

(ii) The areas designated at § 622.33(a) of this chapter, year-round.

\* \* \* \*

(3) \* \* \*

(i) *Bycatch mitigation measures.* The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must undertake the bycatch mitigation measures under paragraphs (c)(5)(i) and (c)(5)(ii)(A) - (C) of this section to release sea turtles, prohibited sharks, or smalltooth sawfish, as appropriate.

(ii) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(iii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(ii) of this section, must be used to disengage any hooked or entangled sea turtles as stated in paragraphs (c)(5)(ii)(A) - (C) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in category D of Table 1 of Appendix A to this part. If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible. Dehooking devices should not be used to release smalltooth sawfish.

\* \* \* \*

5. In § 635.71, paragraph (a)(33) is revised to read as follows:

#### **§ 635.71 Prohibitions.**

\* \* \* \*

(a) \* \* \*

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized appropriately, as specified in § 635.21 (c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

\* \* \* \*

[FR Doc. E6-4582 Filed 3-28-06; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**[Docket No. 040610180-6065-02; I.D. 030806A]**

**RIN 0648-AR09**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Tagged Pacific Halibut and Tagged Sablefish**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend regulations for excluding tagged halibut and tagged sablefish catches from deduction from fishermen's Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ) accounts. This action is necessary to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction, and to extend the same exclusion to halibut and sablefish harvested under the CDQ Program, which allocates specific harvesting privileges among U.S. fishermen and eligible western Alaska communities. This action is intended to improve administration of the IFQ and CDQ Programs, to enhance collection of scientific data from external tags, and to further the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), and the halibut management program.

**DATES:** Comments on this proposed rule must be received by April 28, 2006.

**ADDRESSES:** Send written comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Records Officer. Comments may be submitted by:

- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.

- E-mail: [tagged-halibut-0648-AR09@noaa.gov](mailto:tagged-halibut-0648-AR09@noaa.gov). Include in the subject line the following document identifier: Tagged Halibut RIN 0648 AR09. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Webform at the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

- Fax: 907-586-7557.

- Mail: P.O. Box 21668, Juneau, AK 99802-1668.

Copies of the Categorical Exclusion (CE) and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from NMFS at the above address or from the NMFS Alaska Region Web site at [www.fakr.noaa.gov](http://www.fakr.noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the addresses above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

#### **FOR FURTHER INFORMATION CONTACT:**

Becky Carls, 907-586-7228 or [becky.carls@noaa.gov](mailto:becky.carls@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of the BSAI and the Gulf of Alaska are managed by NMFS under the FMPs for these areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under 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.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the "Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an IFQ Program, as is the fixed gear sablefish fishery. The IFQ Program is a limited access management system. Both species are also a part of the annual apportionment under the CDQ Program. These programs are codified at 50 CFR part 679.

The International Pacific Halibut Commission (IPHC) develops halibut fishery management regulations pursuant to the Convention and submits those regulations to the U.S. Secretary of State for approval. NMFS publishes approved IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

NMFS published the IPHC's current annual management measures on February 25, 2005, at 70 FR 9242. The Halibut Act also authorizes the Council to develop Pacific halibut fishery regulations in and off Alaska that are in addition to, but not in conflict with, the approved IPHC regulations (Halibut Act, section 773c(c)). Regulations developed by the Council pursuant to the Halibut Act are implemented only with the approval of the U.S. Secretary of Commerce (Secretary).

## Background

### *IFQ and CDQ Programs*

In December 1991, the Council adopted a limited access system for managing the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. The Council designed the IFQ and CDQ Programs to allocate specific harvesting privileges among U.S. fishermen and eligible western Alaska communities to resolve management and conservation problems associated with "open access" fishery management, and to promote the development of fishery-based economic opportunities in western Alaska. Acting on behalf of the Secretary, NMFS initially implemented the IFQ Program and CDQ halibut and sablefish programs through regulations published in the **Federal Register** on November 9, 1993 (58 FR 59375), and fully implemented beginning in March 1995.

NMFS and the State of Alaska jointly manage the CDQ Program that was adopted by the Council in 1991 for halibut, fixed gear sablefish, and pollock in the BSAI. The CDQ Program for pollock was implemented beginning in 1992, and for halibut and fixed gear sablefish in 1995. The CDQ Program has expanded several times and now includes allocations of all FMP groundfish and crab species, and allocations for bycatch of prohibited species. Currently, 65 communities, representing about 27,000 western Alaska residents, are eligible to participate in the CDQ Program. These communities are located within 50 nautical miles of the Bering Sea coast and are predominantly populated by Alaska Natives. The eligible communities formed six non-profit corporations, known as CDQ groups, to manage and administer allocations, investments, and economic development projects.

### *Tagged Halibut*

The IPHC tags Pacific halibut with external research tags to obtain general information on their life history. Tagging information also is used to

improve the estimates of halibut incidental catch mortality rates or to evaluate the survival of halibut released by longliners that use the prescribed "careful release techniques" (i.e., careful shaking, gangion cutting, and hook straightening). Over the years, the IPHC has used several types of external research tags, including spaghetti-wire tags, metal- or plastic-tipped dart tags, and electronic Pop-up Satellite-transmitting Archival Tags.

In 2003, the IPHC also began using internal tags called Passive Integrated Transponder (PIT) tags, which are inserted into the heads of the fish. These PIT tags cannot be identified from any external marking and cannot be recovered by fishermen. Only shoreside scan samplers using special electronic equipment can locate the PIT tags after the fish are landed.

### *Tagged Sablefish*

NMFS has been tagging and releasing sablefish in waters adjacent to Alaska since 1972 under the Sablefish Tag Program. Each year, NMFS catches thousands of fish in the course of NMFS surveys. NMFS weighs and measures the fish, determines their sex, and tags them before releasing them. Fishermen and seafood processors subsequently find the tagged fish. Since 1972, about 300,000 tagged sablefish have been released, of which nearly 26,000 have been recovered. Additionally, the Alaska Department of Fish and Game has used PIT tags for sablefish studies off Alaska.

Sablefish tagging supports estimates of important biological parameters such as fishing and natural mortality, growth, and migration of fish among management areas. These parameters are incorporated into stock assessment models that are used to recommend harvest levels. Information derived from tagging results in stock assessments that enhance the fishery management process and decrease costs associated with under- and over-harvest of groundfish resources. The common types of external tags used for sablefish include plastic T-bar tags, and tags alerting fishermen to the presence of surgically implanted electronic tags in particular fish.

### **Need for Action**

The purposes of this action are: (1) To eliminate an inconsistency between Federal and IPHC regulations, and (2) to include the CDQ Program in the exemption from deduction of halibut and sablefish tagged with external research tags.

IPHC regulations at Section 21(3) require externally tagged halibut and

sablefish harvested in commercial fisheries to count against Individual Vessel Quotas (used in Canada), CDQs, IFQs, or daily bag or possession limits "unless otherwise exempted by state, provincial, or federal regulations." Federal regulations at 50 CFR 679.40(g) exempt any tagged halibut and sablefish landed in Federal commercial IFQ fisheries from counting against a person's IFQ. The regulatory language currently included in the Federal exemption is inconsistent with that in the IPHC regulations because it does not specifically identify "external" tags for halibut. This Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Now, various types of internal and external tags are used to identify fish for scientific purposes. The proposed action would amend Federal regulations so only halibut and sablefish that are "externally" tagged may be excluded from quota deduction.

The exemption from quota deduction for tagged fish currently provided in Federal regulations for IFQ halibut and IFQ sablefish does not extend to CDQ halibut and CDQ sablefish. Halibut CDQ and sablefish CDQ are allocated to Western Alaska CDQ groups as fixed percentages of the annual total allowable catch of halibut and of sablefish. IFQ holders and CDQ groups operating in the Western Alaska CDQ region target essentially the same stock of fish and either may harvest externally tagged fish. However, CDQ groups do not currently receive the incentive of a deduction exemption for externally tagged fish from CDQ limits. Thus, to encourage recovery of scientific information used to evaluate and manage the halibut and sablefish fisheries, the exemptions from deduction of harvested halibut and sablefish with attached external research tags would be extended to CDQ catches.

This action will improve governmental processes. Externally tagged halibut and sablefish are not counted against a fisherman's IFQ allocation if they are reported when landed. This exemption from quota deduction is intended to give fishermen an incentive to take the time to report tagging information that is important to the management of the halibut and sablefish fisheries. The original tag exemption regulations were prepared prior to the introduction of internal tags. Because fishermen are unaware of the tags' presence prior to discovery by scan samplers, this incentive does not apply to internally tagged fish. This regulatory change would eliminate the potential for ambiguity and confusion over the

exemption status of fish. Extension of the exemption to the CDQ fisheries will provide an incentive for fishermen operating in these programs to return tags.

#### *Proposed Changes to Regulations*

NMFS proposes to amend the current regulations on tagging at 50 CFR 679.40(g) by removing “Tagged” and adding in its place “External research tags for.” This action would specify that only halibut or sablefish bearing an external research tag issued by any state, Federal, or international agency, are excluded from program quota deduction.

In section 679.40 paragraph (g)(1), the phrase “a research tag” would be revised to read “an external research tag” to ensure that only halibut and sablefish bearing external research tags are exempt from quota deduction.

Paragraph (g)(1)(i) would be amended by removing “50 CFR 300.18” and adding in its place “50 CFR 300.62 and 50 CFR part 679.” The reference to “50 CFR 300.18” is an artifact from when the IPHC regulations for annual management measures were codified in the Code of Federal Regulations (CFR). NMFS publishes the IPHC regulations as annual management measures in the **Federal Register**, but now does not codify them in the CFR.

Paragraph (g)(1)(ii) would be revised to require fishermen to comply with all sablefish regulations at 50 CFR part 679 in addition to turning in a tagged sablefish.

Paragraph (g)(2) would be amended by removing “Tagged halibut and sablefish” and adding in its place “Halibut and sablefish bearing an external research tag from any state, Federal, or international agency.” In addition a reference to 50 CFR 679.5(l) would be added. Section 679.5 paragraph (l) describes the recordkeeping and reporting requirements for the IFQ Program. Language specifying which quotas would not be debited by harvest of externally tagged halibut or sablefish would be broken out into two separate paragraphs (g)(2)(i) and (g)(2)(ii). The first would address halibut IFQ and sablefish IFQ, while the second would address halibut CDQ and sablefish CDQ.

Additional language would be added to § 679.40(g)(1) and (g)(2) to improve the clarity of the regulations.

#### **Classification**

NMFS has determined that the proposed rule is consistent with the Halibut Act and the FMPs, and preliminarily determined that the rule is

consistent with the Magnuson-Stevens Act and other applicable laws.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, the reasons why it is being considered, a statement of the objectives of, and legal basis for, this action are contained in the preamble and are not repeated here. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSEES**).

The entities that would be directly regulated by this action are the Western Alaska CDQ groups that annually receive halibut and sablefish quota, and those entities harvesting halibut and/or sablefish under the IFQ and CDQ Programs. There were six Western Alaska CDQ groups in 2004. Each of these groups is organized as a not-for-profit entity, and none is dominant in its field, thus, each group is considered to be a directly regulated small entity.

In 2004, 1,524 unique vessels harvested halibut and/or sablefish. A total of 1,304 unique vessels were used to harvest IFQ halibut, 199 to harvest CDQ halibut, and 1,489 to harvest IFQ halibut and/or CDQ halibut (i.e., 14 harvested both). A total of 396 unique vessels were used to harvest IFQ sablefish, 18 to harvest CDQ sablefish, and 403 to harvest IFQ and/or CDQ sablefish (i.e. 11 harvested both). Contractual arrangements, ownership information, and any resulting affiliations between such parties are proprietary. Though affiliation status for these entities is not well known, vessel operations are believed to be small entities and will be treated as such for the purposes of this action.

This action would amend regulations to provide that only halibut or sablefish that are externally tagged with research tags would be exempt from deduction from IFQ or CDQ accounts. The exemption is believed to provide an economic incentive for fishermen to take the additional time to notify fishery managers about the tags and about the tagged fish they encounter during their fishing operations. This information is important for the conservation and management of the halibut and sablefish fisheries.

The benefits of this action are as follows: (1) Regulatory consistency leading to the potential for fewer disagreements and lower transactions

costs during landings, (2) potentially improved fisheries management via improved collection of scientific data, and (3) a potential, although very slight, economic benefit to CDQ groups, which recover and turn in external halibut and/or sablefish research tags, accruing from the exemption from quota deduction. The benefits to the CDQ groups are expected to be small due to the overall low numbers of halibut and sablefish external tag returns.

This regulation appears to impose no costs on directly regulated small entities. IFQ fishermen currently voluntarily bear the small burden of collecting and returning tags. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to IFQ exemptions for delivery of externally tagged fish, and would continue to enjoy this benefit. CDQ groups harvesting CDQ halibut and CDQ sablefish would, under the proposed action, also benefit from this exemption. CDQ groups would not be required to return tags, so no costs would be imposed on them. Overall, this action would have no known adverse impacts on the profitability or competitiveness of small regulated entities.

This proposed regulation does not impose new recordkeeping or reporting requirements on the directly regulated small entities. Affected small entities may choose to ignore external research tags and are not under any obligation to report them. However, if affected small entities wish to benefit from this regulation, they must report the presence of external research tags to IPHC port samplers, to the IPHC directly, to the Alaska Department of Fish and Game, or to NMFS as appropriate.

This proposed action does not duplicate, overlap, or conflict with other Federal rules.

The no action alternative would have no direct impact on small entities. Under this alternative the regulations would not be changed to eliminate the inconsistency between IPHC and Federal regulations, nor would CDQ groups be eligible for exemptions from quota deduction for halibut or sablefish tagged with external tags issued by any state, Federal, or international agency. Therefore, the no action alternative would not meet the objectives of this action to eliminate inconsistency in the regulations and to extend the exemption from quota deduction to the CDQ groups.

An alternative that would leave the CDQ program fisheries out of the proposed action was considered but was rejected. This alternative would not encourage all fishermen that harvest

halibut and sablefish in quota fisheries to return tagged fish. Moreover, this alternative would provide less benefit to CDQ groups, which are small entities under SBA guidelines. This alternative, therefore, would not meet the objectives of this action.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under control number 0648-0276. Public reporting burden for tag information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 24, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.40, paragraph (g) is revised to read as follows:

##### § 679.40 Sablefish and halibut QS.

\* \* \* \* \*

(g) *External research tags for 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 an external research tag from any state, Federal, or

international agency, provided that the halibut or sablefish is one of the following:

(i) A Pacific halibut landed pursuant to 50 CFR 300.62 and 50 CFR part 679; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program, and in compliance with all sablefish requirements of 50 CFR part 679.

(2) Halibut and sablefish bearing an external research tag from any state, Federal, or international agency, landed pursuant to paragraphs (g)(1)(i) or (g)(1)(ii) of this section, and in accordance with § 679.5(l), shall be excluded from IFQ or CDQ deduction as follows:

(i) The fish shall not be calculated as part of a person's IFQ harvest of halibut or sablefish and shall not be debited against a person's halibut IFQ or a person's sablefish IFQ; or

(ii) The fish shall not be calculated as part of the CDQ harvest of halibut or sablefish and shall not be debited against a CDQ group's halibut CDQ or a CDQ group's sablefish CDQ.

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