billing of minutes to the Interstate TRS Fund. Providers must make available at least one means by which such disclosure may be made anonymously. Providers must promptly investigate any report of wrongdoing and, when warranted, take appropriate corrective action. Providers may not discipline any employee, agent, or contractor solely for reporting under this provision. Providers shall also inform all employees, agents, and contractors that they may directly contact the Commission's Office of Inspector General to report wrongdoing.

(iv) *Record retention.* Providers shall retain their call detail records for five years from the date of service, and shall make such records available to the Commission or administrator upon request.

(7) In addition to those standards set forth above, Video Relay Service providers shall be subject to the following standards:

(i) *Idle time or no face on screen.* If either party to a VRS call is away from the call, or otherwise unavailable or unresponsive, for more than two minutes the CA may disconnect the call, except when the call has been placed on hold by a business. If at any time during a VRS call a VRS CA is confronted with only a blank screen (*e.g.,* a privacy screen), or a screen that does not display the face of the video caller, the CA may disconnect the call if the video caller's face does not reappear within two minutes.

(ii) *Call center information.* VRS providers shall file quarterly reports with the Commission and the administrator by March 31, June 30, September 20, and December 31 each year stating the name and address of each call center the provider owns or controls (including call centers owned or operated by subcontractors or entities operating calls centers for a subcontractor), the number of CAs and CA managers at each call center, and the name and contact information for the key managers at each call center. VRS providers shall file an amendment to their most recent quarterly filing within 30 days of opening a call center, closing a call center, or changing the ownership or management of a call center.

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(b) * * *

(4) * * *

(iii) *Location of call centers.* VRS call centers must be located in the United States.

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(c) * * *

(5) * * *

(iii) * * *

(E) *Payments to TRS providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. These reports shall include the call record ID sequence, CA ID, session start and end times, conversation start and end times, incoming telephone number or IP address for Internet-based TRS service not subject to the numbering requirements under § 64.611, outbound telephone number or IP address for Internet-based TRS service not subject to the numbering requirements under § 64.611, total conversation minutes, and total session minutes. In addition, VRS and IP Relay providers shall include in their reports speed of answer compliance data. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in this section, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with parts 32 and 36 of this chapter procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the Fund administrator. The Fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate.

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[FR Doc. 2010–20615 Filed 8–20–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Docket No. 0906041011–91012–01

RIN 0648–AX91

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Halibut and Sablefish Individual Fishing 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 the Individual Fishing Quota (IFQ) Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in waters in and off Alaska (IFQ Program) by revoking quota share (QS) that have been inactive since they were originally issued in 1995. Inactive QS are those held by persons that have never harvested their IFQ and have never transferred QS or IFQ into or out of their accounts.

This action is necessary to achieve the catch limit from the halibut fisheries and optimum yield from the sablefish fisheries in Alaska in accordance with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act and results in more efficient use of these species as supported by National Standard 5. The intended effect is to promote the management provisions in the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and the Northern Pacific Halibut Act of 1982.

DATES: Comments must be received by 5 p.m., local time, on September 22, 2010.

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–AX91 (PR), by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.
- Fax: (907) 586–7557, Attn: Ellen Sebastian.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review and Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov*, or from the Alaska Region website at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Alaska Region, e-mailed to *David_Rostker@omb.eop.gov*, or faxed to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Halibut Management

Management of the commercial fishery for Pacific halibut (Hippoglossus stenolepis) in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled "Convention Between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed in Ottawa, Canada, on March 2, 1953, and amended by the "Protocol Amending the Convention," signed in Washington, D.C., March 29, 1979. The Convention is administered by the International Pacific Halibut Commission (IPHC) and is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

Generally, the IPHC surveys the Pacific halibut stock and develops fishery management regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the U.S. Secretary of State with concurrence from the Secretary of Commerce (Secretary). NMFS publishes approved regulations in the **Federal Register** as annual management measures pursuant to 50 CFR part 300.62. NMFS published the current annual management measures on March 18, 2010 (75 FR 13024). Federal regulations governing the halibut fisheries appear at 50 CFR part 300, subpart E.

The Halibut Act (section 773(c)) also authorizes the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations that are in addition to, and not in conflict with, approved IPHC regulations for U.S. Convention waters. Such regulations may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority most notably in the development of the Individual Fishery Quota (IFQ) Program codified at 50 CFR part 679.40.

Sablefish Management

Federal management of the commercial fishery for sablefish (Anoplopoma fimbria) is authorized by the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act) and implemented by regulations at 50 CFR part 679.

IFQ Program

The Council and NMFS developed the IFQ Program for the halibut and sablefish fixed-gear fishery in waters in and off Alaska. The IFQ Program limits access to the fisheries to persons holding QS. Annually, the amount of halibut and sablefish that each QS holder may harvest is calculated and issued as IFQ. The Council adopted the IFQ Program in 1991 under the authority of the Halibut Act and the Magnuson-Stevens Act. The preamble to the proposed rule, published December 3, 1992 (57 FR 57130), provides details of the conservation and management background leading to the Council's adoption of the IFQ Program. NMFS implemented the program on November 9, 1993 (58 FR 59375) through Federal regulations at 50 CFR part 679. Fishing under the IFQ Program began on March 15, 1995.

The IFQ Program is designed to maintain the social character and economic benefits of the commercial, fixed-gear fisheries that Alaskan coastal communities rely on as a source of revenue. The Council and NMFS intend the IFQ Program to provide economic stability for the Pacific halibut and sablefish commercial fisheries and improve long-term productivity of the resources. The IFQ management approach extended the fishing season, and harvests of the annual total allowable catch (TAC) now occur throughout most of the year. The season length and known amount of QS let fishermen set their own pace and their fishing effort to focus more attention on safety, operational efficiency and product quality. The IFQ program also allows fishermen to transfer QS, giving them flexibility to determine what type of investment to make based on when, where, and how much halibut and sablefish they can harvest.

Initial Assignment and Recipients of QS

Quota shares were initially assigned to persons that owned vessels or held a vessel lease and made at least one landing in a regulatory area in any one of the years 1988, 1989, or 1990. The intent was to assign initial shares only to those fishermen then currently active in the halibut and sablefish fixed-gear fisheries. The amount of QS a person received was based on his or her documented, historical catch for 5 out of 6 years (1985 through 1990) for sablefish, and for 5 out of 7 years (1984 through 1990) for halibut. This allowed a person to choose the best 5 years to calculate his or her assignment. The number of QS units issued to each person was based on each person's selection of years of landings.

Persons holding QS for an area have harvesting privileges for an amount of halibut or sablefish that is derived annually from their QS holdings in that area and authorized on their IFQ permit. The specific amount (in pounds) is determined by the number of QS units held for that species, the total number of QS units issued for that species in a

specific regulatory area, and the TAC of the species allocated for IFQ fisheries in a particular year. To simplify the language in the remainder of this document, the concept of QS units and associated IFQ pounds issued annually is referred to singularly as QS except in reference to specific Council direction and in the draft regulations.

One design feature of the IFQ Program requires IFQ permit holders to be on board the vessel to maintain a predominantly "owner-operated" fishery with a narrow exemption for initial recipients of QS. Initial recipients of catcher vessel QS may be absent from a vessel conducting IFQ halibut or sablefish fishing, provided the QS holder can demonstrate at least a minimum specified level of ownership of the vessel that harvests the IFQ halibut or sablefish, as well as 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.

Need for Action

In June 2006, the Council recommended removal of initially allocated halibut and sablefish QS from QS holders that had never harvested IFQ halibut or IFQ sablefish, or that had never transferred any QS or IFQ since initially receiving the QS. Quota share would be considered inactive if the QS and the associated annual allocation of IFQ pounds have been neither transferred nor fished.

Inactive QS exists for a variety of reasons. The initial allocation of halibut or sablefish QS was made to qualified persons according to regulations at § 679.40(a). These regulations specified no minimum pounds of halibut or sablefish to be harvested during the respective halibut and sablefish base periods (1984–1990 for halibut and 1985–1990 for sablefish), but one catch landing had to occur in any one of the last 3 years of the base period. Hence, the calculation of initial QS for some qualified persons resulted in their receiving very small QS allocations. The IFQ poundage derived from these allocations of QS also is small: in some cases summing to fewer pounds than a whole fish. The recipients of these small QS allocations have presumably elected not to participate actively in the IFQ fisheries. Though, persons holding inactive QS have had the same opportunity as persons with active QS to participate in the IFQ program by fishing and transferring QS and IFQ. Other persons holding inactive QS are no longer in the commercial fishing industry, are deceased, or have been unable or unwilling to divest or otherwise transfer their inactive QS.

The existence of inactive QS was not specifically addressed during the implementation, development or maintenance of the IFQ program. As a result, several hundred accounts with very small amounts of inactive QS remain in the IFQ Program database. Even though the QS is inactive, NMFS must perform routine administrative tasks to process, monitor, and maintain data on the inactive QS, including recordkeeping, regular correspondence with QS holders, and monthly and annual reporting. IFQ permit holders are responsible for the costs and reimburse NMFS for those costs through the IFQ cost recovery program (50 CFR 679.45). When inactive QS are held and not harvested, active IFQ holders pay slightly higher fees for the IFQ Program because IFQ cost recovery fees apply only when IFQ species are landed.

As a result of the inactive QS, some IFQ will not be harvested and a portion of the TAC will remain unharvested. This reduces economic and social benefits from QS harvest typically realized by fishery dependent businesses and the public. Unused IFQ also deprives consumers of product. Holding inactive QS prevents access to halibut and sablefish QS by persons qualified to fish the QS, and limits the ability of fishermen interested in entering the IFQ Program or expanding their QS holdings. Hence the inactive QS prevent the IFQ fisheries from optimizing yield.

Proposed Action

This action proposes to revoke inactive halibut and sablefish QS from the QS pools. The portion of the annual halibut and sablefish TACs represented by the revoked QS and associated IFQ would be distributed among IFQ permit holders in an amount proportional to their IFQ allocation. Alternatively, if a permit holder requests NMFS not to revoke his or her inactive QS, then NMFS would assign an active status to that QS and the associated IFQ would continue to be issued annually.

All halibut and sablefish QS identified as inactive are held by initial recipients of QS. Revoking QS as proposed would not change the initial recipient status of the QS holder. Hence, if a person was initially allocated QS that would be revoked under this action, and then subsequently acquires new QS in the future, that person still would retain the benefit of being an initial recipient of QS for purposes of retaining the flexibility of using a hired master.

Although the administrative burden for the retained QS would not be reduced, annual administrative tasks and costs for managing revoked QS would be eliminated. Reducing the administrative burden would allow for more efficient use of IFQ Program resources, and, for the sablefish fisheries, is consistent with National Standard 5. Revoking inactive QS also would reduce costs and improve operational flexibility of active program participants. The change in distribution of IFQ allows broader opportunity to achieve the catch limit in halibut fisheries and optimum yield from the sablefish fisheries as required by National Standard 1 of the Magnuson-Stevens Act.

The Council recommended this proposed action as part of a multi-part IFQ regulatory amendment package. NMFS subsequently separated the Council's multiple recommendations into independent regulatory amendment packages to better address priority actions in a timely manner. This proposed rule is the final one of the series recommended by the Council in 2006. As a result, several years have passed between the Council's action notifying the public of the pending change to the IFQ Program and publication of this proposed rule. During these years, NMFS followed the Council's recommendation to contact persons holding inactive halibut or sablefish QS by mail and to communicate that NMFS is pursuing rulemaking that, if implemented, would require persons to notify NMFS in writing that they do not want their inactive QS and associated annual IFQ revoked. NMFS notified persons with inactive QS of the status of the proposed action in letters sent by direct mail in January 2008 and in March 2009. The notification process was productive, stimulating transfers of inactive QS that resulted in almost a 50–percent decline in the number of persons holding inactive halibut and sablefish QS. An additional recommendation of the Council to provide broad public notice of the Council's intent to withdraw inactive QS is addressed with publication of this proposed rule in the **Federal Register**.

Council Consideration

The RIR/IRFA prepared for this action (see ADDRESSES) reports that when the Council initially considered the proposal in June 2006, 534 persons held inactive QS for halibut, which yielded roughly 280,000 pounds (127 mt) of IFQ. Inactive sablefish QS was held by

seven persons and yielded roughly 16,000 pounds (7.3 mt) of IFQ that year. Given this amount of inactive QS and associated IFQ, the Council recommended a lottery for a one-time redistribution of inactive QS if the total amount of inactive QS is more than the number of QS units equivalent to 50,000 pounds (22.7 mt) of halibut IFQ for all IPHC regulatory areas in the year of the lottery; therefore, the Council's secondary recommendation for a lottery was conditioned on the total amount of inactive QS that could be revoked being greater than that which would yield 50,000 pounds (22.7 mt) of halibut IFQ for all IPHC regulatory areas in the year of the lottery.

NMFS reported to the Council at its December 2008 meeting that the amount of IFQ associated with the number of inactive halibut QS fell below the 50,000 pound (22.7 mt) threshold for implementing a lottery to redistribute the inactive QS. At that time, 278 persons held inactive QS: 275 held halibut QS, and 4 held sablefish QS (one person held QS for both species). Using 2008 ratios, this inactive QS represented 34,719 halibut IFQ pounds (15.8 mt) and 924 sablefish IFQ pounds (0.4 mt). During 2006–2008, the total number of unique, inactive QS holders declined 49 percent. Assuming year-specific ratios of QS units to IFQ pounds, the amount of change in inactive IFQ pounds of halibut and sablefish can be generally represented as a decline of 87.6 percent and 94.2 percent, respectively. The Council noted the extent of QS consolidation and notified the public of its intention to review its preferred alternative during the February 2009 Council meeting.

In February 2009, the Council reaffirmed its preferred alternative to remove inactive halibut and sablefish QS. It acknowledged that the amount of inactive halibut QS had consolidated below the 50,000 (22.7 mt) pound threshold level the Council previously identified to implement a lottery for the redistribution of inactive QS; therefore, the proposed action was narrowed to exclude the lottery recommendation and to revoke inactive QS only when no action is taken by the QS holder. Action by the QS holder means that the QS holder must notify NMFS in writing to specifically request that their inactive QS not be revoked or present evidence that the QS should not have been determined inactive.

In the time since the Council discussed this issue at the beginning of 2009, the number of persons holding inactive QS has declined further. As of December 31, 2009, 242 permit holders held inactive QS; 240 held halibut QS, and three held sablefish QS (one person held QS for both species). Using 2009 ratios, the amount of inactive QS held represent 24,299 pounds (11.02 mt) of halibut IFQ and 731 pounds (0.33 mt) of sablefish IFQ. Between December of 2008 and December of 2009 the total number of persons holding inactive QS declined 13 percent. The ratio of QS units to IFQ pounds is similar in 2008 and 2009, allowing direct comparison of the IFQ pounds of inactive QS between the two years. In the 12 months between December 2008 and 2009, the amount of inactive halibut QS declined 30 percent and the amount of inactive sablefish QS declined 21 percent.

Official Notice and Record

If the proposed rule is approved by the Secretary of Commerce and implemented, NMFS would send each holder of inactive QS a "Notice of Determination of Quota Share Inactivity" (Inactive QS Notice). The Inactive QS Notice would be sent by certified mail to the address of record at the time the Inactive QS Notice is sent (50 CFR 679.43(e)). NMFS bears no responsibility if the Inactive QS Notice is sent to the address of record and is not received because NMFS has not been notified of the change in the address of record. The Inactive QS Notice would describe the inactive status of the QS, identify the IFQ permit holder, and provide the date the authorized 60–day response period ends.

NMFS would issue an Inactive QS Notice alerting a holder of inactive halibut or sablefish QS that their QS is considered inactive based on records maintained by NMFS indicating that initially issued QS was never used to land IFQ halibut or IFQ sablefish or to transfer any QS or IFQ to or from another person. The official record of an IFQ halibut or IFQ sablefish landing would contain the IFQ permit number to which the IFQ landing would have been credited. The number and amount of landings would be based only on legally submitted harvest documentation. This documentation must include a state catch report, a Federal catch report, or other valid documentation that indicates the amount of IFQ halibut or IFQ sablefish harvested, the IPHC or groundfish reporting area in which the IFQ pounds were harvested, the vessel and gear type used for the harvest, and the date of harvesting, landing, or reporting. Federal catch reports are production reports required under 50 CFR 679.5. NMFS has used production reports only for catcher/processors to document IFQ landing and active QS. State catch reports are Alaska, California, Oregon, or Washington fish tickets. State fish tickets are used by NMFS only for catcher vessels as data sources to determine the specific amount and location of landings that would demonstrate active QS.

NMFS presumes that the official record data sources are correct. In the case where a person believes the official record is incorrect, his or her claim can be raised in a separate correspondence to NMFS, Restricted Access Management Program, Juneau, AK (see ADDRESSES).

Options for Persons Holding Inactive QS

A person that holds inactive QS would have two options to respond to receipt of an Inactive QS Notice. During the 60–day response period specified in the Inactive QS Notice, the person holding the inactive QS could choose to (1) do nothing, thereby resulting in revocation of the inactive QS; or (2) request in writing that the inactive QS not be revoked. Alternatively, a person holding inactive QS could exercise options that have existed since the beginning of the IFQ Program in 1995 to either transfer some or all of the inactive QS, or harvest halibut or sablefish based on IFQ derived from the inactive QS. These options are further explained below.

First, a person holding inactive QS could choose to do nothing. That person's inactive QS would be revoked at the end of the 60–day period specified in the Inactive QS Notice. Revoked QS would cease to exist in the QS pool and would not receive an annual allocation of IFQ poundage for IFQ halibut or IFQ sablefish. Any IFQ derived from the inactive QS also would be revoked at the time that the inactive QS are revoked. After inactive QS are revoked, the previous holder of those QS could participate in the IFQ halibut or IFQ sablefish fisheries only if they receive QS by transfer.

Second, a person with inactive QS could choose to retain or activate the QS by notifying NMFS in writing that he or she does not want the inactive QS revoked. Such written requests would have to be postmarked within the 60–day response period specified in the Inactive QS Notice. This response would allow NMFS to activate the otherwise inactive QS by the QS holder's demonstration of at least minimal activity in the IFQ Program. NMFS would allocate IFQ based on the activated QS as it has done since the beginning of the IFQ Program, and the holder of such QS would continue to benefit from the initial recipient

privileges specified in the regulations implementing the IFQ Program (§§ 679.41 and 679.42). Moreover, the IFQ halibut and IFQ sablefish harvesting privilege for such a QS holder would continue as it does for all other QS holders.

The options to activate otherwise inactive QS by either transferring some or all of the inactive QS, or harvesting halibut or sablefish based on IFQ derived from the inactive QS, would continue to be available to a person holding inactive QS through the end of the 60–day response period specified in the Inactive QS Notice. No additional period of time is proposed to demonstrate these activities because the person holding the inactive QS has already had an opportunity to demonstrate such activity since the beginning of the IFQ Program in 1995. Further, the two information letters sent by NMFS to persons holding inactive QS notifying them of this proposed action successfully alerted a significant number of persons holding inactive QS as demonstrated by comparison of IFQ program participation over time as summarized under Council consideration above.

A person holding inactive QS who is unable to respond to the Inactive QS Notice from NMFS within the 60–day response period may appeal to NMFS to submit his or her response late to the NMFS Alaska Region Office of Administrative Appeals pursuant to § 679.43. As a practical matter, any other challenge of the Inactive QS Notice within the 60–day response period would be considered as a written request to not revoke the inactive QS. As such, a challenge would activate the otherwise inactive QS by demonstrating a reaction and therefore at least minimal activity in the IFQ Program.

Written Response

The Inactive QS Notice provides the person holding the inactive QS with the opportunity to respond in writing to NMFS within a single 60–day response period, from the date that the Inactive QS Notice is sent, and clearly request the QS and IFQ remain active. Response will only be accepted by mail to simplify processing of responses. E-mail, fax or any other form of response is not acceptable. The Inactive QS Notice would be constructed to allow the bottom half of the document to be separated and used as a mail-in response form to NMFS indicating whether the holder of the inactive QS wants to retain the QS. The following written statement would be printed on the mail-in response form as an expression of request to not revoke the inactive QS: "I [print first name, middle initial and surname] request that NMFS not revoke my quota share authorized by my signature on this date. Signed [Write signature]. Dated [Enter the current date]." A holder of inactive QS may also respond by mail without using the provided form, but must include all the same specific information, names, signatures and dates as included on the mail-in response form. Once the completed mail-in form or other response statement is received in the mail by NMFS and verified correct, a letter of acknowledgement will be issued to the person identified as the holder of the inactive QS or his or her legal representative. The letter would serve as final agency action advising that QS would be 'active' and no further response by the person holding the inactive QS or NMFS would be required.

Previous Response to NMFS

NMFS previously sent QS holders two informational letters noticing them of this proposed action to revoke inactive QS. A QS holder who previously responded to NMFS letters that still holds inactive QS must resubmit a response to NMFS by mail within the authorized 60–day response period or NMFS would revoke the inactive QS. Any previous request to NMFS to activate inactive QS is not sufficient for NMFS to change that QS status. A written response is required within the 60–day response period specifically provided by the Inactive QS Notice. If a response was submitted to NMFS on the subject of inactive QS and the IFQ permit holder has since had the inactive QS officially activated by completing a transfer or fishing the IFQ, then no further response is required. If an IFQ permit holder previously responded to NMFS letters about inactive QS and requested he or she be able to keep the inactive QS, then the IFQ permit holder must submit that request to NMFS again within the 60–day response period provided by the Inactive QS Notice or the inactive QS will be revoked. If a person holding inactive QS fails to notify NMFS of his or her interest to activate their QS within the 60–day response period, then NMFS would revoke the inactive QS.

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 Halibut Act, the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

The IRFA prepared for this proposed action assesses the potential adverse economic impacts each alternative would have on directly regulated small entities if the proposed regulations were adopted to revoke inactive QS. A business is considered a small entity if annual gross revenues are less than $4.0 million. NMFS defines all halibut and sablefish vessels as small businesses, for the purpose of this analysis. The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from the restrictions placed on the amount of annual IFQ that may be landed from any individual vessel. In 1995, the year the IFQ Program began and the year before the Council recommended this proposed action, a total of 2,057 vessels participated in IFQ halibut fisheries in all areas, and a total of 616 vessels participated in the IFQ sablefish fisheries in all areas combined. In late 2008, when the Council chose to revisit this action, a total of 1,156 vessels participated in the IFQ halibut fishery, and 362 vessels participated in the IFQ sablefish fishery in all areas. The total number of vessels includes

individual vessels that participated in the fisheries in any regulatory area.

The purpose of amending the regulations for the halibut and sablefish IFQ Program is to improve program administration, reduce costs and improve operational flexibility of program participants, and help achieve optimum yield. Inquiries about the cost of the IFQ Program and access to inactive QS provided impetus for the Council to consider this proposed action. There is no regulatory authority for NMFS to revoke QS or accept relinquishment of QS amounts that are impractical or uneconomical to fish; instead, QS may be voluntarily transferred or fished.

The Council initiated analysis of four issues pertaining to the IFQ Program for the fixed-gear halibut and sablefish fishery in 2006. An RIR/IRFA was provided for public review May 12, 2006 that analyzed each issue in one, multi-part, IFQ regulatory amendment package. This proposed action on the issue of inactive QS was referred to as Action 3 in the 2006 RIR/IRFA. The Council reviewed the status quo alternative of not revoking inactive halibut or sablefish QS, and two alternatives to withdraw inactive QS. Alternative 1 is the no action alternative and would not change any economic impacts on directly regulated small entities. Under the status quo, holders of inactive QS would have no option to relinquish their inactive halibut or sablefish QS. Federal regulations do not provide for the voluntary removal of QS other than through transfer.

Alternative 2 would revoke all inactive halibut and sablefish QS. Inactive QS is initially allocated QS that has never been used to harvest halibut or sablefish and has never been transferred in to or out of the initial QS account. Only persons who do not hold active QS would be affected. Persons that transferred some or all of their halibut or sablefish IFQ but never harvested any IFQ halibut or IFQ sablefish would not be subject to revocation of their QS under this alternative.

Alternative 3, recommended by the Council, would revoke all inactive QS unless the holder of the inactive QS notifies NMFS of his or her interest to retain their inactive QS. Alternative 3 also provides for a lottery to redistribute revoked QS to eligible persons unless the amount of inactive QS available to be revoked is below a threshold of QS units equal to 50,000 pounds (22.7 mt) for all IPHC regulatory areas.

NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of the action and that would minimize the economic impact of the proposed rule on small entities.

In June 2006, the Council adopted a preferred alternative, Alternative 3, to (a) revoke all inactive halibut and sablefish QS, held by initial QS recipients, from the QS pools and (b) redistribute inactive halibut QS through a lottery if the final amount of revoked inactive QS exceeds the number of QS units equivalent to 50,000 pounds (22.7 mt) for all IPHC regulatory areas in the year of the lottery.

After the Council's 2006 action on the multi-part IFQ regulatory amendment package, NMFS separated the Council's multiple recommendations into different regulatory amendment packages, including this proposed action on inactive QS. In 2008, the amount of inactive QS was less than the threshold poundage prompting the Council, in February 2009, to reaffirm its previous recommendation for Alternative 3, minus the lottery. An updated RIR/IRFA for this proposed regulatory amendment to the halibut and sablefish IFQ program was finalized September 8, 2009.

In 1995, more than 500 persons were issued QS that they subsequently did not use and that would be considered inactive QS under this proposed action. By December 31, 2009, the number of IFQ permit holders with inactive QS declined to 242, with 240 holding inactive halibut QS, and three holding inactive sablefish QS (one person held inactive QS for both species). Using 2009 ratios, the amount of inactive QS held in December 2009 represent 24,299 pounds (1 mt) of halibut and 731 pounds (0.33 mt) of sablefish.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under Control No. 0648–0272. Public reporting burden for a letter requesting NMFS not revoke IFQ Program QS is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall 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: August 17, 2010.

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 § 679.40, add paragraph (a)(10) to read as follows:

§ 679.40 Sablefish and halibut QS.

* * * * *

(a) * * *

(10) NMFS revokes inactive QS if the person holding inactive QS does not:

(i) Respond in writing to NMFS, within 60 days after NMFS issues a Notice of Determination of Quota Share Inactivity (Inactive QS Notice) sent to the address of record as defined at § 679.43(e) of this part, requesting that the inactive QS not be revoked.

(ii) For purposes of paragraph (a)(10) of this section, "respond in writing" means write a statement directing NMFS to change the status of QS to "active" and sign and date the statement or complete the form attached to the Inactive QS Notice and send through U.S Mail to the NMFS, Alaska Region address provided on the Inactive QS Notice and printed on the front side of the form.

(iii) For purposes of paragraph (a)(10) of this section, the term "inactive QS" means halibut QS or sablefish QS, held by a person who received an initial allocation of halibut QS or sablefish QS and has not taken any of the following actions:

(A) Transferred any halibut QS or sablefish QS pursuant to § 679.41;

(B) Transferred any halibut IFQ or sablefish IFQ pursuant to § 679.41;

(C) Landed any halibut authorized by IFQ halibut permit(s) issued to that person; or

(D) Landed any sablefish authorized by IFQ sablefish permit(s) issued to that person.

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