

Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the fishery, not allow the full utilization of the yellowfin sole TAC in the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2005.

**Alan D. Risenhoover**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 05-14854 Filed 7-22-05; 3:27 pm]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 041126333-5040-02; I.D. 072205A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of "other rockfish" in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of "other rockfish" in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other rockfish" 2005 total allowable catch (TAC) in this area has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 22, 2005, until 2400 hrs, A.l.t., December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone 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-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2005 TAC of "other rockfish" in the Western Regulatory Area of the GOA is 40 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the "other rockfish" TAC in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of "other rockfish" in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

"Other rockfish" consists of all slope and demersal shelf rockfish.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of "other rockfish" in the Western Regulatory Area of the GOA.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2005.

**Alan D. Risenhoover**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 050421110-5192-02; I.D. 041505F]

RIN 0648-AT03

#### Pacific Halibut Fisheries; 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 amend the Pacific halibut regulations for waters in and off Alaska. This action is necessary to modify the Individual Fishing Quota (IFQ) Program and the Western Alaska Community Development Quota (CDQ) Program to allow quota share holders in International Pacific Halibut Commission (IPHC) Regulatory Area (Area) 4C to fish their Area 4C IFQ or CDQ in Area 4D. This action is intended to enhance harvesting opportunities for halibut by IFQ and CDQ fishermen and is necessary to promote the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ and CDQ Pacific halibut fisheries, consistent with the regulations and resource management objectives of the IPHC and the North Pacific Fishery Management Council (Council).

**DATES:** Effective on July 22, 2005.

**ADDRESSES:** Copies of the environmental assessment (EA), regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall, or from NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:**

Bubba Cook, 907-586-7425 or [bubba.cook@noaa.gov](mailto:bubba.cook@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Pacific Halibut Management**

Management of the Pacific halibut (*Hippoglossus stenolepis*) (halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled 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 Halibut Act.

Generally, the 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. NMFS published the IPHC's current annual management measures on February 25, 2005 (70 FR 9242).

The Halibut Act also authorizes the Council to recommend halibut fishery regulations in and off Alaska that are in addition to, but not in conflict with, the approved IPHC regulations (Halibut Act, section 773(c)). Regulations recommended by the Council will be implemented only upon approval of the U.S. Secretary of Commerce (Secretary).

**The IFQ and CDQ Fisheries**

In December 1991, the Council adopted a limited access system for managing the halibut fishery in and off Alaska under authority of the Halibut Act. This limited access system included an IFQ program for Areas 2C through 4D, and the CDQ Program for Areas 4B through 4E. 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 and CDQ Programs through regulations published in the **Federal Register** on November 9, 1993 (58 FR 59375). Fishing for halibut under these two programs began on March 15, 1995.

Each quota share (QS) issued under the IFQ Program represents a

transferable harvest privilege, within specified limitations, which is converted annually into IFQ. Fishermen granted IFQs are authorized to harvest the amounts of halibut in the areas specified on an IFQ permit issued to the fishermen.

NMFS and the State of Alaska jointly manage the CDQ Program based on a program design developed by the Council. Currently, 65 communities are eligible to participate in the CDQ Program, representing about 27,000 western Alaska residents. These communities are located within 50 nautical miles of the Bering Sea coast or on an island in the Bering Sea 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. Allocations are administered by the State of Alaska in cooperation with NMFS according to the total catch established for each Area by the IPHC.

**The Effect of this Action**

This final rule amends the Area 4 Catch Sharing Plan (CSP) and existing regulations to allow Area 4C IFQ or CDQ holders to harvest all or part of their halibut IFQ or CDQ allocation in Area 4D. The current Area 4 CSP was developed by the Council to apportion the IPHC's halibut catch limit for a combined Area 4C-E as necessary to carry out the socioeconomic objectives of the IFQ and CDQ programs. The Area 4 CSP provides a framework for dividing the IPHC's annual halibut catch limit for a combined Area 4C-E among Areas 4C, 4D, and 4E. This action revises the Area 4 CSP and its implementing regulations to allow IFQ and CDQ holders that receive Area 4C halibut allocations the flexibility to harvest such halibut IFQ or CDQ either in Area 4C or in Area 4D.

The principal elements of this amendment are described and explained in detail in the preamble to the proposed rule (May 5, 2005; 70 FR 23829) and are not repeated here. This final rule is substantively the same as the proposed rule and NMFS made no changes to the regulatory text provided in the proposed rule. Comments on the proposed rule were invited through June 6, 2005.

**Response to Comments**

NMFS received four letters of comment that contained four separate comments from three organizations and one individual. The following summarizes and responds to these comments.

*Comment 1:* The proposed rule appears to only allow Area 4C IFQ, but not Area 4C CDQ to be fished in Area 4D. This is inconsistent with the Council's motion.

*Response:* In December 2004, the Council recommended allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D. This recommendation was proposed by NMFS through amendments to the Area 4 CSP and its implementing regulations at 50 CFR part 679. The amendments to the Area 4 CSP provide the primary framework authority for the allowance for Area 4C CDQ holders to harvest their CDQ in Area 4D. The regulations found at § 679.42 impose additional limitations on the allowance for Area 4C IFQ holders to harvest their IFQ in Area 4D. Regulations at § 679.7 provide restrictions upon Area 4C IFQ and CDQ to ensure that an IFQ or CDQ holder's total quota allotment for both areas is not exceeded. Therefore, the proposed rule specifically contemplated allowing CDQ holders as well as IFQ holders to fish Area 4C quota in Area 4D consistent with Council intent.

*Comment 2:* The proposed rule unfairly allows Area 4C IFQ or CDQ holders to harvest their IFQ or CDQ in Area 4D without allowing Area 4D IFQ or CDQ holders to harvest their IFQ or CDQ in Area 4C.

*Response:* Halibut IFQ and CDQ fishermen in Area 4C have experienced a steady drop in catch rates since 1985. The drop is consistent among gear types and amounts to a decline in catch rates of greater than 70 percent over the past ten years. The reduced catch rates have consequently reduced the percentage of the total harvest of halibut by IFQ and CDQ fishermen in Area 4C.

Recent research conducted by the IPHC indicates localized depletion in Area 4C. Localized depletion results from concentrated fishing effort in a limited area that exceeds the sustainable level for fishing in that area. Although effort and catches of halibut have increased in Area 4C over the last 10 years as the catch limit has increased, catch per unit effort (CPUE) has declined steadily since commercial fishing began. Catches increased because fishing effort increased, offsetting the decline in CPUE. IPHC research shows that a comparison of CPUE with effort indicates a continuous pattern of increasing effort and decreasing CPUE. The IPHC suggests that further increased effort in Area 4C is unlikely to produce increased catch.

The preferred action selected by the Council authorizes fishermen to harvest their Area 4C IFQ or CDQ in Area 4D, which is a much larger regulatory area

with sufficient halibut biomass to accommodate the additional harvest. The CSP assigns 46.43 percent of the combined 4C-E catch to Area 4D, which is an amount equal to that allocated to Area 4C. However, for the same percentage, Area 4D has approximately ten times more fishing grounds, at 5,605 square nautical miles, than Area 4C, at 561 square nautical miles.

Additionally, CPUE in Area 4D consistently appears remarkably better than in Area 4C as indicated by the number of halibut landings compared to total harvest percentage of the IFQ and CDQ allocations by area. Fishermen in Area 4D harvested an average of 92 percent of the IFQ allocation for Area 4D over the past ten years, achieving 100 percent during 2003 and 2004. Fishermen also harvested an average of 89 percent of the Area 4D CDQ allocation over the past ten years, achieving 80 and 84 percent during 2003 and 2004, respectively. On average, Area 4D IFQ fishermen conducted only 32 percent of the IFQ landings that Area 4C IFQ fishermen conducted over the past ten years, inferring that less effort was required to achieve the full harvest of the 4D IFQ halibut allocation. Likewise, CDQ landings of halibut from Area 4D were only 19 percent of those from Area 4C over the past ten years, inferring that less effort was required to achieve the full harvest of the 4D CDQ harvest. Less effort was required to harvest IFQ and CDQ halibut allocation in Area 4D, indicating a higher CPUE in Area 4D than in Area 4C. Therefore, allowing Area 4D IFQ or CDQ holders to harvest their Area 4D IFQ or CDQ in Area 4C, where the CPUE is lower and localized depletion could be further exacerbated, would be counterproductive.

The Council briefly discussed an alternative that would have allowed Area 4D fishermen to harvest their IFQ and CDQ in Area 4C, in effect erasing the boundary line between Area 4C and Area 4D. However, the Council determined that the option would not achieve the goals of reducing fishing effort in Area 4C and protecting the small vessels that fish in nearshore waters of Area 4C from potential increased gear conflict and grounds preemption by Area 4D fishermen. For those reasons the Council did not pursue further analysis of that alternative or further consider allowing Area 4D IFQ or CDQ to be harvested in Area 4C.

*Comment 3:* If Area 4C IFQ and CDQ holders had not depleted their local stocks, they would not have a problem. Area 4C fishermen should change their methods for fishing within Area 4C

rather than be allowed to deplete the adjacent fishery in Area 4D.

*Response:* The IPHC assesses the halibut resource in Areas 4C-E as a single stock unit. However, since 1998 the IPHC has annually implemented the measures specified in the Area 4 CSP to apportion the combined Area 4C-E catch limit independently among Areas 4C, 4D, and 4E. The combined catch limit is allocated as 46.43 percent to Area 4C, 46.43 percent to Area 4D, and 7.14 percent to Area 4E. NMFS bases the calculation of IFQ pounds on the combined catch limit established by the IPHC for each area. Total IFQ pounds for Area 4C-E are calculated by multiplying the catch limit established by the IPHC for the combined Area 4C-E by the respective percent allocation for Area 4C, 4D, and 4E. This action results in no change to the total catch limit for Areas 4C-E, the percent allocations of the total catch limit for each Area within Areas 4C-E, and subsequently the total IFQ allocation. Because the halibut resource is considered a single stock in Areas 4C-E and no change to the associated calculations for the Area 4C-E total catch results from this action, allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D subject to their existing quotas will not result in a net increase in halibut harvest in Area 4C-E.

In addition, allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D will not likely result in any localized depletion of Area 4D stocks because the geographical area of the Area 4D fishing grounds is much larger than in Area 4C. The IPHC notes that 46.43 percent of the entire Area 4C-E catch limit is allotted for only 5.1 percent of the total Area 4C-E fishing grounds located in Area 4C. The available fishing grounds in Area 4C consists of only 561 square nautical miles. The limited fishing grounds in Area 4C results in concentrated fishing effort in a relatively small fishing area. Conversely, the CSP assigns 46.43 percent of the combined 4C-E catch to Area 4D, which is an amount equal to that allocated to Area 4C. However, for the same catch percentage, Area 4D has approximately ten times more fishing grounds at 5,605 square nautical miles than Area 4C at 561 square nautical miles. Additionally, harvest records over the past ten years indicate that far less effort was required to achieve the full harvest of the 4D IFQ and CDQ harvest, thereby indicating a higher CPUE in Area 4D (see Response to Comment 2). Consequently, allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D will not

likely transpose Area 4C's localized depletion problem to Area 4D because much larger fishing grounds and a higher CPUE exist in Area 4D.

*Comment 4:* We support NMFS and the Council in allowing Area 4C IFQ and CDQ holders to harvest their IFQ or CDQ in Area 4D and ask for speedy implementation of this action.

*Response:* NMFS notes this support.

#### Classification

This rule relieves a restriction by removing the prohibition preventing Area 4C IFQ and CDQ fishermen from fishing their quota in Area 4D and so, pursuant to 5 U.S.C. 553(d)(1), it is not subject to the 30-day delayed effectiveness provision of the APA. Current regulations prohibit harvesting halibut IFQ or CDQ in a regulatory area other than the area for which the quota is allocated. Halibut IFQ and CDQ allocated in a particular area may be harvested only in that same area, in accordance with biomass-based quotas, except that halibut CDQ allocated for Area 4D may be harvested in Area 4E. This rule would reduce fishing effort in Area 4C while continuing to allow Area 4C fishermen to fully harvest their IFQ or CDQ by eliminating the current restrictions prohibiting the harvest of halibut IFQ or CDQ in a regulatory area for which the quota is allocated and, therefore, redistributing fishing effort from Area 4C to Area 4D. Additionally, the need to implement these measures in a timely manner to allow for economic relief and promote safety in the Pribilof Islands constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. The Council requested this action to alleviate economic hardship in the Pribilof Islands resulting from poor halibut harvests in Area 4C in recent years. Due to ice cover and weather conditions in the Bering Sea, halibut IFQ and CDQ fishermen have a very narrow window in which to safely fish during the summer months. Therefore, this action must be implemented immediately upon filing with the Office of the **Federal Register** to provide IFQ and CDQ fishermen a reasonable opportunity to take advantage of favorable weather conditions in a limited fishing season.

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

The Council recommended this action to the Secretary for adoption pursuant to its authority under the Halibut Act. An RIR/IRFA for the proposed revisions to the Area 4 CSP and regulatory amendment describes the management

background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives (see **ADDRESSES**).

NMFS prepared an FRFA for this action that examines regulations regarding the legal harvest of halibut IFQ and CDQ in Convention waters in and off Alaska. The FRFA incorporates the IRFA and a summary of the analysis completed to support this action. This analysis evaluates the small entity impacts of an amendment to the Area 4 CSP and its implementing regulations affecting IFQ and CDQ fishing which has the potential to result in a significant impact on a substantial number of small entities, as defined under the Regulatory Flexibility Act. The FRFA addresses the requirements of the Regulatory Flexibility Act at section 604(a).

The entities regulated by this action are those entities that harvest halibut in Areas 4C and 4D. These entities include the six CDQ groups, and the halibut longline catcher vessels and catcher/processor vessels in these areas whose owners or hired captains hold halibut QS/IFQ or are contracted by CDQ groups that hold QS/CDQ. This action may directly affect all six CDQ groups, which represent 65 western Alaska communities with a total 2000 population of about 27,000, which receive halibut CDQ in halibut Areas 4C. This action may also directly affect 63 persons who hold more than 4 million QS units in Area 4C in 2004.

The purpose and need for this action is to: (1) reduce fishing effort within Area 4C, thereby alleviating localized depletion; (2) increase human health and safety of the small boat halibut IFQ and CDQ fishery near St. Paul and St. George by reducing competition with larger vessels that may harvest their IFQ in either Area 4C or 4D; and (3) assist Area 4C IFQ holders in harvesting their full IFQ and CDQ allocations by increasing the area of available fishing grounds.

The IRFA prepared for the preferred alternative was described in the classification section of the preamble to the proposed rule. The public comment period ended June 6, 2005. No comments were received on the IRFA.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

The Council analyzed two alternatives for this action. These alternatives included a no action alternative and the selected preferred alternative. Under Alternative 1, the no action alternative, the status quo would be maintained and Area 4C IFQ and CDQ holders would not be able to harvest their quota outside Area 4C. Alternative 2, the preferred alternative, would allow Area 4C IFQ or CDQ holders to harvest all or part of such IFQ or CDQ in Area 4D. The Council determined that Alternative 1 failed to meet the purpose and need of this action stated above. The preferred alternative will achieve the Council's desired goals and the purpose and need of this action by revising the Area 4 CSP and IFQ and CDQ regulations to allow Area 4C IFQ or CDQ holders to harvest all or part of their Area 4C IFQ or CDQ in Area 4D.

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. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Alaska Regional Office (see **ADDRESSES**), and the guide (i.e., permit holder letter) will be sent to all holders of permits for the Pacific Halibut IFQ and CDQ fisheries in Area 4. The guide and this final rule are available upon request and on the Alaska Region website at <http://www.fakr.noaa.gov/>.

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

Alaska, Determinations and appeals, Fisheries, Recordkeeping and reporting requirements.

Dated: July 21, 2005.

**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 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 § 679.7, paragraph (f)(4) is revised to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(f) \* \* \*

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ card holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and § 679.5.

\* \* \* \* \*

■ 3. In § 679.42, paragraph (a)(1) is revised to read as follows:

#### § 679.42 Limitations on use of QS and IFQ.

(a) \* \* \*

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except:

(i) Notwithstanding § 679.4(d)(1), § 679.7(f)(4) and (f)(11), § 679.40(b)(1), (c)(3), and (e), from July 22, 2005 to November 15, 2005, all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

(ii) For the year 2006 and subsequent annual IFQ fishing seasons, all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

\* \* \* \* \*

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