

Dated: May 14, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 001108316-1083-02; I.D. 060600B]

RIN 0648-AK50

#### Fisheries of the Exclusive Economic Zone Off Alaska; Improved Individual Fishing 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 regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. NMFS has identified parts of the program that need further refinement or correction for effective management of the affected fixed gear fisheries. This action is intended to effect those refinements and is necessary to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to the IFQ fisheries.

**DATES:** Effective June 20, 2001, except for the gear type data element of §§ 679.5(l)(2)(vi) and 679.42 (j)(6), which are not effective until the Office of Management and Budget (OMB) approves the information collection requirements contained in those sections. NMFS will announce the effective date for those sections by publication in the **Federal Register**.

Comments on the information collections must be received by June 20, 2001.

**ADDRESSES:** Copies of the Regulatory Impact Review/Supplementary Final Regulatory Flexibility Analysis may be obtained from Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, (Attn: Lori J. Gravel). Send comments on the information collections to NMFS and to OMB at the Office of Information and Regulatory Affairs, Office of Management and

Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

Regulations codified at 50 CFR part 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off Alaska, under the authority of the Halibut Act with respect to halibut and the Magnuson-Stevens Act with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is codified in the final rule published in the **Federal Register**, November 9, 1993 (58 FR 59375).

NMFS' continuing assessment of the IFQ Program's responsiveness to conservation and management goals for Pacific halibut and sablefish fisheries has produced two "omnibus" packages of IFQ regulatory reforms since the inception of the program (60 FR 22307, May 5, 1995; 61 FR 41523, August 9, 1996). This final rule, the third such "omnibus" package of regulatory changes to the IFQ Program, amends various portions of the program's implementing regulations. These changes are necessary to promote the ability of fishermen to conduct IFQ fishing operations more efficiently, to enhance NMFS' ability to administer the program, and to improve the clarity and consistency of IFQ Program regulations.

This final rule makes the following changes to the IFQ regulations: (1) In § 679.1 *Purpose and scope*, adds an explicit reference to the Halibut Act, under which regulations in this part regarding the Pacific halibut fishery were developed, and in § 679.1(d) revise "IFQ management plan" to read "IFQ management measures" to prevent any inference that the IFQ Program is itself a "fishery management plan" as that term is used in the Magnuson-Stevens Act; (2) amends the requirements for IFQ fishermen participating in open-access sablefish fisheries in Alaska State waters; (3) adds nomenclature to reflect organizational changes in NMFS' Restricted Access Management (RAM) program; (4) amends the definition of an IFQ landing to include vessels that are removed from the water and put on trailers; (5) removes the reference to an "accompanying statement" establishing IFQ balances; (6) adds an exemption for lingcod fishermen using dinglebar gear from the IFQ 6-hour prior notice of landing and 12-hour landing window requirements; (7) adds gear type to the

information required on a completed IFQ landing report; (8) amends the information required for a shipment report to clarify which registered buyer, in landings involving multiple registered buyers, is responsible for compliance with shipment report requirements; (9) makes minor corrections to errors arising from the consolidation of regulations; (10) amends the survivorship transfer provisions to allow the temporary transfer of a deceased QS holder's QS and IFQ to a designated beneficiary and revise a paragraph on an IFQ leasing provision that expired in 1998; (11) amends the limitations on the use of QS and IFQ to require annual updates on the status of corporations, partnerships, and other collective entities holding QS; (12) amends the submission of appeals to allow appeals to initial administrative decisions to be submitted by facsimile machine; and (13) amends reporting requirements for consistency with the Paperwork Reduction Act (PRA).

A detailed discussion of each of these changes may be found in the preamble to the proposed rule published December 14, 2000, at 65 FR 78126.

NMFS invited public comment on the changes contained in this action through January 16, 2001. No comments were received, and NMFS publishes this rule unchanged from the proposed rule.

This rule revises regulations pertaining to certain IFQ forms and reports to clarify further the data required of the public in these collections of information. Two of the collections of information contained in this final rule have not yet been authorized by OMB pursuant to the PRA. The pertinent collections of information are the addition of "gear type" to information required in a completed IFQ Landing Report at § 679.5 (l)(2) and the addition of a requirement that a corporation, partnership, and other collective entity holding QS submit annual updates on the status of the collective entity as such at § 679.42 (j)(5).

##### Classification

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 Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB under OMB control number 0648-0272. These requirements and their

associated burden estimates per response are: Landing Report (12 minutes); request for QS Application (30 minutes for an individual, 1 hour for an existing corporation, 2 hours for a dissolved corporation, and 2 hours for a vessel); IFQ Vessel Clearance Report (12 minutes); IFQ Shipment Report (18 minutes); IFQ Transshipment Authorization Request (12 minutes); QS Designated Beneficiary Form (1 hour); QS/IFQ Transfer Application (2 hours); and Letter of Appeal (4 hours).

This rule also contains new collection-of-information requirements, which have been or will be submitted to OMB for approval, and which are not effective at this time (see the **DATES** section). These two requirements are the addition of a gear type data element to the landing report (not expected to alter the estimated 12 minutes response time for the report) and a new requirement for annual updates of identification of current shareholders or partners (30 minutes).

Comments are invited on (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through use of automated collection techniques or other forms of information technology. Send comments on these or other aspects of the information collections to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Other collections of information in this rule have been approved by the OMB under OMB control number 0648-0272. These new information requirements comprise the following additions and revisions to the IFQ recordkeeping and reporting requirements: Request for QS Application; IFQ Vessel Clearance Report; IFQ Shipment Report; IFQ Transshipment Authorization Request; QS Designated Beneficiary Form; QS/IFQ Transfer Application; and the Letter of Appeal.

NMFS prepared a final regulatory flexibility analysis to describe this final rule's potential economic effects on small entities. The reporting burden of this action is identified in this final rule. Seven changes were made to clarify the

regulations and improve regulatory language to avoid potential confusion for the affected small entities. Allowing QS holders to designate a beneficiary to receive temporary transfer privileges provides a benefit to the families of QS holders with a minimal burden of filling out an application form. Allowing administrative appeals to be submitted by facsimile machine will reduce the burden of submitting an appeal on the affected families. Requiring an annual update on the status of corporations, partnerships, or other non-individual entities is necessary to ensure that QS are not erroneously issued because of changes in these non-individual entities, which requires an increase in the burden to such entities because of annual submissions. Requiring the addition of gear type to landing reports is necessary for the management of the IFQ program, which is limited to certain gear types, makes a negligible increase to the burden of QS holders. Extending the exemption to the 6-hour prior notice of landing report and the 12-hour landing requirements to lingcod dinglebar gear troll fishermen will make it easier for them to land small incidental catches of halibut. Prohibiting the removal from the water of a vessel containing IFQ harvests enhance NMFS' monitoring IFQ landings to ensure accurate accounting of harvests against QS balances will cause inconvenience to some IFQ fishermen by requiring a 6-hour delay before offloading their harvest at the dock. The amendments to this final rule are expected to have minimal impact on the 1,677 unique persons holding halibut QS and the 897 unique persons holding sablefish QS, all of whom are assumed to be small entities.

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

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

Fisheries, Reporting and recordkeeping requirements.

Dated: May 15, 2001.

**Clarence Pautzke,**

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

For the reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In part 679, all references to "Chief, RAM Division" are removed and "Program Administrator, RAM" is added in its place.

3. In § 679.1, the first sentence of the introductory paragraph, paragraph (d), and paragraph (d)(1)(i)(B) are revised to read as follows:

#### **§ 679.1 Purpose and scope.**

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. \* \* \*

\* \* \* \* \*

(d) *IFQ Program for sablefish and halibut.* The IFQ management measures for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

(1) \* \* \*

(i) \* \* \*

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold quota shares, IFQ permits, or IFQ cards.

\* \* \* \* \*

4. In § 679.2, the definition of "Chief, RAM Division" is removed, the definition of "IFQ landing" is revised, the definition of "Program Administrator, RAM" is added, and, under the definition of "Authorized fishing gear," paragraphs (A)(1) through (15) are redesignated as paragraphs (2) through (16), newly designated paragraph (16) is revised, and a new paragraph (1) is added to read as follows:

#### **§ 679.2 Definitions.**

\* \* \* \* \*

*Authorized fishing gear* \* \* \*

\* \* \* \* \*

(1) *Dinglebar gear* means one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

\* \* \* \* \*

(16) *Troll gear* means one or more lines with hooks or lures attached drawn through the water behind a moving vessel. This gear type includes hand troll and power troll gear and dinglebar gear.

\* \* \* \* \*

*IFQ landing* means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel

containing IFQ halibut, IFQ sablefish, or products thereof.

\* \* \* \* \*

*Program Administrator, RAM* means the Program Administrator of Restricted Access Management Program, Alaska Region, NMFS.

\* \* \* \* \*

5. In § 679.4, paragraph (d)(1)(i) is revised to read as follows:

#### § 679.4 Permits.

\* \* \* \* \*

(d) *IFQ*—(1) \* \* \*

(i) *IFQ permit*. A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder; and

\* \* \* \* \*

6. In § 679.5(l), paragraphs (l)(1)(iv), (l)(2)(iv)(A)(2), (l)(2)(vi), (l)(3)(i)(A), (l)(3)(ii), (l)(4), and (l)(5)(i) are revised to read as follows:

#### § 679.5 Recordkeeping and reporting.

\* \* \* \* \*

(l) \* \* \*

(1) \* \* \*

(iv) *Exemption*. The operator of a category B, C, or D vessel, as defined at § 679.40 (a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(2) is exempt from the prior notice of landing required by this section when such landings of IFQ halibut are made concurrent with legal landings of lingcod harvested with dinglebar gear or with legal landings of salmon.

\* \* \* \* \*

(2) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(2) IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to § 679.42 (c)(2) is landed concurrently with a legal landing of lingcod harvested with dinglebar gear or a legal landing of salmon by a category B, C, or D vessel, as defined at § 679.40 (a)(5).

\* \* \* \* \*

(vi) *Information required*. The registered buyer must enter accurate information contained in a complete IFQ landing report as follows: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; the harvesting vessel's ADF&G number; gear type reported by cardholder; the Alaska State fish ticket number(s) for the landing; the ADF&G statistical area of harvest reported by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest

reported by the IFQ cardholder; for each ADF&G statistical area of harvest reported by the IFQ cardholder, the product code landed and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained.

(3) \* \* \*

(i) \* \* \*

(A) Complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish for which the Registered Buyer submitted a landing report before the fish leave the landing site.

\* \* \* \* \*

(ii) *Information required*. A shipment report must specify the following: Whether the report is a revised report; species and product type being shipped; number of shipping units and unit weight; fish product weight; names of the shipper and receiver; names and addresses of the consignee and consignor; mode of transportation; intended route; and signature of the responsible registered buyer's representative.

\* \* \* \* \*

(4) *Transshipment authorization*. No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment; names and ADF&G numbers of vessels delivering and receiving the transshipment; product destination; registered buyers' names and permit numbers; IFQ permit numbers; species, regulatory areas, product types and codes, number of units, and unit weight of IFQ harvests being transshipped; time and date of the request; and name and contact numbers for the person making the request.

(5) \* \* \*

(i) *Applicability*. The vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel from a clearing officer and provide the following information: Date, time, and location of clearance; vessel name and ADF&G and IPHC numbers; homeport; Federal Fisheries Permit number; IFQ permit numbers; registered buyer permit number; IFQ cardholder name; date, time, and location of landing; areas fished and estimated

weight of harvests by species; and registered buyer's signature.

\* \* \* \* \*

7. In § 679.7, paragraph (f)(14) is revised to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(f) *IFQ fisheries*. \* \* \*

(14) Violate any other provision under this part.

\* \* \* \* \*

8. In § 679.40, paragraph (a)(6)(i) is revised to read as follows:

#### § 679.40 Sablefish and halibut QS.

\* \* \* \* \*

(a) \* \* \*

(6) \* \* \*

(i) *Application form*. The Application period for QS ended on July 15, 1994. As of that date, the Request for QS Application form replaced the QS Application form as the means by which the Administrator, RAM, reviews and makes initial administrative determinations on requests for initial allocations of QS. A Request for QS Application must contain the following: information identifying the individual, representative of a deceased fisherman's estate, corporation or partnership, or dissolved corporation or partnership making the request; contact numbers; vessel identification, length overall, and purchase date; and information on any vessel leasing arrangement pertinent to the claim of eligibility.

\* \* \* \* \*

9. In § 679.41, paragraphs (h)(2) and (k) are revised to read as follows:

#### § 679.41 Transfer of QS and IFQ.

\* \* \* \* \*

(h) *Transfer of IFQ*. \* \* \*

(2) IFQ resulting from category B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (k) of this section.

\* \* \* \* \*

(k) *Survivorship transfer privileges*—

(1) On the death of an individual who holds QS or IFQ, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (k)(2) of this section, receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an Application for Transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) QS holders may provide the Regional Administrator with the name

of a designated beneficiary from the QS holder's immediate family to receive survivorship transfer privileges in the event of the QS holder's death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse or, in the absence of a surviving spouse, from a beneficiary from the QS holder's immediate family designated pursuant to paragraph (k)(2) of this section to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (h)(2) of this section.

10. In § 679.42, paragraph (j)(6) is added to read as follows:

**§ 679.42 Limitations on the use of QS and IFQ.**

\* \* \* \* \*

(j) \* \* \*

(6) A corporation, partnership, or other entity, except for a publicly held corporation, that receives an initial allocation of QS assigned to categories B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

\* \* \* \* \*

11. In § 679.43, paragraph (c) is revised to read as follows:

**§ 679.43 Determinations and appeals.**

\* \* \* \* \*

(c) *Submission of appeals.* Appeals must be in writing and must be submitted to the Office of Administrative Appeals, P. O. Box 21668, Juneau, AK 99802 or delivered to Federal Building, 709 West 9th St., Room 801, Juneau, AK. Appeals may be transmitted by facsimile to (907) 586-9361. Additional information about appeals may be obtained by calling (907) 586-7258, and by accessing Office of Administrative Appeals section of the NMFS Alaska Region website <http://www.fakr.noaa.gov>.

\* \* \* \* \*

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