



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 230720-0171]

RIN 0648-BM18

#### **Pacific Halibut Fisheries; Catch Sharing Plan; Rulemaking to Modify the 2023-2027**

#### **Halibut Individual Fishing Quota (IFQ) Vessel Harvest Limitations in IFQ**

#### **Regulatory Areas 4A, 4B, 4C, and 4D**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for 2023 through 2027. This rule removes limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ Regulatory Areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action provides additional flexibility and stability to IFQ participants in Areas 4A, 4B, 4C, and 4D while a longer term modification of vessel use caps is considered. This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

**DATES:** Effective [*insert date of publication in the Federal Register*].

**ADDRESSES:** Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) (herein referred to as the “Analysis”) prepared for this action are available from <https://www.regulations.gov> identified by docket number NOAA-NMFS-2023-0055

or from the NMFS Alaska Region website at

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

**FOR FURTHER INFORMATION CONTACT:** Alicia M. Miller, 907-586-7228 or *[Alicia.m.miller@noaa.gov](mailto:Alicia.m.miller@noaa.gov)*.

**SUPPLEMENTARY INFORMATION:** NMFS published a proposed rule in the **Federal Register** on May 11, 2023 (88 FR 30272), with public comments invited through June 12, 2023. NMFS received two comment letters on the proposed rule. A summary of the comments and NMFS' responses are provided under the heading **Comments and Responses** below. The following background sections describe the IFQ Program, the halibut IFQ vessel use caps, and this final rule. Detailed descriptions of the IFQ Program and the rationale and effects of this action are included in the preamble to the proposed rule and in the Analysis prepared for this action and are not repeated here (see **ADDRESSES**).

### **Background**

This rule implements regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D for 2023 through 2027. Vessel use caps were recommended by the North Pacific Fishery Management Council (Council) and implemented by NMFS as part of the IFQ Program (58 FR 59375, November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC) and consistent with the Halibut Act (16 U.S.C. 773c(c)).

### *IFQ Program*

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the Community Development Quota (CDQ) Program (50 CFR part 679). A key 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. For more information about the IFQ Program, please refer to section

2.3 of the Analysis. Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding quota share (QS), which is the limited access permit NMFS uses to calculate a person's IFQ each year. Halibut QS is designated for a specific geographic area of harvest, a specific vessel operation type (catcher vessel (C/V) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, category A shares are designated for catcher/processors that process their catch at sea (*e.g.*, freezer longline vessels) and do not have a vessel length designation, whereas category B, category C, and category D shares are designated to be fished on C/Vs that meet specific length designations (§ 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. IFQ permits authorize permit holders to harvest a specified amount of a particular IFQ species in an area from a specific operation type and vessel category, consistent with the QS they hold. IFQ is expressed in pounds (lb) and is based on the amount of QS held by the permit holder in relation to the total QS pool for each area with an assigned catch.

The IFQ Program also establishes: 1) limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (§ 679.42(f)); 2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); 3) limits on the ability of IFQ assigned to one C/V vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and 4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold C/V QS, and they are required to be on the vessel when the IFQ is being fished, with a few limited

exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the C/V halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

#### *Halibut IFQ Vessel Use Caps*

The IFQ Program vessel use caps limit the maximum amount of halibut that can be harvested on any one vessel in any fishing year. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut IFQ fishery and to address concerns about the socio-economic impacts of fleet consolidation and reduction of crew jobs under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130, December 3, 1992).

This preamble refers to halibut catch limits, commercial halibut allocations, and vessel use caps in pounds (lb) and metric tons (mt). Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed.

This rule does not modify the vessel use caps for Areas 2C, 3A, 3B, and 4E. Vessels in these areas cannot be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (§ 679.42(h)(1)). Applying this regulation to 2023 yields a vessel use cap of 89,030 lb (40.4 mt) in all areas. This final rule provides flexibility to vessels harvesting halibut IFQ in Areas 4A, 4B, 4C, and 4D by removing the vessel use cap for 2023 through 2027. Vessels harvesting halibut IFQ in these areas are therefore not limited to a maximum proportion of annual halibut IFQ that may be harvested on a vessel. Halibut harvested in Area 4E is currently entirely allocated under the CDQ Program and CDQ is not subject to vessel use caps. For that reason, the vessel use cap applicable to Area 4E is not modified by this rule.

This rule also removes the vessel use cap applicable to a Community Quota Entity (CQE) in Area 4B from 2023 through 2027. In Area 4B, a CQE is authorized to hold

halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870, February 14, 2014). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold C/V halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS. Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is not subject to the vessel use cap regulations at § 679.42(h)(1)(ii) from the effective date of this final rule through 2027. Unless modified by a subsequent rulemaking, any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak after 2027 will be limited to harvest no more than 50,000 lb (22.7 mt).

This rule does not modify other elements of the IFQ Program, nor IPHC actions related to the program. Specifically, this rule does not do any of the following:

- Increase or otherwise modify the annual halibut catch limits adopted by the IPHC and implemented by NMFS (88 FR 14066, March 7, 2023);
- Modify any other conservation measures recommended by the IPHC and implemented by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC; or
- Modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

#### *Final Regulations*

This rule adds a provision at § 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D from 2023 through 2027 fishing years. Because vessel use caps are applied under existing regulations at the fishery level, including harvest in all areas, the regulations clarify that harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in Area 2C, 3A, or 3B from 2023 through 2027. Unless modified by a

subsequent rulemaking, after 2027, no vessel in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E can be used to harvest more halibut IFQ than one-half percent of the combined total catch limits of halibut (§ 679.42(h)(1)).

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

NMFS did not make changes to the regulatory text in this final rule from the regulatory text in the proposed rule.

### **Comments and Responses**

NMFS received two comment letters during the public comment period for the proposed rule (88 FR 30272, May 11, 2023). One letter was from a CQE authorized to hold QS in Area 4B and the other was from an individual on a topic outside the scope of this action. Below, NMFS summarizes and responds to the three unique relevant comments.

*Comment 1:* We support the proposed action to suspend the halibut IFQ vessel use caps in Area 4B for 2023 through 2027.

*Response:* NMFS acknowledges this comment.

*Comment 2:* The proposed regulatory language at § 679.42(h)(1)(iii) does not explicitly mention a “CQE” but it is clearly inclusive of all vessels harvesting IFQ halibut in Area 4B and this includes IFQ derived from QS held by the CQE in Area 4B.

*Response:* NMFS agrees. This rule removes the vessel use cap applicable to a vessel harvesting IFQ derived from QS held by a CQE in Area 4B for 2023 through 2027.

*Comment 3:* This action provides additional flexibility to the CQE authorized to hold QS in Area 4B by removing the 50,000 lb vessel use cap that would otherwise be applicable to harvesting vessels. Removing this vessel use cap will allow more of the CQE-held QS to be harvested and support the local economy.

*Response:* NMFS acknowledges this comment.

## **Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council (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 the geographic area concerned to develop regulations governing the allocation and catch of halibut in the United States portion of Convention waters, provided those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catch among fishery participants in Convention waters off Alaska.

Under 5 U.S.C. 553(d)(1), NMFS waives the 30-day delay in effective date of this final rule, which relieves a restriction on vessels by removing the use cap. It is important that this final rule is implemented in a timely manner before fishing vessels reach their use caps. An expedited implementation provides much needed flexibility and prevents unnecessary limits on fishing activity.

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

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the *Final Regulatory Flexibility Analysis* section.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by any public comments in response to the IRFA, NMFS' responses to any such comments, and a summary of the analyses completed to support the action.

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.” Copies of the proposed rule, this final rule, and the small entity compliance guide are available on the Alaska Region's website at:

*<https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/pacific-halibut-and-sablefish-individual-fishing-quota-ifq-program>*.

#### *Final Regulatory Flexibility Analysis*

This FRFA incorporates the IRFA and the analyses completed to support this action. 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, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. 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 preamble to the proposed rule (88 FR 30272, May 11, 2023). That description is not repeated here.

#### *Public and Chief Counsel for Advocacy Comments on the IRFA*

NMFS published the proposed rule on May 11, 2023 (88 FR 30272). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on June 12, 2023. 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; therefore, no changes were made to this rule as a result of comments on the IRFA.

#### *Number and Description of Small Entities Regulated by This Final Rule*

This final rule directly regulates the owners and operators of vessels that harvest halibut IFQ in IFQ Area 4A, 4B, 4C, or 4D. As of 2021 (the most recent year of gross revenue data), there were 98 unique vessels that harvested halibut IFQ in Area 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but one of these vessels that landed halibut in 2021 are considered small entities based on the applicable \$11 million threshold. Additional details are included in section 2.6 in the Analysis prepared for the proposed rule (see **ADDRESSES**).

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

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

### *Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

The RFA requires identification of any significant alternatives that accomplish the stated objectives of the action, consistent with applicable statutes, and that would minimize any significant economic impact of the action on small entities. No alternatives to the action were considered. This action is the same as the action implemented in 2022 and 2021 and similar to the action implemented in 2020, which did not include Area 4A.

The status quo alternative would retain the existing vessel use cap restrictions as defined under § 679.42(h). It is possible that such restrictions would increase the likelihood that some of the annual halibut allocation is left unharvested in Area 4.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory Areas 4A, 4B, 4C, and 4D. The action alternative and the regulations contained in this action provide flexibility to IFQ participants in 2023 through 2027 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these Areas. However, this action could result in a reduction in existing operating vessels (and the associated crew jobs) and opportunities for new entrants in Areas 4A, 4B, 4C, and 4D, due to inability to compete with larger, more efficient operations. Additionally, if there are fewer participants in the fishery, it is possible that landings could consolidate to fewer processors and communities depending on landing location and historic harvester-processor relationships.

### *Collection-of-Information Requirements*

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 2023.

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Kimberly Damon-Randall,

Acting 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 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.

2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory Areas 4A, 4B, 4C, and 4D during the 2023 through 2027 fishing years. IFQ halibut harvested in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory Area 2C, 3A, or 3B during the 2023 through 2027 fishing years.

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