

List of Subjects**47 CFR Part 2**

Communications equipment, Radio.

47 CFR Part 26

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 010823213–2078–02; I.D. 071701C]

RIN 0648-AK70

Fisheries of the Exclusive Economic Zone Off Alaska; 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 implement Amendment 54 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 54 to the FMP for Groundfish of the Gulf of Alaska (Amendments 54/54), and an amendment to the Pacific halibut commercial fishery regulations for waters in and off Alaska. These amendments make three changes in the Individual Fishing Quota (IFQ) Program to: (1) Allow a quota share (QS) holder's indirect ownership or affiliation to a vessel, through corporate or other collective ties, to substitute for vessel ownership in the QS holder's own name for purposes of hiring a skipper to fish the QS holder's IFQ; (2) revise the definition of "a change in the corporation or partnership" to include language that explicitly specifies the point at which estates holding initial allocations of QS must transfer the QS to a qualified individual; and (3) revise sablefish use limits to be expressed in QS units rather than as percentages of the QS pool. This action is intended to improve the effectiveness of the IFQ Program and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the

Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

DATES: DATES: Effective May 29, 2002.

ADDRESSES: Copies of Amendments 54/54, the Regulatory Impact Review and the Initial Regulatory Flexibility Analysis (IRFA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel-Duvall.

FOR FURTHER INFORMATION CONTACT:

Glenn Merrill, 907–586–7228 or email at glenn.merrill@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The IFQ Program, a limited access management system for the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was approved by NMFS in January 1993, and fully implemented beginning in March 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management regions. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations under the authority of the Halibut Act.

A detailed discussion providing specific examples of the effect of this final rule on the IFQ Program may be found in the preamble to the proposed rule, published October 12, 2001 (66 FR 52090).

Indirect Vessel Ownership

The IFQ Program contains a number of provisions designed to promote an owner-operator IFQ fishing fleet. An exception to the owner-operator provisions allows initial recipients of category B, C, or D (catcher vessel) QS (hereafter QS holder) to hire a skipper to fish the IFQ derived from the QS, provided the QS holder owns at least 20 percent of the vessel on which the IFQ is being used to fish for IFQ species. This final rule will allow a QS holder to substitute indirect ownership of a vessel through corporate or other ties for direct vessel ownership by the QS holder for purposes of hiring a skipper to fish the QS holder's IFQ. This final rule also will allow corporate QS holders to employ a hired skipper on a vessel owned by a shareholder in the corporation. The purpose of this action

is to revise IFQ Program regulations to explicitly reflect management practices that have been in effect since the IFQ Program started in 1995.

This final rule allows a QS holder to continue to hire a skipper through a corporation or partnership provided that certain minimum levels of vessel ownership are maintained by an individual QS holder who is a shareholder in a corporation or a partner in a partnership. Existing regulations require an individual QS holder to maintain a minimum of 20-percent ownership interest in the vessel (see 64 FR 24960, May 10, 1999). These regulations prevent a QS holder from employing a hired skipper unless the QS holder directly owns at least 20 percent of the vessel on which the hired skipper will fish the QS holder's IFQ.

This final rule extends the 20-percent ownership standard to QS holders who indirectly own a vessel through a corporation, partnership, or other entity. For example, a QS holder who is a shareholder in a corporation will be allowed to employ a hired skipper to fish his or her IFQ aboard a vessel wholly owned by that corporation provided that the QS holder had at least 20-percent ownership in the corporation that owns the vessel. This means a QS holder can meet the 20-percent minimum ownership standard indirectly as a shareholder of a corporation, a partner in a partnership, or a member of another entity. However, this final rule prevents a QS holder from employing hired skippers through corporations in which they are nominal shareholders.

Minimum ownership interest is determined by multiplying the percentage of ownership that a QS holder has in a corporation, partnership, or other entity by the percentage of ownership that a corporation, partnership, or other entity has in the vessel on which a hired skipper is employed. This final rule codifies the existing management policy and methodology currently used by NMFS to determine the ownership interest a QS holder has in a vessel. The following are two examples of how this final rule will be implemented:

Example 1: A QS holder owns 20 percent of a corporation and that corporation wholly owns a vessel. That QS holder would be allowed to employ a hired skipper aboard the vessel owned by the corporation because 20-percent ownership interest in the corporation multiplied by a 100-percent corporate ownership in the vessel equals a 20-percent ownership interest by the QS holder in the vessel. (0.2 X 1.0 = 0.2 or 20 percent)

Example 2: A QS holder owns 50 percent of a corporation and that corporation owns 30 percent of a vessel. That QS holder would

not be allowed to employ a hired skipper aboard the vessel owned by the corporation because 50-percent ownership interest in the corporation multiplied by a 30-percent corporate ownership in the vessel equals a 15-percent ownership interest by the QS holder in the vessel. ($0.5 \times 0.3 = 0.15$ or 15 percent)

This final rule holds individual QS holders who are indirect corporate vessel owners to the same ownership standards as those required of direct individual vessel owners. This will allow existing business practices to continue since many QS holders own their vessels through a corporation to minimize personal liability. Without this final rule, QS holders would be unable to meet minimum standards for direct vessel ownership while maintaining the advantages that corporate vessel ownership provides.

Likewise, this final rule allows corporations, partnerships, or other entities that are QS holders to employ a hired skipper on board a vessel owned by a shareholder. This final rule requires the corporate QS holder to maintain certain minimum levels of interest, or affiliation, with the vessel on which a hired skipper is employed. However, this final rule does not require the corporate QS holder to maintain an ownership interest in the shareholder's vessel.

Minimum interest, or affiliation, is determined by multiplying the percentage of ownership that a person has in a corporation, partnership, or other entity by the percentage of ownership that person has in the vessel on which a hired skipper is employed. Again, this final rule codifies the existing management policy and methodology used by NMFS for this situation. The following are two examples of how this final rule will be implemented:

Example 1: A corporation is a QS holder. A shareholder owns 50 percent of that corporation and that shareholder owns 50 percent of a vessel. The corporate QS holder would be allowed to employ a hired skipper aboard the vessel owned by the shareholder because 50 percent interest in the corporation by the shareholder multiplied by a 50-percent ownership in the vessel by the shareholder equals a 25-percent interest, or affiliation, by the corporate QS holder in the shareholder's vessel. ($0.5 \times 0.5 = 0.25$ or 25 percent)

Example 2: A corporation is a QS holder. A shareholder owns 80 percent of that corporation and that shareholder owns 10 percent of a vessel. The corporate QS holder would not be allowed to employ a hired skipper aboard the vessel owned by the shareholder because 80-percent interest in the corporation by the shareholder multiplied by a 10-percent ownership in the vessel by the shareholder equals an 8-percent interest, or affiliation, by the corporate QS

holder in the shareholder's vessel. ($0.8 \times 0.1 = 0.08$ or 8 percent)

Revising the Definition of a Change in Corporation or Partnership

To prevent excessive consolidation of QS and promote an owner-operator IFQ fleet, the IFQ Program restricts the extent to which corporations, partnerships, and other collective entities can hold catcher vessel QS. The regulations pertaining to collective QS holdings provide that any "change" in a corporation, partnership, or other entity, will cause the QS to cease generating annual IFQ for harvesting IFQ halibut or sablefish until the QS is transferred to a qualified individual (see 50 CFR 679.42(j)). The regulations define a "change" in a corporation, partnership, or other collective entity to mean the addition of a shareholder or partner to the collective entity. By defining such a "change," the Council clearly expressed its intent to limit the ability of collective entities to hold catcher vessel QS and use indefinitely the resulting IFQ.

This final rule revises the definition of "a change in the corporation or partnership" to state that for estates holding QS, a "change" occurs with the final or summary distribution of the estate. The effective date of that change is the date of determination of a legal heir, if the previous QS holder died intestate, or the date of the order for distribution of the estate, if the previous QS holder had testamentary documents. Under this final rule, the estate is required to transfer any estate-held QS to a qualified individual upon a change in the estate. This final rule limits the ability of estates to hold QS and fish the resulting IFQ indefinitely and thereby meets the intent of the IFQ Program and the Council to maintain an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

Sablefish Use Limits

The IFQ Program limits the amount of QS a person may use to harvest IFQ species. In the original implementing regulations for the IFQ Program (58 FR 59375, November 9, 1993), use limits are expressed as percentages of the QS pool. The total amount of QS is used as a basis for the annual determination of IFQ for each QS holder. Because the size of the QS pool may vary from year to year, a use limit expressed as a percentage of the QS pool results in a variable use limit. Consequently, a fisherman's QS holdings that have reached the limit in one year may actually exceed the limit in a subsequent year without the fisherman having acquired any additional QS. In

1997, all halibut use limits were revised to be expressed in numbers of QS units based on the 1996 QS pool (62 FR 7947, February 21, 1997). The revised halibut use limits provide a fixed limit that does not change according to the size of the QS pool.

This final rule standardizes the application of use limits for halibut and sablefish. This provides sablefish QS holders with the same benefit of a stable use limit so that they can manage their fishing businesses in a more rational manner. This final rule revises the sablefish use limit percentages to 3,229,721 units of sablefish QS, and the IFQ regulatory area SE sablefish use limit percentages to 688,485 units of sablefish QS.

This final rule does not change the amount of QS that a person could use. It simply sets those limits in QS units, instead of as a percentage of the QS pool.

Changes From the Proposed Rule

NMFS invited public comment on the proposed rule implementing Amendments 54/54 from October 12, 2001, through November 26, 2001 (66 FR 52090, October 12, 2001). No comments were received.

During the course of preparing this final rule, several corrections were made to the final rule to better reflect the original intent of Amendments 54/54. The changes made in this final rule correctly reflect the intent of the Council and previous regulatory action approved by NMFS. These changes also reflect the current management practices used by NMFS when determining the level of indirect ownership or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed. These changes correct the mathematical methodology used to determine the level of indirect ownership or affiliation and do not affect the nature of the proposed rule or the intent of the Council.

The first change in the final rule regulatory language concerns the determination of ownership interest for purposes of meeting the 20-percent minimum ownership interest requirement. The regulatory language in the proposed rule (66 FR 52090, October 12, 2001) for 50 CFR 679.42(i)(3) did not adhere to the Council's intent to require that initial recipients of category B, C, or D quota share must maintain a minimum of a 20-percent ownership interest in the vessel that employs a hired skipper. The proposed rule regulatory language did not use a multiplicative approach for purposes of determining the level of indirect

ownership. Currently, NMFS uses a multiplicative rule for determining the level of interest or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed. The final rule language has been changed to adhere to the existing management practices that Amendments 54/54 were intended to codify.

The second change in the final rule regulatory language changes the numbering of a new paragraph at 50 CFR 679.42(j)(6) to 50 CFR 679.42(j)(7). The Code of Federal Regulations was amended recently to include a paragraph (j)(6), and the new paragraph in the final rule is added at (j)(7) of § 679.42.

The third change in the final rule regulatory language concerns the use of a hired skipper aboard a vessel that is owned by an individual that has an affiliation with a corporate QS holder through membership in a corporation, partnership, or other entity. The regulatory language in the proposed rule (66 FR 52090, October 12, 2001) for 50 CFR 679.42(j)(6) (now (j)(7)) did not adhere to the Council's intent to require that initial recipients of category B, C, or D QS must maintain a minimum 20-percent interest in the vessel before those initial QS recipients could hire a skipper to fish their IFQ on that vessel. The proposed rule regulatory language did not use a multiplicative approach for purposes of determining the level of indirect ownership. Currently, NMFS uses a multiplicative rule for determining the level of interest or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed. The final rule language has been changed to adhere to the existing management practices that Amendments 54/54 were intended to codify.

The fourth change clarifies that the effective date of a change for purposes of transferring estate-held QS to a qualified individual includes situations when a person dies intestate (date of determination of a legal heir) and when a person dies with testamentary documents (date of the order for distribution of the estate). Regulatory text was added to § 679.42(j)(3) to reflect that clarification.

All the changes in the regulatory language from the proposed rule are consistent with Council intent. Failing to make these changes would frustrate Council intent to maintain an owner-operator component to the IFQ fishery and maintain more than a nominal relationship between the QS holder and the vessel on which a hired skipper is

employed. These changes are corrections to the regulatory language describing the methodology used to determine interest in a vessel. These clarifications do not represent new policy and are necessary to reflect the current management practices used by NMFS to determine the level of indirect ownership or corporate affiliation that must exist between the QS holder and the vessel on which a hired skipper is employed.

Classification

The Administrator, Alaska Region, NMFS, has determined that these FMP amendments for sablefish and regulatory amendments for Pacific halibut are necessary for the conservation and management of the Pacific halibut and sablefish fixed-gear IFQ fishery and that they are consistent with the Magnuson-Stevens Act, Halibut Act, and other applicable laws.

NMFS prepared a FRFA that describes the impact this final rule would have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES).

This final rule makes three changes to the IFQ program that are necessary to ensure the program continues to be managed in a manner intended by the Council. These changes (1) specify the vessel ownership level for purposes of hiring a skipper to fish the QS holder's IFQ; (2) revise the definition of "a change in the corporation or partnership" to clarify when estates must distribute QS being held; and (3) revise sablefish QS limit to be expressed as a specific number rather than as a percentage. The overall impact of these amendments on small entities is as follows: First, the indirect ownership provisions, while conceivably keeping some QS off the open market, will provide fishermen who hold initial allocations of catcher vessel QS an additional option for using their QS; second, the change in the definition of a "change in the corporation or partnership" to include language specific to estates will benefit small entities by placing more QS on the market than would otherwise occur when estates, as with all non-individual non-corporate entities, eventually divest themselves of QS; and finally, the revision of the sablefish QS use limits will allow QS holders to manage their QS holdings more efficiently by providing a stable use limit that does not change with changes in the QS pool.

These actions would potentially affect all holders of initially allocated QS in categories B, C, or D in the IFQ Program. The maximum number of affected fishermen could be approximately 3,900 persons, both individual and collective

entities, who, as of January 2001, hold category B, C, or D category QS and, by virtue of having received initial allocations, are eligible to hire skippers. The impact of this action would be to create explicit regulatory authority for current NMFS policy. This would give QS holders, whether collective entities or individuals who are partners or shareholders in collectively owned vessels, an additional option to use the hired skipper provisions of the IFQ Program. At present, NMFS has no reliable data indicating how many individual QS holders may be shareholders or partners in collective entities or how many collective entities may have individual members who own fishing vessels. These data are not currently collected as they are not required for managing the existing program. Also, at present, NMFS does not have available the full data necessary to determine the extent to which this action may impact small entities.

The IRFA considered alternatives that would have maintained the status quo or adopted the changes described in this action and analyzed the effect of those alternatives on small entities. The alternatives considered in the IRFA were developed in response to public comments and participation in the Council process. The changes described in this final rule are the same as the alternative developed in the IRFA. NMFS is not aware of any alternatives in addition to those considered in this action that would accomplish the objectives of the Magnuson-Stevens Act and other applicable statutes while further minimizing the economic impact of the rule on small entities.

No public comments were received during the comment period on the IRFA or the economic impact of the rule generally and, therefore, no changes were made to the analysis based on public comment.

No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 23, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, 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.*, 3631 *et seq.*, Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.42, paragraphs (e), (j)(2), (j)(3), and (j)(4) are revised, and paragraphs (i)(3) and (j)(7) are added to read as follows.

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(e) Sablefish QS Use. (1) No person, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person's initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

(2) In the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 688,485 units of sablefish QS for this area, except if the amount of a person's initial allocation of sablefish QS is greater than 688,485 units, in which case that person may not use more than the amount of the initial allocation.

* * * * *

(i) * * *

(3) The exemption provided in paragraph (i)(1) of this section may be

exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member, provided that the individual maintains a minimum 20 percent interest in the vessel owned by the corporation, partnership, or other entity. For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, or other entity by that individual multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other entity.

(j) * * *

(2) For purposes of this paragraph (j), "a change" means:

(i) for corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership; or

(ii) for estates, the final or summary distribution of the estate.

(3) The Regional Administrator must be notified of a change in the corporation, partnership, or other entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation

or partnership or, for estates, the date of the determination of a legal heir to the estate, or the date of the order for distribution of the estate.

(4) QS assigned to vessel categories B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, or other entity that changes, as defined in this paragraph, must be transferred to an individual, as prescribed in § 679.41 of this part, before it may be used at any time after the effective date of the change.

* * * * *

(7) The exemption provided in paragraph (j) of this section may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who is a shareholder in the corporation, partnership, or other entity, provided that the corporation, partnership, or other entity maintains a minimum of 20 percent interest in the vessel. For purposes of this paragraph, interest in a vessel is determined as the percentage of ownership in the corporation, partnership, or other entity by that person who is a shareholder in the corporation, partnership, or other entity, multiplied by the percentage of ownership in the vessel by that person who is a shareholder in the corporation, partnership, or other entity.

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