



Agency Regulatory Proposals

PREPARED BY: IPHC STAFF (23 NOVEMBER 2016)

NATIONAL MARINE FISHERIES SERVICE

- **Appendix I** - *Fishing in Multiple Regulatory Areas in Alaska*
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Appendix I

IPHC Regulations Proposal Submission Form

Proposal Title: Harmonize IPHC Regulation Section 18 with 50 C.F.R. § 679.7(f)(4) – Fishing Multiple Regulatory Areas (2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E)

Year Proposed For: 2017

Submission Information (Please print or type)

Name: National Marine Fisheries Service, Office of Law Enforcement, Alaska Division

Address: P.O. Box 21767

City: Juneau

State/Prov: AK

Postal/ZIP Code: 99802-1767

Telephone: 907-586-7225

Fax: 907-586-7200

ELLIS.WILLARD.S.101050327

Digitally signed by ELLIS.WILLARD.S.101050327
DN: c=US, o=U.S. Government, ou=DoD, ou=PSD,
ou=OTI&R, cn=ELLIS.WILLARD.S.101050327
Date: 2016.11.22 13:53:30 -0800

Signature: 9

Will Ellis

Assistant Director, NMFS Office of Law Enforcement, Alaska Division

1. What is the definition and objective of the proposal?

The attached proposal harmonizes IPHC Regulation Section 18 with NMFS halibut fishery regulations published at 50 C.F.R. Section 679.7(f)(4). Both sets of regulations address the circumstances under which a person may lawfully possess at the same time on board a vessel halibut caught in more than one of the regulatory areas off Alaska. However, differences in regulatory text have caused confusion. For example, 50 CFR Section 679.7(f)(4) prohibits retention of halibut on a vessel in excess of the total amount of unharvested IFQ or CDQ that is currently held by all IFQ or CDQ permit holders aboard the vessel for the area in which the vessel is fishing unless the vessel has a NMFS-certified observer on board and maintains a daily fishing log, while IPHC Regulation Section 18(3)(a) states that halibut caught in more than one of the regulatory areas may be possessed aboard a vessel at the same time if the vessel has a NMFS-certified observer on board *or a VMS transmitter on board*. In a recent enforcement case, Respondent's legal counsel argued that different wording in the two sets of regulations resulted in a conflict requiring the charges be dropped. Although NMFS prevailed in that case, the attached proposal clarifies that halibut caught in more than one of the regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E may be possessed on board a vessel at the same time only if authorized by NMFS regulations published at 50 CFR Section 679.7(f)(4). Section 679.7(f)(4) is attached for reference.

2. Impacts: Describe who you think this proposed change might affect (include fishers, processors, agencies, and the public).

2a. Who might benefit from the proposed change?

The regulated industry will benefit from regulations that are more clear.



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2b. Who might suffer hardships or be worse off?

No one.

3. Are there other solutions to the problem described above? If so, why were they rejected?

The attached proposal is a simple solution to the problem.

IPHC Regulation (2016)

18. Fishing Multiple Regulatory Areas

- (1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.
- (2) Halibut caught in more than one of the Regulatory Areas ~~2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E~~ may be possessed on board a vessel at the same time ~~only if authorized provided the operator of the vessel:~~
 - ~~(a) has a NMFS certified observer on board when required by NMFS regulations published at 50 CFR Section 679.7(f)(4); and~~
 - ~~(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.~~
- (3) ~~Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time provided the operator of the vessel:~~
 - ~~(a) has a NMFS certified observer on board the vessel as required by NMFS regulations published at 50 CFR Section 679.7(f)(4); or has an operational VMS on board actively transmitting in all regulatory areas fished and does not possess at any time more halibut on board the vessel than the IPQ permit holders on board the vessel have cumulatively available for any single Area 4 regulatory area fished; and~~
 - ~~(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.~~
- (4) ~~If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).~~



Appendix I (con't)

U.S. Code of Federal Regulations (CFR) for Alaska

50 CFR § 679.7(5)(4)

§ 679.7 – Prohibitions. In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

(f) * * *

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ permit holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the Federal Register pursuant to § 300.62 of this title and § 679.5.