

2005, the Office of Management and Budget (OMB) published its Final Information Quality Bulletin for Peer Review (70 FR 2664). The intent of the peer review policy and the OMB Information Quality Bulletin for Peer Review is to ensure that listings are based on the best scientific and commercial data available. We are soliciting the names of recognized experts in the field that could serve as peer reviewers for the loggerhead status review. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

National Marine Fisheries Service and U.S. Fish and Wildlife Service. 2007. Loggerhead sea turtles (*Caretta caretta*) 5-year review: summary and evaluation. 65 pp.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 28, 2008.

Samuel D. Rauch, III,

Deputy Assistant Secretary for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070717351-7373-01]

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: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify both 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 would amend current regulations to remove a prohibition against 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 would add 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 action 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 proposed 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: Comments must be received no later than April 4, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AV64" by any of the following methods:

- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

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

- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

- Fax: 907-586-7557.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change.

NMFS will accept anonymous comments. Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) file formats to be accepted.

Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809, or the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on 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 rule may be submitted to NMFS at the above address, and by e-mail to 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.

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 BSAI FMP. The FMP was prepared by the 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 (described below) 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 (72 FR 11792; March 14, 2007). Federal regulations governing the halibut fisheries in the BSAI management area appear at 50 CFR parts 300 and 679.

Background and Need for Action

A. The IFQ Program

The Council, under the authority of the Halibut Act (with respect to Pacific halibut) and the Magnuson-Stevens Act (with respect to sablefish), adopted the IFQ Program in 1991. The Halibut and Sablefish IFQ Program established a limited access system for managing the fixed gear Pacific halibut fishery in Convention waters in and off Alaska and sablefish fisheries in waters of the EEZ, located between 3 and 200 miles off Alaska. The IFQ Program was approved by NMFS in January 1993, and promulgated in Federal regulation on November 9, 1993 (58 FR 59375). Fishing under the Halibut and Sablefish

IFQ Program began on March 15, 1995, ending the open access fisheries which preceded its implementation. Regulations implementing the Halibut and Sablefish IFQ Program are at 50 CFR part 679.

The Halibut and Sablefish IFQ Program was developed to reduce fishing capacity that had increased during years of management as an open access fishery, while maintaining the social and economic character of the fixed gear fisheries that coastal communities in Alaska rely on as a source of revenue. The Council and the Secretary concluded that the Halibut and Sablefish IFQ Program would provide economic stability for the commercial hook-and-line fishery while reducing many of the conservation and management problems commonly associated with open access fisheries. The proposed rule for the IFQ Program (57 FR 57130; December 3, 1992) describes, in detail, the background leading to the Council's adoption of the Halibut and Sablefish IFQ Program.

The Council and NMFS also intended the IFQ Program to improve the long-term productivity of the sablefish and halibut fisheries by further promoting the conservation and management objectives of the Magnuson-Stevens Act and the Halibut Act while retaining the character and distribution of the fishing fleets as much as possible. The IFQ Program includes several provisions, such as ownership caps and vessel use caps, that are intended to protect small producers, part-time participants, and entry-level participants that otherwise could be adversely affected by excessive consolidation. The IFQ Program also includes other restrictions intended to prevent the halibut and sablefish fisheries from being dominated by large boats or by any particular vessel class. These and other types of requirements were designed to maintain predominantly owner-operated fisheries, which was a key characteristic of the halibut and sablefish fisheries prior to the implementation of the IFQ Program.

Under the IFQ Program, quota share (QS) represents a harvesting privilege for a person. On an annual basis, QS holders are authorized to harvest a specified poundage which is issued by NMFS as IFQ. The specific amount of IFQ held by a person is determined by the number of QS units held, the total number of QS units issued in a specific regulatory area, and the total pounds of sablefish or halibut allocated for the IFQ fisheries in a particular year. Fishermen may harvest the IFQ over the entire fishing season, which in 2007 was March 10 through November 15 for

halibut (72 FR 11792; March 14, 2007) and sablefish (72 FR 9676; March 5, 2007). Generally, an IFQ permit holder must be onboard a vessel at the time his or her IFQ is fished. He or she also must comply with IFQ landing report requirements at § 679.5(l)(2).

IFQ regulations also restrict the type of QS and IFQ transfers that may occur, including restrictions against the transfer of most types of QS if the QS is subject to a lease or condition of repossession or resale by the person transferring the QS. This effectively precludes temporary transfers of QS and IFQ between parties. QS is categorized by vessel size and type. IFQ derived from QS associated with processing vessels (vessel category A) may be temporarily transferred or leased, while much of the IFQ derived from QS associated with catcher vessels (vessel categories B, C, and D) may not be temporarily transferred or leased, with limited exception.

The requirements that catcher vessel QS holders be onboard a vessel while conducting IFQ fishing operations and present during an IFQ landing, as well as the restrictions against temporary transfers of IFQ, are conditionally excepted by other IFQ Program regulations.

There are three exceptions to the general IFQ transfer restrictions at § 679.41. Emergency waivers to IFQ landing requirements are allowed in limited situations (i.e., emergency medical situations that occur at sea) and only allow the IFQ associated with a particular permit to be temporarily fished, and an IFQ landing made, by someone other than the permit holder or IFQ hired master (see § 679.42(d)(1)). Secondly, halibut and sablefish QS holders may request medical transfers of their IFQ (see § 679.42(d)(2)) in the event of a medical conditions affecting a QS holder or immediate family member. Finally, a surviving spouse or beneficiary of a deceased QS holder may transfer the associated IFQ for up to three years to an eligible IFQ recipient (see § 679.41(k)(3)).

An exception to the owner-on-board requirement is provided for individuals who received initial allocations of QS in vessel category B, C, or D. Initial recipients of catcher vessel QS may be absent from a vessel conducting IFQ halibut or sablefish fishing, provided the QS holder can demonstrate ownership of the vessel which harvests the IFQ halibut or sablefish and representation on the vessel by a hired master. This exception allows fishermen who historically operated their fishing businesses using hired masters before the implementation of the IFQ Program

to retain the flexibility of using hired masters under the IFQ Program. Hired master provisions also are applicable to the CDQ Program (described below), as annual halibut CDQ is issued to corporate entities. Each CDQ entity annually authorizes numerous fishermen to fish for its halibut CDQ and land halibut for accrual against the CDQ entity's halibut CDQ permit.

B. The CDQ Program

The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The purpose of the program is to provide western Alaska communities the opportunity to participate and invest in BSAI fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska.

The CDQ Program receives apportionments of the annual catch limits for a variety of commercially valuable species in the BSAI. These allocations are in turn allocated among six different non-profit managing organizations (CDQ entities) representing different affiliations of 65 different communities. CDQ entities use the revenue derived from the harvest of their fisheries allocations as a basis for funding economic development activities and for providing employment opportunities. Thus, the successful harvest of CDQ Program allocations is integral to achieving the goals of the program.

Regulations establishing the CDQ Program were first implemented in 1992. The CDQ Program was incorporated into the Magnuson-Stevens Act in 1996 through the Sustainable Fisheries Act (Public Law 104-297). Section 305(i)(1) of the Magnuson-Stevens Act includes requirements to establish the CDQ Program and allocate a percentage of the total allowable catch of any Bering Sea fishery to the program. Corresponding Federal and state regulations implemented various administrative and fisheries management aspects of the CDQ Program. The fisheries management regulations governing the CDQ fisheries are integrated into the regulations governing the non-CDQ fisheries for groundfish, halibut, and crab. NMFS, the State of Alaska, and the Western Alaska Community Development Association administer the CDQ Program.

C. Description of Proposed Regulatory Amendments

This proposed action would (1) remove a prohibition against using longline pot gear in the Bering Sea during the month of June, and (2) amend regulations to allow military reservists and National Guard members to temporarily transfer their IFQ if mobilized to active duty.

The Council made recommendations for regulatory revisions for each of these actions in June 2006, as part of a multi-part IFQ regulatory amendment package. NMFS subsequently separated the Council's comprehensive recommendations into different regulatory amendment packages, including this proposed rule.

NMFS also proposes 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." This is intended to make the descriptors used in association with such permits consistent throughout these paragraphs.

The following sections provide a detailed explanation of the regulatory amendments contained in this proposed rule.

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

This proposed rule would 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) would be 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 longline pot gear was 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 were to be set over previously deployed longline hook-and-line gear, the latter could be damaged or lost during its retrieval. The Council recommended a prohibition against longline pot gear in the Bering Sea subarea to prevent the

potential preemption of fishing grounds. This was based on its concerns about potential conflicts between vessel operators using different gear types on common fishing grounds. Final regulations prohibiting the use of longline pot gear were published on August 21, 1992 (57 FR 37906). That rule fully describes the rationale for implementing this gear restriction.

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 possibility of congestion and preemption of common fishing grounds. However, during the first IFQ season, fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been underharvested 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. Such predation represents undocumented fishing mortality. Even though the sablefish quota may be underharvested by fishermen, overall fishing mortality could actually be higher than the specified quota, resulting in unrecorded harvests. 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 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, compared with 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. In recommending the lifting of the ban on longline pots, the Council expressed concern that, despite the decreased likelihood of grounds pre-emption, fishermen using traditional hook-and-line gear in relatively small boats may be pre-empted 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 vessels 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 proposed action would implement the Council's June 2006 recommendation to remove the June longline pot gear closure. Doing so may provide an opportunity to harvest additional amounts of the annual sablefish IFQ and sablefish CDQ allocations. These allocations historically have been underharvested. In 2007, 67 percent of the Bering Sea sablefish IFQ allocations 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. Since 2004, pot gear has accounted for over half of the annual fixed gear sablefish catch in the Bering Sea. While the original June closure was intended to prevent conflicts between different gear groups, one of the over-arching operational issues in the Bering Sea sablefish fishery in the last decade has been predation of hooked sablefish by whales. This in turn has led to changes in the predominant gear type used in this fishery to pot gear from hook-and-line gear, which may diminish the potential for fishing ground conflicts between different gear groups overall, and during June in particular.

This action would address a problem in the IFQ sablefish and CDQ sablefish fisheries resulting from a previous Council action. The June longline pot gear prohibition in the Bering Sea sablefish fisheries is operationally inefficient, with respect to the constraints that are placed on fishermen using longline pot gear during the middle of the sablefish season. This is of particular concern because longline

pot gear is increasingly being deployed in the Bering Sea, compared to the different mix of gear types deployed during the initial years of the IFQ Program. Most gear reported in the pot gear category in the Bering Sea is assumed to be longline pots, despite the lack of a unique reporting code for this gear type. Single pot and line gear is not used much in the Bering Sea sablefish fishery because sea conditions result in its loss.

Because the fixed gear sablefish fishery historically has not completely harvested the annual Bering Sea sablefish IFQ and CDQ allocations, elimination of the June closure may increase total landings and reduce fishing costs. NMFS does not have the information necessary to know whether the June longline pot gear prohibition results in completely foregone harvesting opportunities and revenue during that month, or whether sablefish fishing effort and harvests shift to other months of the sablefish fishing season. However, operational flexibility and economic efficiency is expected to increase for Bering Sea sablefish IFQ and CDQ fishermen should this action be approved. Fishermen wishing to use longline pot gear during June would benefit from this change by being able to use such gear without a mandatory, mid-season, one month stand down. This action could affect the 115 Bering Sea IFQ sablefish permit holders and the six CDQ entities that received sablefish CDQ in 2007. Industry representatives reported to the Council in 2006 that perhaps six longline pot vessels may fish this gear type during June if the prohibition is removed. No representatives of the hook-and-line sector testified about or have otherwise communicated to the Council or NMFS that this proposed change would have adverse effects on their sablefish fishing operations. NMFS also notes that longline pot gear may be used to fish for other Bering Sea groundfish species (such as Pacific cod) during June; issues of gear conflicts between Pacific cod longline vessel operators and sablefish hook-and-line vessel operators have not been communicated to NMFS.

Adoption of this proposed action would not change the catch monitoring and accounting practices in place for the sablefish IFQ and sablefish CDQ fisheries. Removing the June closure would mean that enforcement personnel would no longer have to monitor whether vessels fishing with longline pot gear in June were targeting sablefish, which currently is 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 proposed rule would 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 proposed change is intended to allow reservists and guardsmen the potential to gain some economic benefit from their QS, should they be unavailable to fish their IFQ during a given year due to active military duty or deployment. Specifically, this proposed rule would 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 owners also fish the IFQ associated with their quota shares, rather than leasing or otherwise assigning it 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.

The Council advised NMFS that it wished to address a long-term solution to situations where QS holders in the military reserves or National Guard are mobilized without any recourse except to leave their annual IFQ allocation unharvested or to sell their quota share. This element was incorporated into the omnibus regulatory amendment that the Council was developing for other IFQ-related actions. The analysis for these regulatory amendments was released for public review in December 2005, followed by final Council action in June 2006, as described previously.

This proposed rule would 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. An application and appeals process would be added to 50 CFR part 679. This proposed regulatory change would 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 would be limited to guardsmen and reservists that were deemed eligible to make such transfers, based on eligibility criteria established by NMFS. Such criteria would include evidence of active duty military service that would preclude the QS holder from fishing their IFQ during a given time period. A transfer would be temporary because it would be restricted in duration 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 recipient of IFQ transferred via a TMT would presumably compensate the QS holder for the transferred IFQ, thus allowing QS holders to avoid some of the economic loss associated with their inability to fish their IFQ in a given year. This arrangement would benefit the mobilized QS holder and the temporary recipient of the IFQ. It could also result in a small increase in the use of the Halibut and Sablefish IFQ Program allocations compared with that under the status quo. The active use of IFQ that would otherwise be idled due to a guardsman or reservist's mobilization also would promote economic activity among fishing support industry sectors, and provide structural stability to the Council's "owner-on-board" policy by allowing guardsmen and reservists to retain their QS and resume IFQ fishing following a military deployment.

The general benefits associated with TMTs include (1) providing operational and economic flexibility to fishermen that are subject to valid military orders; (2) providing an income stream to such fishermen that may sustain them economically and allow their future participation in the IFQ fisheries; (3) providing an incremental increase in the amount of halibut and sablefish delivered to seafood processors; (4) sustaining demand for services and supplies from fishing industry support sectors; (5) ensuring a continued supply of fisheries products derived from the IFQ fishery to consumers; and (6) ensuring that any associated jobs, value-added production, tax revenues, and other benefits attributable to the economic activity made possible by the temporary transfer of otherwise inactive IFQ are sustained.

The application process for a military transfer would be similar to existing transfer applications under the IFQ Program. The application would consist of a form provided by NMFS that also describes the requirements necessary to receive a temporary military transfer. Information collected on these applications would include basic identifying information about the proposed transferor and transferee, documentation of 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 denial according to existing appeal procedures at § 679.43.

Administrative Changes

This proposed rule would amend certain modifiers (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 proposed rule would remove 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 would be replaced by the term “legible copy.” Regulations at § 679.4(d)(1)(ii) currently require that an “original IFQ hired master permit” must be on board a vessel that harvests 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 “original on board” requirement is a holdover from a previously removed requirement for IFQ fishermen to have their original, plastic IFQ Landing Card onboard the harvesting vessel.

Requiring fishermen to possess an original IFQ hired master permit currently is unnecessary for administrative or enforcement purposes. There are no ready means 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 would enhance the speed and efficiency of transmitting such permits to IFQ hired masters via facsimile or other electronic formats.

Furthermore, this proposed rule would make several other changes to the descriptive language associated with IFQ permits and CDQ hired master permits. The word “copy” associated with IFQ permits would be 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) would be replaced with the term “legible copy.” This would provide clarity and consistency for 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, the proposed rule would replace the term “without a CDQ card” with “without a CDQ hired master permit” in a prohibition at § 679.7(f)(6)(iii). As described previously, recent regulatory revisions to 50 CFR part 679 replaced the term “CDQ card” with the term “CDQ hired master permit.” This particular paragraph was inadvertently omitted from those revisions; this proposed rule would correct that omission.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed 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.

An initial regulatory flexibility analysis (IRFA) was prepared for the actions encompassed by this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that the proposed action, if adopted, would have on directly regulated small entities. A business is considered a small entity if annual gross revenues are less than \$4.0 million. A description of each independent action, why it is being

considered, and the legal basis for it are presented above in the preamble to this rule. A summary of the remainder of the IRFA follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The objectives of this proposed rule are two-fold. First, it would address the potential economic inefficiencies created by maintaining a mid-season gear closure by allowing longline pot gear to be used to fish for sablefish in the Bering Sea during the month of June. Second, it would allow temporary transfers of IFQ for a specific class of halibut and sablefish QS holders: military reservists and National Guardsmen. This potentially would allow such QS owners to avoid the economic hardship that may be associated with not being able to harvest their annual IFQ if they were mobilized to active duty.

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 IRFA prepared for the proposed action 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 proposed action are assumed to be “small entities” for purposes of the IRFA. 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 proposed removal of a regulatory restriction.

The second class of small entities that would be directly regulated by this proposed 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.

An unknown number of vessel operations may choose to use longline pot gear to fish for sablefish in June if the longline pot gear prohibition is removed from regulation. Testimony from participants in this fishery suggests that approximately six vessels may participate. 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 IRFA prepared for this proposed 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 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 the proposed 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 superceded 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 proposed 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 for 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 proposed rule were adopted. Thus, the IRFA prepared for this action assumes that all halibut and sablefish QS holders are small entities, for RFA purposes. Based on this assumption, the proposed 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 IRFA 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 being unable 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 ordered to active duty. Alternative 2, the preferred alternative, would amend regulations to explicitly allow temporary IFQ transfers for mobilized guardsmen and reservists. This would decrease the likelihood that such QS holder 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 an estimate of such impacts. 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 the proposed rule 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.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted under 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, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the ADDRESSES above, and e-mail to 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: February 28, 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 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.*; 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 on board by a hired master. Except as specified in § 679.42(d), an individual that is issued an IFQ hired master permit must remain on board 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 a 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:

(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); and

(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 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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