

50 CFR Part 679

[Docket No. 960129018-6018-01; I.D. 080596B]

Fisheries of the Exclusive Economic Zone Off Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), August 7, 1996, until 2400 hrs, A.l.t., October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The deep-water species fishery was apportioned 400 mt of Pacific halibut prohibited species catch for the third season, the period July 1, 1996, through September 30, 1996 (61 FR 4304, February 5, 1996). (See § 679.21(d).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.21(d)(7)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the third seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts for applicable gear types may be found at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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50 CFR Part 679

[Docket No. 960401095-6212-02; I.D. 032596A]

RIN 0648-AH61

Fisheries of the Exclusive Economic Zone Off Alaska; Improve Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule amending the regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This rule also eliminates a prohibition pertaining to IFQ sablefish in the regulations governing the groundfish fisheries in the Gulf of Alaska (GOA). After the first year of the IFQ Program's operation, the North Pacific Fishery Management Council (Council) and NMFS recognize aspects of the Program that need further refinement. This action is necessary to make those refinements and is intended to improve the ability of NMFS to manage the Pacific halibut and sablefish fixed gear fisheries.

EFFECTIVE DATE: September 9, 1996.

ADDRESSES: Copies of the final rule and the Regulatory Impact Review for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: James Hale, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Background**

Regulations codified at 50 CFR 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma*

fimbria) fixed gear fisheries in and off of Alaska, under the authority of the Northern Pacific Halibut Act with respect to halibut and the Magnuson Fishery Conservation and Management Act (Magnuson Act) with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule published in the Federal Register on November 9, 1993 (58 FR 59375).

This action amends various portions of the regulations implementing the IFQ Program and eliminates a prohibition in the groundfish regulations that pertains to IFQ sablefish. These changes are intended to improve the ability of fishermen to conduct fishing operations under the IFQ Program, to refine NMFS' ability to administer the program effectively, and to make the Program more responsive to conservation and management goals for Pacific halibut and sablefish fisheries. A proposed rule was published in the Federal Register, which invited comments through May 24, 1996 (61 FR 18116; April 24, 1996). No comments were received. The following list is a brief description of the regulatory provisions added or amended by this rule. Further information on these changes is contained in the preamble to that proposed rule (61 FR 31228; June 19, 1996).

Elimination of the 72-hour "Fair Start" Provision

Section 679.7(b)(2) is removed to eliminate the prohibition against deploying fixed gear during the 72-hour period preceding the opening of fixed gear sablefish fishing seasons. NMFS has determined that this prohibition is no longer necessary. Under the IFQ Program, which lengthened GOA fixed gear sablefish seasons, the problems addressed by the "fair start" provision have been resolved.

Revision of the Owner-Aboard Restriction

Section 679.4(d)(6)(ii) is revised to allow fishermen to leave their vessels during the time between their arrival in port and the beginning of landing operations. IFQ regulations formerly required IFQ holders to be aboard vessels used to harvest IFQ fish during all fishing operations to ensure that the catcher vessel fleet remains primarily an owner-operator fleet. As revised the regulation continues to require that IFQ holders be aboard during harvest and landing of IFQ fish, except as allowed by the emergency waiver provision; however, IFQ fishermen no longer have to remain aboard in the interim between

arriving in port and unloading IFQ harvests.

Delivery of IFQ Halibut Bycatch by Salmon Fishers

Exceptions to two landing requirements at § 679.5 are provided to encourage salmon fishermen with halibut IFQ to land incidental catches of halibut. Paragraph (C) is added to § 679.5(l)(1)(i) to relieve salmon trollers of the IFQ Program's 6-hour prior notice of landing requirement for delivery of 500 lb (0.227 metric tons (mt)) or less of IFQ halibut bycatch concurrently with legal salmon landings. Paragraph (2) is added to § 679.5(l)(1)(ii)(B) to relieve salmon fishermen of the restriction that IFQ landings be made between the hours of 0600 and 1800 only, when landing 500 lb (0.227 mt) or less of IFQ halibut bycatch concurrently with legal salmon landings.

Revision of Shipment Report Requirement

This action revises § 679.5(l)(2) to modify IFQ Shipment Report requirements. After the first year of the IFQ Program's operation, NMFS finds the current requirement to be unnecessary to monitor and enforce the IFQ Program effectively. This final rule modifies the current regulation to require that the Shipment Report be filled out prior to shipment and submitted to NMFS within 1 week after the date on which the shipment occurred. This action also requires that the Shipment Report or a bill of lading accompany a shipment of IFQ species to the first destination beyond the landing point only. These changes relieve a reporting requirement on shipments of IFQ fish by allowing Shipment Reports to be submitted up to 1 week after the shipment occurred. In addition, a registered buyer is relieved of the requirement to produce multiple copies of the Shipment Report.

Revision of Transshipment Requirements

Section 679.5(l)(2)(v) is revised to clarify requirements governing transshipment of IFQ species. Former regulations providing for transshipment might have been misinterpreted to mean that 24-hour prior notice of a transshipment is sufficient to "authorize" a transshipment. This regulatory amendment specifies that authorization from a clearing officer to transship IFQ species must itself be obtained by the prospective transshipper 24 hours before the proposed transshipment could occur. The amendment further requires that the request for authorization specify the

date and location of the proposed transshipment.

Tagged Halibut and Sablefish

Paragraph (h) is added to § 679.40 to allow tagged halibut and sablefish to be landed without being debited to a person's IFQ halibut or IFQ sablefish quota. The International Pacific Halibut Commission (IPHC) has requested that the IFQ regulations be amended to encourage the landing of tagged halibut in support of the IPHC's biological research on halibut. Accordingly, NMFS adds to the IFQ regulations a provision that tagged halibut not be counted against an IFQ holder's annual Pacific halibut quota. This provision also applies to the capture of tagged sablefish to promote NMFS' fisheries research.

Elimination of Certified Mail Requirements

Sections 679.40(c)(3) and 679.41(d)(4) are amended to eliminate certified mail requirements. To make the IFQ Program more cost-effective, NMFS eliminates certified mail requirements but retains discretion to use certified mailings when appropriate.

Revisions to the Transfer Process

The transfer process for QS and IFQ is revised to address two issues identified by NMFS and the fishing industry during the first year of fishing under the IFQ Program. First, the provision for leasing QS at § 679.41(b)(1) is revised to allow leasing of IFQ under the same conditions. NMFS determined that allowing the lease of IFQ separate from QS would restore the full benefit of the Council's intent that all persons holding QS assigned to vessel categories B, C, or D be allowed to lease up to 10 percent of that QS for a period of 3 years. Regulations at § 679.41(g) and (h) also are revised to reflect this change.

Second, new paragraphs (k)(1) and (2) are added to § 679.41 to provide for the transfer of all QS and IFQ to the surviving spouse of a deceased individual holder of QS or IFQ by right of survivorship, unless contrary intent was expressed by the deceased holder of QS or IFQ in a probated will. This provision allows the surviving spouse, first, to transfer any current year's IFQ for the duration of the allocation year and, second, to transfer annual allocations of IFQ resulting from the total QS transferred by right of survivorship for 3 calendar years from the date of the death of the deceased holder of QS or IFQ. The new provision allows a surviving spouse to transfer the total IFQ resulting from QS for a period of 3 years and thereby obtain pecuniary

benefit from the QS for that period. An Application for Transfer of QS or IFQ to the surviving spouse will be approved by the Director, Alaska Region, NMFS (Regional Director) when sufficient evidence, such as a death certificate, has been provided to verify the death of the holder of QS or IFQ. If the deceased provided for distribution of the QS or IFQ in a will that is probated, then the QS or IFQ will be transferred under the provisions for transfer as a result of court order or operation of law set out in § 679.41(f) and other transfer provisions of § 679.41.

In the interim between publication of the proposed and final rules for this action, the regulations governing fisheries in the Exclusive Economic Zone off Alaska have been consolidated into one new CFR part (50 CFR part 679) as part of the President's Regulatory Reform Initiative (see 61 FR 31228, June 19, 1996). This final rule renumbers and otherwise adjusts the changes contained herein to be consistent with the new disposition of regulations in 50 CFR part 679. There have been no substantive changes from the proposed rule.

Classification

The Regional Director determined that the amendments are necessary for the conservation and management of the IFQ fisheries and that the amendments are consistent with the Magnuson Act, the Northern Pacific Halibut Act, and other applicable laws.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This action will not require the collection of information not already approved by the Office of Management and Budget (OMB). The collection of information originally authorized for the IFQ Program included in the request for transshipment authorization information regarding the primary port location of the proposed transshipment. The requirement that transshipments take place in primary ports only was subsequently removed from regulations implementing the IFQ Program; the information required remains accounted for and approved by OMB (OMB control number 0648-0272) regarding IFQs for Pacific halibut and sablefish. This action simply reinstates the requirement that requests for transshipment authorization include notice of the location of the proposed transshipment, although that location no longer need be

a primary port. The estimated response time for the transshipment notice is 6 minutes. This action also restates existing requirements for prior notices of landing, shipment reports, and applications for transfer of IFQs, all of which also are approved under OMB control number 0648-0272. The respective estimated response times for these requirements are 12 minutes, 12 minutes, and 2 hours. No additional burden is required of the public for information not already projected for IFQ recordkeeping and reporting requirements.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The reasons were published in the Federal Register on April 24, 1996 (61 FR 18116). As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: August 5, 1996.

C. Karnella,

Acting Program Management Officer,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended 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.*

2. In § 679.4, paragraph (d)(6)(ii) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(d) * * *

(6) * * *

(ii) *IFQ card.* Except as specified in § 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during all fishing operations until arrival at the point of landing and during all IFQ landings. The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer,

clearing officer, or registered buyer purchasing IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish between the time the vessel arrives at the point of landing until the commencement of landing.

* * * * *

3. In § 679.5, the introductory text of paragraph (l)(1)(i) and paragraphs (l)(1)(ii)(B), (l)(2)(i), (l)(2)(iii), and (l)(2)(v) are revised; paragraph (l)(1)(i)(C) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(1) *IFQ landings report—(i) Prior notice of IFQ landing.* Except as provided in paragraph (l)(1)(i)(C) of this section, the operator of any vessel making an IFQ landing must notify the Alaska Region, NMFS, no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

* * * * *

(C) The operator of a category B, C, or D vessel, as defined at § 679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(ii) and concurrent with a legal landing of salmon is exempt from the prior notice of landing required by this section.

(ii) * * *

(B) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless:

(1) Permission to land at a different time is granted in advance by a clearing officer; or

(2) IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(ii) is landed concurrently with a legal landing of salmon by a category B, C, or D vessel, as defined at § 679.40(a)(5).

* * * * *

(2) *IFQ shipment report—(i) Applicability.* Each registered buyer,

other than those conducting dockside sales, must report on a shipment report any shipments or transfers of IFQ halibut and IFQ sablefish to the first destination beyond the location of the IFQ landing.

* * * * *

(iii) *Registered Buyer.* A registered buyer must:

(A) Complete a Shipment Report for each shipment or transfer from that registered buyer prior to shipment and assure that the Shipment Report is

submitted to, and received by, the Alaska Region, NMFS, within 7 days of the date shipment or transfer commenced;

(B) Assure that a copy of the Shipment Report or a bill of lading that contains the same information accompanies the shipment to its first destination beyond the location of the IFQ landing; and

(C) Submit a revised Shipment Report if any information on the original Shipment Report changes prior to the first destination of the shipment. A revised Shipment Report must be clearly labeled "Revised Shipment Report," and must be received by the Alaska Region, NMFS, within 7 days of the change.

* * * * *

(v) *Transshipment.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment.

* * * * *

§ 679.7 [Amended]

4. In § 679.7, paragraph (b)(2) is removed and reserved.

5. In § 679.40, paragraph (c)(3) is revised, and paragraph (g) is added to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(c) * * *

(3) *IFQ permit.* The Regional Director shall issue to each QS holder, pursuant to § 679.4, an IFQ permit accompanied by a statement specifying the maximum amount of halibut and sablefish that may be harvested with fixed gear in a specified IFQ regulatory area and vessel category as of January 31 of that year. Such IFQ permits will be mailed to each QS holder at the address on record for that person after the beginning of each fishing year but prior to the start of the annual IFQ fishing season.

* * * * *

(g) *Tagged halibut and sablefish.* (1) Nothing contained in this part shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture a research tag from any state, Federal, or international agency, provided that the halibut or sablefish is:

(i) A Pacific halibut landed pursuant to 50 CFR 300.18; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program.

(2) Tagged halibut or sablefish landed pursuant to paragraphs (1)(i) or (1)(ii) of this section shall not be calculated as part of an individual's IFQ harvest or be debited against an individual's halibut or sablefish IFQ.

6. In § 679.41, paragraphs (b)(1), (d)(4), (d)(5) introductory text, (g)(1), (g)(2), and (h) are revised, and paragraph (k) is added to read as follows:

§ 679.41 Transfer of QS and IFQ.

* * * * *

(b) *Transfer procedure*—(1) *Application for transfer.* An Application for Transfer of QS/IFQ (Application for Transfer) must be approved by the Regional Director before a person may use IFQ to harvest IFQ halibut or IFQ sablefish, whether the IFQ was the result of a direct transfer or the result of a QS transfer. An Application for Transfer will not be approved until the Regional Director has reviewed and approved the transfer agreement signed by the parties to the transaction. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notification of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another

communication mode is requested on the Application for Transfer.

* * * * *

(d) * * *

(4) *Notification of approval.*

Applicants will be notified by mail of the Regional Director's approval of an application for eligibility.

(5) *Notification of disapproval.* The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

* * * * *

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

(2) Except as provided in paragraph (g)(3) of this section, only persons who are IFQ crew members, and meet the other requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it, in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish.

* * * * *

(h) *Transfer of IFQ.* (1) Pursuant to paragraph (a) of this section, an Application for Transfer must be approved by the Regional Director before a person may use any IFQ that

results from a direct transfer to harvest halibut or sablefish. After approving the Application for Transfer, the Regional Director will change any IFQ accounts affected by the approved transfer and issue all necessary IFQ permits.

(2) (Applicable until January 2, 1998). A person may transfer no more than 10 percent of the total IFQ resulting from QS held by that person and assigned to vessel categories B, C, or D for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year.

* * * * *

(k) *Transfer to the surviving spouse.*

(1) On the death of an individual who holds QS or IFQ, the surviving spouse receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will that is probated. The Regional Director will approve an Application for Transfer to the surviving spouse when sufficient evidence has been provided to verify the death of the individual.

(2) The Regional Director will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (g)(2) of this section.

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