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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 679

[Docket No.: 191219-0121]

RIN 0648-BI65

Fisheries of the Exclusive Economic Zone off Alaska; Authorize the Retention of Halibut in Pot Gear in the BSAI; Amendment 118

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements Amendment 118 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and a regulatory amendment that revises regulations on Vessel Monitoring System (VMS) requirements in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA). This final rule is necessary to improve efficiency and provide economic benefits for the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) fleets, minimize whale depredation and seabird interactions in the IFQ and CDQ fisheries, and reduce the risk of exceeding an overfishing limit for any species. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Northern Pacific Halibut Act of 1982 (Halibut Act), the BSAI FMP, and other applicable laws.

DATES: This rule is effective on *[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE*

FEDERAL REGISTER].

ADDRESSES: Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the “Analysis”) and the Finding of No Significant Impact prepared for this final rule may be obtained from <https://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

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

SUPPLEMENTARY INFORMATION: NMFS published the Notice of Availability for Amendment 118 in the **Federal Register** on August 21, 2019 (84 FR 43570), with public comments invited through October 21, 2019. NMFS published the proposed rule to implement Amendment 118 in the **Federal Register** on October 3, 2019 (84 FR 52852), and a correction to the proposed rule on October 28, 2019 (84 FR 57687), with public comments invited through November 4, 2019.

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 this rule is provided in the preamble of the proposed rule and in the Analysis.

Background

The North Pacific Fishery Management Council (Council) recommended Amendment 118 to the BSAI FMP (Amendment 118) to require the retention of halibut by vessels using pot gear in the IFQ and CDQ fisheries in the BSAI, to prohibit the use of pot gear in the Pribilof Island Habitat Conservation Zone (PIHCZ), to require vessels using pot gear to fish IFQ and CDQ to use logbooks and VMS, and to develop regulations that allow NMFS to limit or close IFQ or CDQ fishing for halibut if a groundfish or shellfish overfishing level (OFL) is approached, consistent with existing regulations for groundfish. In recommending Amendment

118, the Council intended to address whale depredation in the IFQ and CDQ fisheries and to improve harvest efficiency of halibut. The following sections summarize the IFQ and CDQ Program, the retention of halibut, limitations on the use of pot gear, and whale depredation in the BSAI. Additional detail is provided in the preamble to the proposed rule (84 FR 52852, October 3, 2019).

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 develops 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. The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS promulgates the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The final rule implementing the 2019 annual management measures published March 14, 2019 (84 FR 9243).

The IFQ and CDQ Programs

The commercial halibut and sablefish fisheries in the GOA and the BSAI management areas are managed under the IFQ Program that was implemented in 1995 (58 FR 59375, November 9, 1993). Section 4.5 of the Analysis (see **ADDRESSES**) and the preamble to the proposed rule (84 FR 52852, October 3, 2019) provide additional information on the sablefish and halibut IFQ Program.

The Western Alaska Community Development Program (CDQ Program) was implemented in 1992 (57 FR 54936, November 23, 1992). Section 4.5.2 of the Analysis provides additional detail on the history of the CDQ halibut fishery.

The IFQ and CDQ fisheries are prosecuted in accordance with catch limits established by regulatory areas. The sablefish IFQ regulatory areas defined for sablefish in the BSAI are the Bering Sea (BS) and the Aleutian Islands (AI). The sablefish regulatory areas are shown in Figure 14 to 50 CFR part 679.

This rule implements provisions that affect IFQ halibut and CDQ halibut fisheries in the BSAI. The IPHC defines halibut regulatory areas (Areas). The Areas are defined in 50 CFR part 679 and described in Figure 15 to 50 CFR part 679 and Section 1.3 of the Analysis. Action 1 under this final rule is described below and applies within Areas 4B, 4C, 4D, 4E, and that portion of Area 4A that occurs in the Bering Sea and Aleutian Islands Management Area defined in the BSAI FMP.

Retention of Halibut by IFQ Sablefish Fishermen Using Authorized Gear

In the BSAI, IFQ sablefish fishermen who also hold halibut IFQ are required to retain halibut of legal-size. Many IFQ fishermen hold both sablefish and halibut IFQ, and the species can overlap in some fishing areas (see Section 4.5.2 of the Analysis).

In 2018, the IPHC recommended, and the U.S. approved, regulations to authorize the retention of halibut by vessels using pot gear throughout Alaska (83 FR 10390, March 9, 2018). Section 20(1) of the IPHC's 2019 annual management measures authorizes a person to retain and possess IFQ halibut or CDQ halibut taken with hook-and-line or pot gear in the IFQ or CDQ fisheries provided retention and possession is authorized by NMFS regulations published at 50 CFR part 679. If the Secretary approves a final rule to implement Amendment 118, these new regulatory requirements would ensure consistency with the regulations promulgated under the Halibut Act (16 U.S.C. 773c(c)).

Limitations on the Use of Pot Gear to Reduce Bycatch Concerns

Pribilof Islands Blue King Crab (PIBKC) occurs in the BSAI and is overfished and experienced overfishing most recently in 2016. Bycatch of PIBKC in pot gear is a concern in the BSAI, particularly in areas where PIBKC are concentrated. The greatest concentration of PIBKC is within the PIHCZ, a portion of the BSAI that overlaps with IFQ and CDQ halibut and sablefish fisheries. Section 3.6 of the Analysis provides more information about PIBKC and the PIHCZ.

In addition to the current closure of the PIHCZ to all trawl gear and Pacific cod pot gear, regulations in § 679.25 provide NMFS with inseason management authority to issue precise closures to BSAI groundfish and shellfish fisheries if a stock, in this case PIBKC, is approaching the OFL and if the closure is necessary to prevent overfishing.

Whale Depredation in the BSAI

Participants in the BSAI IFQ fisheries indicated to the Council and NMFS that authorizing the use of pot gear for IFQ halibut fishing could reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line to pot gear. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 118 and this final rule.

This Final Rule

This section describes the changes to current regulations. This final rule includes two actions that revise 50 CFR part 300, 50 CFR part 600, and 50 CFR part 679. The primary action, Action 1, implements management measures that authorize retention of legal-size halibut in pot gear in the BSAI. The scope of this action does not authorize the retention of IFQ or CDQ halibut in other directed pot fisheries, including crab fisheries and Pacific cod fisheries. Action 2

modifies regulations to provide clarity and to remove from regulation two VMS requirements that are no longer necessary.

Action 1: Authorize the Use of Pot Gear to Retain Halibut and Other Related Regulatory Provisions

Action 1 includes the following five elements: 1) authorizes retention of legal-size halibut in pot-and-line or longline pot gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI and requires retention of legal-sized halibut provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ for that retained halibut; 2) closes the PIHCZ to all groundfish and halibut fishing with pot gear; 3) removes the requirement for a 9-inch maximum width tunnel opening when an IFQ or CDQ permit holder fishes for halibut or sablefish IFQ in the BSAI with pot gear and is required to retain halibut; 4) clarifies the inseason management measures, as well as the required determinations, that NMFS will use to limit or close IFQ or CDQ fishing for halibut if an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for groundfish; and 5) requires logbooks and VMS for all vessels using pot gear to retain halibut and sablefish and adds requirements for reporting on the Prior Notice Of Landing (PNOL).

Action 1 does not authorize the retention of IFQ halibut or CDQ halibut in other directed pot fisheries, other than IFQ or CDQ sablefish or IFQ or CDQ halibut. An IFQ permit holder or a vessel fishing on behalf of a CDQ group is not permitted, nor required, to retain halibut on a pot fishing trip while directed fishing in other pot fisheries (e.g., Pacific cod or crab), even if they hold available IFQ or CDQ.

The first element of Action 1 authorizes the harvest of IFQ halibut or CDQ halibut with pot gear and provides halibut quota holders the opportunity to use pot gear on a trip solely

intended to harvest halibut, or on a mixed trip in which both halibut and sablefish are the intended target, provided the vessel has quota for the appropriate areas for both species. Section 679.7(f)(11) prohibits IFQ permit holders from discarding halibut or sablefish caught with fixed gear for which they hold unused halibut or sablefish IFQ for that vessel and IFQ regulatory area. Consistent with that regulatory requirement and with § 679.42(m)(2) and (3), Action 1 prohibits IFQ and CDQ permit holders fishing in the BSAI with pot gear from discarding legal-size halibut for which they have the necessary quota. IFQ and CDQ participants that hold both sablefish and halibut quota will have more flexibility to use their quota opportunistically and minimize variable costs.

This final rule revises the definition of “Fishing” at § 300.61 to include the deployment of pot gear in the BSAI halibut IFQ or CDQ fishery.

This final rule revises § 679.2 to include pot gear as authorized fishing gear in the BSAI IFQ and CDQ fisheries. Specifically, this final rule revises the definition of “Fixed gear” under the definition of “Authorized fishing gear” at § 679.2(4)(v) to include pot gear as an authorized gear in the BSAI IFQ halibut or CDQ halibut fishery. The regulations currently define fixed gear for sablefish harvested in the BSAI to include hook-and-line gear and pot gear (§ 679.2(4)(ii)). Fixed gear is a general term that describes multiple gear types allowed to fish sablefish and halibut under the IFQ and CDQ Programs and is referred to throughout 50 CFR part 679. This final rule revises § 679.24 (and § 679.42, discussed later) to require retention of halibut in pot gear in the BSAI IFQ and CDQ fisheries. Specifically, this final rule revises § 679.24(b) to require retention of groundfish for any person using longline pot gear while fishing for halibut in the BSAI. As revised, § 679.24(b) now requires retention of groundfish for any person using longline pot gear while fishing for both sablefish and halibut in the BSAI.

This final rule revises § 679.42(b)(1)(i) to specify that IFQ halibut may be harvested using pot gear, but the final rule will not change the existing prohibition on the use of trawl gear to harvest IFQ halibut in any IFQ regulatory area.

The second element of Action 1 closes the PIHCZ to all directed fishing for groundfish and halibut with pot gear. This final rule revises § 679.22(a)(6) to implement that closure. Regulations at § 679.22 already prohibit the use of pot gear to harvest Pacific cod in the PIHCZ. The Pacific cod pot fishery is the largest groundfish pot fishery in the BSAI. Closing the PIHCZ to all pot gear is necessary to avoid groundfish fishery and area closures that could be triggered by approaching an OFL for the PIBKC. Section 3.6 of the Analysis provides additional details on the distribution of halibut and potential overlap with PIBKC in the PIHCZ.

The third element of Action 1 amends regulations at § 679.2(15) that describe the definition of “Authorized Fishing Gear” to exempt vessel operators fishing halibut or sablefish IFQ or CDQ with pot gear from the requirement to have a tunnel opening no wider and no taller than 9 inches when the vessel operator is required to retain halibut. If the tunnel opening requirement remained in effect, the extent to which halibut quota holders in the BSAI could target halibut with pot gear would be greatly reduced, contrary to the intent of Amendment 118. Section 4.7.4.2 of the Analysis describes this element in more detail.

The fourth element of Action 1 specifies the management measures, and required determinations, that NMFS will use to limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish. Under existing regulations at § 679.25, NMFS has the authority to limit or close groundfish fisheries, including the IFQ or CDQ sablefish fishery, to prevent overfishing of groundfish and shellfish species. However, these regulations do not apply

to the IFQ or CDQ halibut fishery to prevent overfishing of groundfish or shellfish. While NMFS has authority under section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) to enact emergency regulations to limit fishing to avoid exceeding an OFL and authority under the Halibut Act to implement measures that are in addition to and not in conflict with those adopted by the IPHC (16 U.S.C. 773c(c)), the specific regulatory measures that NMFS could use to limit or close halibut fishing to prevent overfishing are not described in regulation. This final rule revises § 679.25 to specify the management measures NMFS can use, and the determinations required, to limit or close halibut fisheries in the BSAI and GOA in the event an OFL is approached for a groundfish or shellfish species, consistent with regulations in place for directed fishing for groundfish. These changes provide the public with a clear understanding of NMFS's regulatory authority to limit or close halibut directed fishing in the event that the OFL for PIBKC, or other groundfish or shellfish species, is approached. Section 4.7.6 of the Analysis further describes this element in greater detail.

The fifth element of Action 1 requires all vessels fishing IFQ or CDQ sablefish or halibut with pot gear to complete the Daily Fishing Logbook (DFL), to use VMS, and to provide additional pot gear information on the PNOL. A vessel operator records where and when fishing activity occurs and the number of sets and hauls in the DFL. There are several types of logbooks, including a DFL required by NMFS (§ 679.5) and an IPHC logbook. The Council's intent for this element is to require all vessels fishing IFQ or CDQ sablefish or halibut with pot gear to complete the DFL, and the final rule revises regulations at § 679.5 accordingly. In addition, this final rule requires vessels to report specific information on the use of pot gear in the BSAI on the PNOL under § 679.5, including adding the requirement to report the number of pots set, the

number of pots lost, and the number of pots left deployed on the fishing grounds, in addition to the information they currently submit in the PNOL.

Due to concern over additional pot fishing in the PIHCZ and within the PIBKC stock boundary area, this final rule revises § 679.7(f)(26) to prohibit vessels using pot gear to fish for IFQ or CDQ sablefish or halibut in the BSAI without functioning VMS equipment as required under § 679.42(m).

All vessels that participated in the BSAI IFQ or CDQ sablefish pot fishery have VMS and maintain a DFL already. However, additional vessels may use pot gear to harvest IFQ or CDQ halibut or sablefish in the future. Any additional vessels will be required to install VMS and begin maintaining a DFL, as well as report pot gear information on the PNOL, under this final rule. Section 4.7.5 of the Analysis provides more information supporting these monitoring and reporting provisions.

To effectuate each of the five elements described above, the final rule revises § 679.42 to specify at § 679.42(m) the requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear. This includes the requirements that all vessel operators must retain legal-sized halibut provided the operator has sufficient IFQ or CDQ for the retained halibut; that all vessel operators must comply with the VMS requirements; that all vessel operators must complete a DFL; and that all vessels operators must report pot gear set, lost, and left deployed on the fishing grounds when they submit a PNOL.

Finally, to promote consistency and clarity with the provisions of this rule, this final rule makes editorial revisions throughout regulations at 50 CFR part 679. Existing regulations implementing the Observer Program state the gear type (hook-and-line) used to harvest halibut in the applicability paragraph for which vessels are in partial coverage or full coverage. Regulations

at § 679.51(a)(1)(i) are modified to remove the language describing the specific gear type used to fish for halibut, which is in accordance with this action that authorizes another specific gear type (pot) in addition to hook-and-line gear. This is an editorial change that does not modify existing observer coverage requirements for vessels participating in the IFQ or CDQ halibut or sablefish fisheries.

Action 2: NMFS's Regulatory Amendment to Modify VMS Regulations

Action 2 modifies regulations to remove certain provisions that are no longer required for management and enforcement purposes and makes other minor revisions to the regulations governing VMS. However, Action 2 does not materially change existing VMS coverage, requirements, or equipment.

First, this final rule removes from § 679.28 a check-in requirement for vessel owners activating VMS for the first time. Currently, vessel owners are required to check in by fax to register a new unit with the NMFS Office of Law Enforcement (OLE) (§ 679.28(f)(4)(ii)). This faxed check-in is no longer necessary because the information OLE needs about a new VMS unit is provided automatically by the VMS unit when the new unit is activated.

Second, this action removes from § 679.42 a requirement for vessel operators in the IFQ sablefish fisheries in BSAI and GOA to contact NMFS by phone and receive confirmation that their VMS unit is operating. Currently, vessel operators are required to call OLE at least 72 hours prior to fishing for IFQ sablefish in the BSAI and prior to using longline pot gear to fish for IFQ sablefish in the GOA (§ 679.42(k)). These vessel clearance requirements are no longer needed because the VMS unit provides the information needed by OLE to monitor these fisheries.

This action also modifies in § 679.28(f)(6) the list of circumstances in which a VMS unit must be transmitting to include reference to all of the VMS requirements elsewhere in 50 CFR

part 679 and 50 CFR part 680. The current list is only a partial list of the VMS requirements in Federally-managed fisheries off Alaska. Completion of the list will reduce confusion about the VMS requirements under § 679.28(f), but it will not alter existing VMS requirements at § 679.28(f) when a VMS transmitter must be transmitting. The action also revises two cross references to the VMS requirements in § 679.7(a)(21) and (22) to more accurately refer to the VMS regulations in § 679.28(f). This revision will provide greater clarity and specificity in the VMS regulations without changing existing VMS requirements.

Anticipated Effects of This Final Rule

This section describes the final rule implementing Amendment 118 and the anticipated effects on fishery participants and the environment.

This final rule authorizes the use of pot gear in the IFQ and CDQ halibut fisheries and requires retention of legal-sized halibut in pot gear used in the existing IFQ and CDQ sablefish pot gear fisheries and in the new IFQ and CDQ halibut pot gear fisheries if the operator has sufficient IFQ or CDQ for the retained halibut. Pot gear includes pot-and-line gear and longline pot gear. For additional information on longline gear, pot-and-line gear, and longline pot gear, see the definition of “Authorized Fishing Gear” in § 679.2. This final rule could improve operational efficiency of vessels participating in the IFQ or CDQ halibut or sablefish pot fisheries by reducing the discard mortality associated with halibut discard in the existing sablefish pot fisheries and reducing whale depredation for vessels that choose to switch to pot gear instead of hook-and-line gear. Reducing bycatch and discard mortality of halibut in the sablefish pot fishery and reducing whale depredation of halibut and sablefish caught with pot gear will provide conservation benefits to these fishery resources (halibut and sablefish).

Based on the analysis in Section 4.7.2 of the Analysis, the overall impact of this final rule on the hook-and-line IFQ or CDQ halibut fishery is likely to be small. As explained in Section 4.5.2 of the Analysis, vessel operators who switch to pot gear to harvest halibut could benefit from this final rule from reduced whale depredation, reduced operating costs, and reduced fishing time. The Analysis (see Section 4.7.2.1) recognizes that it is not possible to estimate how many hook-and-line vessel operators will switch to pot gear to harvest halibut under this final rule. The total number of vessels using pot gear will be limited by the costs of pot gear and vessel reconfiguration. For some vessel operators, reconfiguration costs will be prohibitive.

To implement the Council's recommendation to close the PIHCZ to all fishing with pot gear, the final rule requires that all vessels retaining IFQ or CDQ halibut or sablefish in pot gear use logbooks and VMS to ensure consistency in monitoring fishery behavior.

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 catch share programs, such as the IFQ fisheries (16 U.S.C. 1854(d)(2)(A)). Therefore, NMFS implemented a cost recovery fee program for the IFQ fisheries in 2000 (65 FR 14919, March 20, 2000). The cost to implement and manage the IFQ sablefish and halibut pot gear fishery are included in the annual calculation of NMFS's recoverable costs, and this final rule is included under this cost recovery program. These costs are part of the total management and enforcement costs used in the calculation of the annual fee percentage. While costs specific to the CDQ Program for halibut are recoverable through a separate cost recovery program (81 FR 150, January 5, 2016), this rule does not change the process that harvesters use to pay cost recovery fees.

Whale and Seabird Interactions

If some portion of the IFQ and CDQ halibut fleet switches to pot gear, interactions between whales and the halibut fishery could decrease. Unaccounted halibut mortality due to depredation is expected to decline as IFQ and CDQ halibut fishermen voluntarily switch from hook-and-line gear to pot gear. Because the amount of depredation is not known with certainty, the potential effects of reduced depredation from this final rule cannot be quantified. Section 3.5 of the Analysis and the preamble of the proposed rule provides available information on the interactions of the IFQ fishery with killer whales and sperm whales. Section 3.5.3.2 of the Analysis and the preamble of the proposed rule describes whale entanglement with vertical gear lines in the water.

This final rule will likely reduce the incidental catch of seabirds in the IFQ and CDQ halibut fisheries because it provides vessel operators with the opportunity to use pot gear, which has a lower incidental catch rate of seabirds than hook-and-line gear. In Section 3.9 of the Analysis, NMFS compared the number of seabird mortalities by hook-and-line and pot gear and determined that a higher level of seabird mortality occurred with hook-and-line gear than pot gear.

Comments and Responses

NMFS received 6 comment letters on the proposed rule. NMFS has summarized and responded to the 11 unique comments below. The comments were from individuals and industry representatives representing IFQ fishermen, CDQ communities, and crab fishermen.

Comment 1: NMFS should prohibit all commercial fishing as well as prohibit pot gear, longline nets, and trawling in the PIHCZ.

Response: NMFS disagrees. Prohibiting all commercial fishing would be outside of the scope of this final rule. This final rule is intended to authorize the retention of halibut in pot gear

in the BSAI, while considering the impact on other species, consistent with the requirements of the Magnuson-Stevens Act and the Halibut Act. Under existing regulations at § 679.22(a)(6), the PIHCZ is closed to all directed fishing for groundfish using trawl gear, and directed fishing for Pacific cod using pot gear. This final rule prohibits the use of any pot gear in the PIHCZ to minimize bycatch of PIBKC to the extent practicable, prevent overfishing, and support rebuilding of the PIBKC stock. Additional detail on the purpose of this rule is provided in the preamble to the proposed rule and Section 3.6 of the EA. Longline nets are not an authorized gear type in the BSAI.

Comment 2: NMFS is too generous in fishing regulations and all species are going extinct, including marine mammals. It is time to stop commercial fishermen and to stop polluting our waters, including keeping out large tourist boats.

Response: NMFS disagrees. NMFS implements conservation and management measures as recommended by the Council, and the flexibility provided by this final rule will not create an overfished condition or contribute to overfishing in the groundfish and shellfish fisheries in the BSAI. Sections 3.4 and 3.7 of the Analysis describes the current BSAI halibut and sablefish fisheries. Section 3.3 and 3.5.3 of the Analysis and the preamble of the proposed rule describe the cumulative effects on the environment, including marine mammals and seabirds. In recommending Amendment 118, the Council and NMFS considered the impacts of Amendment 118 and this final rule on marine mammals and seabirds, and based on the Analysis concluded that there may be only minimal, if any, adverse effects on marine mammals. In addition, NMFS determined the final rule was not likely to adversely affect ESA-listed marine mammals and seabirds. The regulation of maritime pollution and tour vessels is outside of the scope of this final rule.

Comment 3: Several commenters expressed support for Amendment 118 to allow pot gear to be used by halibut fisheries in the BSAI as an alternative to longline gear and to avoid whale depredation sometimes experienced with longline gear. Several commenters also expressed support that Amendment 118 would prohibit the use of pot gear in sensitive habitats like the PIHCZ. One commenter requests that the Council and NMFS consider whether areas around St. Matthew Island should be closed to protect habitat and reduce bycatch of St. Matthew blue king crab.

Response: NMFS acknowledges this comment. This final rule prohibits the use of any pot gear in the PIHCZ to minimize bycatch of PIBKC to the extent practicable, prevent overfishing, and support rebuilding of the PIBKC stock, and the revised regulations will prohibit directed fishing for groundfish using trawl gear or pot gear or fishing for halibut using pot gear in the PIHCZ (§ 679.22(a)(6)). St. Matthew blue king crab was declared overfished in 2018, and the Council and NMFS are currently developing a rebuilding plan. The St. Matthew Island blue king crab directed fishery has been closed since the 2016/2017 season. Extending closures around St. Matthew Island would be beyond the scope of this final rule. However, NMFS has established a range of measures to protect St. Matthew blue king crab. The St. Matthew Island Habitat Conservation Area (SMIHCA) was created in 2008 and expanded in 2010 to protect blue king crab habitat (see Table 46 to 50 CFR part 679). Vessels fishing with nonpelagic trawl gear are prohibited from fishing in the SMIHCA (§ 679.22(a)(20)). Other fishery closure areas include a 20nm Steller sea lion closure around the southern tip of Hall Island (near St. Matthew Island) to trawling, hook-and-line, and pot fisheries for pollock, Pacific cod, and Atka mackerel (§ 679.22(a)(7)). In addition, all nearby state waters around St. Matthew Island are closed to the taking of king crab and to commercial groundfish fishing. At this time, NMFS and the Council

are developing a rebuilding plan and will consider any potential sablefish and halibut pot gear fishery impacts in the development of conservation and management measures for the St. Matthew Island blue king crab.

Comment 4: The proposed rule states that after implementation of Amendment 101 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), IFQ sablefish fishermen requested greater consistency between the regulatory requirements in the BSAI and GOA. Amendment 118 should prohibit the deployment of gear before the IFQ sablefish fishing period such as in § 679.7(f)(17) for GOA sablefish pots, which prohibits deploying, conducting fishing with, or retrieving longline pot gear in the GOA before the start or after the end of the IFQ sablefish fishing period.

Response: NMFS acknowledges this comment. During the Council process for development of this action, the Council recommended revisions to regulations on the type of authorized gear for halibut but did not recommend new regulations or revisions to existing regulations on the timing of the deployment of pot gear in the IFQ fishery, or in other groundfish fisheries in the BSAI. Section 2.2 of the Analysis and the preamble of the proposed rule state that the scope of this rule would not allow for the retention of halibut IFQ or CDQ in other directed pot fisheries, such as those for groundfish (other than sablefish) or shellfish. An IFQ permit holder would not be required *nor* permitted to retain halibut on a pot fishing trip while directed fishing in other pot fisheries (such as Pacific cod or crab), even if they hold available IFQ.

As described in the proposed rule and Section 3.1.1.2 of the Analysis, under Amendment 118 and this final rule, catches of IFQ sablefish or halibut will be authorized only during the IFQ fishing period specified at § 679.23(f)(1) and (g)(1) and established by the Council and NMFS

through the annual harvest specifications for sablefish (84 FR 9000, March 13, 2019) and the annual management measures for halibut (84 FR 9243, March 14, 2019).

Comment 5: We would like to highlight ongoing coordination among halibut, Pacific cod, and crab fishermen, as well as gear manufacturers, that has come about, in part, from the this action to allow halibut pots in the BSAI. Fishermen are working together on gear designs to allow halibut and cod fishermen to maximize their target catch while minimizing crab bycatch.

Response: NMFS acknowledges this comment. The Analysis and preamble of the proposed rule recognize that industry-led innovation to develop gear specifications to minimize bycatch could be more responsive, flexible, and effective than regulations to address the range of bycatch issues that may be experienced with a new gear type. However, NMFS and the Council will continue to review the performance of pot gear, and if bycatch increases, additional regulatory revisions could be undertaken.

Comment 6: Several commenters raised concerns over additional crab bycatch with the increased use of pot gear in the IFQ and CDQ sablefish and halibut fisheries. One commenter requests that crab bycatch be tracked closely by NMFS in this developing fishery and be reported to the Council and the public through NMFS's annual inseason report. In addition, this commenter supports NMFS authority to limit or close IFQ or CDQ fishing for halibut if an OFL is approached for a groundfish or shellfish species.

Response: NMFS acknowledges the support for inseason management authority. Section 4.7.7 of the Analysis provides further information on inseason management reports. NMFS inseason management produces a report every year which provides an overview of the catch in that region for the preceding year to the Council. The report began including statistics on the number of GOA sablefish pot vessels, metric tons of sablefish harvested, and percent of sablefish

harvest by gear type and sub-area in the GOA after Amendment 101 to the GOA FMP was implemented. Assuming three or more vessels participate in a BSAI halibut pot fishery (so the confidential information can be released in aggregate form), similar information could be reported for a BSAI halibut pot fishery to track the changes in the fishery. This accords with the Council's request, as outlined in the Analysis, that NMFS include pot gear effort in its annual inseason management report to the Council. The Council also intends to review the effects from this final rule authorizing retention of halibut in pot gear within three years after implementation.

Comment 7: NMFS should include a requirement for biodegradable panels in BSAI halibut pot gear, if not already in regulation.

Response: NMFS agrees and notes this requirement is currently in regulation. As described in Section 4.7.4.3 of the Analysis, all groundfish pots in federal fisheries are required at § 679.2 to be equipped with a biodegradable panel at least 18 inches. This requirement to include a biodegradable panel will also apply to pot gear used to harvest halibut in the BSAI.

Comment 8: Many fishermen fish both Pacific cod and halibut. When all of the species seasons and areas are open for fishing, NMFS should allow retention of halibut in any pot fishery and minimize discards of all species. I believe fishermen who fish for halibut with pot gear will routinely catch more Pacific cod than halibut in many areas. We do not want to require discards of Pacific cod. I think, at a minimum, when both seasons are open for Pacific cod and halibut that the maximum retention requirement (20%) should not be in effect.

Response: NMFS disagrees. Authorizing retention of halibut when directed fishing for Pacific cod would be outside of the scope of this final rule. This final rule is intended to authorize the retention of halibut in pot gear in the directed IFQ and CDQ halibut and sablefish fisheries. The scope of this action and the Council's intent is described in further detail in

Section 2 of the Analysis and in the preamble of the proposed rule. The scope of this action would not allow for the retention of IFQ or CDQ halibut in other directed pot fisheries, such as those for groundfish (other than sablefish) or shellfish. An IFQ permit holder would not be required nor permitted to retain halibut on a pot fishing trip while directed fishing in other pot fisheries, such as Pacific cod, even if they hold available IFQ. Similarly, CDQ participants would not be required nor permitted to retain halibut on a pot fishing trip while directed fishing in other pot fisheries, such as Pacific cod, even if they hold available CDQ.

Comment 9: The elements of Amendment 118 are responsive to the MSA National Standards, including 1) optimum yield; 2) use of best scientific information available; 4) non-discrimination among residents of different states; 5) efficiency in utilization of fishery resources; 7) minimization of costs and unnecessary duplication; 8) taking into account the sustained participation of communities (in this case halibut dependent communities) in utilization of fishery resources; 9) minimization of bycatch and mortality to the extent practicable; and 10) promotion of the safety of life at sea. This commenter also noted that the requirement that all vessels over 79 feet maintain and abide by their stability instructions for their vessels and gear ensures that the safety of participants in this fishery will not be unduly endangered.

Response: NMFS acknowledges this support and agrees that the Council and NMFS have considered and balanced the ten National Standards under the Magnuson-Stevens Act (16 U.S.C. 1851) and that this final action is consistent with those National Standards. Section 5.1 of the Analysis describes how the Council considered and balanced the National Standards under the Magnuson-Stevens Act when recommending its preferred alternative. Amendment 118 and this final rule implement the Council's preferred action, without significant change, and are

consistent with the Magnuson-Stevens Act's ten National Standards, for the reasons discussed in the Analysis and in the Notice of Availability for Amendment 118 (84 FR 43570, August 21, 2019).

Comment 10: Our concern is about the appropriate management of CDQ halibut quota that is held by the CDQ entity, but normally fished on a vessel with a skipper who does not actually hold that quota personally. We are not certain how implementing regulations would deal with a vessel fishing for CDQ sablefish with pots, and catching legal-size halibut. Would that vessel be required to retain that halibut if the CDQ entity held unused halibut CDQ?

Response: Yes, under § 679.42(m), vessels fishing for CDQ sablefish with pot gear would be required to retain legal-sized halibut on board provided there is a permit holder on board with unused halibut IFQ or CDQ for that IFQ regulatory area.

Comment 11: One commenter recommends that the conservation benefits of Amendment 118 be spelled out. This commenter also noted the conservation benefits of the action, including: 1) the allowance of the retention of halibut in pots in the IFQ or CDQ sablefish fishery is expected to reduce halibut bycatch and mortality, as well as reduce duplicative efforts in different target fisheries, resulting in greater conservation and efficiency; 2) fishing for halibut in pot gear rather than longline gear is expected to reduce halibut mortality based on predation by whales, which will result in conservation of the halibut resource and greater efficiency in fishing efforts; 3) the use of pot gear in targeting halibut is expected to reduce the incidental catch of seabirds given that seabirds are attracted to baited hooks in longline gears, which will lead to greater conservation of seabird populations, as well as reduce inefficiencies resulting from lost baits or catches on hooks; 4) the prohibition of pot gear to target halibut in the PIHCZ is responsive to concerns over additional pot fishing activity impacting overfished PIBKC as well

as other crab species in the area, and ensuring that bycatch of PIBKC and other crab species within the PIHCZ will not result from this action adds to existing conservation efforts.

Response: NMFS agrees with the commenter regarding the conservation benefits of the final rule to implement Amendment 118. NMFS notes that the preamble to the proposed rule (84 FR 52852, October 3, 2019) and the Analysis describe potential benefits, including conservation benefits, in detail. NMFS provides a summary response here. First, the final rule authorizes the retention of halibut in pots in the IFQ sablefish fishery, while requiring retention of halibut pursuant to §§ 679.7(f)(11) and 679.42(m). This will reduce regulatory discards of halibut, which in turn will reduce halibut bycatch and mortality, thereby providing a conservation benefit for the halibut resource. Fishing with pot gear, instead of hook-and-line gear, is also expected to reduce whale predation of halibut and sablefish that occurs with hook-and-line gear. The reduced mortality associated with reduced whale predation with pot gear is another conservation benefit to these fishery resources.

In addition, the final rule provides greater flexibility for participants in the BSAI by allowing them options to fish their quota opportunistically with either hook-and-line or pot gear. Section 4.7.2 of the Analysis provides more detail; in summary, this may increase their economic efficiency and reduce opportunity costs that are incurred from avoiding whales. Another potential benefit occurs from increased efficiency in the use of the resource and possibly better accounting for unobserved mortality due to whale depredation.

The final rule also provides a conservation benefit for seabirds. Section 3.9.2.2 states that pot gear has the lowest seabird bycatch rates and it is assumed that the impact to seabirds is insignificant. The use of pot gear, rather than hook-and-line gear, is therefore expected to reduce the incidental catch of seabirds in the IFQ and CDQ fisheries. The final rule also addresses

conservation concerns in the PIHCZ and for PIBKC. The final rule closes the PIHCZ to all fishing with pot gear for groundfish and halibut, in addition to the existing prohibition on the use of trawl gear and pot gear for Pacific cod. Section 3.6.3.2 of the Analysis and the proposed rule preamble describe that closing the PIHCZ is in response to conservation concerns over any additional pot gear activity and associated shellfish bycatch.

Changes from Proposed to Final Rule

There were no changes from the proposed to final rule.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 118 to the BSAI FMP and this final rule are necessary for the conservation and management of the groundfish and halibut fishery and are consistent with the Magnuson-Stevens 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. Section 5(c) of the Halibut Act 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 (16 U.S.C. 773c(c)). This final rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska. The Halibut Act provides the Secretary with the general responsibility to carry out the Convention with the authority, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act (16 U.S.C. 773c(a) & (b)). This final rule is consistent with the Halibut Act and other applicable laws.

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

This final rule is considered an Executive Order 13771 deregulatory action.

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 preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule and as part of this rulemaking process, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: <https://www.fisheries.noaa.gov/action/amendment-118-fmp-groundfish-bering-sea-and-aleutian-islands-management-area>. This rule does not require any additional compliance from small entities that is not described in the preambles. Copies of this final rule are available from NMFS at the following website:

<https://www.fisheries.noaa.gov/region/alaska>.

Final Regulatory Flexibility Analysis (FRFA)

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS’s responses to those comments, and a summary of the analyses completed to support the final rule.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency

promulgates a final rule under section 553 of Title 5 of the U.S. Code (5 U.S.C. 553), after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA (5 U.S.C. 604). 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 IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to 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 (SBA) 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 that 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 this 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.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preambles to the proposed rule (84 FR 52852, October 3, 2019) and the proposed rule correction (84 FR 57687, October 28, 2019), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

An IRFA was prepared in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA.

Number and Description of Small Entities Regulated by this Final Rule

NMFS estimates that, between the BSAI and the GOA, 815 vessels participated in the IFQ or CDQ commercial halibut fisheries in 2018; 802 of which are considered small entities based on the \$11.0 million threshold. All of these small entities in the BSAI or GOA could be directly regulated by that aspect of the final rule that specify NMFS's regulatory authority to limit or close IFQ or CDQ halibut fishing if NMFS determined it was necessary in the event of a conservation concern for groundfish or shellfish. In addition, vessels that currently participate in the GOA fisheries will be directly regulated by the final rule if they choose to participate in the IFQ or CDQ halibut or sablefish fisheries in the BSAI. NMFS estimates that, in the BSAI, 152 vessels participated in the IFQ or CDQ halibut or sablefish fisheries in 2018. Of those vessels, 125 are considered small entities. In the BSAI sablefish pot fishery, 5 of the 9 vessels that participated in 2018 are considered small entities. Therefore, NMFS estimates a total of 130 small entities that could be directly regulated by this final rule if they decide to use pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish. In addition, a portion of these small entities engaged in the IFQ or CDQ halibut or sablefish fisheries are subject to the requirements for using pot gear if they choose to use pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries. In addition, this final rule closes the PIHCZ to all fishing with pot gear. No entities are currently using pot gear to fish within the PIHCZ. Therefore, no additional entities other than the 130 entities engaged in the IFQ or CDQ fisheries are affected by this provision. Those entities

engaged in the IFQ or CDQ fisheries with pot gear in the BSAI are required to use logbooks and VMS and submit additional pot gear information on the PNOL while IFQ or CDQ fishing with pot gear in the BSAI.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements of some vessels affected by this final rule will be increased slightly. This final rule contains new requirements for vessels participating in the IFQ and CDQ halibut pot fishery in the BSAI. This final rule removes two unnecessary VMS check-in requirements in the BSAI and GOA.

NMFS currently requires catcher vessels 60 feet (ft) or greater length overall (LOA), using fixed gear, setline, or pot gear to harvest IFQ sablefish or IFQ halibut to maintain a longline and pot gear Federal DFL. Catcher/processors currently must also maintain a daily catcher/processor logbook (DCPL). All vessels participating in the BSAI sablefish IFQ or CDQ pot fishery maintain a longline and pot gear DFL. This final rule revises regulations to also require all vessels using pot gear to harvest IFQ or CDQ halibut in the BSAI to maintain a longline and pot gear DFL.

NMFS currently requires vessels in the BSAI to have an operating VMS on board while participating in the IFQ or CDQ sablefish pot fishery. This final rule revises regulations to extend this requirement to vessels using pot gear in the BSAI IFQ or CDQ halibut fishery.

NMFS currently requires all vessels in the IFQ sablefish and halibut fisheries to submit a PNOL to NMFS. This final rule revises regulations to require vessels using pot gear in the BSAI IFQ or CDQ halibut fishery to report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds in addition to the information they currently submit in the PNOL.

Two regulations are removed because they are no longer necessary, but these removals do not materially change existing VMS coverage, requirements, or equipment. This final rule removes a check-in requirement for vessel operators activating VMS for the first time and removes a requirement for vessel operators to contact NMFS and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish in the BSAI or using longline pot gear to fish for IFQ sablefish in the GOA.

Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. BSAI halibut harvesters that are directly regulated by this final rule are expected to benefit from the additional flexibility to use a new gear type in order to minimize the costs of whale depredation that occurs on hook-and-line gear. Additional impacts may be expected for small directly regulated IFQ or CDQ halibut and sablefish harvesters in terms of potential additional costs for daily fishing logbooks, reporting on the PNOLs, or VMS requirements. Small entities will be required to comply with the requirements for using pot gear in the BSAI IFQ and CDQ halibut and sablefish fisheries. Authorizing halibut retention in pot gear in this final rule provides an opportunity for small entities to choose whether to use hook-and-line or pot gear to increase harvesting efficiencies and reduce operating costs in the IFQ and CDQ halibut and sablefish fisheries. Because NMFS currently has statutory authority under section 305(c) of the Magnuson-Stevens Act to enact emergency regulations to prevent overfishing (16 U.S.C. 1855(c)), NMFS does not anticipate additional costs to small entities from potential inseason closures. However, NMFS expects that this final rule will provide better clarity and certainty to the regulated public by specifying in regulation the management measures, and required determinations, that NMFS would use to

limit or close IFQ or CDQ fishing for halibut in the BSAI and GOA if an OFL for groundfish or shellfish is approached, consistent with regulations in place for directed fishing for groundfish.

As noted in Section 4.7.12 of the Analysis, the requirements for using pot gear are not expected to adversely impact small entities because such entities can voluntarily choose to use pot gear or continue to use hook-and-line gear. In addition, the requirements for using pot gear will not be expected to restrict existing sablefish harvesting operations. The Council and NMFS considered requirements that would have imposed larger costs on directly regulated small entities. These included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring gear modifications, such as escape mechanisms for bycatch. The Council and NMFS determined that the costs of additional requirements on the existing fleet outweighed the benefits of increased regulations because, while the preferred specifications for gear modifications to reduce bycatch are unknown at this time, industry could develop them in the future if allowed the flexibility to innovate. This final rule therefore meets the objectives of the final rule while minimizing adverse impacts on fishery participants.

Small entities are required to comply with additional recordkeeping and reporting requirements under this final rule if they choose to use pot gear in the BSAI IFQ or CDQ halibut fishery. Directly regulated small entities using pot gear are required to maintain and submit logbooks to NMFS, report specific information on the PNOL, and have an operating VMS on board the vessel. These additional recordkeeping and reporting requirements are not expected to adversely impact directly regulated small entities because the costs of complying with these requirements is *de minimis* relative to total gross fishing revenue that the opportunity to fish with pot gear will provide. More detail can be found in Section 4.7.5 of the Analysis. In addition, it is likely that vessels will not incur new costs under the final rule because many of the vessels that

may choose to use pot gear under this final rule likely currently comply with the logbook and VMS reporting requirements when participating in the IFQ sablefish fishery and in other fisheries.

The Council and NMFS considered alternatives to implement additional requirements to report locations of deployed and lost gear in an electronic database. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of the rule; could undermine other aspects of the Magnuson-Stevens Act because coordinates of lost pot gear are confidential under section 402(b) of the MSA (16 U.S.C. 1881a(b)); and were not practicable at this time because NMFS cannot enforce a location reporting requirement because it is not currently possible to verify the location of lost fishing gear. In addition, this final rule eliminates the requirement for a one-time report that must be faxed into NMFS OLE, which results in an estimated savings of \$1,340 a year in personnel and miscellaneous costs to the industry. This final rule also eliminates the requirements for vessels using pot gear to harvest IFQ sablefish to check-in when using VMS, which results in estimated annual savings of \$268 for all vessel operators in the BSAI and GOA. Accordingly, this final rule meets the objectives of the action while minimizing the reporting burden for fishery participants.

There are no significant alternatives to this final rule that accomplish the objectives to authorize retention of halibut in pot gear in the BSAI IFQ or CDQ halibut or sablefish fisheries and that minimize adverse economic impacts on small entities.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). NMFS has submitted requirements under Control Numbers 0648-0213 and 0648-0445 to

OMB for approval. A collection-of-information requirement under Control Number 0648-0272 has been approved by OMB.

OMB Control Number 0648-0213

Public reporting burden is estimated to average 35 minutes per individual response for the Catcher Vessel Longline and Pot Gear Daily Fishing Logbook.

OMB Control Number 0648-0272

Public reporting burden is estimated to average 15 minutes per individual response for the Prior Notice of Landing.

OMB Control Number 0648-0445

While the number of participants who will use VMS transmissions will increase, such transmissions are not assigned a reporting burden because the transmissions are automatic. Public reporting burden is expected to decrease because the requirements for the VMS check-in report (estimated average of 12 minutes per individual response) and the sablefish call-in (estimated average of 12 minutes) are being removed because they are no longer necessary.

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: <https://www.reginfo.gov/public/do/PRAsearch#>.

List of Subjects

50 CFR Part 300

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

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing regulations, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 20, 2019.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

1. The authority citation for part 300, subpart E, continues to read as follows:

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

2. In § 300.61, in the definition of “Fishing”:

- a. Remove “or” at the end of paragraph (1);
- b. Remove the period at the end of paragraph (2) and add “; or” in its place; and
- c. Add paragraph (3).

The addition reads as follows:

§ 300.61 Definitions.

* * * * *

Fishing * * *

(3) The deployment of pot gear as defined in § 679.2 of this title in Commission regulatory areas 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170°00' W. long.

* * * * *

PART 600— MAGNUSON-STEVENSON ACT PROVISIONS

3. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.725, revise paragraph (v) table entry “7. Pacific Halibut Fishery (Non-FMP):” row A to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

| Fishery | Authorized Gear Types |
|---|------------------------|
| * * * * * | |
| VII. North Pacific Fishery Management Council | |
| * * * * * | |
| 7. Pacific Halibut Fishery (Non-FMP): | |
| A. Commercial (IFQ and CDQ) | A. Hook and line, pot. |

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 § 679.2, for the definition of “Authorized fishing gear,” add paragraphs (4)(v) and (15)(iii) to read as follows:

§ 679.2 Definitions.

Authorized fishing gear ***

(4) ***

(v) For halibut harvested from any IFQ regulatory area in the BSAI, all pot gear, if the vessel operator is fishing for IFQ or CDQ halibut in accordance with § 679.42.

(15) ***

(iii) *Halibut retention exception.* If required to retain halibut when harvesting halibut from any IFQ regulatory area in the BSAI, vessel operators are exempt from requirements to comply with a tunnel opening for pots when fishing for IFQ or CDQ halibut or IFQ or CDQ sablefish in accordance with § 679.42(m).

7. In § 679.5, revise paragraphs (a)(4)(i), (c)(3)(i)(B) heading, (c)(3)(i)(B)(1) and (3), and (l)(1)(iii)(I) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(1) of this section and the vessel activity report described at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) *IFQ or CDQ halibut, or IFQ or CDQ sablefish fisheries.* (1) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA, or using pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section.

* * * * *

(3) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(2) of this section, when using hook-and-line gear or pot

gear to harvest IFQ or CDQ sablefish, and when using pot gear or gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

* * * * *

(1) * * *

(1) * * *

(iii) * * *

(I) If using longline pot gear in the GOA or pot gear in the BSAI, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

* * * * *

8. In § 679.7:

a. In paragraphs (a)(21) and (22), remove the reference “§ 679.28” and add in its place “§ 679.28 (f)”;

b. Remove paragraph (f)(6)(ii) and redesignate paragraph (f)(6)(iii) as paragraph (f)(6)(ii); and

c. Add paragraph (f)(26).

The revisions and additions read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(26) Operate a catcher vessel or a catcher/processor using pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI and fail to use functioning VMS equipment as required in § 679.42(m).

* * * * *

9. In § 679.22, revise paragraph (a)(6) to read as follows:

§ 679.22 Closures.

(a) * * *

(6) *Pribilof Islands Habitat Conservation Zone*. Directed fishing for groundfish using trawl gear or pot gear, or fishing for halibut using pot gear, is prohibited at all times in the area defined in Figure 10 to this part as the Pribilof Islands Habitat Conservation Zone.

* * * * *

10. In § 679.24, add paragraph (b)(1)(iv) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(b) * * *

(1) * * *

(iv) While fishing for IFQ or CDQ halibut in the BSAI.

* * * * *

11. In § 679.25:

- a. Revise paragraph (a)(1) introductory text;
- b. Add paragraph (a)(1)(v); and
- c. Revise paragraphs (a)(2)(i) introductory text and (a)(2)(iii)(C).

The additions and revisions read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(1) *Types of adjustments*. Inseason adjustments for directed fishing for groundfish or fishing for IFQ or CDQ halibut issued by NMFS under this section include:

* * * * *

(v) Inseason closures of an area, district, or portions thereof, of harvest of specified halibut fisheries.

(2) * * *

(i) Any inseason adjustment taken under paragraph (a)(1)(i), (ii), (iii), or (iv) of this section must be based on a determination that such adjustments are necessary to prevent:

* * * * *

(iii) * * *

(C) Closure of a management area or portion thereof, or gear type, or season to all groundfish or halibut fishing; or

* * * * *

12. In § 679.28:

- a. Remove and reserve paragraph (f)(4)(ii);
- b. In paragraph (f)(6)(iv), remove “or”;
- c. In paragraph (f)(6)(v), remove the period and add a semicolon in its place; and
- d. Add paragraphs (f)(6)(vi) through (ix).

The revisions read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(vi) You operate an Amendment 80 catcher/processor (see § 679.5(s));

(vii) You are fishing for IFQ sablefish in the Bering Sea or Aleutian Islands (see § 679.42(k));

(viii) You are fishing for IFQ sablefish in the GOA using longline pot gear (see § 679.42(l)) or fishing for IFQ or CDQ halibut or CDQ sablefish in the BSAI using pot gear (see § 679.42(m)); or

(ix) You are required under the Crab Rationalization Program regulations at 50 CFR 680.23(d).

* * * * *

13. In § 679.42, revise paragraphs (b)(1)(i) and (k)(1) and (2) and add paragraph (m) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(1) * * *

(i) *IFQ halibut.* IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area.

* * * * *

(k) * * *

(1) *Bering Sea or Aleutian Islands.* Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3) through (5).

(2) *Gulf of Alaska.* A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish. The operator of the vessel must comply with VMS requirements at § 679.28(f)(3) through (5).

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(m) *BSAI halibut and sablefish pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI using pot gear are set out under § 300.61 of this title and §§ 679.2, 679.5, 679.7, 679.20, 679.22, 679.24, 679.25, 679.28, 679.42, and 679.51.

(1) *Applicability.* Any vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish with pot gear in the BSAI must comply with the requirements of paragraph (m) of this section. The IFQ regulatory areas in the BSAI include 4B, 4C, 4D, and 4E and the portion of Area 4A in the Bering Sea Aleutian Islands west of 170° 00' W. long.

(2) *General.* To use pot gear to fish for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, a vessel operator must:

- (i) Retain IFQ or CDQ halibut caught in pot gear if sufficient halibut IFQ or CDQ is held by persons on board the vessel as specified in paragraph (m)(3) of this section; and
- (ii) Comply with other requirements as specified in paragraph (m)(4) of this section.

(3) *Retention of halibut.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear must retain IFQ or CDQ halibut if:

- (i) The IFQ or CDQ halibut is caught in any IFQ regulatory area in the BSAI in accordance with paragraph (m) of this section; and
- (ii) An IFQ or CDQ permit holder on board the vessel has unused halibut IFQ or CDQ for the IFQ regulatory area fished and IFQ vessel category.

(4) *Other requirements.* A vessel operator who fishes for IFQ or CDQ halibut or IFQ or CDQ sablefish using pot gear in the BSAI must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Possess a transmitting VMS transmitter and comply with the VMS requirements at §679.28(f)(3) through (5).

(iii) Report pot gear information required when submitting a PNOL as described in §679.5.

§ 679.51 [Amended]

14. In § 679.51(a)(1)(i) introductory text, remove the phrase “with hook-and-line gear”.

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