

the same profit consideration as if they were direct labor. The other elements of indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead expenses within the classification of professional/technical overhead, general overhead and general and administrative expenses.

(iv) *Subcontractors.* (A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the contractor is using subcontractors to perform labor which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(B) In accordance with (EPAAR) 48 CFR 1515.902(d), whenever the subcontractor profit/fee is known to the contracting officer, that profit/fee shall not be considered as part of the basis for determining the contractor profit/fee.

(v) *Other direct costs.* Items of costs, such as travel and subsistence, should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of

(A) The degree of cost responsibility the contractor assumes,

(B) The reliability of the cost estimates in relation to the task assumed, and

(C) The chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type.

The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a low rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Prospective price determination ...	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given

to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

1552.217-73 [Amended]

3. Section 1552.217-73 is amended by revising the clause heading as follows:

1552.217-73 Option for Increased Quantity—Cost Type Contract (JUN 1997)

1552.217-74 [Amended]

4. Section 1552.217-74 is amended by revising the clause heading as follows:

1552.217-74 Option for Increased Quantity—Cost Plus Award Fee Contract (JUN 1997)

Dated: October 27, 1997

John C. Gherardini,

Acting Director, Office of Acquisition Management.

[FR Doc. 97-29593 Filed 11-10-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970520118-7251-02; I.D. 050197A]

RIN 0648-AJ00

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Standard Allowances for Ice and Slime

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that establishes standard allowances for ice

and slime found on unwashed Pacific halibut and sablefish landed in the Individual Fishing Quota (IFQ) fisheries for these species and incorporates them into the conversion factors for halibut and product recovery rates for sablefish used by NMFS to debit IFQ accounts. This action is necessary to correct inaccuracies in the current accounting process for landed IFQ product and is intended to support the goals and objectives of the IFQ program.

DATES: Effective December 12, 1997.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from: National Marine Fisheries Service, Alaska Region, Fisheries Management Division, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands in the exclusive economic zone are managed by NMFS pursuant to the fishery management plans (FMPs) for groundfish in the respective management areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773 *et seq.*, authorizes the Council to develop, and NMFS to implement, regulations applicable in waters under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea to allocate halibut fishing privileges among U.S. fishermen.

Under these authorities, the Council developed the IFQ program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries. The IFQ program was approved by NMFS, and fishing under that program began in March 1995. The Magnuson-Stevens Act and the Halibut Act authorize the Council and NMFS to make regulatory changes to the IFQ program that are consistent with the FMPs and that are necessary to conserve and manage the fixed gear Pacific halibut and sablefish fisheries.

Rationale and Management Action for Establishing Standard Allowances for Ice and Slime

Accurately accounting for the harvest of IFQ halibut and IFQ sablefish (IFQ species) is an important component of the IFQ program. Participants in the IFQ program are given specified allocations of IFQ species. Inaccurate accounting of the harvest of these allocations could cause either the underharvesting or overharvesting of IFQ species.

A major source of inaccurate accounting currently occurs because the current regulations do not provide for the adjustment of landed weights of unwashed IFQ species by either NMFS or program participants (fishermen and purchasers). An adjustment is needed to allow participants landing fish or fish products with ice and slime to harvest their full IFQ species share. Participants have been making, without regulatory authorization, adjustments of up to 9 percent to account for ice and slime. To the extent that the amount of adjustment is too high, these participants harvest more than their IFQ species share, potentially leading to a total overharvest. Also anecdotal reports from industry indicate that some purchasers of IFQ species have used their practice of making high ice and slime allowance adjustments to the weights they report to NMFS as an inducement to fishermen to deliver their catch to them rather than to a competitor who makes no adjustment or at least attempts to make a fair adjustment. The larger the percentage allowance for ice and slime used, the smaller the amount of landed IFQ species is reported to NMFS and the smaller the deduction from an IFQ participant's account with the ultimate consequence being overharvest. This method of inducing a participant's business is unfair to other purchasers of IFQ species.

In recognition that persons who land unwashed IFQ fish and products and who, in compliance with the regulations, report actual scale weights do not get to harvest their full IFQ shares while those who land washed fish and products do, and those who make unauthorized deductions harvest more than their share, NMFS proposed establishing a standard allowance of 2 percent for ice and slime on unwashed IFQ species (62 FR 32734, June 17, 1997). A 2-percent allowance for unwashed Pacific halibut is based on long-standing industry convention and has been accepted by the International Pacific Halibut Commission (IPHC), the international body entrusted with the primary responsibility for managing Pacific halibut. A 2-percent allowance

for unwashed sablefish was proposed by the industry. NMFS specifically requested comments on this proposed standard. Only one comment was received. That comment is addressed in the comment section below.

NMFS, by this rule, adopts a 2-percent allowance for ice and slime on unwashed halibut and sablefish. NMFS is implementing this allowance by incorporating it into the conversion factors and product recovery rates it uses to adjust reported weights to "standardized" weight measurements when debiting a participant's IFQ account. When applying conversion factors and product recovery rates, NMFS relies on product codes. The following new product codes are established and codified to accommodate the new conversion factors and product recovery rates for the ice and slime standard allowance: Product code 51—Whole fish/food fish with ice and slime (sablefish only); product code 54—Gutted only with ice and slime (Pacific halibut and sablefish); product code 55—Headed and gutted with ice and slime (Pacific halibut only); product code 57—Headed and gutted, Western cut, with ice and slime (sablefish only); and Headed and gutted, Eastern cut, with ice and slime (sablefish only). IFQ program participants are to use these new product codes only for unwashed IFQ species. Existing product codes 01, 04, 05, 07, and 08 are available for washed IFQ species (i.e., IFQ species without ice and slime).

These changes do not affect the requirement that IFQ program participants accurately report the scale weight actually measured without any adjustments at the time of landing. NMFS will adjust these weights to compensate for ice and slime by using the appropriate conversion factor or product recovery rate based on the product code(s) reported. By NMFS adopting a standard allowance and by NMFS doing the adjustments instead of industry participants, the practice of some industry participants using large allowances to "induce" business will be eliminated and the playing field will be leveled for all. Recording any amount on the IFQ landing report that is different from the scale weight actually measured at time of landing is a violation of the regulations and is subject to penalty.

Other Changes Made by This Action

The following changes are made to the regulatory text found at 50 CFR part 679 to clarify ambiguities concerning IFQ program requirements and deducted amounts.

First, the information required by § 679.5(l)(1)(iv) to be reported by IFQ landing reports is clarified by changing the words "fish product weight of sablefish and halibut landed" to "the scale weight of the product at the time of landing."

Second, the requirement to "sign any required fish ticket" in § 679.42(c)(3) is separated from the requirement to sign the IFQ landing report. Separating these requirements is intended to clarify that the IFQ landing report is the exclusive source of data NMFS will use to debit an IFQ account and to make all other IFQ calculations (e.g., adjustments under § 679.40(c)).

Third, the regulatory text in § 679.42(c)(3) (i) and (ii) explaining exactly what amount must be reported to NMFS for debit against an IFQ account is removed. These requirements will now appear at § 679.5(l)(1)(iv). Other provisions that were found in § 679.42(c)(3) (i) and (ii) are moved to § 679.42(c)(2), and new language is added to § 679.42(c)(2) specifying that the IFQ landing report will be the exclusive source of data NMFS will use for debiting an IFQ account.

Response to Comments

NMFS received one letter of comment was received on the proposed rule during the comment period. The following paragraphs summarize and respond to that comment.

Comment 1: The commenter fully supports establishing a standard allowance for ice and slime on unwashed IFQ species; however, the commenter indicates that 4 percent, rather than 2 percent, is a more accurate percentage based on derived recovery rates on IFQ species purchased and prepared for marketing. Further, the commenter states that the derived recovery rates are also affected by the allowance for heads, which is fixed at 10 percent for Pacific halibut. For example, when the weights of the heads of IFQ species are a greater percentage of body weight than the current allowance for heads, which frequently occurs with smaller fish, recovering buying and processing costs, even with a 4 percent allowance for ice and slime, is difficult. The head weight/body weight ratio is also affected by where the head is severed from the body. Historically, the standard head cut used to be on the back side of the eye socket; currently the head cut must be through the middle of the eye socket, or even lower, to achieve an economically viable head weight/body weight ratio.

Response: Historical information and the best available data support the determination that 2 percent is an

appropriate standard allowance for ice and slime. Calculating an allowance for ice and slime by comparing recovery rates of purchased product to processed product is not statistically accurate because it does not account for other variables, such as the loss of body weight through loss of moisture content, different head cuts, etc. The only statistically accurate method of deriving a percentage for an allowance for ice and slime is to measure the product before and after washing. To ensure the accuracy of the percentage, the time period between the two weighings should be minimal and the product should not be affected by any other procedures, such as heading the product or chilling the product. Changing the ice and slime standard allowance to account for varying head weights is inappropriate. Furthermore, NMFS contacted the IPHC and confirmed that the standard head cut percentage allowance is based on a head cut through the second eye ball. Therefore, cutting the head behind the eye socket would change the head weight/body weight ratio. This change would reduce the processed product weight, thereby requiring an increase in some allowance to account for the loss. This could be the reason why the commenter prefers 4 percent, rather than 2 percent ice and slime allowance to achieve an economically viable derived rate. However, the two allowances should not be dependent on one another and, for the reasons stated above, a 2-percent standard allowance for ice and slime is appropriate.

Changes Made to the Final Rule

Two changes were made to the final rule as compared with the proposed rule. First, the fifth clause of the first sentence of § 679.5(l)(1)(iv) was removed because it was the same as the previous clause. Second, the words "actually measured" and "actually measured and reported" were removed from § 679.5(l)(1)(iv) and § 679.42(c)(2)(i) and (ii), respectively.

These phrases did not add any additional clarification to the regulatory text.

Classification

NMFS prepared an EA/RIR for this rule, and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the quality of the human environment as a result of this rule. This action will not significantly alter the impacts analyzed in the Final Environmental Impact Statement (FEIS) for the IFQ program. A copy of the FEIS for the IFQ program or

the EA/RIR for this action is available from NMFS (see ADDRESSES).

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Fisheries, Recordkeeping and reporting requirements.

Dated: November 4, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, 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 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.5, paragraph (l)(1)(iv) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(1) * * *

(iv) *Information required.* Information contained in a complete IFQ landing report shall include: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; product type landed; and the scale weight of the product at the time of landing.

* * * * *

3. In § 679.42, paragraph (c) is revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(c) *Requirements and deductions.* (1) Any individual who harvests halibut or sablefish with fixed gear must:

(i) Have a valid IFQ card.

(ii) Be aboard the vessel at all times during the fishing operation.

(iii) Sign any required fish ticket.

(iv) Sign the IFQ landing report required by § 679.5(l)(1)(iv).

(2) The scale weight of the halibut or sablefish product actually measured at

the time of landing, required by § 679.5(l)(1)(iv) to be included in the IFQ landing report, shall be the only source of information used by NMFS to debit an IFQ account. An IFQ account will be debited as follows:

(i) For sablefish product, dividing the scale weight at the time of landing by the product recovery rate found in Table 3 of this part that corresponds to the product code reported in the IFQ landing report; or

(ii) For halibut product, multiplying the scale weight at the time of landing by the conversion factor listed in paragraph (c)(2)(iii) of this section that corresponds to the product code reported in the IFQ landing report.
(iii) *Halibut conversion factors.*

Product code	Product description	Conversion factor
04	Gutted, head on	0.90
05	Gutted, head off	1.00
54	Gutted, head on, with ice and slime	0.88
55	Gutted, head off, with ice and slime	0.90

4. In 50 CFR part 679, Table 1 is amended by adding the following fish product codes/descriptions in numerical order to read as follows:

TABLE 1 TO PART 679—PRODUCT CODES

Fish product code	Description
5	<i>Headed and gutted.</i> Pacific halibut only.
51	<i>Whole fish/food fish with ice and slime.</i> Sablefish only.
54	<i>Gutted only with ice and slime.</i> Belly slit and viscera removed. Pacific halibut and sablefish only.
55	<i>Headed and gutted with ice and slime.</i> Pacific halibut only.
57	<i>Headed and gutted, Western cut, with ice and slime.</i> Sablefish only.
58	<i>Headed and gutted, Eastern cut, with ice and slime.</i> Sablefish only.

5. In 50 CFR part 679, Table 3 is amended by adding new product code columns with the following descriptions and product code numbers between Column 37 (Butterfly Backbone Removed) and Column 96 (Decomposed Fish) and adding the following product recovery rate values for the listed FMP species "SABLEFISH" in new columns 51, 54, 57, and 58:

TABLE 3 TO PART 679.—PRODUCT RECOVERY RATES FOR GROUND FISH SPECIES PRODUCT CODE

FMP species	Species code	Whole fish/food fish with ice and slime	Gutted with ice and slime	H&G western cut with ice and slime	H&G eastern cut with ice and slime
	51	54	57	58
Sablefish	710	1.02	0.91	0.70	0.65

[FR Doc. 97-29707 Filed 11-10-97; 8:45 am]