

[Federal Register: June 28, 1994]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 940683-4183; I.D. 060994B]

RIN 0648-AE79

Limited Access Management of Federal Fisheries In and Off of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 31 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 35 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the fishery for Pacific halibut in and off the State of Alaska (Alaska or State). This action is being proposed to implement the Modified Block Proposal, to clarify the transfer process for the Individual Fishing Quota (IFQ) program, and to prevent excessive consolidation of the Pacific halibut and sablefish fisheries off Alaska. If approved, these FMP and regulatory amendments would require the issuance of quota share (QS) blocks for QS resulting in less than 20,000 lb (9 mt) of IFQ for halibut or sablefish, based on the 1994 total allowable catch (TAC) for fixed gear in those fisheries, allow the combination of QS blocks that are less than 1,000 lb (0.5 mt) of IFQ for halibut and less than 3,000 lb (1.4 mt) of IFQ for sablefish, restrict the number of blocks that may be held by a person in any IFQ regulatory area, and clarify the transfer process for QS and IFQ. It is intended to ensure that small part-time operators and diversified operations can continue to participate profitably in the IFQ fisheries.

DATES: Comments must be received by August 8, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, 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. Copies of Amendments 31 and 35, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the ``Sitka Block'' proposed amendment, the ``Full/Partial Block'' proposed amendment, and the ``Modified Block'' proposed amendment to the **IFQ** management alternative for the Pacific halibut and sablefish fisheries off Alaska, may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The Sitka Block proposed amendment, the Full/Partial Block proposed amendment, the Modified Block proposed amendment, and the status quo alternative for the **IFQ** program for fixed-gear sablefish fisheries off Alaska and for the fixed-gear Pacific halibut fisheries in and off Alaska are described in the EA/RIR/IRFA dated December 17, 1993. Language amending the BSAI and the GOA FMPs was developed for the Modified Block Proposal, the North Pacific Fishery Management Council's (Council) chosen alternative. The amendments to the FMPs affect the sablefish fisheries in the exclusive economic zone (EEZ) off Alaska, which are managed in accordance with the BSAI and the GOA groundfish FMPs. The Council prepared both FMPs under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The BSAI FMP is implemented by regulations appearing at 50 CFR 611.93 for the foreign fishery and 50 CFR part 675 for the U.S. fishery. The GOA FMP is implemented by regulations appearing at 50 CFR 611.92 for the foreign fishery and at 50 CFR part 672 for the U.S. fishery. General regulations that also pertain to the U.S. groundfish fisheries appear at 50 CFR part 620.

The Council does not have an FMP for halibut. The domestic fishery for halibut in and off Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at

Washington, DC, March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by the Secretary of Commerce (Secretary), limited-access policies for the Pacific halibut fishery in Convention waters in and off Alaska. ``Convention waters'' means the maritime areas off the west coast of the United States and Canada, as described in Article I of the Convention (see 16 U.S.C. 773(d)).

The Council acted under these authorities in recommending changes to the **IFQ** program for the halibut and sablefish fisheries. These recommended changes would be implemented by this proposed action and are intended by the Council to promote the conservation and management of sablefish and halibut resources, and to further the objectives of the Magnuson Act and the Halibut Act.

QS Block Proposals

Concern over the potential for excessive consolidation of fishing privileges under the **IFQ** program was the impetus for the QS block proposals. The Council asked its staff to analyze the first of the QS block proposals, the Sitka Block proposal, at its April 1992 meeting. The Sitka Block proposal provided that (1) initial QS for each **IFQ** regulatory area would be allocated in blocks, (2) QS in a block could not be separated and would have to be transferred as a block, and (3) the ``maximum block size'' allowed in each **IFQ** regulatory area would be one-half the most restrictive QS use limit for an area.

The Full/Partial Block proposal was considered at the January 1993 Council meeting. It provided that (1) initial QS for each **IFQ** regulatory area would be allocated in blocks, (2) QS in a block could not be separated and would have to be transferred as a block, (3) QS that represented 20,000 lb (9 mt) or more of **IFQ** in the implementation year would be issued as a ``full block'' for that **IFQ** regulatory area, and (4) QS that represented less than 20,000 lb (9 mt) would be issued as a ``partial block'' for that **IFQ** regulatory area.

The Modified Block proposed amendment was passed after the Council took public testimony and discussed the other two block proposals at its September 1993 meeting. The Modified Block Proposal retained most of the features of the current **IFQ** program, including the same ownership constraints and the same vessel size categories. The Modified Block Proposal also provided that (1) only initial allocations of QS that represented less than 20,000 lb (9 mt) of **IFQ** in the implementation year would be issued as a block, (2) QS that represented

20,000 lb (9 mt) or more of **IFQ** in the implementation year would be ``unblocked'' QS, and (3) QS in a block could not be separated and would have to be transferred as a block. For each species in each **IFQ** regulatory area, a person who did not hold any unblocked QS could hold up to two QS blocks for that area, but the sum of the two QS blocks could not exceed use limits in 50 CFR 676.22 (e) and (f). A person who held unblocked QS for an **IFQ** regulatory area could hold only one QS block for that area, provided that the total QS held, blocked and unblocked, for that **IFQ** regulatory area did not exceed use limits referenced above. The Modified Block Proposal also provided that QS blocks resulting in less than 1,000 lb (0.5 mt) of **IFQ** for halibut (or 3,000 lb (1.4 mt) of **IFQ** for sablefish) in the implementation year could be combined. The QS block resulting from this combination could not exceed 1,000 lb (0.5 mt) for halibut or 3,000 lb (1.4 mt) for sablefish. This ``sweeping-up'' provision was designed to allow very small QS allocations to be combined into ``fishable'' amounts.

All three block proposals, the Sitka Block Proposal, the Full/Partial Block Proposal, and the Modified Block Proposal, were designed to reduce the maximum potential consolidation relative to the current **IFQ** program. The EA/RIR/IRFA indicated that, if actual consolidation is proportional to the estimates of maximum potential consolidation, more QS holders likely would remain in the halibut and sablefish fisheries under any of the three block proposals than under the current **IFQ** program.

The Council adopted the Modified Block Proposal because it prevented excessive consolidation of QS by blocking any QS allocation for an **IFQ** regulatory area that would have represented less than 20,000 lb (9 mt) of **IFQ** in the implementation year (1994). Also, it did not unnecessarily interfere with the opportunities currently available under the **IFQ** program for larger operations, because QS allocations for an **IFQ** regulatory area that would have represented 20,000 lb (9 mt) or more of **IFQ** in 1994 would remain unblocked. The Council decided that the Modified Block Proposal would achieve the objectives of the other block proposals (i.e., protect small producers, part-time participants, and entry level participants that may tend to disappear because of excessive consolidation under the current **IFQ** program), with fewer restrictions on the flexibility and the economic efficiency of the **IFQ** program as a whole.

Whether QS is blocked or unblocked would be determined by the QS pools for each **IFQ** regulatory area as they exist on October 17, 1994. Using a specific date to calculate whether to block QS ensures that all persons would be treated in a similar manner, regardless of when their QS is issued. October 17, 1994, was chosen as the date to calculate QS

because it was long enough after the application period (ends July 15, 1994) to allow the QS pools to achieve QS amounts reflective of their eventual range, but long enough before the 1995 fishing season to allow for transfers of QS for that fishing season.

Transfer of QS Blocks

Blocked and unblocked QS would be transferable subject to the approval of the Regional Director, Alaska Region, NMFS, and compliance with the transfer regulations found in 50 CFR part 676. The Modified Block Proposal creates the potential that some QS blocks would become non-transferable, because their size would exceed the QS use limits in 50 CFR 676.22 (e) and (f). This potential was addressed in the EA/RIR/IRFA dated December 17, 1993. Since there was only a slight potential of having a QS block that would be non-transferable, and only a few regulatory areas were affected, an alternative was developed to solve the issue of non-transferability, rather than totally abandoning the Modified Block Proposal.

This alternative would permit the transfer of a QS block that exceeded the QS use limits by dividing the block into two blocks. The sizes of the resulting blocks would depend on the QS use limit preventing the transfer--one block would be the maximum size allowable under the QS use limit, the other block would contain the residual QS. Dividing a block to allow its transfer when it would be otherwise non-transferable because it exceeded the QS use limit is an exception to the proposed rule (Sec. 676.21(d)(1)). Under any other circumstance, a QS block could not be divided.

Furthermore, this alternative does not waive any of the other use limits under the existing **IFQ** program or under the changes proposed to the program by this action. For example, a person may only hold two QS blocks for an **IFQ** regulatory area, or one QS block if any unblocked QS is held. Also, a person cannot exceed the QS use limit by transfer. These limits would prevent a person from receiving, by transfer, the two blocks created by dividing a block because its size exceeded the QS use limit. If a person held any QS for an **IFQ** regulatory area, blocked or unblocked, the most he/she would be able to receive by transfer would be one block. If a person did not hold any QS for an **IFQ** regulatory area, he/she would still be prevented from receiving both blocks, because the sum of the QS in both blocks would exceed the QS use limit for that regulatory area.

Other Changes to the **IFQ** Regulatory Language

This action proposes changes to the transfer procedure in 50 CFR

part 676 to accommodate the Modified Block Proposal, and to further clarify the transfer process. First, a definition of transfer of QS or **IFQ** would be included in the introductory paragraph of Sec. 676.21. Second, Sec. 676.21(e) would be revised and placed at Sec. 676.21 (a), (b), and (c). Third, procedures designed specifically for transferring QS blocks would be placed in Sec. 676.21(d). Fourth, procedures for transfers of QS or **IFQ** resulting from court orders, operation of law, or as part of security agreements would be clarified and placed in Sec. 676.21(e). Fifth, transfer restrictions specific to regulatory areas would be expanded and placed in Sec. 676.21(f). Making the transfer process easier to understand is the impetus for these proposed changes. NMFS is particularly interested in public comments regarding these changes to the existing transfer process for QS and **IFQ**, which was published in the Federal Register on November 9, 1993 (58 FR 59375).

Section 304(a)(1)(D) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendments and regulations. At this time, the Secretary has not determined that the FMP amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making final determinations about the FMP amendments and in promulgating final rules under both the Magnuson and Halibut Acts, will take into account the data, views, and comments received during the comment period.

Classification

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. The analysis in the IRFA indicates that by reducing consolidation, the Modified Block Proposal may increase the total cost of harvesting the fishery resource, thereby decreasing the net economic benefits of the **IFQ** program and increasing harvesting costs to small entities. The analysis also indicates that by reducing consolidation, the Modified Block Proposal may result in higher levels of harvesting employment. Higher levels of harvesting employment and the maintenance of diversity in fishing operations participating in the **IFQ** program are the main goals of the Modified Block Proposal. A copy of the analysis is available from the Council (see ADDRESSES).

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

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: June 22, 1994.

Henry R. Beasley,
Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is proposed to be 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.

Sec. 676.16 [Amended]

2. Section 676.16 is amended by removing and reserving paragraphs (i) and (n).

3. Section 676.20 is amended by revising paragraph (a) and the first sentence of the introductory text of paragraph (f) to read as follows:

Sec. 676.20 Individual allocations.

* * * * *

(a) Initial allocation of quota share. The Regional Director shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to **IFQ** regulatory areas and vessel categories. QS will be assigned as a block in the appropriate **IFQ** regulatory area and vessel category if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of **IFQ** for halibut or sablefish based on:

(1) The 1994 TAC for fixed gear in those fisheries for specific **IFQ** regulatory areas, and

(2) The QS pools of those fisheries for specific **IFQ** regulatory areas as of October 17, 1994.

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(f) * * * The Regional Director shall assign halibut or sablefish IFQs to each person holding unrestricted QS for halibut or sablefish, respectively, up to the limits prescribed at Sec. 676.22 (e) and (f). *

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4. Section 676.21 is revised to read as follows:

Sec. 676.21 Transfer of QS and **IFQ**.

Transfer of QS or **IFQ** means any transaction requiring QS, or the use thereof in the form of **IFQ**, to pass from one person to another, permanently or for a fixed period of time, except that transactions requiring **IFQ** cards to be issued in the name of a vessel master employed by an individual or a corporation are not transfers of QS or **IFQ**.

(a) Transfer procedure. A person who receives QS by transfer may not use **IFQ** resulting from that QS for harvesting halibut or sablefish with fixed gear until an Application for Transfer of QS/**IFQ** (Application for Transfer) is approved by the Regional Director. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notice of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer. QS or **IFQ** accounts affected by an Application for Transfer approved by the Regional Director will change on the date of approval. Any necessary **IFQ** permits will be sent with the notice of the Regional Director's decision.

(b) Application for Transfer approval criteria. Except as provided in paragraph (e) of this section, an Application for Transfer will not be approved until the Regional Director has determined that:

(1) The person applying for transfer received the QS or **IFQ** to be transferred:

(i) By initial assignment by the Regional Director as provided in Sec. 676.20(a); or

(ii) By approved transfer;

(2) The person applying to receive the QS or **IFQ** meets the requirements of eligibility in paragraph (c) of this section;

(3) The person applying for transfer and the person applying to receive the QS or **IFQ** have their notarized signatures on the Application for Transfer;

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person;

(5) The person applying to receive the QS or **IFQ** currently exists;

(6) The transfer would not cause the person applying to receive the QS or **IFQ** to exceed the use limits in Sec. 676.22 (e) or (f);

(7) The transfer would not violate the provisions of paragraph (f) of this section; and

(8) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Director.

(c) Eligibility to receive QS or **IFQ** by transfer. All persons applying to receive QS or **IFQ** must submit an Application for Eligibility to Receive QS/**IFQ** (Application for Eligibility), containing accurate information, to the Regional Director. The Regional Director will not approve a transfer of **IFQ** or QS to a person until the Application for Eligibility for that person is approved by the Regional Director. The Regional Director shall provide an Application for Eligibility form to any person on request.

(1) A person must indicate on the Application for Eligibility whether the eligibility sought is as:

(i) An individual; or

(ii) A corporation, partnership, or other entity.

(2) A person may submit the Application for Eligibility with the Application for Transfer or file the Application for Eligibility prior to submitting the Application for Transfer. If a person, as described in paragraph (c)(1)(ii) of this section, files the Application for Eligibility prior to submitting the Application for Transfer, and that person's status subsequently changes, as described in Sec. 676.22, that person must resubmit an Application for Eligibility before submitting, or with, the Application for Transfer.

(3) The Regional Director's approval of an Application for Eligibility will be mailed to the person by certified mail.

(4) The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility; and

(ii) An explanation why the Application for Eligibility was not approved.

(5) Reasons for disapproval of an Application for Eligibility may include, but are not limited to:

(i) Fewer than 150 days of experience working as an **IFQ** crew member;

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of ``person'' at Sec. 676.11;

(iii) An incomplete Application for Eligibility; or

(iv) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations.

(d) Transfers of QS blocks. (1) A QS block must be transferred as an undivided whole, unless the size of the QS block exceeds the use limits specified at Sec. 676.22. If the QS block to be transferred exceeds the use limits specified at Sec. 676.22, the Regional Director will divide the block into two blocks, one block containing the maximum amount of QS allowable under the QS use limits and the other block containing the residual QS.

(2) QS blocks representing less than 1,000 lb (0.5 mt) of **IFQ** for halibut or less than 3,000 lb (1.9 mt) for sablefish, based on the factors listed in Sec. 676.20(a), for the same **IFQ** regulatory area and vessel category, may be consolidated into larger QS blocks, provided that the consolidated QS blocks do not represent greater than 1,000 lb (0.5 mt) of **IFQ** for halibut or greater than 3,000 lb (1.4 mt) of **IFQ** for sablefish based on the factors listed in Sec. 676.20(a). A consolidated QS block cannot be divided and is considered a single block for purposes of use and transferability.

(e) Transfer of QS or **IFQ** with restrictions. If QS or **IFQ** must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS or **IFQ** by transfer does not meet all of the eligibility requirements of this section, the Regional Director will approve the Application for Transfer with restrictions. The Regional Director will not assign **IFQ** resulting from the restricted QS to any person. **IFQ** with restrictions may not be used for harvesting halibut or sablefish with fixed gear. The QS or **IFQ** will remain restricted until:

(1) The person who received the QS or **IFQ** with restrictions meets the eligibility requirements of this section and the Regional Director approves an Application for Eligibility for that person; or

(2) The Regional Director approves the Application for Transfer from the person who received the QS or **IFQ** with restrictions to a person who meets the requirements of this section.

(f) Transfer restrictions. (1) Except as provided in paragraph (e) or paragraph (f)(2)) of this section, only persons who are **IFQ** crew members, or that were initially assigned catcher vessel QS, and meet the other requirements in this section may receive catcher vessel QS.

(2) Except as provided in paragraph (f)(3) of this section, only persons who are **IFQ** crew members may receive catcher vessel QS in **IFQ** regulatory area 2C for halibut or in the **IFQ** regulatory area east of 140 deg.W. long. for sablefish.

(3) Catcher vessel QS initially assigned to an individual may be

transferred to a corporation that is solely owned by the same individual. Such transfers of catcher vessel QS in **IFQ** regulatory area 2C for halibut or in the **IFQ** regulatory area east of 140 deg.W. long. for sablefish will be governed by the use provisions of Sec. 676.22(i); the use provisions pertaining to corporations at Sec. 676.22(j) shall not apply.

(4) The Regional Director will not approve an Application for Transfer of catcher vessel QS subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraph (g) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Director may request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(g) Leasing QS (applicable until January 2, 1998). A person may not use **IFQ** resulting from a QS lease for harvesting halibut or sablefish until an Application for Transfer complying with the requirements of paragraph (b) of this section and the lease agreement are approved by the Regional Director. A person may lease no more than 10 percent of that person's total catcher vessel QS for any **IFQ** species in any **IFQ** regulatory area to one or more persons for any fishing year. After approving the Application for Transfer, the Regional Director shall change any **IFQ** accounts affected by an approved QS lease and issue all necessary **IFQ** permits. QS leases must comply with all transfer requirements specified in this section. All leases will expire on December 31 of the calendar year for which they are approved.

5. Section 676.22 is amended by revising paragraph (g) to read as follows:

Sec. 676.22 Limitations on the use of QS and **IFQ**.

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(g) Limitations on QS blocks. No person, individually or collectively, may hold more than two blocks for each species in any **IFQ** regulatory area, except that if that person, individually or collectively, holds unblocked QS for a species in an **IFQ** regulatory area, such person may only hold one QS block for that species in that **IFQ** regulatory area. For purposes of this section, holding, or to hold, blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

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