



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 200713-0187]**

**RIN 0648-BJ34**

**Pacific Halibut Fisheries; Revisions to Catch Sharing Plan and Domestic Management Measures in Alaska**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements regulations for a “fish up” provision in the halibut and sablefish Individual Fishing Quota (IFQ) Program to allow Community Quota Entities (CQEs) located in IFQ regulatory Area 3A (Southcentral Alaska) holding Area 3A category D halibut quota share (QS) (i.e., for use on catcher vessel less than or equal to 35 ft (10.7 m) length overall) to have the associated IFQ harvested on category C vessels (catcher vessels less than or equal to 60 ft (18.3 m) length overall) beginning August 15 of each IFQ fishing season. This action also makes a minor change to regulations implementing the IFQ Program to consolidate temporary IFQ transfer forms. This final rule is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982, the Magnuson-Stevens Act, and other applicable laws.

**DATES:** Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:**

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action are available from [www.regulations.gov](http://www.regulations.gov) or from the NMFS Alaska Region Web site at <https://www.fisheries.noaa.gov/region/alaska>.

**FOR FURTHER INFORMATION CONTACT:** Doug Duncan, 907-586-7228 or [doug.duncan@noaa.gov](mailto:doug.duncan@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Authority for Action**

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on

March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with the concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and concurrence from the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures at 50 CFR 300.62.

The Halibut Act, 16 U.S.C. 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, currently the Department of Homeland Security.

The Halibut Act, 16 U.S.C. 773c(c), also provides the 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 of Commerce. The Council has exercised this authority in the development of the IFQ Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c(c)) and section 303(b) of the Magnuson-Stevens Act (16 U.S.C. 1853(b)).

## **Background**

This final rule contains two elements. The first modifies regulations pertaining to the use of halibut QS and halibut IFQ held by CQEs in Area 3A. The second element makes minor changes to regulations implementing the IFQ Program that consolidate

temporary IFQ transfer forms. The following sections briefly summarize the IFQ Program, the CQE Program, and this rule. A more comprehensive description can be found in the preamble to the proposed rule for this action (85 FR 20657; April 14, 20 20).

### **IFQ Program**

The IFQ Program, a limited access privilege program for the fixed-gear halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in 1993. A comprehensive explanation of the IFQ Program can be found in the final rule implementing the program (58 FR 59375, November 9, 1993).

In the IFQ program, halibut QS was issued specific to one of eight IPHC halibut management areas throughout the BSAI and GOA, and four vessel categories: catcher/processor of any length (category A); catcher vessel of any length (category B); catcher vessel less than or equal to 60 ft (18.3 m) LOA (category C); and catcher vessel less than or equal to 35 ft (10.7 m) LOA (category D). The amount of halibut that each QS holder may harvest is calculated annually and issued as IFQ in pounds on an IFQ permit. Under most circumstances, the category of halibut IFQ must be matched to the category of vessel used to harvest it. Exceptions to allow a smaller category of IFQ to be harvested on a larger vessel category (*e.g.*, fishing category D IFQ on a category C vessel) are referred to as “fish-up” provisions.

### **CQE Program**

The Council developed the CQE Program to improve the ability of remote coastal communities to maintain long-term opportunities to access the halibut and sablefish resources managed under the IFQ program. The Council recommended the CQE Program

in the GOA as an amendment to the IFQ Program in 2002, and NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004).

The CQE Program allows 45 small, remote, coastal communities in the GOA, represented by a NMFS-approved non-profit CQE, to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B. Communities eligible to participate in the CQE Program in the GOA include those that meet criteria for geographic location, population size, and historic participation in the halibut and sablefish fisheries, and are listed in Table 21 to 50 CFR part 679.

A CQE functions by holding QS and leasing the IFQ derived from it to community residents who can, among other purposes, use the revenue from harvesting to purchase their own QS. This promotes community access to IFQ Program fisheries.

The Council established limitations in the original CQE Program to prevent excessive consolidation of IFQ harvest into CQE communities. However, subsequent review by the Council and NMFS found that few CQEs held any halibut QS and there was no clear evidence demonstrating conflict between CQE and non-CQE IFQ Program participants. As a result, NMFS has taken previous action to improve the effectiveness of the CQE Program by minimizing program limitations (78 FR 33243, June 4, 2013).

### **Need for this Action**

While the expanded CQE Program provided additional flexibility for eligible communities to participate in IFQ Program fisheries, CQEs still face financial challenges that make it difficult to purchase and finance QS. As of 2019, only two out of fourteen eligible CQE communities in Area 3A had purchased halibut QS. Furthermore, public testimony has indicated that in those Area 3A CQE communities that have acquired

category D halibut QS, smaller category D vessels are sometimes unavailable to harvest the IFQ. IFQ Program regulations in Area 3A do not allow category D IFQ to be harvested on larger category C vessels, which could limit a CQE's ability to fully utilize its halibut IFQ in the event that no usable vessels are available or severe late season weather precludes the use of small vessels. If a CQE is unable to fully harvest its annual IFQ and realize the associated revenue, it may face difficulty fulfilling any debt service on financed QS. If no alternative funding is available, a CQE could be forced to sell QS, potentially eliminating fishery access and economic opportunities for the community.

Modifying the regulations to allow category D IFQ to be harvested on larger category C vessels near the end of the IFQ season will provide more flexibility to CQE participants to fully harvest their category D IFQ in Area 3A. This will further the Council's intent of facilitating CQE community access to the halibut resource. By limiting use of the exemption to the end of the season as a contingency plan, this action is also consistent with the intent of the IFQ Program to maintain the historical vessel size characteristics of the fleet when possible.

The Council's intent is reflected in the purpose and need statement adopted at final action at the April 2018 Council meeting. The Council's purpose and need, and final motion is available in the RIR (see **ADDRESSES**). Section 1.1 of the RIR also provides a summary of the history of this action.

### **Provisions of This Final Rule**

This final rule includes two elements. The first element will modify regulations to allow halibut IFQ derived from CQE held category D QS in Area 3A to be used to harvest halibut on a vessel less than or equal to 60 ft (18.3 m) LOA beginning on August

15 of each IFQ fishing season. The second element of this action makes minor changes to regulations implementing the IFQ Program to consolidate temporary IFQ transfer forms.

#### *CQE Fish-Up Provision*

The first element of this final rule will add a paragraph at § 679.42(a)(2)(ii)(A) specifying that IFQ derived from CQE held QS assigned to category D in Area 3A could be harvested on a vessel less than or equal to 60 ft (18.3 m) LOA from August 15 to the end of the IFQ season. This action will allow eligible community residents leasing category D IFQ from a CQE to fish it on larger vessels before the end of the IFQ season, which is typically in mid-November. This action does not prevent category D IFQ held by a CQE from being fished on a category D vessel at any time during the IFQ season.

This final rule only applies to Area 3A category D halibut QS held by CQEs located in Area 3A. A “fish-up” provision is already in place for Areas 3B and 4B, whereas CQEs located in 2C cannot hold category D halibut QS. Areas 4A, 4C, 4D, and 4E do not have communities eligible to participate in the CQE program. CQEs located in other IFQ regulatory areas are also not eligible to hold category D halibut QS assigned to Area 3A. If CQEs held the maximum amount of Area 3A category D halibut QS allowed by regulation, this final rule would apply to 1,233,740 halibut QS units (approximately 10 percent of the total Area 3A category D halibut QS, or about 0.7 percent of the total halibut QS in Area 3A). Currently, one CQE in Area 3A owns 159,075 units of Area 3A category D halibut QS (6,324 IFQ pounds in 2018). Potentially up to 14 CQE communities will be affected by this action. This action is not expected to have a significant impact on other IFQ Program participants due the regulatory constraints and

financial limitations of CQEs. Use of this provision will be voluntary and is expected to have a small but beneficial impact on affected CQEs.

### **Additional Changes to IFQ Program Regulations**

This action also includes a minor change to regulations implementing the IFQ Program to consolidate the Application for Temporary Military Transfer of IFQ form into the Application for Temporary Transfer of Halibut/Sablefish Individual Fishing Quota (IFQ) form. Currently, the Temporary Transfer of Halibut/Sablefish IFQ form is used for category A IFQ transfers, surviving beneficiary transfers, and IFQ transfers to CDQ groups during years of low abundance. By adding military-related IFQ transfers to the existing Application for Temporary Transfer of Halibut/Sablefish IFQ form, this action will centralize all non-medical temporary IFQ transfers onto a single form. This action also eliminates regulatory reference to the previously required form fields of “number of QS units” and “range of QS serial numbers for IFQ to be transferred” because they are no longer used to process temporary IFQ transfers. This simplifies the temporary IFQ transfer process for the public and for agency administrators. There are no changes to the eligibility requirements for, or agency processing of, a temporary military transfer of IFQ. Regulations at § 679.41(m)(3) introductory text and (m)(3)(iii) will be modified to reference the “application for temporary transfer of halibut/sablefish IFQ” and the corresponding contents of a complete application.

### **Response to Comments**

NMFS received two comments on the proposed rule. Neither comment addressed the content of this action and were therefore outside the scope of this action and are not addressed in this final rule.

## **Changes From Proposed to Final Rule**

NMFS has made no modifications from the proposed rule.

## **Classification**

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson-Stevens Act, the Halibut Act, and other applicable law.

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 Halibut Act (16 U.S.C. 773c) allows the regional fishery management council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters which 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 purposes of Executive Order 12866.

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

## *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) 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 the factual basis for certification.

#### *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 these requirements to OMB for approval under Control Number 0648–0272. Public reporting burden is estimated to average per response: two hours for Application for Temporary Transfer of Halibut/ Sablefish Individual Fishing Quota (IFQ). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at

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

*<https://www.reginfo.gov/public/do/PRASearch>.*

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 16, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF  
ALASKA**

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;  
Pub. L. 111-281.

2. In § 679.41, revise paragraphs (m)(3) introductory text and (m)(3)(iii) to read as follows:

**§ 679.41 Transfer of quota shares and IFQ.**

\* \* \* \* \*

(m) \* \* \*

(3) *Application.* A QS holder may apply for a temporary military transfer by submitting an application for temporary transfer of halibut/sablefish IFQ to the Alaska Region, NMFS. NMFS will transfer, upon approval of the application, the applicable IFQ from the applicant (transferor) to the recipient (transferee). An application for temporary transfer of halibut/sablefish IFQ is available at <https://www.fisheries.noaa.gov/region/alaska> or by calling 1-800-304-4846. A complete application must include all of the following:

\* \* \* \* \*

(iii) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year.

\* \* \* \* \*

3. In § 679.42, add paragraph (a)(2)(ii)(A) and reserve paragraph (a)(2)(ii)(B) to read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) Halibut IFQ derived from QS assigned to vessel category D in Area 3A that is held by a CQE located in Area 3A may be used to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA from August 15 to the end of the IFQ fishing season.

(B) [Reserved]

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