Florida and in the Gulf EEZ is no longer included under the South Atlantic or Gulf Coral FMPs.

Florida's Fish and Wildlife Conservation Commission (FWC) is currently responsible for the majority of the management, implementation, and enforcement of octocoral harvest because the majority of octocoral harvest occurs in Florida state waters. In the absence of Federal regulations, the FWC regulations on octocoral harvest apply to adjacent Federal waters (68B–42.006 of the Florida Administrative Code).

Need for Correction

After the regulations implementing CE–BA 2 and the Generic ACL Amendment became effective on January 30, 2012, NMFS determined that the quota for Gulf allowable octocoral, specified in paragraph (b) of § 622.42, was inadvertently retained in the regulations. The final rule implementing the Generic ACL Amendment removed the allowable octocoral quota for the Gulf EEZ, and the final rule implementing CE–BA 2 removed the allowable octocoral quota for the South Atlantic EEZ. However, these two final rules became effective on the same day and the Gulf allowable octocoral quota was inadvertently retained in the regulations through the final rule implementing CE–BA 2. NMFS's intent was to remove the quota for both Gulf and South Atlantic allowable octocoral from the regulations because the quota is no longer managed under Federal FMPs. This correcting amendment is necessary to remove and reserve paragraph (b) in § 622.42.

Correction

As published, the final rule implementing CE–BA 2 contains an error in the regulatory text. In § 622.42, paragraph (b) should be removed and reserved. All other information remains unchanged and will not be repeated in this correction.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because it would be unnecessary and contrary to the public interest. This correcting amendment removes a paragraph of regulatory text that was incorrectly retained. NMFS incorrectly retained the quota for Gulf allowable octocoral in the CE–BA 2 final rule. The Generic ACL Amendment removed octocoral from Federal management in the Gulf EEZ. Notice and comment is unnecessary because the public had notice and an opportunity to comment on the removal of the quota for Gulf allowable octocoral when NMFS promulgated the proposed rule for the Generic ACL Amendment. The public has been led to believe that the quota for Gulf allowable octocoral was removed from the regulations on the effective date of the final rule implementing the Generic ACL Amendment. The delay caused by an additional public comment period might cause confusion among regulated parties and would therefore be contrary to the public interest.

For the same reasons, the Assistant Administrator also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in effective date for this correcting amendment. This correction removes regulatory text that the public believed was previously removed and does not change operating practices in Gulf or South Atlantic fisheries.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

This rule has been determined to be not significant under Executive Order 12866.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 15, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

Accordingly, 50 CFR part 622 is corrected by making the following correcting amendment:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

§ 622.42 [Amended]

■ 2. In § 622.42, paragraph (b) is removed and reserved.

[FR Doc. 2012–12156 Filed 5–17–12; 8:45 am]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0906041011–2432–02]

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: Final rule.

SUMMARY: NMFS issues a final rule 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 IFQ 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 this action will achieve more efficient use of these species. The intended effect is to promote the management provisions in the Northern Pacific Halibut Act of 1982, 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.

DATES: Effective June 18, 2012.

ADDRESSES: Electronic copies of this rule, the categorical exclusion memorandum, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA), and the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.* Written requests may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; or in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska. Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this action may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov,* or by fax to (202) 395–7285.

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

SUPPLEMENTARY INFORMATION:

Management of the Halibut and Sablefish IFQ Fisheries

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, DC, 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).

The Halibut Act (section 773(c)) 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. Federal regulations governing the halibut fisheries appear at 50 CFR part 300, subpart E. Halibut regulations may be implemented by NMFS only after approval by the Secretary of Commerce (Secretary). The Council has exercised this authority most notably in the development of the IFQ Program codified at 50 CFR part 679, subpart D.

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 fisheries in waters in and off Alaska. 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 for the IFQ Program, published December 3, 1992 (57 FR 57130), details 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 Program limits access to the halibut and sablefish fixed-gear fisheries in waters in and off Alaska to persons holding QS. Quota Share was initially issued to persons who owned or leased vessels that made legal commercial landings of Pacific halibut or sablefish during 1988–1990. The intent was to assign initial QS only to those fishermen then currently active in the halibut and sablefish fixed-gear fisheries. Once issued to a person, QS is held by that person until it is transferred, suspended, or revoked. The IFQ Program allows fishermen to transfer QS to other initial issuees or to those who have a Transferable Eligibility Certificate, giving them flexibility to determine what type of investment to make based on when, where, and how much halibut and sablefish they can harvest.

The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ pounds on an IFQ permit. An IFQ permit authorizes participation in the fixed-gear fishery for Pacific halibut in and off Alaska, and in most fixed-gear sablefish fisheries off Alaska. IFQ permits are issued annually to persons holding Pacific halibut and sablefish QS or to those persons who are recipients of IFQ transfers from QS holders.

Persons holding QS have harvesting privileges for IFQ pounds of halibut or sablefish that are derived annually from their QS holdings. The amount (in pounds) specified on an permit is determined by the number of QS units held for a species, the total number of QS units issued for that species in a specific regulatory area, and the total allowable catch (TAC) of that species allocated for IFQ fisheries in a particular year, as modified by adjustments from the prior year's harvest.

The IFQ Program requires IFQ permit holders to be on board the vessel to maintain a predominantly ''owner-operated'' fishery. A narrow exemption exists 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 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 designated under IFQ regulations. 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.

Description of Final Action

This final rule authorizes NMFS to revoke halibut and sablefish QS that have been inactive since they were originally issued in 1995. Inactive QS are those held by persons who have never harvested the IFQ derived from initially issued QS and who have never transferred QS or IFQ into or out of their IFQ Program accounts. NMFS will not revoke the inactive QS of any person who responds in writing to NMFS within 60 days after NMFS issues a Notice of Determination of Quota Share Inactivity, requesting that the inactive QS not be revoked. The action provides halibut and sablefish fishermen holding active QS an opportunity to fish for currently unavailable QS and more fully harvest these species' TACs.

The background and need for this action were described in detail in the preamble to the proposed rule published in the **Federal Register** on August 23, 2010 (75 FR 51741). In summary, amending the IFQ Program regulations will improve access to all available QS, increase the operational flexibility of fishermen participating in the IFQ fisheries, and increase yield from QS to help achieve optimum yield. In addition, data collection, recordkeeping, and reporting of inactive QS and the administrative tasks for managing inactive QS are eliminated. Less information to administer and manage will streamline aspects of the IFQ Program, reduce administrative costs, and promote efficient use of IFQ Program and participant resources. To achieve these objectives, the final rule authorizes NMFS to revoke inactive QS.

Halibut and sablefish QS was initially allocated to persons who qualified to hold an IFQ permit pursuant to

regulations at § 679.40(a). These regulations specified no minimum amount of halibut or sablefish QS to be issued. As a result, small amounts of QS were initially issued to just over 200 persons who to date have never fished the IFQ derived from that QS, or transferred the QS to another person. Thus, the recipients of these QS allocations have left their QS inactive for the entire 16 years since it was initially issued. They presumably have elected not to participate actively in the IFQ fisheries, are no longer in the commercial fishing industry, are deceased, or have been unable or unwilling to divest or otherwise transfer their inactive QS. Persons holding inactive QS have had the same opportunity as persons with active QS to participate in the IFQ Program by fishing their IFQ or transferring their QS and IFQ.

As a result of inactive QS, some IFQ and a portion of the TAC is not harvested. This reduces economic and social benefits from IFQ harvests typically realized by fishery dependent businesses and the public. Consumers are deprived of product, active IFQ fishermen are precluded from harvesting the IFQ derived from inactive QS, and new entrants to the IFQ fisheries are denied access to halibut and sablefish QS held by persons who have never participated in the IFQ fisheries. This final rule will improve operational flexibility of active program participants to harvest species TACs, and will allow broader opportunity to achieve the halibut fishery's constant exploitation yield and the optimum yield from the sablefish fisheries as required by National Standard 1 of the Magnuson-Stevens Act.

Moreover, even though QS is inactive, NMFS must perform routine administrative tasks to process, monitor, and maintain data on inactive QS, including recordkeeping, regular correspondence with the IFQ permit holder that holds inactive QS, annual allocation of IFQ pounds, and data reporting. The administrative work detracts time from NMFS managers that can be used more productively. Additionally, IFQ permit holders help pay for the program costs through the IFQ cost recovery program (§ 679.45) by remitting a fee for IFQ species landed. When QS remains inactive, no landing fees accrue to the program, although the IFQ permit holder with the inactive QS continues to receive administrative support from the IFQ Program. This action will eliminate the administrative tasks and costs for managing inactive QS, because the rule removes that QS entirely. Less information to administer and manage will streamline aspects of the IFQ Program to the benefit of QS managers and program participants. Reducing the administrative costs and burden will allow for more efficient use of IFQ Program resources.

This action revokes inactive halibut and sablefish QS. The portion of the annual halibut and sablefish TACs represented by the revoked QS and associated IFQ will be distributed in future years 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 will assign an active status to that QS because the permit holder took action in making the request. This QS retained by request will remain integrated with previously-active QS and the associated IFQ will continue to be issued annually.

Revoking QS will not change the initial recipient status of the QS holder. Hence, if a person was initially allocated QS that is revoked under this action and subsequently acquires new QS in the future, that person retains the benefit of being an initial recipient of QS for purposes of retaining the flexibility of using a hired master.

Public Notice

In June 2006, the Council acted on a multi-part IFQ regulatory amendment package that included this action on inactive QS. The Council adopted a preferred alternative to (1) revoke all inactive halibut and sablefish QS from the QS pools and (2) 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. NMFS separated the Council's multiple recommendations into different regulatory amendment packages. This final 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 final rule.

Since Council action, NMFS, Alaska Region, has maintained a Web site listing of inactive QS and the information needed to facilitate voluntary transfers of QS. NMFS also contacted persons holding inactive halibut or sablefish QS by direct mail. NMFS notified these persons of the status of this action in letters sent by direct mail in January 2008 and again in March 2009. NMFS communicated that it was 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. In between these notification letters, the amount of inactive halibut QS declined below the threshold poundage to conduct a lottery prompting the Council, in February 2009, to reaffirm its previous recommendation for the Preferred Alternative, but without the lottery. NMFS also provided broad public notice of the Council's intent to withdraw inactive QS with publication of the proposed rule (75 FR 51743) in the **Federal Register**, August 23, 2010.

The RIR/FRFA prepared for this action (see **ADDRESSES**) finds that when the Council initially considered the proposal in June 2006, 534 persons held 865,586 units of inactive halibut QS (280,000 lbs [127 mt] in 2006 equivalents). Inactive sablefish QS equating to 57,522 units (16,000 lbs [7.3 mt] in 2006 equivalents) was held by seven persons. As of December 21, 2011 (the most current data available), 202 persons held 156,218 units of inactive halibut QS (10,597 lbs [4.8 mt] in 2011 equivalents) and two persons held 9,281 units of inactive sablefish QS (695 lbs [0.32 mt] in 2011 equivalents). Overall, the communications with IFQ permit holders stimulated transfers of inactive QS that resulted in a 62 percent decline in the number of persons holding inactive halibut QS and a 71 percent decline in the number of people holding inactive sablefish QS. The decline in QS units was also similar for both species: Inactive halibut QS declined 82 percent and inactive sablefish QS declined 84 percent.

Official Notice and Record

This final rule implements regulations authorizing NMFS to send each holder of inactive QS a ''Notice of Determination of Quota Share Inactivity'' (Inactive QS Notice). The Inactive QS Notice will be sent by certified mail to the address of record at the time the Inactive QS Notice is sent (§ 679.43(e)). The inactive QS holder bears the responsibility if the Inactive QS Notice is not received because the inactive QS holder has not notified NMFS of a change in the address of record. The Inactive QS Notice will describe the inactive status of the QS, identify the IFQ permit holder, and provide the date the authorized 60-day response period will end.

NMFS will issue an Inactive QS Notice alerting a holder of inactive halibut or sablefish QS that their QS are considered inactive based on records maintained by NMFS. An Inactive QS Notice will be issued if official records indicate that the QS holder initially issued the QS never landed their IFQ

halibut or IFQ sablefish, or transferred any QS or IFQ to or from another person. The official record of an IFQ halibut or IFQ sablefish landing contains the IFQ permit number to which the IFQ landing was credited. The number of landings and weight of each landing will be based only on legally submitted harvest documentation. Legal documentation is an IFQ Landing Report submitted under § 679.5, which indicates, among other data, the amount of IFQ halibut or IFQ sablefish harvested, the IPHC or groundfish reporting area in which the IFQ amounts were harvested, the vessel and gear type used for the harvest, and the date of harvesting, landing, or reporting. NMFS presumes that the official record data sources are correct. If 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**) prior to the end of the 60-day response period specified in the Inactive QS Notice.

Options for Persons Holding Inactive Quota Share

A person who holds inactive QS has two options when responding to an Inactive QS Notice. During the 60-day response period specified in the Inactive QS Notice, the person holding the inactive QS could (1) do nothing, thereby resulting in revocation of the inactive QS; or (2) request in writing that the inactive QS be considered active and not 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.

NMFS will revoke the inactive QS of a QS holder who fails to respond to NMFS within the 60-day period specified in the Inactive QS Notice. NMFS will remove revoked QS from the QS pool and will not generate an annual allocation of IFQ poundage for IFQ halibut or IFQ sablefish. Any IFQ derived from the inactive QS also will be revoked at the time that the inactive QS are revoked. After inactive QS are revoked, the previous holder of those QS can participate in the IFQ halibut or IFQ sablefish fisheries only if they subsequently receive QS or IFQ, or both, by transfer.

A person holding inactive QS who wishes to retain the inactive QS may notify NMFS in writing that he or she does not want the inactive QS revoked; this written notification must be received within the 60-day response period specified in the Inactive QS Notice. This notification will demonstrate sufficient activity in the IFQ Program to allow NMFS to activate the otherwise inactive QS. After receiving the QS holder's timely written notification, NMFS will allocate IFQ based on the activated QS as it has done since the beginning of the IFQ Program, and the holder of such QS will continue to benefit from the initial recipient privileges specified in the regulations implementing the IFQ Program (§§ 679.41 and 679.42). The IFQ halibut and IFQ sablefish harvesting privilege for an initial recipient of QS will continue as it does for all other initial recipient QS holders.

A person holding inactive QS who fails to respond to the Inactive QS Notice from NMFS within the 60-day response period may appeal to the NMFS National Appeals Office to submit his or her response late pursuant to § 679.43. As a practical matter, any other written challenge of the Inactive QS Notice received within the 60-day response period will be considered a request to not revoke the inactive QS. Such challenges will activate the otherwise inactive QS by demonstrating a reaction and, therefore, at least minimal activity in the IFQ Program.

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, will 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 will be provided to demonstrate these activities.

Written Response to Inactive QS Notice

The Inactive QS Notice provides the person holding the inactive QS with the opportunity to request in writing that inactive QS and IFQ remain active. NMFS will accept written responses by mail, courier or hand-delivery, or fax. The response deadline will be 60 days after NMFS sends the Inactive QS Notice and will be stamped on the Notice and identified as the Response Date. Responses must be received by NMFS no later than the date printed on the Inactive QS Notice, or, if sent by mail, postmarked by that date. If delivered by hand or carrier, the receipt date will be the date the response is stamped received by NMFS. If sent by facsimile, the receipt date will be the date stamped received by NMFS. Any other form of response, including email, will not be accepted. The Inactive QS Notice will 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 statement will be printed on the mail-in response form as an expression of the QS holder's 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 without using the provided form, but must include the same information, names, signatures, and dates as specified on the mail-in response form. Each completed form or other response statement received by NMFS by the response date and verified correct will result in a letter of acknowledgement issued to the person identified as the holder of the inactive QS or his or her legal representative. The letter will serve as final agency action advising that QS will be ''active'' and no further response by the person holding the inactive QS or by NMFS will be required.

Previous Response to NMFS Letters

Any previous request to NMFS to activate inactive QS is not sufficient for NMFS to change that QS status. If a response was submitted to NMFS regarding inactive QS and the IFQ permit holder has since officially activated the QS by completing a transfer or fishing the IFQ, then no further response is required. If a QS 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 again submit that request pursuant to this final rule to avoid revocation of inactive QS.

Public Comment

NMFS proposed this action in the **Federal Register** on August 23, 2010 (75 FR 51741). NMFS received two comments during the public comment period for the proposed rule. These comments are addressed below.

Comment 1: The commenter maintains that this action will result in an increased number of hooks deployed and therefore will increase the risk that short-tailed albatross will be caught and drowned in the halibut longline fishery. The commenter considers this redistribution of TAC and the current use of improved seabird bycatch avoidance measures in the halibut fishery to be a change in the action previously analyzed in the 1998 Bering Sea Aleutian Islands and Gulf of Alaska

Halibut Fishery Biological Opinion (1998 Biological Opinion) issued by the U.S. Fish and Wildlife Service (FWS) on March 13, 1998 (*http://alaskafisheries.noaa.gov/protectedresources/seabirds/section7/pachalibut.pdf*). In addition, the commenter considers the increased population of short-tailed albatross to be a change in the environmental baseline. For these reasons, the commenter recommends that NMFS reinitiate section 7 consultation with FWS on the effects of the Pacific halibut fishery on the short-tailed albatross. The commenter also recommends restructuring the observer program to require observers on commercial halibut longline vessels.

Response: NMFS disagrees that re-initiation of consultation with the FWS is required under section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536.

Section 7 of the ESA and implementing regulations at 50 CFR part 402 require each federal agency, in consultation with either the FWS or NMFS depending on the species involved, to insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of any endangered or threatened species. In April 1997, NMFS re-initiated consultation regarding the effects of the Pacific halibut commercial fishery on the endangered short-tailed albatross. In March 1998, the FWS issued its 1998 Biological Opinion that the Pacific halibut fishery is not likely to jeopardize the continued existence of the endangered short-tailed albatross.

The 1998 Biological Opinion included an incidental take statement authorizing incidental take of up to two short-tailed albatross every two years. It stated that, as provided in 50 CFR 402.16, re-initiation of formal consultation is required ''when discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) The amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.'' 1998 Biological Opinion, page 30. The 1998 Biological Opinion analyzed the effects of authorizing the commercial halibut longline fishery in the Bering Sea Aleutian Islands and Gulf of Alaska on the short-tailed albatross. The halibut and sablefish harvest quotas have been managed under the IFQ Program since 1995; specifically, the IFQ Program analyzed in the 1998 Biological Opinion allocates the entire total TACs of sablefish and Pacific halibut to the IFQ fleets commercially fishing for these species. In other words, revoking inactive QS will not increase the number of hooks deployed in the fishery relative to the level of harvest analyzed in the 1998 Biological Opinion, because that opinion assessed the possibility of a 100 percent harvest rate, which is higher than the current actual harvest rate. Furthermore, the amounts of sablefish and Pacific halibut likely to be made available for harvest by this final rule constitute only a very small proportional increase in harvest of the sablefish and Pacific halibut TACs. For example, in 2011, 204 QS holders out of a total of 2,954 held inactive QS, and as a result, approximately .02 percent of the IFQ TAC for halibut and sablefish was not harvested. Consequently, NMFS determines that the final rule does not modify agency action in a manner that causes an effect to the short-tailed albatross that was not considered in the 1998 Biological Opinion.

Furthermore, FWS previously concurred that revised NMFS regulations implementing improved seabird avoidance measures in the hook-and-line fisheries off Alaska are not likely to adversely affect the short-tailed albatross. Thus, NMFS disagrees that improved seabird avoidance measures and revised regulations to implement these measures is a change in the action requiring re-initiation of consultation.

In addition, although the short-tailed albatross population has increased, NMFS disagrees that this population increase amounts to a change in the environmental baseline that reveals effects of the action that may affect the short-tailed albatross in a manner or to an extent not considered in the 1998 Biological Opinion. In the 1998 Biological Opinion, FWS analyzed the upward trend in the short-tailed albatross population and expected this trend to continue, which it has. Because the 1998 Biological Opinion considered the effects of the halibut fishery on an increasing population of short-tailed albatross, NMFS disagrees that the upward population trend is new information constituting a change in the baseline. Therefore, re-initiation of formal consultation is not required based on the increasing population trend of short-tailed albatross that was analyzed in the 1998 Biological Opinion.

NMFS recognizes the commenter's concern about the effects of the commercial Pacific halibut longline fishery on short-tailed albatross. NMFS agrees that data collected by observers on commercial halibut longline vessels will likely improve the knowledge of the effects this fishery might have on the short-tailed albatross. The 1998 Biological Opinion's reasonable and prudent measures include a requirement to implement a plan to investigate all options for monitoring the Pacific halibut fishery in waters off Alaska. In October 2010, the North Pacific Fishery Management Council recommended that the halibut fishery be subject to observer coverage under the restructured North Pacific observer program. The extent of observer coverage in the halibut fishery and the implementation date of the restructured observer program have yet to be determined. NMFS is developing the proposed rule for the restructured observer program and will inform the public of the potential effects of this action when the details become available.

While NMFS does not believe that reinitiating section 7 consultation is warranted at this time, NMFS is compiling research data that will support a future re-evaluation of the effects of the Pacific halibut and groundfish fisheries off Alaska on short-tailed albatross, Steller's eider, and spectacled eiders. This explanation will include updated information on the improved seabird avoidance and habitat protection measures, new seabird bycatch mitigation research, and the potential impacts of a restructured observer program. NMFS anticipates that the requisite information and analyses will be available in the next year. NMFS is working with the public on Alaska fisheries issues that may affect ESA-listed species and will keep the public informed of the progress in developing the restructured observer program to ensure concerns are addressed.

Comment 2: Delay the inactive QS action until alternative options are identified for residents of small rural communities (less than 1,500 people) in the Gulf of Alaska to sell their category D QS to a Community Quota Entity (CQE) that represents the community. Revoking inactive QS would preempt future opportunity to transfer inactive category D QS to CQEs. Quota share is specific to regulatory areas and vessel categories. Halibut category D QS is specific to vessels 35 feet or less, length overall.

Response: This action provides IFQ permit holders with inactive QS an opportunity to retain QS by request and avoid removal of inactive QS. Permit holders responding to NMFS that they want to retain their inactive halibut or sablefish QS will have their QS status changed to active. IFQ permit holders also have the option to fish or transfer the QS to activate it any time prior to NMFS revoking the QS. Accordingly, NMFS sees no need to delay the action.

The CQE Program allows CQEs representing communities in IPHC regulatory Areas 2C and Area 3A to purchase halibut category B and C QS and prohibits them from purchasing halibut category D QS. One of the primary reasons the Council established this prohibition was to help ensure halibut category D QS would continue to be available to new entrants and crew members who wanted to start their own businesses. There was concern that an influx of CQEs in Area 2C and 3A would drive up the market for halibut category D QS, and result in more expensive, and less available, QS for individuals. Generally, category D QS are the least expensive category of halibut QS, as they can only be used on the smallest category of vessel. Category D QS are often used by smaller operations, or new entrants, and there is a relatively small amount of halibut category D QS designated for each management area.

After NMFS received Comment 2, the commenters submitted the comment as a proposed regulatory change to the Council. In February 2011 the Council recommended that NMFS amend Federal regulations to allow Area 3A CQEs to purchase a limited amount of halibut category D QS with restrictions. NMFS intends to develop a proposed rule according to the Council's regulatory recommendation and, once approved, could proceed with a call for public comments. Following a review of the public comments on the proposed rule and subject to approval by the Secretary, NMFS may publish a final rule to implement this action. Holders of inactive halibut QS who reside in CQE communities who want to retain their inactive QS may do so by responding to NMFS in writing within the single 60-day response period and requesting that NMFS change the status of his or her QS and IFQ to ''active.'' If regulations are changed in the future to allow CQE purchase of halibut category D QS, then persons who activate their QS by request, lease, or by documenting a landing by the deadline in this action could transfer their activated QS to enhance fishery participation of individual CQE community residents and CQE communities.

Changes From the Proposed Rule

NMFS has changed the method of response to the Inactive QS Notice from mail only as in the proposed rule. NMFS determined that the requirement that response to the Inactive QS Notice be submitted only by U.S. Mail was too restrictive. Therefore, NMFS has broadened the method of submission to include hand-carried responses or responses by facsimile. This change is consistent with methods of submission authorized in other regulations under 50 CFR part 679, where NMFS has required an application or response by a date certain. NMFS did not make any other changes from the proposed rule, published August 23, 2010 (75 FR 51741).

Classification

The Administrator, Alaska Region, NMFS, determined that this rule is necessary for the conservation and management of the fisheries managed under the halibut and sablefish IFQ Program and that it is consistent with the Halibut Act, the FMPs, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable laws.

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.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule also complies with the Secretary's authority under the Halibut Act to implement management measures for the halibut fishery.

Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared for this rule as required by section 604(a) of the Regulatory Flexibility Act (RFA). A FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA and NMFS' responses to those comments, if any, and a summary of the analyses completed to support the action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**).

The proposed rule was published in the **Federal Register** on August 23, 2010 (75 FR 51741). An RIR/IRFA was prepared and described in the ''Classification'' section of the preamble to the proposed rule. A copy of the RIR/IRFA is available from NMFS (see **ADDRESSES**). The public comment period ended on September 22, 2010. NMFS received two unique comment letters. Although neither of the comments directly addressed the IRFA or significant economic impact on small entities, Comment 2 referred to the potential for indirect economic impact on CQEs, which are not directly regulated by this action. No changes were made in the final rule from the proposed rule.

The RFA emphasizes (1) predicting adverse impacts on (1) small entities as a group distinct from other entities; and (2) considering alternatives that may minimize the significant economic impact on small entities, while still achieving the stated objectives of the action. The requirements for a FRFA are contained in section 604(a) of the RFA (5 U.S.C. 604(a)) and a complete description of the requirements are listed in the FRFA. The need for, and the objectives of, this final rule are in the section of the preamble titled ''Description of Final Action.'' The legal basis for this final rule is described in the preamble section titled ''Management of the Halibut and Sablefish IFQ Fisheries.'' A summary of the public comments and NMFS' responses are presented in the preamble section titled ''Public Comments.'' Descriptions of the voluntary compliance requirements of the rule are subsumed in sections of the preamble titled ''Options for Persons Holding Inactive Quota Share'' and ''Written Response.'' Sections of the preamble titled ''Public Notice'' and ''Official Notice and Record'' describe multiple steps NMFS has taken to alert persons with inactive QS of their options to activate QS and minimize economic impacts on these small entities from revoking their QS. Each of the above RFA requirements that are discussed in the preamble are not repeated here. The remaining FRFA requirements are to describe and estimate the current number of small entities to which the rule applies, explain why each one of the other alternatives to the rule that

could have affected the impact on small entities was rejected, and include a statement of the factual, policy, and legal reasons for selecting the alternative implemented by this action. These FRFA requirements are summarized here.

For purposes of a FRFA, the Small Business Administration (SBA) has established that a business involved in fish harvesting is a small entity if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $4 million for all its affiliated operations worldwide. A seafood processor is a small entity if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time or temporary, or other basis at all its affiliated operations. Because the SBA does not have a size criterion for businesses that are involved in both the harvesting and processing of seafood products, NMFS has in the past applied, and continues to apply, the SBA's fish harvesting criteria for these businesses because catcher/processors are first and foremost fish harvesting businesses. Therefore, a business involved in both the harvesting and processing of seafood products is a small business if it meets the $4 million criterion for fish harvesting operations.

Directly regulated entities in this action are persons that hold halibut QS or sablefish QS and whose future harvests would be deducted from the species' TAC. Currently, NMFS does not possess sufficient ownership and affiliation information to determine the precise number of QS holders considered small entities in the IFQ Program. Lacking more precise data on small entities, NMFS estimated the maximum number of small entities that are adversely impacted by this action to equal all inactive halibut QS and inactive sablefish QS holders, or 219 entities. The analysis also assumes that recipients of the additional QS from the proportional distribution of the IFQ from revoked QS will benefit from this rule, and these entities are therefore are not discussed further.

Small entities that could be impacted by this action are the QS holders whose inactive QS will be revoked unless they voluntarily comply with the requirements specified in regulation to retain the impacted QS. At the end of 2010, the most recent year with complete data, the amount of inactive halibut QS was 195,038 units, or 19,374 net lb (8.8 mt), held by 219 unique persons, which is the maximum number of small entities that could be impacted by this action. The maximum number of small entities holding inactive sablefish QS that could be revoked by this action equals 3 unique persons. These small entities held 9,281 inactive QS units of sablefish, equal to 661 round lb (0.3 mt) of sablefish.

Even if a small entity's QS and associated IFQ is revoked by this action, the initial issuee status of the QS recipient is not extinguished should the QS holder decide to re-enter the IFQ fishery. There is no projection of the number of persons who will have their inactive QS revoked but who will re-enter the halibut or sablefish fishery at some point in the future. At most the number of persons will not exceed the total number of QS holders that will have QS and associated IFQ revoked at the end of the 60-day response period.

It is not possible to determine the precise number of the 219 small entities holding inactive halibut and sablefish QS, as of the end of 2010, that will activate their QS before the end of the 60-day notice period. Not all activated QS can be expected to result in landed catch as some entities may choose to hold QS for reasons other than for fishing. However, the amount of QS retained under such circumstance would be miniscule compared to the overall amount of QS allocated to both fisheries.

Small entities that transferred some or all of their halibut or sablefish IFQ but never harvested any IFQ halibut or IFQ sablefish will not be subject to revocation of their QS under this final rule.

All inactive QS revoked by NMFS at the end of the 60-day notice period will be removed from the NMFS QS database. The pounds of annual IFQ represented by the revoked QS will be distributed among IFQ permit holders with active QS in an amount proportional to their IFQ allocation in the years following the revocation.

Based on available data and more general information concerning the probable economic activity of vessels in the halibut and sablefish IFQ fisheries, no vessel operation directly regulated by the IFQ Program could have been used to land more than $4 million in combined gross receipts (the maximum gross revenue threshold for a small catcher vessel) in 2005 or 2008, the years analyzed for the Council's 2006 and 2009 selection of a preferred alternative. All entities directly regulated by this action are considered small entities under the RFA, and have gross annual revenues less than $4 million. The action will not have a significant adverse impact on affected small entities relative to the status quo, no action alternative.

NMFS considered the effects and costs of this action in analysis of alternatives independent of all entities status as small entities. Each one of the other significant alternatives considered by the agency and rejected by the Council also impacted small entities. The Council reviewed the status quo, no action alternative of not revoking inactive halibut or sablefish QS, and two action alternatives to withdraw inactive QS. The two action alternatives were merged into one alternative when the provision for a lottery to redistribute revoked QS to eligible persons was rescinded from the preferred alternative. The lottery provision depended on there being at least 50,000 lbs (22.7 mt) of inactive QS units available for revocation. Because NMFS and the Council determined the amount of inactive QS fell below that threshold for all IPHC regulatory areas, they decided to eliminate this provision. NMFS is not aware of any additional alternatives to those considered that would accomplish the objectives of this action and that would minimize adverse economic impact of this action on small entities. Compared to the status quo, this action allows holders of inactive halibut or sablefish QS to voluntarily relinquish their inactive QS or transfer that QS prior to the end of the 60-day response period. The objective of this action is to relieve an operational restriction created by a lack of regulatory authority. The original impetus for the IFQ Program QS lottery has been superseded by ongoing changes in the characteristics of the halibut and sablefish fisheries QS holdings—specifically, the increased transfer of inactive QS and elimination of latent IFQ.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The guide explains the actions an IFQ permit holder with inactive QS may voluntarily take to avert NMFS revoking inactive QS pursuant to this final rule. The preamble to this final rule serves as the Small Entity Compliance Guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of the final rule may be obtained from the

NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Collection of Information

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), 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 email to *OIRA_Submission@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, Reporting and recordkeeping requirements.

Dated: May 15, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.;* 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. Responses must be received by NMFS no later than the date contained on the Inactive QS Notice

(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 by U.S. Mail, courier, hand delivery, or facsimile to the NMFS, Alaska Region as provided on the Inactive QS Notice and printed on the front side of the form. The written response must be received by NMFS no later than the date contained on the Inactive QS Notice or if sent by mail, postmarked by that date. If delivered by hand or courier, the receiving date is the date the notice is stamped received by NMFS.

(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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