

Kenai Refuge Manager has a map available for anglers and the general public to locate the above closures by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.

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Dated: March 2, 1998.

**Donald J. Barry,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA)

#### 50 CFR Part 679

[Docket No. 971015247-8061-02; I.D. 091597D]

RIN 0648-AK19

#### Fisheries in the Exclusive Economic Zone Off Alaska; Withdrawal of a Proposed Rule to Modify Individual Fishing Quota Survivorship Transfer Provisions

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

**ACTION:** Proposed Rule; withdrawal.

**SUMMARY:** NMFS withdraws a proposed regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska that was published in the **Federal Register** on November 6, 1997 (62 FR 60060). The proposed regulatory change would have modified the IFQ Program's survivorship transfer provisions in a manner that would be inconsistent with the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action is necessary to withdraw the proposed rule, and is intended to preclude implementation of regulations that NMFS has determined to be inconsistent with provisions of the FMPs.

**DATES:** This proposed rule is withdrawn on March 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The fixed gear halibut and sablefish fisheries are managed by the IFQ Program, a limited access system for fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off of Alaska. Under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982, NMFS implemented the IFQ Program in 1995, on the recommendation of the North Pacific Fishery Management Council (Council), to reduce excessive fishing capacity in the fixed gear Pacific halibut and sablefish fisheries, while maintaining the social and economic character of these fisheries and the Alaskan coastal communities where many of these fishermen are based.

Various limitations and restrictions govern the use and transfer of QS and IFQ. To harvest an IFQ allocation of halibut or sablefish species, the holder of QS from which the IFQ derives must qualify as an initial recipient of QS or as a crew member with at least 150 days experience in commercial harvest operations. Moreover, all leasing of IFQ in QS categories B, C, or D is prohibited. However, the FMPs provide for emergency transfer of IFQ. Under the authority of these emergency transfer provisions, a final rule published in the *Federal Register* on August 9, 1996 (61 FR 41523), granted surviving spouses of deceased QS holders emergency privileges allowing them to lease the total IFQ resulting from the deceased QS holder's QS for a period of 3 years following the QS holder's death. A surviving spouse might not otherwise be eligible to use or lease the deceased QS holder's IFQ (1) because of the 150-day crew members requirement and (2) unless or until a court determines the spouse to be the rightful beneficiary of QS. The emergency upon which such transfer privileges are predicated and, hence, authorized by the FMPs, is the temporary indisposition of QS while the deceased QS holder's estate remains in probate. NMFS implemented the surviving spouse transfer provisions expressly to allow a spouse to gain some pecuniary benefit from a deceased QS holder's fishing business pending the

final disposition of the QS. Such privileges are temporary; once a deceased QS holder's estate is probated and an heir to the QS determined, that heir is free to transfer the QS to an individual eligible to fish an IFQ allocation of halibut or sablefish.

In June 1997, the Council recommended extending the surviving spouse transfer privileges to heirs. For the benefit of such an action to take effect, a legal determination of who would be the heir would first have to be made. Implementation of this proposed action would not extend the benefit of the existing surviving spouse transfer privileges to other surviving family members in addition to or in the absence of a spouse. Rather, it would nullify the benefit of the existing rule, which is to allow a surviving spouse to lease the deceased QS holder's IFQ for up to 3 years between the date of the QS holder's death and the time when the legal beneficiary of the QS may transfer the QS to an eligible individual.

Moreover, this proposed action is inconsistent with the FMPs. The proposed action would have effect only after the conclusion of the emergency for which the surviving spouse transfer privilege provides the often time-consuming legal process necessary to determine an heir. Because no emergency exists that would authorize the extension of temporary transfer privileges to heirs, this action is inconsistent with the FMPs and is hereby withdrawn. NMFS also withdraws the proposed rule amending survivorship transfer provisions for halibut QS and IFQ. Although the halibut IFQ fishery is not regulated pursuant to the FMPs, NMFS withdraws the amendment to transfer provisions for this fishery, as well, in order to allow the Council to reconsider this action and to maintain consistency in transfer provisions in these closely related IFQ fisheries.

#### Classification

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

Dated: March 12, 1998.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

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