, and the combined Areas are referred to as Area 4CDE in this final rule.

The commercial catch limits for Areas 4B and 4CDE are allocated between two distinct management programs, the CDQ Program and the IFQ Program. Throughout the duration of the IFQ Program, the Area 4E commercial catch limit has been exclusively allocated to the CDQ Program; therefore, no Area 4E QS or IFQ is allocated.

Overall, the halibut IFQ commercial catch limits in Areas 4B and 4CDE have trended downward over the past 15 years (see Section 3.6.1 of the Analysis). The Area 4B commercial catch limit has dropped substantially from 2001 to 2015. In 2015, the Area 4B commercial catch limit for IFQ was less than a quarter of what it was in 2001. The combined commercial catch limit for IFQ in Areas 4C and 4D has seen more fluctuation during this period, but has still experienced an overall downward trend since 2007. In 2007, the combined commercial catch limit for IFQ in Areas 4C and 4D was about 2.2 million pounds; in 2015, it was about 0.7 million pounds.

The CDQ Program

The CDQ Program was implemented in 1992, and in 1996, the Magnuson-Stevens Act was amended to include provisions specific to the CDQ Program. The purposes of the CDQ Program are 1) to provide eligible western Alaska villages with the opportunity to participate and

invest in fisheries in the BSAI management area; 2) to support economic development in western Alaska; 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and 4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

The CDQ Program consists of six different non-profit managing organizations (CDQ groups) representing different geographical regions in Alaska. The CDQ Program receives annual allocations of TAC for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are in turn allocated among the CDQ groups. Among the species CDQ groups are allocated for commercial fishing, Pacific halibut is an important species for community resident employment and income. NMFS allocates halibut to CDQ groups for commercial fisheries in four Areas: 4B, 4C, 4D, and 4E (see Section 3.5.1 of the Analysis). See Section 3.5.2 of the Analysis for additional detail on the history of the halibut CDQ fishery.

The resident halibut CDQ fleets and criteria for participation in CDQ fisheries vary among the CDQ groups. The resident halibut CDQ fleets are impacted by internal economic decisions made by the CDQ groups and in the ways the CDQ groups choose to promote economic development in their communities. Many of the small boat fishermen in CDQ communities are dependent on the halibut fishery (Section 3.5.3 of the Analysis).

Need for Action

The downward trend of halibut commercial catch limits in Areas 4B and 4CDE over the past 15 years has been dramatic, with current limits significantly lower than those of the recent past years. The recent years of low halibut abundance and the resulting low commercial catch

limits in Areas 4B and 4CDE have made it increasingly difficult for most CDQ groups to create a viable commercial halibut fishing opportunity for their community residents.

Under current regulations, CDQ groups cannot receive by transfer any IFQ derived from catcher vessel QS. Current regulations also prohibit halibut QS holders from transferring their IFQ separately from the underlying QS except in very narrow, specific situations (see Section 3.7 of the Analysis for more information).

To address these problems, this final rule creates a voluntary option for IFQ holders in Areas 4B, 4C, or 4D to temporarily transfer their halibut IFQ to a CDQ group in years of extremely low halibut abundance. This flexibility allows CDQ groups to expand the fishing opportunities for the small boat fleets operating out of the CDQ group's communities and provides IFQ holders with the opportunity to receive value for their IFQ when extremely low halibut commercial catch limits may not be large enough to provide for an economically viable fishery for IFQ holders.

This Final Rule and the Anticipated Effects

This final rule includes three actions. The primary action, Action 1, creates a voluntary option for an IFQ holder to temporarily transfer his or her halibut IFQ to a CDQ group in years of extremely low halibut abundance. Actions 2 and 3 make minor regulatory adjustments to remove an obsolete reference in the IFQ Program regulations and to clarify IFQ vessel use cap regulations, respectively. The following paragraphs provide additional detail on the actions.

Action 1

This final rule 1) defines the halibut commercial catch limits under which CDQ groups may receive IFQ by transfer, 2) establishes limits on the types and amounts of IFQ that can be transferred, and 3) establishes reporting requirements for CDQ groups receiving IFQ by transfer.

This final rule does not convert transferred IFQ to CDQ. Allocations of halibut CDQ will not change under this final rule.

Under this final rule, CDQ groups may receive transfers of halibut catcher vessel IFQ (Categories B, C, and D IFQ) in Areas 4C and 4D when the halibut annual commercial catch limit is less than 1.5 million pounds in Area 4CDE. CDQ groups may receive transfers of halibut catcher vessel IFQ (Categories B, C, and D IFQ) in Area 4B when the annual halibut commercial catch limit is less than 1 million pounds in Area 4B. IFQ holders may transfer both blocked and unblocked IFQ to CDQ groups. This final rule does not revise current regulations that authorize an IFQ holder in Areas 4B, 4C and 4D to transfer his or her Category A halibut IFQ to any qualified person, including a CDQ group. However, as explained later, this rule provides additional harvesting flexibility for Category A halibut IFQ transferred to a CDQ group in years of extremely low halibut abundance.

The Council recommended and NMFS is implementing these thresholds based on an analysis of commercial catch limits between 2008 and 2017, a period of time representing a range of different halibut commercial catch limits and decreasing opportunities for CDQ community fishermen. The Council considered a range of different commercial catch limit thresholds for both Areas 4B and 4CDE before selecting these thresholds. The preamble to the proposed rule provides additional information on the factors considered by the Council and NMFS (83 FR 8028, March 26, 2018).

These thresholds are intended to balance the goal of providing additional halibut fishing opportunities for CDQ residents when the halibut CDQ allocation alone may not be large enough to sustain small vessel resident fisheries, with the need to avoid potential adverse distributional impacts on other halibut IFQ users that could result if IFQ transfers were permitted without

restrictions. These thresholds provide the flexibility to transfer halibut IFQ in Areas 4B, 4C, and 4D only during worst case scenarios for halibut commercial catch limits in these areas (Section 2.3 of the Analysis). For Area 4CDE, the Council determined and NMFS agrees that a halibut commercial catch limit below 1.5 million pounds reflects a worst case scenario for Area 4CDE as it represents an extremely low commercial catch limit for these areas. For Area 4B, the Council determined and NMFS agrees that a halibut commercial catch limit below 1 million pounds, which has not been experienced during the last 10 years, reflects a worst case scenario for Area 4B as it represents an extremely low commercial catch limit for this area.

This final rule establishes several limits on the catcher vessel IFQ that can be transferred while providing some flexibility with transferred catcher vessel and catcher/processor IFQ. The rationale for the limits can be found in Section 2.2 of the Analysis and in the preamble to the proposed rule (83 FR 8028, March 26, 2018). The limits are: 1) a CDQ group will be able to receive catcher vessel IFQ by transfer only for an area in which it also holds halibut CDQ; 2) no vessel greater than 51 feet length overall (LOA) may be used to harvest catcher vessel IFQ transferred to a CDQ group; 3) catcher vessel IFQ resulting from QS acquired after December 14, 2015, may not be transferred to a CDQ group until 3 years after the QS was acquired (*i.e.*, a cooling off period); 4) an IFQ holder will not be allowed to transfer catcher vessel halibut IFQ to a CDQ group for more than 2 consecutive years; and 5) in Area 4B, only those QS holders who hold fewer than 76,355 QS units specified for Area 4B will be allowed to transfer their catcher vessel IFQ to CDQ groups.

The first limit prevents a CDQ group from receiving catcher vessel halibut IFQ by transfer for an area in which that CDQ group does not hold halibut CDQ. The Council

recommended and NMFS is implementing this limit so that any catcher vessel IFQ transferred to a CDQ group is available for use in conjunction with halibut CDQ that is issued to a CDQ group.

Additionally, under this final rule at § 679.42(a)(1)(iii), a CDQ group that is eligible to receive a transfer of Area 4D catcher vessel IFQ will be able to harvest that IFQ, and any Category A IFQ it holds, in Area 4E (Section 3.5.2 of the Analysis). This flexibility is consistent with section 12(8) of the IPHC annual management measures (83 FR 10390, March 9, 2018), which allows Area 4D halibut CDQ to be harvested in Area 4E.

The second limit prohibits the use of vessels greater than 51 feet LOA to harvest catcher vessel IFQ that is transferred to a CDQ group. The Council recommended and NMFS is implementing this vessel size limit because this is the largest size vessel owned by CDQ community residents that has landed halibut CDQ during the past 10 years, 2008 through 2017 (Section 3.5.3 of the Analysis). Current regulations provide sufficient flexibility to allow IFQ that could be transferred to a CDQ group under this final rule to be fished on a vessel of any length up to 51 feet LOA (see Section 2.4 of the Analysis).

This final rule clarifies that any Area 4D Category A IFQ that is held by a CDQ group or transferred to a CDQ group may be fished in Area 4E by vessels less than or equal to 51 feet LOA when the commercial catch limit threshold in Area 4CDE is triggered. This final rule does not revise current regulations that authorize Category A IFQ for Areas 4B, 4C, or 4D to be fished in the corresponding area on a vessel of any length.

Under the third limit, IFQ resulting from QS acquired after December 14, 2015, may not be transferred to a CDQ group until 3 years after the QS was acquired (*i.e.*, the date NMFS approved the transfer). This provision effectively creates a “cooling off” period. The Council recommended and NMFS is implementing this cooling off period to reduce the incentive for

individuals to acquire QS with the intention of transferring the resulting IFQ to CDQ groups rather than fishing the IFQ.

The fourth limit prohibits an IFQ holder from transferring catcher vessel halibut IFQ for a specific IFQ regulatory area to a CDQ group for more than two consecutive years. This two-year limit applies to calendar years and only to years in which the commercial catch limit is below the threshold. Additionally, this limit applies to the transfer of any halibut IFQ for a specific area. If an IFQ holder chooses to transfer some but not all of his or her IFQ for a particular area during a year when the annual commercial catch limit for that area is set below the threshold, that transfer will count towards the two-year limit. Transfers of IFQ for one area will not affect the ability to transfer IFQ for another area. This final rule limits the potential for an IFQ holder to continuously transfer IFQ to CDQ groups rather than fishing that IFQ or transferring the underlying QS to other new entrants in the fishery.

Under the fifth limit, only catcher vessel QS holders that hold fewer than 76,355 QS units specified for Area 4B may transfer their catcher vessel IFQ to CDQ groups. NMFS will consider all categories of Area 4B QS holdings regardless of blocked or unblocked status. This limit ensures that persons holding larger amounts of QS units continue to be active fishermen in the Area 4B halibut fishery while providing an opportunity for persons holding smaller amounts of QS units to transfer catcher vessel IFQ to CDQ groups if the 1 million pound commercial catch limit threshold to allow IFQ transfers is met. As described in the proposed rule (83 FR 8028, March 26, 2018), this limitation applies only for Area 4B to accommodate the specific nature of IFQ operations in the remote Aleutian Island communities in Area 4B.

This final rule establishes a reporting requirement for CDQ groups that receive IFQ by transfer. The report is required only for those years in which CDQ groups received IFQ by

transfer. CDQ groups that receive IFQ by transfer will be required to report the annual amount and vessel category of Area 4 halibut IFQ transferred to the CDQ group, the criteria used to select IFQ holders to transfer Area 4 halibut IFQ to the CDQ group, and the criteria used to determine the person(s) eligible to fish Area 4 halibut IFQ received by transfer. This report will allow the Council, NMFS, and the public to monitor the use of IFQ transferred to CDQ groups and provide the Council with information to determine whether the use of transferred IFQ is consistent with its intent for the action. This final rule requires the report to be submitted to NMFS and the Council no later than January 31 of the year after the IFQ was transferred to the CDQ group. This deadline is consistent with other reports required under the IFQ Program and ensures that NMFS and the Council have received the report prior to the issuance of IFQ, which typically occurs in mid-February. If a CDQ group is required to submit a report and does not do so by the deadline, the CDQ group will be ineligible to receive transfers of catcher vessel IFQ until the report is submitted.

Under this final rule, a CDQ group that wants to receive halibut IFQ by transfer will make an arrangement with an IFQ holder to transfer his or her IFQ. The CDQ group must complete an Application for Temporary Transfer of Halibut and Sablefish IFQ and submit the application to NMFS for approval. Once approved, NMFS will issue the CDQ group an IFQ permit with the pounds of halibut IFQ that will be available to be fished. After determining who will fish the halibut IFQ, the CDQ group with the IFQ permit must apply to NMFS for a hired master permit for the vessel operator designated to fish the halibut IFQ. Current regulations authorize a vessel operator to harvest halibut IFQ and CDQ on the same fishing trip. A vessel operator harvesting both halibut CDQ and IFQ transferred to a CDQ group is required to carry 1) a halibut CDQ permit, 2) a CDQ hired master permit, 3) a copy of the IFQ permit of the CDQ

group, and 4) an IFQ hired master permit. Additionally, any vessels fishing halibut IFQ transferred to a CDQ group will be subject to the current IFQ vessel use caps under § 679.42(h)(1). If a vessel harvests both halibut IFQ and CDQ, only the halibut IFQ accrues towards, and is subject to, the vessel use cap.

Halibut that is landed by a vessel operator harvesting CDQ and IFQ will be debited off two separate catch limits. Therefore, for purposes of catch accounting, participants are required to track what amount of halibut harvest is associated with the group's CDQ and what amount is associated with the IFQ permit held by the CDQ group. This distinction must be recorded on the fish ticket (Section 3.8.11.3 of the Analysis). NMFS updated the database that monitors transfers of IFQ between permit holders and that is used to issue hired master permits to allow for this new type of transfer (see Section 3.8.11.4 of the Analysis).

Under this final rule, CDQ groups are responsible for cost recovery fees based on the amount of IFQ pounds held on the IFQ permit. Section 304(d)(2)(A) of the Magnuson-Stevens Act obligates NMFS to recover the actual costs of management, data collection, and enforcement (direct program cost) of the IFQ fisheries. Therefore, NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). While costs specific to the CDQ Program for halibut are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), this final rule requires regulatory changes to the IFQ transfer and hired master use provisions and therefore constitutes a change in management of the IFQ Program. CDQ group participants receiving IFQ transfers will be required to pay an IFQ cost recovery fee as a portion of the ex-vessel value of their landed halibut.

Section 8(2) of the IPHC annual management measures (83 FR 10390, March 9, 2018) authorizes a vessel operator harvesting halibut CDQ in Areas 4D or 4E to retain halibut that are

less than the size limit established by the IPHC for personal use. Under the status quo, a vessel operator harvesting halibut IFQ held by a CDQ group along with halibut CDQ may retain halibut less than legal size for personal use. Vessel operators harvesting both halibut CDQ and halibut IFQ transferred to a CDQ group in Areas 4D or 4E may retain halibut smaller in length than the size limit established by the IPHC for personal use as specified in section 8 of the IPHC annual management measures. The personal use allotment applies to all halibut IFQ transferred to a CDQ group under this exemption. Section 8(3) of the IPHC annual management measures requires a CDQ group to report on all retained halibut for personal use that are smaller than legal size and harvested on behalf of a CDQ group.

This final rule modifies the definition of “annual commercial catch limit” at 50 CFR 300.61 to include definitions for Areas 3B and 4A, and for Areas 4B, 4C, 4D, and 4E.

This final rule modifies § 679.41 to allow transfer of halibut IFQ in Areas 4B, 4C, and 4D in years of low halibut commercial catch limits in Areas 4B and 4CDE to CDQ groups along with the specific conditions under which this transfer activity may occur.

This final rule adds a reporting requirement under § 679.5(l)(10) to require a CDQ group to submit a report to NMFS and the Council on the criteria it used to select IFQ holders from whom IFQ transfers were received, the criteria it used to determine the persons who could harvest transferred IFQ, and the amount and type of IFQ transferred.

This final rule adds a provision under § 679.42 to allow Area 4D IFQ that is transferred to a CDQ group to be harvested in Area 4E.

Anticipated Effects of Action 1

The preamble to the proposed rule describes the anticipated effects of Action 1 on CDQ groups, CDQ residents, IFQ holders, and halibut QS holders (83 FR 8028, March 26, 2018).

Overall, this final rule provides IFQ holders and CDQ groups with an opportunity to alleviate the adverse economic, social, and cultural impacts of extremely low levels of commercial halibut catch limits on Western Alaskan communities. This final rule could also provide distributional benefits to some processing plants, secondary service providers, and communities as a whole. This final rule could benefit halibut QS holders in Areas 4B, 4C, and 4D by permitting them to transfer their Area 4B, 4C, and 4D halibut IFQ in years of extremely low commercial catch limits. This final rule could also result in some consolidation of the number of IFQ trips, and could affect the decisions of QS holders to transfer their QS if they have the ability to transfer their IFQ to CDQ groups. The preamble of the proposed rule (83 FR 8028, March 26, 2018) and Section 3.8 of the Analysis have additional details on the anticipated effects of Action 1.

Action 2

This final rule removes an obsolete reference in § 679.42(a)(2)(i). Currently, this regulation provides an exception to a prohibition at § 679.42(a)(2). However, the exception refers to § 679.42(k), which was modified in 2008 by the final rule to revise regulations governing the use of commercial halibut QS and the processing of non-IFQ species when processed halibut is on board a vessel (73 FR 8822; February 15, 2008). That final rule removed paragraph (k) and re-designated § 679.42(l) as paragraph (k). NMFS inadvertently neglected to remove the cross-reference to paragraph (k) in § 679.42(a)(2)(i). Therefore, with this final rule, NMFS removes the cross-reference to paragraph (k) to clarify that persons possessing unused Category B, C, or D halibut QS may be on board 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. The effects of this action are expected to be minor and beneficial by improving the clarity of the regulations.

Action 3

This final rule clarifies existing regulations pertaining to the IFQ vessel limitations, also referred to as the vessel use caps. NMFS adds language to § 679.42(h)(1) and (h)(2) to clarify that the vessel use caps apply to halibut and sablefish IFQ and not to halibut and sablefish CDQ. This action improves the clarity of the regulations and helps IFQ and CDQ participants understand the regulations to which they are subject. The effects of this action are expected to be minor and beneficial by improving the clarity of the regulations.

Comments and Responses

NMFS received 4 comment letters on the proposed rule. One of the comment letters was outside the scope of this action. NMFS has summarized and responded to the six unique comments in the remaining three comment letters.

Comment 1: There should not be a transfer of halibut IFQ during years of low abundance unless they give back to others during years of high abundance. They harvest so much that they caused the low abundance.

Response: NMFS disagrees. Based on the best available scientific information from the IPHC, halibut is not considered to be subject to overfishing as that term is defined by the IPHC (Section 3.6.1 of Analysis). As described in Section 3.6.1 of the Analysis, annual catch limits are set in a precautionary manner to achieve optimum yield on a continuing basis. As described in the proposed rule and Section 3.6.1 of the Analysis, this final rule does not increase the overall amount of halibut in Areas 4B or 4CDE that is authorized to be harvested on an annual basis. The final rule establishes a voluntary program that provides participants with an opportunity to utilize available catch to mutual benefit during times of low abundance and does not require QS

holders to transfer IFQ to CDQ groups during times of low abundance or require CDQ groups to transfer IFQ back to QS holders during times of high abundance.

Comment 2: This rule allows leasing quota when the fish populations are low and it would increase the chance of overfishing the halibut stock.

Response: Annual halibut commercial catch limits are adjusted downward with decreasing abundance to protect the stock and prevent overfishing. This final rule does not change the process of allocating halibut among Areas or the process of establishing halibut commercial catch limits, nor will this final rule change specific management measures that govern the harvest of halibut in Areas 4B and 4CDE, such as fishing location, timing, effort, or authorized gear types. Section 3.6.1 of the Analysis describes the current status of the halibut stock which is not overfished or subject to overfishing. This final rule creates an exception to allow CDQ groups to receive IFQ by transfer, within the established annual catch limits, in years of low abundance. Therefore, this final rule will not increase the chance of overfishing of the halibut stock.

Comment 3: It is worth pausing to remember how bad the old days were, prior to implementation of the IFQ program. In order to catch as much of the TAC as possible, the industry did not pay attention to the environmental impact of its operations, worker safety, and excessive bycatch. NOAA is right to continue to refine this outstanding program. The proposed rule to allow transfers of IFQ to CDQ groups is well-written and prevents abuse of the program by “mailbox-fishermen” and favors the coastal communities.

Response: NMFS acknowledges this comment.

Comment 4: If the halibut stock is low enough to trigger this flexibility, expanding flexibility will further aggravate the problem of an overfished stock. When the stock is low, then

everyone should suffer, both CDQ fishermen and IFQ fishermen, in order for the stock to regenerate.

Response: NMFS disagrees. Annual halibut commercial catch limits are set with precaution and adjusted downward in times of low abundance to avoid overfishing. The flexibility provided by this final rule will not create an overfished condition or contribute to overfishing. This final rule does not modify the methods for apportioning halibut catch limits between the CDQ and IFQ Programs. As halibut catch limits increase or decrease based on halibut abundance, participants in the CDQ and IFQ Programs are not affected any differently under this final rule than under current regulations. If the catch limit threshold is low enough to trigger the ability for QS holders to transfer their IFQ to CDQ groups, then QS holders and CDQ groups benefit from a voluntary market transaction. Disapproving this rule would not increase halibut abundance. Section 3.8 of the Analysis provides additional detail on the anticipated effects of this final rule.

Comment 5: NMFS should consider setting lease terms for this exception because if the cost of the lease is too high, the benefits of the proposed rule would be blunted.

Response: The Council and NMFS did not want to be involved in setting lease terms, similar to other transfer exceptions in the IFQ Program. The IFQ Program relies on market-based values and NMFS anticipates that IFQ and CDQ participants would come to a private agreement in this voluntary exception. In Section 3.8.7 of the Analysis, NMFS describes the impact that the transfer of IFQ (i.e., leasing) could have on QS markets. As described in the preamble of this final rule, there are several limitations on the transfer of IFQ. These limitations are intended, in part, to maintain current fishing business practices and to limit potential adverse impacts on a range of participants in the CDQ and IFQ Programs. This final rule does not establish additional

requirements on the specific agreements between QS holders and CDQ groups when transferring IFQ because the limitations established by this final rule sufficiently constrain the amount of IFQ, the vessel category of IFQ, and the specific halibut catch limits conditions in Areas 4B and 4CDE IFQ that may be transferred.

Comment 6: NMFS should terminate the policy to allow unused quota to carry over to the next season and instead allow unused quota to carry over to the next season only for the purposes of leasing it to CDQ groups.

Response: This final rule does not modify existing regulations that allow a QS holder's annual IFQ allocation to be adjusted to cover under- or over-harvest from the previous year (see regulations at § 679.40(d) and (e)). The Council focused on alternatives that would allow transfer of IFQ to CDQ groups within the year of low halibut commercial catch limits, rather than adjusting over/under harvest rules that would apply to the following year when the halibut commercial catch limits may not be under the thresholds, as a more direct method of addressing the issue.

OMB Revisions to PRA References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires that agencies inventory and display a current control number assigned by the Director of the Office of Management and Budget (OMB), for each agency's information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule adds a new collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the section resulting from this final rule.

Changes from the Proposed Rule

NMFS makes two minor changes to the proposed regulatory text in this final rule. First, § 679.5(l)(10) is changed to include the words “and the Council.” New regulations at § 679.5(w) require a CDQ group to submit a report to both NMFS and the Council. Adding this language to § 679.5(l)(10) creates consistency between these sections. Second, NMFS changes “halibut IFQ” to “IFQ halibut” in § 679.42(h)(1) and “sablefish IFQ” to “IFQ sablefish” in § 679.42(h)(2). The proposed changes were intended to refer to the type of fish (IFQ halibut and IFQ sablefish defined at § 679.2) that will count towards the vessel limits prescribed by these paragraphs rather than the type of fishing rights (halibut IFQ and sablefish IFQ).

Classification

The NMFS Alaska Region Administrator determined that this final rule is necessary for the conservation and management of the IFQ halibut fishery off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the 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 are in addition to, and not in conflict with, IPHC regulations. This 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 the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the rule more generally. As a result, a regulatory flexibility analysis was not required, and none was prepared, pursuant to 5 U.S.C. 605.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the PRA, which have been approved by OMB under OMB control number 0648-0764. After this final rule's effective date, OMB Control Number 0648-0764 will be merged with OMB Control Numbers 0648-0272 and 0648-0711.

Public reporting burden is estimated to average per response: 2 hours for Application for Temporary Transfer of Halibut and Sablefish IFQ, 40 hours for the annual report, and 1 minute for electronic submission of cost recovery fees or 30 minutes for non-electronic fee submission. 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 this data collection, 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, nor shall any person be subject to penalty for failure to comply with, a collection of information

subject to the requirement 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.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Date: October 12, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 300 and 679 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”, add an entry in alphanumeric order for “679.5(w)” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR:	
* * * * *	
679.5(w)	-0272
* * * * *	

* * * * *

Title 50—Wildlife and Fisheries

PART 300—INTERNATIONAL FISHERIES REGULATIONS

3. The authority for 50 CFR part 300, subpart E, continues to read as follows:

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

4. In § 300.61, revise the definition of “Annual commercial catch limit” to read as follows:

§ 300.61 Definitions.

* * * * *

Annual commercial catch limit, for purposes of commercial fishing in:

(1) Commission regulatory areas 2C and 3A, means the annual commercial allocation minus an area-specific estimate of commercial halibut wastage.

(2) Commission regulatory areas 3B and 4A, means the annual total allowable halibut removals by persons fishing IFQ.

(3) Commission regulatory areas 4B, 4C, 4D, and 4E, means the annual total allowable halibut removals by persons fishing IFQ and CDQ.

* * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

5. The authority citation for 50 CFR 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.

6. In § 679.5, add paragraphs (l)(10) and (w) to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(10) A report on annual IFQ regulatory areas 4B, 4C, and 4D Halibut IFQ transfer activities must be submitted to NMFS and the Council by a CDQ group as required at § 679.5(w).

* * * * *

(w) *Report on Area 4 halibut IFQ transfers to CDQ groups—(1) Applicability.* A CDQ group that receives IFQ regulatory area 4 halibut IFQ by transfer must submit a timely and complete report on the CDQ group's annual halibut IFQ transfer activities for each calendar year that it receives IFQ regulatory area 4 halibut IFQ by transfer. A CDQ group is not required to

submit a report for any calendar year in which it did not receive any IFQ regulatory area 4 halibut IFQ by transfer.

(2) *Time limits and submittal.* A CDQ group must submit a complete report by January 31 of the year following a fishing year during which the CDQ group receives IFQ regulatory area 4B, 4C, or 4D halibut IFQ by transfer. The complete report must be submitted to the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501-2252, and to NMFS-Alaska Regional Administrator, P.O. Box 21668, Juneau, AK, 99802-1668.

(3) *Complete report.* A complete report contains all report requirements described in paragraphs (w)(4)(i) through (w)(4)(iii) of this section.

(4) *Report requirements.* A CDQ group must report the following information:

(i) The annual amount, IFQ regulatory area, and vessel category of IFQ regulatory area 4B, 4C, and 4D halibut IFQ transferred to the CDQ group;

(ii) The criteria used to select IFQ holders to transfer IFQ regulatory area 4B, 4C, and 4D halibut IFQ to the CDQ group; and

(iii) The criteria used to determine the person(s) eligible to harvest IFQ regulatory area 4B, 4C, and 4D halibut IFQ received by transfer.

7. In § 679.41,

a. Add paragraph (c)(13);

b. Revise paragraphs (d)(1), (g)(1), and (h)(2); and

c. Add paragraph (o).

The additions and revisions read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(13) If the person applying to receive halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory areas 4B, 4C, or 4D is a CDQ group, the following determinations are required:

(i) The CDQ group applying to receive halibut IFQ for an IFQ regulatory area receives an annual allocation of halibut CDQ for that IFQ regulatory area pursuant to § 679.31(b)(1);

(ii) The QS holder applying to transfer halibut IFQ to a CDQ group has not transferred any halibut IFQ assigned to vessel categories B, C, or D for that IFQ regulatory area to a CDQ group during the last two consecutive fishing years;

(iii) If the IFQ to be transferred to a CDQ group results from QS that was transferred to the QS holder after December 14, 2015, the QS holder applying to transfer halibut IFQ to a CDQ group has held the underlying QS for that IFQ for a minimum of 3 years from the date NMFS approved the transfer;

(iv) If the IFQ to be transferred to a CDQ group is assigned to vessel categories B, C, or D in IFQ regulatory area 4B, the QS holder applying to transfer that halibut IFQ to a CDQ group holds fewer than 76,355 halibut QS units in IFQ regulatory area 4B; and

(v) The CDQ group applying to receive halibut IFQ has submitted a complete report if required to do so by § 679.5(w).

(d) * * *

(1) *Application for Eligibility.* All persons, except as provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section, applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) containing accurate information to the Regional Administrator. The Regional Administrator will not approve a transfer of IFQ or QS to

a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility form to any person on request.

(i) An Application for Eligibility is not required for a CQE if a complete application to become a CQE, as described in paragraph (l)(3) of this section, has been approved by the Regional Administrator on behalf of an eligible community.

(ii) An Application for Eligibility is not required for a CDQ group.

* * * * *

(g) * * *

(1) Except as provided in paragraph (f), paragraph (g)(2), paragraph (l), paragraph (n) or paragraph (o) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

* * * * *

(h) * * *

(2) IFQ resulting from categories B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (d), paragraph (f), paragraph (k), paragraph (l), paragraph (m), or paragraph (o) of this section.

* * * * *

(o) *Transfer of IFQ to CDQ groups.* (1) A QS holder who holds fewer than 76,355 units of halibut QS in IFQ regulatory area 4B may transfer halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory area 4B to a CDQ group that receives an allocation of IFQ

regulatory area 4B halibut CDQ if the annual commercial halibut catch limit, as defined in § 300.61 of this title, for Area 4B is less than 1 million pounds in that calendar year.

(2) A QS holder in IFQ regulatory areas 4C or 4D may transfer halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory areas 4C or 4D to a CDQ group that receives an allocation of halibut CDQ in that IFQ regulatory area if the annual commercial halibut catch limit, as defined in § 300.61 of this title, for Area 4CDE is less than 1.5 million pounds in that calendar year.

(3) A QS holder must meet the requirements in paragraph (c)(13) of this section to transfer halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory areas 4B, 4C, or 4D to a CDQ group.

(4) A CDQ group that receives halibut IFQ by transfer may not transfer that halibut IFQ to any other person.

8. In § 679.42,

- a. Revise paragraph (a)(1);
- b. Remove paragraph (a)(2)(i);
- c. Redesignate paragraphs (a)(2)(ii) through (iv) as paragraphs (a)(2)(i) through (iii);
- d. Add new paragraph (a)(2)(iv); and
- e. Revise paragraphs (h)(1) introductory text and (h)(2) introductory text.

The revisions and additions read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) * * *

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except for the following:

(i) All or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(ii) All or part of the halibut CDQ specified for regulatory area 4D may be harvested in either Area 4D or Area 4E.

(iii) If a CDQ group is authorized to receive a transfer of halibut IFQ assigned to vessel categories B, C, or D in IFQ regulatory area 4D as specified in § 679.41(o) of this part, all or part of the halibut IFQ specified for regulatory area 4D that is held by or transferred to a CDQ group may be harvested in either Area 4D or Area 4E.

(2) * * *

* * * * *

(iv) Halibut IFQ assigned to vessel category B, C, or D held by a CDQ group may not be used on a vessel over 51 feet LOA, irrespective of the vessel category assigned to the IFQ.

* * * * *

(h) * * *

(1) *Halibut*. No vessel may be used, during any fishing year, to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that:

* * * * *

(2) *Sablefish*. No vessel may be used, during any fishing year, to harvest more IFQ sablefish than one percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas, except that:

* * * * *