

receive information about their monthly bill or as a monthly stand-alone mailer (e.g., postcard, brochure).

(d) ETCs that receive federal universal service funds shall provide information on the DTV Transition that is equivalent to the information provided pursuant to paragraph (b)(2) of this section as part of any Lifeline or Link-Up publicity campaigns conducted by the ETC between March 27, 2008, and March 31, 2009.

[FR Doc. E8-11156 Filed 5-16-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070717351-8507-02]

RIN 0648-AV64

#### Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Development Quota Program

**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 Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program for the fixed-gear commercial Pacific halibut and sablefish fisheries. This action amends current regulations to allow the use of longline pot fishing gear in the Bering Sea sablefish IFQ and sablefish CDQ fisheries in the month of June. This action also adds regulatory provisions to allow members of the National Guard and military reserves who are mobilized to active duty to temporarily transfer their annual halibut and sablefish IFQ to other eligible IFQ recipients. This final rule is necessary to increase the efficiency of fishermen operating longline pot vessels in the Bering Sea sablefish fishery and to allow guardsmen and reservists to accrue some economic benefit from their annual IFQ if unable to harvest it due to military service. This action is intended to promote the conservation and management provisions in the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and the Northern Pacific Halibut Act of 1982 (Halibut Act).

**DATES:** Effective June 18, 2008, except the amendment to § 679.24(c)(4), which is effective May 19, 2008.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or via the NMFS, Alaska Region website at <http://www.fakr.noaa.gov>.

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

**FOR FURTHER INFORMATION CONTACT:**

Obren Davis, 907-586-7228 or [obren.davis@noaa.gov](mailto:obren.davis@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) in the Exclusive Economic Zone (EEZ) under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act) and is implemented by regulations at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. NMFS manages fishing for sablefish (*Anoplopoma fimbria*) through regulations established under the authority of the Magnuson-Stevens Act. Sablefish is managed as a groundfish species under the FMP, as well as under the IFQ Program that allocates sablefish and Pacific halibut (*Hippoglossus stenolepis*) harvesting privileges among U.S. fishermen.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention) and the Halibut Act. The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by these two officials, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62 (73 FR 12280; March

7, 2008). Federal regulations governing the halibut fisheries in the BSAI management area appear at 50 CFR parts 300 and 679.

#### Background and Need for Action

The background and need for this action were described in detail in the preamble to the proposed rule published in the **Federal Register** on March 5, 2008 (73 FR 11851). The proposed rule's comment period ended April 4, 2008. NMFS received two responses that contained four unique comments. These comments are summarized under "Response to Comments."

In summary, this final rule removes a regulation that prohibits using longline pot gear in the Bering Sea during the month of June and amends regulations to allow military reservists and National Guard members to temporarily transfer their IFQ if mobilized to active duty. This action also makes several administrative changes to amend certain modifiers that describe IFQ and CDQ permits in paragraphs (d) and (e) of § 679.4. This includes revising terms such as "original," "copy," and "valid" to read "legible copy." These changes are intended to make the descriptors used in association with such permits consistent throughout these paragraphs.

#### Description of Regulatory Amendments

The following sections explain in detail the regulatory amendments contained in this final rule.

##### Allow Longline Pot Gear to be Used in the Bering Sea Sablefish Fishery in June

This rule will amend regulations in 50 CFR part 679 to remove a prohibition against the use of longline pot gear in the Bering Sea sablefish fishery during the month of June. Existing regulations prohibit deployment of longline pot gear during this month, due to past concerns about conflicts between vessel operators that use different types of fishing gear. Specifically, § 679.24(c)(4) is revised to remove a June closure for longline pot gear in the Bering Sea sablefish fishery.

The use of longline pot gear in the Bering Sea sablefish fishery became an issue in 1991. The nature of longline pot gear and strategies used in fishing with longline pot gear were once thought to deter fishermen from deploying hook-and-line gear on fishing grounds where longline pot gear is set. The groundline (to which baited pots are attached) used with longline pot gear is heavier and stronger than that used for longline hook-and-line gear. If longline pot gear is set over previously deployed longline hook-and-line gear, the weaker hook-and-line gear could be damaged or lost

while being retrieved. The Council recommended a prohibition against longline pot gear in the Bering Sea subarea to avoid potential conflicts between vessel operators using different gear types on common fishing grounds. Final regulations prohibiting the use of longline pot gear and the rationale for implementing this gear restriction were published on August 21, 1992 (57 FR 37906).

In 1995, the IFQ Program extended the fishing season for halibut and sablefish in Federal waters off Alaska to approximately eight months. Prior seasons typically consisted of one or two day openings of concentrated effort. By allowing the sablefish fleet to spread its operations over time, the IFQ Program reduced the likelihood of congestion and preemption of common fishing grounds.

During the first IFQ season, fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been under-harvested due, in part, to fishery interactions with orcas and sperm whales. Whales are able strip hooked fish from fishing gear, reducing the amount of sablefish landed by fishermen using hook-and-line gear. Attempts to deter whales from preying on fish caught on hook-and-line gear by various non-lethal means have proven unsuccessful. One viable method for reducing whale predation is to harvest sablefish with longline pot gear instead of hook-and-line gear. This realization led to a reconsideration of the ban on longline pot gear in the sablefish fishery. On September 18, 1996, a Bering Sea closure to longline pot gear from June 1 through June 30 replaced the year-round longline pot gear prohibition (61 FR 49076).

The reintroduction of longline pot gear into the Bering Sea fisheries posed less of a concern for fishing grounds preemption in 1996 than in 1992, when longline pot gear originally was prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery allowed fishermen to use this gear and reduce interactions with whales. When recommending the removal of the ban on longline pots, the Council expressed concern that, despite the decreased likelihood of grounds preemption, fishermen using traditional hook-and-line gear in relatively small boats may be preempted from grounds by fishermen in larger boats using longline pot gear. Thus, a June closure was retained for the benefit of small vessels using hook-and-line gear to fish for sablefish. June was chosen for the closure because it generally has fair

weather, a safety advantage for small vessels.

In October 2004, a representative for longline pot fishermen proposed that gear competition between the sablefish longline pot fleet and other fisheries had not occurred in June, and asserted that such potential conflicts were no longer a valid concern (as described below) and that the regulatory prohibition was unnecessary and burdensome. No public testimony was received in opposition to this proposal. As a result, the Council initiated an analysis of allowing longline pot gear during June in both the fixed gear Bering Sea IFQ and CDQ sablefish fisheries.

This action will implement the Council's June 2006 recommendation to remove the June longline pot gear closure. Doing so may provide an opportunity for longline pot fishermen to harvest additional amounts of the annual sablefish IFQ and sablefish CDQ allocations. These allocations historically have not been fully harvested. In 2007, 67 percent of the Bering Sea sablefish IFQ allocation was harvested, compared with 94 to 100 percent in the four different Gulf of Alaska sablefish regulatory areas. The fixed gear sablefish CDQ fishery caught 79 percent of the Bering Sea sablefish fixed gear CDQ allocation that year. On average, 56 percent of the annual Bering Sea sablefish IFQ allocation was harvested during the years 2003 through 2007. The existing June longline pot gear prohibition in the Bering Sea sablefish fisheries creates operational inefficiencies because of the constraints that are placed on vessel operators using longline pot gear during the middle of the sablefish season. Allowing this gear type to be used in June may provide additional harvesting opportunities for participants in the sablefish fishery.

This action will not change the catch monitoring and accounting practices in place for the sablefish IFQ and sablefish CDQ fisheries. Removing the June closure will mean that enforcement personnel would no longer have to monitor whether vessels fishing with longline pot gear in June are targeting sablefish, which was a prohibited activity. Neither the NOAA Office for Law Enforcement nor the U.S. Coast Guard have indicated any concerns or objections to the removal of this prohibition.

Allow Military Reservists and National Guardsmen to Temporarily Transfer Annual IFQ

This action will amend IFQ Program regulations to allow military reservists and members of the National Guard to temporarily transfer their halibut or

sablefish IFQ to other eligible IFQ recipients, should they be mobilized to active duty. This change is intended to allow reservists and guardsmen the potential to gain some economic benefit from their quota share (QS), should they be unavailable to fish their IFQ during a given year due to active military duty or deployment. Specifically, this rule will add a new paragraph to § 679.41 to establish the conditions and criteria for allowing the temporary transfer of annual IFQ issued to reservists and National Guardsmen to other eligible IFQ recipients.

Existing QS and IFQ transfer regulations generally do not allow temporary transfers (leasing) of catcher vessel IFQ. Such restrictions are intended to ensure that QS holders also fish the IFQ associated with their QS, rather than leasing or otherwise assigning their IFQ to other parties to fish on their behalf. Thus, mobilized reservists and guardsmen (who are not otherwise authorized to hire a master to harvest their IFQ) may not temporarily transfer their annual IFQ so that it may be fished by another party. The inability to temporarily transfer IFQs during a military mobilization could constitute an economic hardship to affected service members and their dependents.

This action will implement the Council's recommendation to allow halibut and sablefish QS holders to request temporary IFQ transfers, if the applicant meets specified requirements related to eligibility and evidence of military mobilization or activation. This regulatory change does not jeopardize the Council's policy of having an owner-operator IFQ fleet. This alternative may further promote stable, owner-operated businesses in the halibut and sablefish IFQ fisheries. The Council modeled the policy elements associated with temporary military transfers (TMT) on those associated with emergency medical IFQ transfers.

This type of transfer will be limited to guardsmen and reservists that are deemed eligible to make such transfers, based on eligibility criteria established by this final rule. Such criteria includes evidence of active duty military service that precludes the QS holder from fishing his or her IFQ during a given time period. A transfer would be temporary and restricted to a given fishing year. Qualified applicants would be required to request a TMT annually, even if the length of their deployment or mobilization exceeded one year.

The application process for a TMT will be similar to existing transfer applications under the IFQ Program. The application, provided by NMFS, will describe the requirements

necessary to receive a TMT. Information collected on these applications will include basic identifying information about the proposed transferor and transferee, documentation of the transferor's active duty military service, as well as identifying characteristics of the IFQ being transferred. If NMFS denies an application for a TMT, the applicant may appeal the decision by following the existing appeal procedures at § 679.43.

#### Administrative Changes

This action amends certain terms (such as "original," "copy," and "valid") that are used to describe some of the different IFQ and CDQ permits that are required in regulations at § 679.4(d) and (e). These paragraphs are associated with halibut IFQ and sablefish IFQ permits, and halibut CDQ permits, respectively. Each of these paragraphs describes the different types of permits required to participate in the IFQ and CDQ fisheries, the activities authorized by different permit types, and other conditions of use, inspection, and validity. These two paragraphs were amended on August 9, 2007 (72 FR 44795), to replace the obsolete terms "IFQ card" and "CDQ card" with "IFQ hired master permit" and "CDQ hired master permit," respectively.

This rule removes the word "original" from the description of IFQ hired master permits in paragraphs § 679.4(d)(2)(ii) and § 679.4(d)(6)(i)(B). This word will be replaced by the term "legible copy." Regulations at § 679.4(d)(1)(ii) previously required that an "original IFQ hired master permit" must be onboard a vessel used to harvest halibut IFQ or sablefish IFQ. NMFS intended to change "original" to "legible copy" when it revised this paragraph to replace the term "IFQ card" with "IFQ hired master permit," as described previously. However, the deletion of the word "original" was inadvertently omitted. The requirement to have the original permit onboard is a holdover from a requirement for IFQ fishermen to have their original, plastic IFQ landing card (similar to a credit or debit card) onboard the harvesting vessel. This requirement has since been revised.

Requiring fishermen to possess an original IFQ hired master permit currently is unnecessary for administrative or enforcement purposes. No ready means exist to distinguish an original hired master permit from a high quality copy. Additionally, NMFS notes that the time necessary to mail or otherwise convey an original IFQ hired master permit to a recipient is often lengthy, given the remote location of many of the Alaska communities to

which such permits are sent. Allowing a copy of an IFQ hired master permit to be onboard a vessel will enhance the speed and efficiency of transmitting such permits to IFQ hired masters via facsimile or other electronic formats.

Furthermore, this action makes several other changes to the descriptive language associated with IFQ permits and CDQ hired master permits. The word "copy" associated with IFQ permits is replaced with the term "legible copy" in paragraphs § 679.4(d)(6)(i)(A) and (B), as well as § 679.4(e)(2). The word "valid" associated with CDQ hired master permits in § 679.4(e)(3) is replaced with the term "legible copy." This clarifies and makes consistent how IFQ permits and CDQ permits are described in § 679.4(d) and (e) with respect to the need for copies of permits to be legible.

Finally, this action replaces the term "without a CDQ card" with "without a CDQ hired master permit" in a prohibition at § 679.7(f)(6)(iii). Recent regulatory revisions to 50 CFR part 679 replaced the term "CDQ card" with the term "CDQ hired master permit." However, due to an inadvertent error, this change was not made to § 679.7(f)(6)(iii); this final rule corrects that error.

#### Response to Comments

*Comment 1:* The use of longline pot gear should be prohibited in the Bering Sea at all times, not just during June.

*Response:* This final rule implements a revision to a seasonal gear restriction applicable to the Bering Sea sablefish IFQ and CDQ fisheries. Longline pot gear is one of several types of fixed gear that are legally permissible to use to harvest various groundfish species in the Bering Sea. This action will remove a one month closure specifically applicable to the Bering Sea sablefish fisheries. Prohibiting the use of longline pot gear at all times in the Bering Sea is outside of the scope of this action.

*Comment 2:* Members of the National Guard or military personnel should not be allowed to give away their IFQ to anyone else. IFQ holders who do not use their IFQ should lose it.

*Response:* NMFS disagrees. This final rule implements regulations to allow military reservists and National Guard members to temporarily transfer their IFQ to other eligible IFQ fishermen. This is intended to allow such QS holders to avoid the economic hardship associated with being unable to catch their IFQ. QS holders already may permanently transfer their QS and associated IFQ to other parties. Such transfers are an integral part of the halibut and sablefish IFQ program, and

allow fishing privileges to move between fishermen based on market forces.

*Comment 3:* The ability to purchase and process Bering Sea sablefish IFQ and CDQ during June is operationally important to small seafood processors in the Aleutian Islands.

*Response:* Support is noted.

*Comment 4:* Given their service and sacrifice to the Nation, it is more than appropriate to allow military reservists and members of the National Guard the flexibility to either use or transfer their IFQ.

*Response:* Support is noted.

#### Changes from the Proposed Rule

This final rule revises § 679.41(m)(3)(iii) to clarify that the range of serial numbers that must be included with a TMT application are the serial numbers associated with the QS from which the IFQ being transferred are derived. QS represents the percentage of an annual catch limit that a QS holder may catch. It is used to calculate the annual amount of halibut or sablefish IFQ that is allocated to a QS holder. There are no serial numbers associated with IFQ.

#### Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS is not aware of any other Federal rules that would duplicate, overlap, or conflict with this action.

Because this rule relieves a restriction on using longline pot gear to fish for sablefish IFQ and CDQ during June, the revision to § 679.24(c)(4) is not subject to the 30-day delayed effectiveness provision of the Administrative Procedures Act pursuant to 5 U.S.C. 553(d)(1). Existing regulations prohibit the use of longline pot gear in the Bering Sea sablefish fishery during June. This restriction originally was intended to protect vessel operators using hook-and-line gear from potential conflicts on the fishing grounds with operators using longline pot gear. Changes in the operational characteristics of the Bering Sea sablefish fishery have rendered this protection measure obsolete. The sablefish IFQ season lasts approximately eight months, opening in mid-March and closing in mid-November. Requiring vessel operators using longline pot gear to stand down from

fishing for sablefish with this gear type for one month during the middle of the fishing season is operationally inefficient and economically disadvantageous. The remainder of the changes in this rule will be effective 30 days after publication of the rule in the **Federal Register**.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are presented in the preamble to this rule.

NMFS received four public comments about the proposed rule prepared for this action. This includes one comment apiece in support, and one comment apiece in opposition, of the two primary actions that will be implemented by this rule. Both of the comments expressing opposition are outside of the scope of this action; none of the comments contained specific comments about the economic effects of this action. A summary of the remainder of the FRFA follows.

#### *Allow Longline Pot Gear to be Used in the Bering Sea Sablefish Fishery in June*

Two different classes of small entities were identified in the FRFA to remove the longline pot gear restriction in the Bering Sea during June. The first includes holders of Bering Sea sablefish QS. This action may directly affect approximately 115 sablefish QS holders (as of 2006) in the Bering Sea regulatory area. The 2006 ex-vessel value of the sablefish IFQ harvested in the Bering Sea was approximately \$4 million. Based on available data, and more general information concerning the probable economic activity of vessels in these IFQ fisheries, no vessel operation subject to the June gear closure restrictions could have been used to land more than \$4 million in combined gross receipts in 2006 (the maximum gross revenue threshold for a small catcher vessel). Therefore, all sablefish QS holders who would be directly regulated by this action are assumed to be small entities for purposes of the Regulatory Flexibility Act (RFA). At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program, the subset of Bering Sea sablefish QS holders, or

the number of such small entities that could benefit from the removal of a regulatory restriction.

The second class of small entities that would be directly regulated by this action includes the six CDQ groups that receive allocations of Bering Sea sablefish CDQ. CDQ groups are non-profit corporations that manage the fisheries allocations and other business matters for communities participating in the CDQ Program. Each of these groups is organized as a not-for-profit entity and none is dominant in its field; consequently, each is a small entity under the RFA.

Testimony from participants in this fishery suggests that approximately six vessels may choose to use longline pot gear to fish for sablefish in June if the longline pot gear prohibition is removed from regulation. Such vessels may participate in either the IFQ or CDQ sablefish fisheries during the sablefish fishing season. These vessels also may concurrently harvest IFQ and CDQ allocations on the same fishing trip.

The FRFA prepared for this action examined two alternatives. Alternative 1, status quo, would maintain the June closure for longline pot gear for the fixed gear sablefish fishery in the Bering Sea. As such, it would continue to impose adverse economic impacts on the small entities currently participating in this fishery, without offsetting benefits. Alternative 2, the preferred alternative, would amend regulations to remove the June closure, per the request of participants in the Bering Sea sablefish fishery. This alternative would result in a regulatory change that would reduce economic and operational burdens on those small entities that use longline pot gear in the Bering Sea sablefish fisheries. The sablefish IFQ and CDQ season begins in March and ends in November. Entities that begin harvesting sablefish IFQ or CDQ prior to June, but that do not catch all of their annual sablefish allocation during this time must cease fishing for sablefish with longline pot gear during June, prior to resuming fishing. A June stand-down presumably requires additional costs to entities, such as removing longline pot gear from the fishing grounds, switching to another fishery or to another gear type to continue fishing for sablefish, as well as transit costs to and from fishing grounds. NMFS does not have sufficient cost information to approximate the actual costs associated with the effects of the June closure on entities involved in the longline pot gear fishery for sablefish.

No adverse economic impacts on other user groups, including operators of hook-and-line vessels that also are

small entities, were identified. Such entities fish concurrently with longline pot gear vessels during the remainder of the IFQ season without reported gear or fishing grounds conflicts. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize the adverse economic impact of this action on small entities. The objective for this action was to relieve an operational restriction, and associated adverse economic effects, by eliminating a one month fishery closure that is specific to longline pot gear vessels. The original impetus for the June longline pot gear closure has been superseded by ongoing changes in the characteristics of the sablefish IFQ and CDQ fisheries; specifically, the increased use of longline pot gear to prosecute this fishery and the decreased use of hook-and-line gear.

#### *Allow Military Reservists and National Guard Members to Temporarily Transfer Annual IFQ*

This action would amend regulations in 50 CFR part 679 that govern quota transfers conducted under the Pacific Halibut and Sablefish IFQ Program. Existing regulations allow permanent QS and IFQ transfers, but preclude temporary transfers of IFQ except under limited circumstances.

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ program that could be affected by this action. The number of military reservists or guardsmen that hold the category of QS that may not be legally fished by a hired master under current rules cannot be determined with available information. The number of these "citizen soldiers" who hold such restricted QS and who may be mobilized to active duty status during their fishing career cannot be estimated. Given these uncertainties, it is not possible to know how many QS holders could be expected to request a temporary military transfer of IFQs, if the final rule were adopted. Thus, the FRFA prepared for this action assumes that all halibut and sablefish QS holders are small entities, for RFA purposes. Based on this assumption, this action has the potential to directly regulate any of the 3,467 small entities (as of 2006) that hold halibut QS and sablefish QS.

The FRFA prepared for this action examined two alternatives. Under Alternative 1, mobilized military reservists or guardsmen would not be able to temporarily transfer their IFQ.

This could impose a financial burden on such QS holders because they would have to forego the economic benefit that could accrue from leasing their IFQ to other fishermen. It is not possible to quantify what such foregone benefits could be, absent information about how many reservists and guardsmen hold QS, whether and when such persons could be mobilized, and the amount of annual IFQ that could be left unharvested due to a QS holder's inability to catch their IFQ. Based on the standard prices used to assess IFQ fees (for all ports with IFQ landings, as of November 30, 2007), halibut was worth \$4.37 per pound and sablefish was worth \$2.95 per pound. This approximates the value of each pound of halibut and sablefish IFQ to those QS holders whose harvesting operations could be affected by being mobilized or ordered to active duty.

Alternative 2, the preferred alternative, would amend regulations to allow temporary IFQ transfers for mobilized guardsmen and reservists, decreasing the likelihood that such QS holders would suffer economic hardship from being unable to catch his or her halibut or sablefish IFQ. Furthermore, Alternative 2 would minimize adverse impacts that may be attributable to idled IFQ that could accrue to processors, fishery dependent communities, and other fishing support businesses. However, absent information about the number of QS holders that could be affected by this change, as well as the amount of QS and corresponding IFQ that could be left unharvested, NMFS is unable to provide the total estimate of the impacts of this rule. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the Halibut Act and the Magnuson-Stevens Act and other applicable statutes that would minimize the economic impact of this action on small entities. The objective of this action is to relax the policy of requiring halibut and sablefish QS holders to be onboard a vessel when associated IFQ is caught and landed for a specific class of QS holders.

#### *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.

The preamble to this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.fakr.noaa.gov>.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number OMB Control No. 0648-0569. Public reporting burden for Application for Temporary Military Transfer of IFQ is estimated to average two hours per response and four hours per response for appeal of a denied application 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, 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.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 13, 2008.

**Samuel D. Rauch III**,  
Deputy Assistant Administrator For  
Regulatory Programs, 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 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.

■ 2. In § 679.4, revise paragraphs (d)(2)(ii), (d)(6)(i)(A), (d)(6)(i)(B), (e)(2), and (e)(3) to read as follows:

#### **§ 679.4 Permits.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) A legible copy of an IFQ hired master permit issued to an eligible individual in accordance with § 679.42(i) and (j) by the Regional Administrator must be onboard the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained onboard by a hired master. Except as specified in § 679.42(d), an individual that is issued an IFQ hired master permit must remain onboard the vessel used to harvest IFQ halibut or IFQ sablefish with that IFQ hired master permit during the IFQ fishing trip and at the landing site during all IFQ landings.

\* \* \* \* \*

(6) \* \* \*

(i) \* \* \*

(A) The IFQ permit holder must present a legible copy of the IFQ permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(B) The IFQ hired master permit holder must present a legible copy of the IFQ permit and a legible copy of the IFQ hired master permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

\* \* \* \* \*

(e) \* \* \*

(2) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a legible copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, or modified.

(3) *Halibut CDQ hired master permits.* An individual must have onboard the vessel a legible copy of the halibut CDQ hired master permit issued by the Regional Administrator before landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

\* \* \* \* \*

■ 3. In § 679.7, revise paragraph (f)(6)(iii) to read as follows:

#### **§ 679.7 Prohibitions.**

\* \* \* \* \*

(f) \* \* \*

(6) \* \* \*

(iii) *Hired master, CDQ halibut.* Make a CDQ halibut landing without a CDQ

hired master permit listing the name of the hired master.

\* \* \* \* \*

■ 4. In § 679.24, revise paragraph (c)(4) to read as follows:

§ 679.24 Gear limitations.

\* \* \* \* \*

(c) \* \* \*

(4) BSAI. Operators of vessels using gear types other than hook-and-line, longline pot, pot-and-line, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

\* \* \* \* \*

■ 5. In § 679.41, revise paragraph (g)(4) and add paragraph (m) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

\* \* \* \* \*

(g) \* \* \*

(4) The Regional Administrator will not approve an Application for Transfer of QS assigned to vessel categories B, C, or D subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraphs (h) and (m) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Administrator may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

\* \* \* \* \*

(m) Temporary military transfers. In the event of a military mobilization or order to report for military service affecting a QS holder that prevents him or her from being able to participate in the halibut or sablefish IFQ fisheries, the Regional Administrator may approve a temporary military transfer for the IFQ derived from the QS held by a QS holder affected by the military mobilization.

(1) General. A temporary military transfer will be approved if the QS holder demonstrates that he or she is unable to participate in the IFQ fishery for which he or she holds QS because of a military mobilization, order to report for military service, or active duty military service.

(2) Eligibility. To be eligible to receive a temporary military transfer, a QS

holder must meet all of the following requirements:

(i) Be a member of a branch of the National Guard or a member of a reserve component;

(ii) Possess one or more catcher vessel IFQ permits;

(iii) Not qualify for a hired master exception under § 679.42(i)(1);

(iv) Be in active duty military service as that term is defined at 10 U.S.C. 101(d)(1), be under a call to active service authorized by the President or the Secretary for a period of more than 30 consecutive days under 32 U.S.C. 502(f), or in the case of a member of a reserve component, have been ordered to report for military service beginning on the date of the member's receipt of the order and ending on the date on which the member reports for active duty military service.

(3) Application. A QS holder may apply for a temporary military transfer by submitting a temporary military transfer application to the Alaska Region, NMFS. NMFS will transfer, upon approval of the application, the applicable IFQ from the applicant (transferor) to the recipient (transferee). A temporary military transfer application is available at <http://www.fakr.noaa.gov> or by calling 1-800-304-4846. A complete application must include all of the following:

(i) The transferor's identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate.

(ii) The transferee's identity including his or her full name, NMFS person ID, date of birth, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate.

(iii) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, number of units, range of QS serial numbers for IFQ to be transferred, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year.

(iv) Documentation of active military mobilization or deployment. This

documentation must include the following:

(A) A copy of official documentation such as valid military orders or call that direct the transferor to report to active duty military service, to mobilize for a military deployment, or to report to active service.

(B) A concise description of the nature of the military deployment or active duty military service, including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of his/her active duty military service.

(v) The signatures and printed names of the transferor and transferee, and date.

(vi) The signature, seal, and commission expiration of a notary public.

(4) Restrictions. (i) A temporary military transfer shall be valid only during the calendar year for which the associated IFQ is issued.

(ii) A temporary military transfer will be issued only for the IFQ derived from the QS held by the applicant.

(5) Temporary military transfer evaluations and appeals—(i) Initial evaluation. The Regional Administrator will evaluate an application for a temporary military transfer submitted in accordance with paragraphs (c)(1) through (c)(9) of this section. An applicant who fails to submit the information specified in the application for a temporary military transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(ii) Initial administrative determination (IAD). The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information on the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

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