



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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Update on Options to Extend the Halibut Vessel Use Caps Temporary Rule

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In its [June 2022 motion](#) on agenda item D2 - IFQ Committee report, the Council requested that NMFS evaluate options for extending the temporary rule to waive vessel use caps in Area 4 while the Council considers permanent changes to this provision.

The February 10, 2022 Council motion requesting expedited rulemaking to remove vessel use caps applicable to the harvest of halibut IFQ in IPHC regulatory Areas 4A, 4B, 4C, and 4D was specific to the 2022 fishing year. Subsequently, NOAA Fisheries in collaboration with Council staff analyzed the Council's request, published a proposed rule in the Federal Register ([87 FR 23155, April 19, 2022](#)) with a 15-day open public comment period, and then published a final rule to remove limits on the maximum amount of halibut Individual Fishing Quota (IFQ) that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea) for the 2022 IFQ fishing year ([87 FR 34215, June 6, 2022](#)). This temporary final rule is effective June 6, 2022 through December 31, 2022.

Because there is approximately 5 months before the start of the 2023 fishing year, there is sufficient time to propose such interim measures and proceed through the standard notice and comment rulemaking before vessels in Area 4 may be constrained by halibut vessel use caps in 2023. The Councils and Secretary must, whenever possible, afford the full scope of public participation in rulemaking. The process to publish a proposed and final rule includes preparation of an RIR and NEPA document. For the temporary final rule published on June 2, 2022, a 37 page RIR was prepared and the action was categorically excluded under NEPA. Supporting documents and comments are available at: <https://www.regulations.gov/docket/NOAA-NMFS-2022-0037>.

Another potential option could be to extend temporary regulations through an interim final rule published prior to December 31, 2022 when the temporary regulations will expire. Due to the timing, there is not sufficient time between now and December 31 to proceed through the standard notice and comment rulemaking. To waive the notice and comment rulemaking process pursuant to the Administrative Procedures Act, there would need to be rationale to support "good cause" articulating why it is either impracticable, unnecessary, or contrary to the public interest to provide for prior notice and an opportunity for public comment. Administrative inaction to solve a long recognized problem does not generally meet this standard.

Additionally, NMFS would like to highlight the comments received on the proposed rule for the 2022 temporary measures. NOAA Fisheries received 4 comment letters on the proposed



temporary action with one commenter opposing the action because of concerns with consolidation, who benefits from actions like this one, and barriers to entry into the IFQ Program. The commenter adds that, in their view, this action does not align with the original intent of the IFQ program to protect fishery participants from consolidation. In the view of the commenter, by removing vessel use caps, the action promotes consolidation, which increases the price of the QS and barriers to entry into the IFQ Program. This comment and NOAA Fisheries response is further summarized in the final rule [response to comment 3](#).

In terms of timing and workload, if the Council were to recommend interim measures (either time bound or until superseded) for 2023, the Council's recommendation and rationale would need to be analyzed as has been done in 2020, 2021, and 2022, and a rulemaking package would need to be prepared and submitted to the Agency for Secretarial review. To extend the temporary regulations that are currently in place, and assuming the Council's recommendation may be approved by the Secretary, all of the steps described above would need to be completed before December 31, 2022.