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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200330-0092]

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement 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 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 would also make a minor change to regulations implementing the IFQ Program to consolidate temporary IFQ transfer forms. This proposed rule is intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982 and other applicable laws.

DATES: Comments must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by docket number NOAA-NMFS-2019-0134, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0134, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends.

All comments received are a part of the public record and NMFS will post the comments for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action are available from www.regulations.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; by email to OIRA_Submission@omb.eop.gov; or by fax to 202-395-5806.

FOR FURTHER INFORMATION CONTACT: Doug Duncan, 907-586-7228 or *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 proposed rule includes two elements. The first would modify regulations pertaining to the use of halibut QS and halibut IFQ held by CQEs in Area 3A. The second element includes minor changes to regulations implementing the IFQ Program that would consolidate temporary IFQ transfer forms. The following sections summarize the IFQ Program, the CQE Program, and this proposed rule.

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). The IFQ Program for the sablefish fishery is implemented by the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program changed the management structure of the fixed-gear halibut and sablefish fishery by issuing QS to qualified persons who owned or leased a vessel that made fixed-gear landings of those species from 1988 to 1990. 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 typical 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 (*i.e.*, fishing category D IFQ on a category C vessel) are referred to as “fish-up” provisions.

Although the IFQ Program resulted in significant safety and economic benefits for fishermen, many residents of Alaska's small, remote, coastal communities who held

QS have transferred their QS to non-community residents or moved out of these communities. As a result, the number of resident QS holders has declined substantially in most remote coastal communities throughout Alaska. This transfer of halibut QS and the associated fishing effort out of small, remote, coastal communities has limited the ability of residents to locally purchase or lease QS.

CQE Program

The Council developed the CQE Program to improve the ability for rural coastal communities to maintain long-term opportunities to access the halibut and sablefish resources. 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 to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. Communities eligible to participate in the CQE Program in the GOA include those that meet criteria for geographic location, population size, historic participation in the halibut and sablefish fisheries, and are listed in Table 21 to 50 CFR part 679. Additional detail on these criteria is available in the final rule implementing the CQE Program (69 FR 23681, April 30, 2004).

Participating communities are represented by a CQE, which is a NMFS-approved non-profit organization. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. With limited exceptions, QS must remain with the CQE in order to create a permanent asset for the community to use. Community residents who lease IFQ from the CQE can use the revenue to purchase their own QS.

These program features promote community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries.

The Council established limitations in the original CQE Program to prevent excessive consolidation of IFQ harvest into CQE communities, limit demand driven QS price increases for all IFQ Program participants, and broadly distribute the benefits from fishing activities among CQE communities. One limitation prohibited CQEs in some areas (*i.e.*, Southcentral Alaska; Area 3A) from purchasing entry level category D QS. However, subsequent review by the Council and NMFS found that few CQEs held any halibut QS and there was no clear evidence demonstrating a potential conflict between the limited number of new IFQ Program entrants and CQEs. In 2013, NMFS revised regulations on vessel use caps that apply to CQE-held QS and IFQ, expanded the list of eligible CQE communities, and allowed CQEs to hold category D halibut QS in Area 3A. Additional detail is available in the final rule implementing these regulatory provisions (78 FR 33243, June 4, 2013). Generally, these changes were intended to improve the effectiveness of the CQE Program by minimizing program limitations.

Need for this Action

While the expanded CQE Program has provided additional flexibility for eligible communities to purchase, maintain, and use QS, challenges still remain due to difficulties in securing favorable financing terms and limited available revenue streams (see Section 2.9.2 of the Analysis for additional detail). As of 2019, only two out of fourteen eligible CQEs 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, and that the

skiffs often used as category D vessels are not ideal for the harsh weather and ocean conditions later in the season when halibut can move offshore (Section 2.11.3 of the RIR). 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 certain circumstances. If a CQE is unable to fully harvest its annual IFQ and realize the associated revenue, it may face financial challenges 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 would provide more flexibility to CQE participants to fully harvest their category D IFQ in Area 3A. This would 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.

This Proposed Rule

This proposed rule includes two elements. The first element would 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 would make minor changes to regulations implementing the IFQ Program to consolidate temporary IFQ transfer forms.

CQE Fish-Up Provision

The first element of this proposed rule would 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 would allow eligible community residents leasing category D IFQ from a CQE to fish it on larger vessels near the end of the season. This proposed rule does not prevent category D IFQ held by a CQE from being fished on a category D vessel on or after the August 15.

Currently, if a CQE in Area 3A has category D IFQ it cannot be harvested on a vessel larger than 35 ft (10.7 m). Any unharvested category D IFQ in excess of 10 percent of the CQE's account cannot be rolled over to the following year and becomes forgone harvest and subsequently forgone revenue to the CQE and community harvester.

This proposed rule would only apply to Area 3A category D halibut QS held by a CQE located in Area 3A. CQEs located in other IFQ regulatory areas are not eligible to hold category D halibut QS assigned to 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). If CQEs held the maximum amount of Area 3A category D halibut QS allowed by regulation, this proposed 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).

This proposed rule would provide additional flexibility for using category D halibut QS held by CQEs in Area 3A. Increases in demand driven by the additional flexibility of category D halibut QS could increase QS prices. However, changes in halibut QS price as a result of this action are expected to be limited for the following reasons. First, the flexibility to fish up afforded by this action is currently limited to one CQE in Area 3A that holds approximately 6,000 pounds of category D halibut IFQ. Second, increased flexibility for a narrow group of users for a limited amount of time is not likely to significantly increase halibut QS demand. Third, the market power of CQEs to purchase QS is already constrained due to the lack of availability of category D halibut QS and CQE funding barriers (described in Section 2.9.2 of the RIR), as well as the regulatory caps previously described. Non-CQE participants would continue to have access to roughly 90 percent of the category D halibut QS in Area 3A without potential competition from CQEs. While upward pressure on the value of halibut QS (such as being able to fish up) could cumulatively impact transfer prices, the impact of this action is expected to be minimal, given the present constraints on CQEs' access to investment capital and historical investment patterns, as well as the broad range of other factors that influence halibut QS prices. Section 2.11.2 of the RIR provides a more complete discussion of the potential impacts to other IFQ Program participants.

While evaluating a fish-up provision, the Council considered three alternatives, which are described in Sections 2.10 and 2.11 of the RIR. These included alternatives that would have limited the number of times the fish-up provision could be used over a period of years or would have extended the use of this provision to the entire fishing season. These alternatives were not recommended by the Council. Additional detail of the

Council's rationale in support of this action is provided in Section 2.5 of the RIR prepared for this action.

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. This would centralize all non-medical temporary IFQ transfers onto a single form. To implement this form consolidation, this action would eliminate 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 would simplify the temporary IFQ transfer process for the public and for agency administrators. There would be 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) would be modified to reference the "application for temporary transfer of halibut/sablefish IFQ" and the corresponding contents of a complete application.

Classification

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

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 proposed rule is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

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

This proposed rule is expected to be 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) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. NMFS requests comments on the decision to certify this proposed rule. The factual basis for this determination is as follows:

This proposed rule would directly regulate CQEs located in Area 3A holding halibut QS assigned to category D in Area 3A. As of 2019, one CQE located in Area 3A held halibut QS assigned to category D in Area 3A. This QS holder is non-profit entity and unlikely to be considered a large entity under SBA standards; however, this cannot be confirmed because NMFS does not have or collect economic data on permit holders necessary to definitively determine total annual receipts. Thus, this QS holder is considered a small entity, based on SBA criteria.

Eligible CQEs in Area 3A may obtain halibut QS assigned to category D in Area 3A; therefore, this proposed rule directly regulates entities representing small, remote communities in Area 3A. There are 14 communities in Area 3A eligible to obtain halibut QS assigned to category D in Area 3A through CQEs. Of these, all have populations less than 50,000 and are considered to be small government jurisdictions.

This proposed action would provide increased flexibility for CQEs in Area 3A to harvest their category D IFQ on category C vessels from August 15 to the end of the IFQ season each year. Use of this provision is voluntary. Currently, this action would only apply to approximately 6,000 pounds of halibut IFQ held by a single CQE in Area 3A. The maximum potential impact of this action is limited to the amount of category D IFQ that CQEs in Area 3A are allowed to hold by regulation, which is roughly 10 percent of the total category D QS in Area 3A. No agency imposed cost burdens are associated with the use of this voluntary provision. This proposed action, therefore, is not expected to have a significant economic impact on a substantial number of the small entities directly regulated by this proposed action. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Regulatory Impact Review

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of the RIR is available from NMFS (see **ADDRESSES**). The Council recommended this proposed action based on those measures that maximized net benefits to the Nation.

Collection-of-Information Requirements

This proposed 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.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to 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 *<https://www.reginfo.gov/public/do/PRAsearch>*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 31, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 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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