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- (2) Have made a shipment that was subject to the affected rates or terms; or
- (3) Have made arrangements with the carrier for a future shipment that would be subject to the affected rates or terms.

(b) The notice required by this section may be in writing or in electronic form, as agreed to by the parties.

(c) For purposes of this section, a mailed notice is deemed "provided" on the date such notice is postmarked.

(d) The notice required by this section must clearly identify the increase in rates or charges or the change in service terms.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672, 675, and 676

[Docket No. 960501122-6122-01; I.D. 042596A]

RIN 0648-A146

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Limited Access Management of Federal Fisheries Off of Alaska; Addition of the City of Akutan To the List of Communities Eligible to Participate in the Community Development Quota Programs (CDQ)

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to add the city of Akutan to the list of western Alaska communities that are eligible to participate in the CDQ programs, to remove the authority to use scales to weigh total catch in the pollock CDQ fishery, and to prohibit processor vessels from filling fish holding bins above the level of the viewing port. These actions are necessary to further the objectives of the CDQ programs.

DATES: Comments must be received at the following address by June 13, 1996.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region,

NMFS, P.O. Box 21668, Juneau, AK 99802-1668; Attn: Lori Gravel. The Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from the same address or by calling 907-586-7228.

FOR FURTHER INFORMATION CONTACT: David Ham, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area (BSAI) are managed by NMFS in accordance with the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island Area (BSAI FMP). The FMPs were prepared by the Council and approved by NMFS under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations that appear at 50 CFR parts 672, 675, and 676. General regulations that also govern the groundfish fisheries appear at 50 CFR part 620.

Beginning with the 1995 fishing season, the Pacific halibut and sablefish fixed gear fisheries have been managed under the Individual Fishing Quota (IFQ) program. The IFQ program is a regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson Act and the Northern Pacific Halibut Act. Further information on the implementation of the IFQ program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the Federal Register, November 9, 1993 (58 FR 59375), and revised in subsequent amendments to the program published in the Federal Register.

Information on the halibut and sablefish (H/S) CDQ program, and the rationale supporting it, are contained in the preamble to the proposed rule to implement the program that was published in the Federal Register on December 3, 1992 (57 FR 57130).

The pollock CDQ program originally was developed by the Council and submitted as part of Amendment 18 to the BSAI FMP. Amendment 18 was approved in part by NMFS (57 FR 23321, June 3, 1992). Initial Federal regulations implementing the pollock CDQ program became effective on November 18, 1992 (57 FR 54936, November 23, 1992), and expired on

December 31, 1995. The Council proposed re-authorizing the pollock CDQ program for an additional 3 years as part of Amendment 38 to the FMP, and NMFS approved this amendment on November 28, 1995. Regulations implementing the pollock CDQ program for 1996, 1997, and 1998, were published on December 12, 1995 (60 FR 63654), and corrected on January 2, 1996 (61 FR 20).

The pollock and H/S CDQ programs apportion designated percentages of the annual total allowable catch for pollock, Pacific halibut, and fixed gear sablefish to a CDQ reserve that may be allocated to eligible western Alaska communities. The purpose of the CDQ program is to provide the CDQ communities with a means for starting or supporting commercial seafood activities that will result in ongoing, regionally based, commercial seafood or related businesses.

CDQ Eligibility for Akutan

The pollock CDQ regulations and the H/S CDQ regulations (§ 675.27(d)(2) and § 676.24(f)(2), respectively), list four criteria for determining the eligibility of western Alaska communities to participate in the CDQ programs. In 1992, NMFS determined that the city of Akutan met the first three criteria but did not meet the fourth criterion. The fourth criterion states that: "the community must not have previously developed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, except if the community can show that benefits from an approved community development plan (CDP) would be the only way to realize a return from previous investments."

Akutan was excluded from CDQ participation because a large groundfish processing plant—the Trident plant—was located within Akutan's city limits.

Despite the presence of this processing plant, the city of Akutan apparently gains little benefit. The Council, at its September 1995, meeting, recommended to NMFS that Akutan be added to the list of CDQ-eligible communities. The Council took this action because the Aleutian Pribilof Island Community Development Association, a CDQ group, put forward evidence showing that Akutan should not be denied CDQ eligibility because of the fourth criterion. The evidence showed that the residents of Akutan have little economic interaction with the Trident processing plant in Akutan due to the nature of the processing plant's operations. The processing plant physically is detached from the city of

Akutan, and the plant uses its own catcher vessels to supply the plant with raw fish product. The processing plant was built to support the large capacity, heavily capitalized fleet. The plant cannot usually accept deliveries from the community's small skiff fleet because of the relatively small volume of groundfish produced by that fleet, and little or no local market exists for the local skiff fleet's fish. Hence, the city of Akutan does not have access to groundfish processing facilities that would support substantial groundfish fisheries participation in the BSAI.

In addition to a lack of groundfish processing capability, the city of Akutan has not developed harvesting capability. Vessels in the local skiff fleet are too small and unsafe to participate effectively and no small boat harbor is available for moorage. Allowing Akutan to participate in the CDQ programs could provide a basis for the community to develop the groundfish harvesting fleet and a boat harbor that would enable the community to make deliveries to the existing Trident groundfish processing plant or to develop alternative groundfish processing facilities.

Weighing Total Catch in the Pollock CDQ Fishery

Processor vessels in the pollock CDQ fishery are required to either provide measured, marked, and certified fish holding bins for volumetric estimates of catch weight or to provide scales to weigh total catch. This requirement at § 675.27(h)(2)(ii)(A) and (B) was published on May 16, 1994 (59 FR 25346), and effective August 15, 1994. NMFS proposes to terminate the option to use scales to weigh catch until NMFS issues regulations specifying a procedure to assure that accurate weights are obtained from the scales.

Under the current regulations, any scale used on a processor vessel to weigh groundfish harvested in the CDQ fisheries must measure catch weights to at least 95-percent accuracy. However, evaluation of two different models of flow scales during the 1995 pollock CDQ fishery and open access pollock non-roe season indicates that, although these scales are capable of weighing with a high degree of accuracy, consistently accurate weighing has not yet been achieved. Observers performed a series of scale tests by weighing approximately 800 kilograms of fish, first on a motion compensated platform scale (to establish the "known weight" of the fish) and then again on the flow scale. The accuracy of the scale, as measured by the difference between these two weights, varied between 0

percent and 97 percent in individual tests. This level of variability in scale performance would not be acceptable under the current CDQ regulations or any regulations anticipated for the BSAI pollock fishery. NMFS believes that requiring that the scale perform to a certain level of accuracy is not adequate to assure accurate weights. NMFS intends to implement a scale testing and certification program that would require a processor vessel to demonstrate that the scale was weighing accurately before the vessel would be allowed to process fish. An advance notice of proposed rulemaking, which outlines NMFS's proposed scale testing and certification program, was published in the Federal Register on February 20, 1996 (61 FR 6337). Once the scale testing and certification program is implemented, the use of scales to weigh total catch in the pollock CDQ fisheries may be allowed. Until such regulations are implemented, § 675.27(h)(2)(ii)(B) would be removed.

Prohibiting Vessels From Overfilling Bins

NMFS has become aware that the operators of some processor vessels in the pollock CDQ fishery have been filling fish holding bins above the level of the viewing port. When this happens, the NMFS-certified observer is not able to see the marked increments on the inside of the bins and to estimate total catch. Therefore, NMFS proposes to amend the pollock CDQ regulations at § 675.27(h)(2)(ii) to prohibit such activity.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an initial regulatory flexibility analysis as part of the regulatory impact review. The analysis describes the impact this proposed rule would have on small entities if it is adopted. The addition of Akutan to the list of eligible CDQ communities would affect a substantial number of small entities, that is, the other 5 communities currently participating in the CDQ program. Akutan would be expected to receive some CDQ support, and support would be reduced for one or more of the other communities accordingly. While it is possible that Akutan would receive only a very small allocation and the resulting reallocations would not have a significant impact, it is more likely that the reallocations would reduce the gross revenues of the other 5 communities by more than 5 percent, thus having a significant economic impact on these entities. It would be speculative to try

to predict specific allocations or impacts. The economic impact on other communities is not a factor to be considered in determining whether a particular community is eligible under the CDQ program. Accordingly, there are no practical alternatives that would be available or that could be considered to reduce or minimize the economic impact on other communities if Akutan is added to the list of CDQ communities. Other aspects of this proposed rule are not expected to have a significant economic impact on a substantial number of small entities.

There are no reporting and recordkeeping requirements other than those already discussed in the Paperwork Reduction Act material that has been submitted to the Office of Management and Budget for approval.

There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

There are no significant alternatives to the proposed action that would accomplish the stated objectives.

A copy of the EA/RIR/IRFA analysis is available from NMFS (see **ADDRESSES**).

List of Subjects

50 CFR Parts 672 and 675

Fisheries; Reporting and recordkeeping requirements.

50 CFR Part 676

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 8, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 672, 675, and 676 are proposed to be amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. Table 7 to 50 CFR part 672, is amended by removing the statement in brackets that follows the table heading and by revising the heading of the Table and the entries under "Aleutian Region" to read as follows:

Table 7 to Part 672—Communities Determined To Be Eligible To Apply for Community Development Quotas (Other Communities That Do Not Appear on This Table May Also Be Eligible)

Aleutian Region:

1. Atka
2. Akutan

3. False Pass
4. Nelson Lagoon
5. Nikolski
6. St. George
7. St. Paul

* * * * *

**PART 675—GROUND FISH OF THE
BERING SEA AND ALEUTIAN ISLANDS
AREA**

3. The authority citation for part 675 continues to read as follows:

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

4. In § 675.27, the last sentence of paragraph (d)(2)(iv) and paragraph (h)(2)(ii) introductory text are revised, paragraph (h)(2)(ii)(A) heading and paragraph (h)(2)(ii)(B) are removed, and paragraphs (h)(2)(ii)(A)(1) through (h)(2)(ii)(A)(5) are redesignated as paragraphs (h)(2)(ii)(A) through (h)(2)(ii)(E), respectively, and paragraph (h)(2)(ii)(F) is added to read as follows:

**§ 675.27 Western Alaska Community
Development Quota Program.**

(applicable through December 31, 1998)

* * * * *

(d) * * *

(2) * * *

(iv) * * * The community of
Unalaska is excluded under this
provision.

* * * * *

(h) * * *

(2) * * *

(ii) Each processor vessel
participating in the CDQ fishery for
pollock must estimate the total weight
of its groundfish catch by the volumetric
procedures specified in this paragraph.

* * * * *

(F) Fish must not be loaded into a bin
used for volumetric measurements
above the level of the viewing port in
the bin.

**PART 676—LIMITED ACCESS
MANAGEMENT OF FEDERAL
FISHERIES IN AND OFF OF ALASKA**

5. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801
et seq.

6. In § 676.24, the last sentence of
paragraph (f)(2)(iv) is revised to read as
follows:

**§ 676.24 Western Alaska community
Development Quota Program.**

* * * * *

(f) * * *

(2) * * *

(iv) * * * The community of
Unalaska is excluded under this
provision;

* * * * *

7. Table 1 to § 676.24, is amended by
revising the heading of the Table and
the entries under "Aleutian Region" to
read as follows:

*Table 1 to § 676.24—Communities
Determined To Be Eligible To Apply for
Community Development Quotas (Other
Communities That Do Not Appear on
This Table May Also Be Eligible)*

Aleutian Region:

1. Atka
2. Akutan
3. False Pass
4. Nelson Lagoon
5. Nikolski
6. St. George
7. St. Paul

* * * * *

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