

Management Council (Council) with respect to this program.

**DATES:** Effective December 15, 2003, except for amendments to §§ 679.2, 679.7, the introductory paragraph to 679.31, and 679.32 which are effective January 15, 2004.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228 or [Obren.Davis@noaa.gov](mailto:Obren.Davis@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Regulations codified at 50 CFR part 679 implement the multispecies CDQ Program, a limited access system that provides exclusive harvesting privileges to a portion of the total allowable catches for halibut, crab and groundfish to eligible western Alaska communities. The purpose of this program is to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of eligible communities. NMFS allocates varying amounts of commercially valuable CDQ target species to CDQ groups each year. The harvest of these species provides a financial means for CDQ groups to fund economic development projects in support of overall program objectives.

This action would modify the management of the "other species" CDQ reserve and amend regulations to distinguish between the management of those groundfish CDQ reserves that are allocated to CDQ groups and those that are not. The "other species" complex is comprised of various species of sharks, skates, sculpins, and octopi. These species are incidentally caught with CDQ target species such as pollock, Pacific cod, sablefish, Atka mackerel, and flatfish. Exceeding an annual CDQ allocation results in an enforcement

action against a CDQ group, which may include monetary or other penalties. To avoid exceeding their "other species" allocations, CDQ groups may have to modify their fishing practices by fishing in new or different locations or ceasing to fish for some target species. Failing to completely harvest CDQ target species allocations has an economic impact on CDQ groups and the CDQ communities when revenues are foregone, which may adversely affect the accomplishment of projects intended to foster economic development in western Alaska communities.

Under this action the "other species" CDQ reserve would still be established annually, but would no longer be allocated to CDQ groups. All catch of "other species" in the groundfish CDQ fisheries would accrue towards this reserve, rather than towards specific allocations to individual CDQ groups. Eliminating individual "other species" allocations would eliminate the potential that some CDQ target allocations would be unharvested for lack of "other species" bycatch, or that groups would incur enforcement actions for exceeding an annual "other species" CDQ allocation. Some CDQ groups receive allocations of "other species" CDQ that are not necessarily proportionate to the amount CDQ target species they are allocated, while other groups receive adequate amounts or even have surplus "other species" remaining at the end of each year. NMFS would manage the "other species" CDQ reserve as a whole with management measures in § 679.20(d). These measures provide the means to manage the catch of "other species" in both the CDQ and non-CDQ groundfish fishery.

This final rule makes the following changes to CDQ Program regulations: (1) amends the content and headings of definitions associated with the CDQ Program; (2) revises a prohibition associated with calculating maximum retainable amounts of CDQ catch; (3) amends the introductory paragraph that discusses CDQ reserves; (4) amends regulations to distinguish how NMFS will manage groundfish CDQ reserves apportioned to CDQ groups and how it will manage groundfish CDQ reserves that are not apportioned to CDQ groups; (5) amends regulations to specify that the "other species" CDQ reserve, is not allocated among CDQ groups; (6) amends regulations to allow NMFS to manage the "other species" CDQ reserve with fishery management measures typically used in non-CDQ fisheries; (7) amends regulations to describe how NMFS will apply CDQ percentage allocations to revised total allowable

catch (TAC) categories that may arise from the annual groundfish harvest specifications process; and (8) amends catch monitoring requirements to align them with revisions to CDQ-related definitions. This action also will rescind the "other species" CDQ percentage allocations made to individual CDQ groups on January 17, 2003, and supercede the Alaska Regional Administrator's 2003-2005 allocation decision pertaining to this CDQ reserve category. These changes are necessary to promote the ability of CDQ groups to more fully utilize their annual groundfish CDQ allocations in support of the goals of the CDQ Program, to enhance NMFS' ability to administer the program, and to improve the consistency and clarity of CDQ Program regulations.

NMFS published a proposed rule to modify the management of the "other species" CDQ reserve on October 22, 2003 (68 FR 60327), with comments invited through November 6, 2003. The preamble to the proposed rule contains a full description and justification of the regulatory revisions implemented by this action. The preamble also contains additional background on the general history of the CDQ program and specific management measures used to allocate and account for the catch of "other species" CDQ, as well as the purpose and need for this action. No letters of comment were received by the end of the comment period. No changes were made from the proposed rule.

### Classification

For the reasons set forth below, the Assistant Administrator finds that the primary provision of this action relieves a restriction, thereby making the normal 30-day delay in effective date inapplicable to the amendment to § 679.31(f). Without this action, existing regulations prohibit CDQ groups from exceeding any CDQ allocation, as discussed in the preamble. CDQ groups likely will have to curtail some of their target fisheries because they lack adequate "other species" CDQ to account for the incidental catch of such species. In this event, CDQ groups would forfeit some of the revenues that they would otherwise receive from the complete harvest of their CDQ target allocations. This would result in unnecessary adverse impacts to eligible communities that are dependent on CDQ royalties to fund economic development projects or on groundfish CDQ harvesting operations to provide employment to residents. This action would remove the allocation of CDQ "other species" to the CDQ groups and authorize management of CDQ "other