

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 676**

[Docket No. 951002243-6004-02; I.D. 092695B]

RIN 0648-AG99

**Limited Access Management of Federal Fisheries In and Off of Alaska; Relieving Transfer Restrictions on Individual Fishing Quota Shares**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that would implement Amendment 32 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 36 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). This final rule is necessary to facilitate full utilization of the allocated resources managed under the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska and is intended to relieve transfer restrictions on Community Development Quota compensation quota shares (CDQ compensation QS), thereby allowing transfers to persons that could use the resulting IFQ to harvest the resource.

**EFFECTIVE DATE:** February 23, 1996.

**ADDRESSES:** Copies of the final rule and the Regulatory Impact Review (RIR) for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, 709 W. 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:****Background**

The IFQ Program for the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in the areas defined in 50 CFR 676.10 (b) and (c) is a regulatory regime recommended by the North Pacific Fishery Management Council (Council) to promote the conservation and management of these fisheries and to further the objectives of the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding

quota share (QS), which represents a transferable harvest privilege, receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest, within specified limitations, IFQ species. Further information on the implementation of the IFQ Program, and the rationale supporting it, is contained in the preamble to the final rule implementing the IFQ Program published November 9, 1993 (58 FR 59375). Additions and/or changes to the final rule implementing the IFQ Program were published June 1, 1994 (59 FR 28281); August 24, 1994 (59 FR 43502), corrected October 13, 1994 (59 FR 51874); October 7, 1994 (59 FR 51135); February 2, 1995 (60 FR 6448); March 3, 1995 (60 FR 11916); March 6, 1995 (60 FR 12152); May 5, 1995 (60 FR 22307); and August 31, 1995 (60 FR 45378).

The CDQ Program for Pacific halibut and sablefish was proposed and implemented in conjunction with the IFQ Program. The CDQ Program apportioned designated percentages of the annual fixed gear total allowable catch (TAC) for halibut and sablefish to eligible western Alaska communities. The harvest of these designated percentages was intended to provide residents of eligible communities with stable, long-term employment and to increase the participation of residents of eligible communities in near-shore fisheries.

Apportioning designated percentages of the annual fixed gear TAC for Pacific halibut and sablefish to eligible western Alaska communities reduced the amount of that TAC available for harvest by persons receiving annual allocations of IFQ. Therefore, CDQ compensation QS were issued as partial compensation to persons who received QS in CDQ areas, because the amount of Pacific halibut and sablefish available for harvest with IFQ in CDQ areas was reduced.

The final rule implementing Amendments 32 and 36 is intended to increase the remunerative value of CDQ compensation QS by relieving the existing transfer restrictions on initial recipients of those shares. Transfer restrictions are relieved by (1) exempting some CDQ compensation QS from the block provision, and (2) allowing some CDQ compensation QS to be transferred across vessel length categories.

**Exemption From the Block Provision**

The block provision was added to the IFQ Program to prevent excessive consolidation of fishing privileges, to promote higher levels of harvesting

employment, and to provide diversity in fishing operations participating in the IFQ program. Preventing excessive consolidation was accomplished by (1) issuing as a block all initial allocations of QS that represented less than 20,000 lb (9 mt) of IFQ based on the 1994 TAC and (2) restricting persons from holding more than two blocks for each IFQ species and IFQ regulatory area. One unintended effect was the blocking of all CDQ compensation QS.

Blocked CDQ compensation QS, especially small blocks (several pounds to several hundred pounds of IFQ), is difficult to market because any block, no matter how small, is counted as part of the two-block restriction. This difficulty in marketing is contrary to the purpose of CDQ compensation QS, which is to compensate persons that received less QS in their traditional fishing areas because of allocations of the TAC to the CDQ Program. Exempting CDQ compensation QS from the block provision provides greater flexibility to persons that plan to transfer their CDQ compensation QS.

**Transfer Across Catcher Vessel Length Categories**

The Council included vessel length categories in the IFQ Program because of significant public concern that harvest privileges would be consolidated excessively into large vessel fishing operations. By restricting transfers across vessel length categories, the Council ensured that the fixed gear fishing fleet would remain relatively diversified and similar in overall character to the fleet prior to the program's implementation. The Council determined that maintaining a diversified fleet was critical to the socioeconomic well-being of coastal communities in Alaska that rely, in part, on the small vessel fleet as a source of revenue.

This objective would not be contradicted by a 1-year period of relief from the restriction against transferring across vessel length categories. Another vessel category designated by fish product type (Category "A"—vessels of any length authorized to process IFQ species) was also included in the IFQ Program; however, because Category "A" is not restricted by length it is not included in the 1-year period of relief. A large portion of the CDQ compensation QS recipients are small vessel operators based in coastal communities located on the Bering Sea. This action would enable small vessel operators in the BSAI management area for sablefish and in IFQ regulatory areas 4A, 4B, 4C, and 4D for halibut to transfer their CDQ compensation QS in

the GOA to larger vessel operators who, in turn, could transfer their initially issued QS in the BSAI management area for sablefish and in IFQ regulatory areas 4A, 4B, 4C, and 4D for halibut to the small vessel operators. The coastal communities that rely on the small vessel fleet would be benefited by having IFQ in more accessible areas. Further, this action would not significantly change the overall character of the fleet because CDQ compensation QS accounts for less than 3 percent of the total amount of QS; therefore, the net gain or loss in any one vessel length category likely would be insignificant.

Comments on and Changes to the Proposed Rule

NMFS received no comments on the proposed rule. As no changes were suggested, NMFS has determined that the rule, as proposed, implements Amendments 32 and 36 as intended by the Council. The final rule contains two wording changes from the proposed rule. Both changes were for clarification only; the effects of the regulations in the final rule are the same as were proposed.

Classification

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities. Copies of the RIR can be obtained from NMFS (see ADDRESSES).

The Assistant General Counsel for Legislation and Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this action does not have a significant economic impact on a substantial number of small entities.

This final rule has been categorically excluded from further environmental assessment pursuant to NOAA Administrative Order 216-6, section 6.02b.3.(b)(ii)(aa) because the actions pursuant to this rule do not result in a significant change in the original IFQ Program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule

will not change the collection of information approved by OMB, OMB Control Number 0648-0272, for the Pacific halibut and sablefish IFQ Program.

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

List of Subjects in 50 CFR Part 676

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: January 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

**PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA**

1. The authority citation for 50 CFR part 676 continues to read as follows:

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

2. In § 676.21, paragraph (h) is added to read as follows:

**§ 676.21 Transfer of QS and IFQ.**

\* \* \* \* \*

(h) *Transfer across catcher vessel categories.* (1) Persons issued CDQ compensation QS in a catcher vessel category, pursuant to § 676.24(i), and in an IFQ regulatory area in which they do not hold QS other than CDQ compensation QS, may use that CDQ compensation QS on any catcher vessel. This exemption from catcher vessel categories ends upon the first transfer of the CDQ compensation QS. CDQ compensation QS being transferred will be permanently assigned to a specific catcher vessel category as designated by the person receiving the transfer.

(2) (Applicable until February 24, 1997). Catcher vessel QS transferred as partial or total consideration for the transfer of CDQ compensation QS may be redesignated into a new catcher vessel category if the CDQ compensation QS being transferred can be used on any catcher vessel pursuant to the exemption in paragraph (h)(1) of this section and the person to which that CDQ compensation QS was issued is party to the transfer.

(3) For purposes of this paragraph (h), CDQ compensation QS is quota share issued as compensation for Pacific halibut and sablefish harvest privileges foregone due to the CDQ Program, as provided in § 676.24(i).

3. In § 676.22, paragraph (a) is revised to read as follows:

**§ 676.22 Limitations on use of QS and IFQ.**

(a) The QS or IFQ specified for one IFQ regulatory area and one vessel category must not be used in a different IFQ regulatory area or vessel category, except as provided in paragraph (i)(3) of this section, or in § 676.21(h)(1).

\* \* \* \* \*

4. In § 676.24, paragraph (i)(3) is revised to read as follows:

**§ 676.24 Western Alaska Community Development Quota Program.**

\* \* \* \* \*

(i) \* \* \*

(3) Persons initially issued QS for IFQ regulatory areas in which a portion of the TAC is allocated to the CDQ Program will be compensated for halibut and sablefish harvest privileges foregone due to the CDQ Program. If a person does not hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be issued as unblocked. If a person does hold QS in an IFQ regulatory area on the date compensation is issued, that person's compensation will be added to their existing QS in that IFQ regulatory area. The resulting QS amount will be blocked or unblocked according to the criteria found at § 676.20(a). Compensation will be calculated for each non-CDQ area using the following formula:

$$Q_N = (Q_C \times QSP_N \times RATE) / (SUM_{CDQ} - [RATE \times SUM_{TAC}] [(1 - RATE) \times TAC_{AVE}] (QSP_C \times [CDQ_{PCT} - RATE])$$

Where:

Q<sub>N</sub> = quota share in non-CDQ area

Q<sub>C</sub> = quota share in CDQ area

QSP<sub>N</sub> = quota share pool in non-CDQ area (as existing on January 31, 1995)

RATE = SUM<sub>CDQ</sub> / average of the TAC (1988-1994) for all CDQ and non-CDQ areas

TAC<sub>AVE</sub> = average of the TAC (1988-1994) for CDQ area

QSP<sub>C</sub> = quota share pool in CDQ area (as existing on January 31, 1995)

CDQ<sub>PCT</sub> = CDQ percentage for CDQ area

SUM<sub>CDQ</sub> = sum [TAC<sub>AVE</sub> × CDQ<sub>PCT</sub>]

SUM<sub>TAC</sub> = sum [TAC<sub>AVE</sub>]

\* \* \* \* \*

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