

specifications of the annual quotas will be accomplished on or about December 1 of the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L).

(1) *Quota reports.* On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 3-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

- (i) Exploitable and spawning biomass relative to the OY.
- (ii) Fishing mortality rates relative to the OY.
- (iii) Magnitude of incoming recruitment.
- (iv) Projected effort and corresponding catches.
- (v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review.* Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** on or about December 1 of each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional

Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications.* Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3-year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3-year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3-year period.

(c) *Annual quotas.* The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

■ 4. In § 648.75, paragraph (b) is revised to read as follows:

§ 648.75 Cage identification.
* * * * *

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year, or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.70(a). Each tag represents 32 bu (1,700 L) of allocation.

■ 5. In § 648.77, paragraph (a)(1) is revised to read as follows:

§ 648.77 Framework adjustments to management measures.
(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council

must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, and suspension or adjustment of the surfclam minimum size limit.

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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031009255-3302-02; I.D. 092503A]

RIN 0648-AQ88

Fisheries of the Exclusive Economic Zone Off Alaska; Revision to the Management of "Other Species" Community Development Quota

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to modify the management of the "other species" Community Development Quota (CDQ) reserve by eliminating specific allocations of "other species" CDQ to individual CDQ managing organizations (CDQ groups) and, instead, allowing NMFS to manage the "other species" CDQ reserve with the general limitations used to manage the catch of non-CDQ groundfish in the Bering Sea and Aleutian Islands management area (BSAI). This action also eliminates the CDQ non-specific reserve and makes other changes to improve the clarity and consistency of CDQ Program regulations. This action is necessary to improve NMFS' ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the North Pacific Fishery

Management Council (Council) with respect to this program.

DATES: Effective December 15, 2003, except for amendments to §§ 679.2, 679.7, the introductory paragraph to 679.31, and 679.32 which are effective January 15, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228 or Obren.Davis@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The Council prepared the FMP pursuant to 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 FMP appear at 50 CFR parts 600 and 679.

Regulations codified at 50 CFR part 679 implement the multispecies CDQ Program, a limited access system that provides exclusive harvesting privileges to a portion of the total allowable catches for halibut, crab and groundfish to eligible western Alaska communities. The purpose of this program is to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of eligible communities. NMFS allocates varying amounts of commercially valuable CDQ target species to CDQ groups each year. The harvest of these species provides a financial means for CDQ groups to fund economic development projects in support of overall program objectives.

This action would modify the management of the "other species" CDQ reserve and amend regulations to distinguish between the management of those groundfish CDQ reserves that are allocated to CDQ groups and those that are not. The "other species" complex is comprised of various species of sharks, skates, sculpins, and octopi. These species are incidentally caught with CDQ target species such as pollock, Pacific cod, sablefish, Atka mackerel, and flatfish. Exceeding an annual CDQ allocation results in an enforcement

action against a CDQ group, which may include monetary or other penalties. To avoid exceeding their "other species" allocations, CDQ groups may have to modify their fishing practices by fishing in new or different locations or ceasing to fish for some target species. Failing to completely harvest CDQ target species allocations has an economic impact on CDQ groups and the CDQ communities when revenues are foregone, which may adversely affect the accomplishment of projects intended to foster economic development in western Alaska communities.

Under this action the "other species" CDQ reserve would still be established annually, but would no longer be allocated to CDQ groups. All catch of "other species" in the groundfish CDQ fisheries would accrue towards this reserve, rather than towards specific allocations to individual CDQ groups. Eliminating individual "other species" allocations would eliminate the potential that some CDQ target allocations would be unharvested for lack of "other species" bycatch, or that groups would incur enforcement actions for exceeding an annual "other species" CDQ allocation. Some CDQ groups receive allocations of "other species" CDQ that are not necessarily proportionate to the amount CDQ target species they are allocated, while other groups receive adequate amounts or even have surplus "other species" remaining at the end of each year. NMFS would manage the "other species" CDQ reserve as a whole with management measures in § 679.20(d). These measures provide the means to manage the catch of "other species" in both the CDQ and non-CDQ groundfish fishery.

This final rule makes the following changes to CDQ Program regulations: (1) amends the content and headings of definitions associated with the CDQ Program; (2) revises a prohibition associated with calculating maximum retainable amounts of CDQ catch; (3) amends the introductory paragraph that discusses CDQ reserves; (4) amends regulations to distinguish how NMFS will manage groundfish CDQ reserves apportioned to CDQ groups and how it will manage groundfish CDQ reserves that are not apportioned to CDQ groups; (5) amends regulations to specify that the "other species" CDQ reserve, is not allocated among CDQ groups; (6) amends regulations to allow NMFS to manage the "other species" CDQ reserve with fishery management measures typically used in non-CDQ fisheries; (7) amends regulations to describe how NMFS will apply CDQ percentage allocations to revised total allowable

catch (TAC) categories that may arise from the annual groundfish harvest specifications process; and (8) amends catch monitoring requirements to align them with revisions to CDQ-related definitions. This action also will rescind the "other species" CDQ percentage allocations made to individual CDQ groups on January 17, 2003, and supercede the Alaska Regional Administrator's 2003-2005 allocation decision pertaining to this CDQ reserve category. These changes are necessary to promote the ability of CDQ groups to more fully utilize their annual groundfish CDQ allocations in support of the goals of the CDQ Program, to enhance NMFS' ability to administer the program, and to improve the consistency and clarity of CDQ Program regulations.

NMFS published a proposed rule to modify the management of the "other species" CDQ reserve on October 22, 2003 (68 FR 60327), with comments invited through November 6, 2003. The preamble to the proposed rule contains a full description and justification of the regulatory revisions implemented by this action. The preamble also contains additional background on the general history of the CDQ program and specific management measures used to allocate and account for the catch of "other species" CDQ, as well as the purpose and need for this action. No letters of comment were received by the end of the comment period. No changes were made from the proposed rule.

Classification

For the reasons set forth below, the Assistant Administrator finds that the primary provision of this action relieves a restriction, thereby making the normal 30-day delay in effective date inapplicable to the amendment to § 679.31(f). Without this action, existing regulations prohibit CDQ groups from exceeding any CDQ allocation, as discussed in the preamble. CDQ groups likely will have to curtail some of their target fisheries because they lack adequate "other species" CDQ to account for the incidental catch of such species. In this event, CDQ groups would forfeit some of the revenues that they would otherwise receive from the complete harvest of their CDQ target allocations. This would result in unnecessary adverse impacts to eligible communities that are dependent on CDQ royalties to fund economic development projects or on groundfish CDQ harvesting operations to provide employment to residents. This action would remove the allocation of CDQ "other species" to the CDQ groups and authorize management of CDQ "other

species" harvest at the CDQ reserve level and under the general management provisions at 50 CFR 679.20(d), thus relieving a restriction and allowing CDQ groups to continue fishing operations for CDQ target allocations without being curtailed by the group's harvest of "other species." It is anticipated that this action will allow CDQ groups and their eligible communities to realize the benefits associated with the harvest of valuable CDQ target allocations. Therefore, under the authority set forth at 5 U.S.C. 553(d)(1) and (3), the revision to § 679.31(f) is effective immediately upon filing with the Office of the Federal Register.

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

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). A copy of the EA/RIR/FRFA is available from NMFS (see ADDRESSES). The need for and objectives of this action are discussed in the preamble to this rule and in more detail in the proposed rule published October 22, 2003 (68 FR 60327). This rule: (1) amends the management of the "other species" CDQ reserve to discontinue allocating this reserve among CDQ reserves; (2) allows NMFS to manage the "other species" CDQ reserve with management measures currently used in the non-CDQ groundfish fishery; (3) eliminates the CDQ non-specific reserve mechanism; and (4) implements an assortment of regulatory revisions affiliated with the revision to the management of the "other species" CDQ reserve and changes to CDQ-related definitions.

NMFS prepared an IRFA to evaluate the impacts of this action on directly regulated small entities in compliance with the requirements of Section 603 of the Regulatory Flexibility Act. The IRFA was described in the classifications section of the proposed rule. The public comment period ended November 6, 2003. No comments related to the economic impact of this action were received.

The small entities that will be directly regulated by this action are the six CDQ groups that represent the 65 western Alaska communities that currently participate in the CDQ Program. This regulation will not impose new recordkeeping or reporting requirements on the regulated small entities.

This action relieves a constraint on CDQ groups to completely harvest their groundfish CDQ target species. NMFS considered, but did not adopt, a status quo alternative to the action because the alternative would not achieve the

Council's objective for this action. Three additional alternatives also were identified for this action, but were not carried forward for further analysis. Two of the rejected alternatives encompassed allocative changes to the "other species" category that would have been difficult to accurately calculate to the degree that they would reliably benefit CDQ groups in the future. These rejected alternatives might also have been controversial to other BSAI fishery components due to concerns that such allocative changes could have adverse impacts on the successful prosecution of future non-CDQ fisheries. A third rejected alternative would have been contrary to statutory provisions of the Magnuson-Stevens Act. These alternatives were discussed in further detail in the classification section of the proposed rule.

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 FRFA, 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. Small entities are not required to take any additional actions to comply with this action. This final rule constitutes the agency's small entity compliance guide pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following web site: <http://www.fakr.noaa.gov/>

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 9, 2003.

John Oliver,
Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For 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 part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C,

Pub. L. 105–277; Sec. 3027, Pub L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.2, the definitions for "Community Development Quota," "Community Development Quota Program," "Community Development Quota reserve," and "Prohibited species quota (PSQ)" are removed; the definitions for "CDQ," "CDQ Program," "CDQ reserve," "PSQ," and "PSQ reserve" are added in alphabetical order; and the definitions for "CDQ species" and "PSQ species" are revised to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ means community development quota and is the amount of a CDQ reserve that is allocated to a CDQ group.

* * * * *

CDQ Program means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

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CDQ reserve means a percentage of each groundfish TAC apportioned under § 679.20(b)(1)(iii), a percentage of a catch limit for halibut, or a percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ Program.

CDQ species means any species or species group that is allocated from a CDQ reserve to a CDQ group.

* * * * *

PSQ means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group.

* * * * *

PSQ reserve means the percentage of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

PSQ species means any species or species group that has been allocated from a PSQ reserve to a CDQ group.

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■ 3. In § 679.7, paragraph (d)(16) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d)* * *

(16) Use any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

■ 4. In § 679.31, the introductory paragraph to this section and paragraph (f) are revised to read as follows:

§ 679.31 CDQ Reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ groups in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of each CDQ reserve to any one group with an approved CDP.

* * * * *

(f) *Management of the Groundfish CDQ Reserves*—(1) *Groundfish CDQ reserves allocated among CDQ groups.* (i) Except as limited by paragraph (f)(2) of this section, the groundfish CDQ reserves are apportioned among CDQ groups using percentage allocations approved by NMFS under § 679.30(d).

(ii) If the groundfish harvest specifications required by § 679.20(c) change the species comprising a TAC category or change a TAC category by combining or splitting management

areas, then the CDQ percentage allocations approved by NMFS for the original TAC category will apply to any new categories.

(iii) A CDQ group is prohibited by § 679.7(d)(5) from exceeding an annual groundfish CDQ amount allocated to it.

(iv) NMFS may specify limitations or prohibitions to prevent overfishing of any BSAI groundfish species, including measures specific to groundfish CDQ species allocated among CDQ groups (see § 679.20(d)(3)).

(2) *Groundfish CDQ reserves not allocated among CDQ groups.* (i) The “other species” CDQ reserve, or individual species that comprise the “other species” CDQ reserve, will not be allocated among CDQ groups.

(ii) Groundfish CDQ reserves not allocated among CDQ groups will be managed at the CDQ reserve level under general limitations at § 679.20(d).

■ 5. In § 679.32, paragraph (c)(1)(i) is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) *Catcher vessels without an observer.* (i) Operators of catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ species, halibut CDQ, and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section, unless retention of groundfish CDQ species is not authorized under § 679.4, discard of the groundfish CDQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by the State of Alaska.

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