

Dated: November 24, 1995.

Nancy Foster,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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50 CFR Part 676

[Docket No.950123023-5271-02; I.D.
110795E]

RIN 0648-AH38; 0648-AI09

Limited Access Management of Federal Fisheries In and Off of Alaska; Determinations and Appeals; Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule
adopting as final without change two
interim rules that amended regulations
implementing the Individual Fishing
Quota (IFQ) Program for Pacific halibut
and sablefish fixed gear fisheries in and
off of Alaska.

EFFECTIVE DATE: This rule is effective
November 30, 1995.

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

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program is a regulatory
regime developed by the North Pacific
Fishery Management Council (Council)
to promote the conservation and
management of Pacific halibut
(*Hippoglossus stenolepis*) and sablefish
(*Anoplopoma fimbria*) stocks in Federal
waters in and off of Alaska. The IFQ
Program limits access to Pacific halibut
and sablefish fixed gear fisheries
through the annual issuance of IFQ.
Holders of IFQ may harvest their IFQ,
specific to species, vessel category, and
regulatory area, any time during the IFQ
fishing season. Further information
about the IFQ Program is contained in
the preamble to the final implementing
regulations published at 58 FR 59375,
November 9, 1993, and subsequent
amendments.

This action makes final several
changes to the IFQ implementing
regulations that were originally effected
by interim rules. One interim rule
reduced the two-stage appeals
procedures to a single-step process,
shortened the length of time required for
certain appeals-related actions, and
established a quota shares (QS) reserve
to permit the deferred allocation of IFQ

for qualified persons whose QS are in
dispute at the time of annual IFQ
allocation. The other interim rule
allowed vessels subject to existing IFQ
Program recordkeeping and observer
coverage requirements to fish for IFQ
species in regulatory areas for which
persons aboard a vessel hold IFQ less
than the total amount of IFQ species on
board. These changes are described
below.

Changes to the Determinations and Appeals Procedures

Final rules implementing the appeals
procedure for limited access
management of Federal fisheries in and
off of Alaska became effective July 1,
1994 (59 FR 28281, June 1, 1994). A
detailed explanation of the procedure
for appealing initial administrative
determinations appeared in the
preamble of the notice of proposed
rulemaking published at 59 FR 5979 on
February 9, 1994. NMFS identified three
changes to the final rules as necessary
to improve the efficiency of the appeals
process. An interim rule published at 60
FR 6448, February 2, 1995, effected
these changes, as follows.

1. The first change eliminated
applicants' right to appeal an appellate
officer's decision to the Director, Alaska
Region, NMFS (Regional Director), but
retained the Regional Director's
discretionary authority to renew,
modify, reverse, or remand any such
decision. This effectively changed the
original two-stage appeals procedure to
a single-step process. The original
procedure provided an applicant a first-
stage opportunity to appeal an initial
administrative determination to an
appellate officer and a second-stage
opportunity to appeal the appellate
officer's decision to the Regional
Director. This interim rule eliminated
the second-stage appeal; however, the
Regional Director routinely reviews
appellate officers' decisions and may
reverse, modify, or remand those
decisions for further consideration. The
appellate officer's decision, unless acted
on by the Regional Director, becomes
the final agency action for purposes of
judicial review 30 days after issuance.

2. The second change substantially
reduced the time period within which
an appellant may file an appeal from 90
Federal business days to 60 calendar
days after the date of the initial
administrative determination. The
original appeals filing period consisted
of 90 days, not including weekends and
holidays. The revised appeals filing
period consists of 60 calendar days
unless the last day falls on a weekend
or holiday. The original appeals filing
period was intended to provide an

appellant with a liberal period within
which to prepare an appeal. NMFS
determined that this period was
unnecessarily long and would
exacerbate expected delays in the
resolution of appeals. Disputes in which
two or more applicants make claims to
the same vessel or catch data should be
resolved at the same time. Without this
change, one claimant could file a
prompt appeal while another could
delay filing for up to 4 months, thereby
preventing the prompt issuance of
disputed IFQ to the rightful party. The
revised period provides appellants with
adequate time to prepare and file
appeals, and benefits all affected parties
by accelerating the appeals process.

3. The third change shortened the
period of delayed effectiveness of an
appellate officer's decision from 45
Federal business days to 30 calendar
days after the date the decision is
issued, unless, prior to that time, the
Regional Director modifies the decision,
issues an order staying the effectiveness
of the decision pending review, or
accelerates the effectiveness date. This
change also accelerated the agency's
final actions on appeals. NMFS
determined that 30 calendar days are
adequate for the Regional Director to
review an appellate officer's decision
and take any necessary action, such as
a stay.

These changes implemented by the
interim rule help to expedite the
appeals process, which benefits the
fishermen involved.

Changes to the Establishment of QS Pools

Regulations pertaining to the
calculation of QS and the QS pool for
an area are found at § 676.20. The
interim rule at 60 FR 6448, February 2,
1995, also amended § 676.20(d)(3) to
establish a reserve within the QS pool
of each IFQ regulatory area. Without
such a reserve, contested catch history
would not be included in the pool, and
persons without QS included in the QS
pool on January 31 of any year, when
annual allocations of IFQ are
determined, would be unable to
participate in the IFQ fisheries in that
year.

A problem of particular concern in
the initial year of the IFQ Program was
that numerous appeals involved
disputes over who owned or leased a
vessel that made qualified landings but
not over the amount of those landings.
Many of these appeals were not resolved
by January 31, 1995. Failure to establish
a reserve within the QS pool could have
prevented the prevailing party from
receiving and using IFQ during the IFQ

fishing season in 1995. It is possible that such situations may occur in the future.

To correct the problem, the interim rule established a QS pool reserve for catch history that would otherwise have been withheld from the QS pool due to the pendency, at the time of annual IFQ determinations, of an appeal involving contested catch history, vessel ownership, or vessel lease data by two or more QS applicants. The interim rule allowed NMFS to set aside QS in the reserve pool for deferred award to specific appellants, and to include this QS in the total QS pool for purposes of determining the amount of IFQ to be assigned to each holder of QS.

The interim rule addressed the problem that appeals involving multiparty contests could unjustly result in failure to allocate IFQ for the annual fishing season to applicants who make timely and sufficient application for participation in the IFQ Program. The QS pool reserve is used only in situations in which eligibility for qualifying pounds has been established but the appropriate party to be issued QS and resulting IFQ remains contested pending a decision.

Changes to General Prohibitions

Close monitoring of the harvest of IFQ halibut and IFQ sablefish is required to prevent exceeding the total allowable catch for halibut and sablefish fixed gear fisheries in each regulatory area. A regulation at § 676.16(d) was designed to ensure that an IFQ holder harvested his or her IFQ only in the regulatory area specified on his or her IFQ permit. This regulation, enforced by at-sea monitoring of catches, made it unlawful for any person to retain IFQ halibut or IFQ sablefish on a vessel in excess of the total amount of unharvested IFQ, applicable to the vessel category and IFQ regulatory area in which the vessel is operating, and that is currently held by all IFQ card holders on board the vessel.

The practical effect of this provision was to require persons to offload all IFQ species caught in one regulatory area before fishing IFQ in another regulatory area. IFQ holders with small amounts of IFQ in multiple regulatory areas were especially affected, because the IFQ held in one area was frequently too small to cover the IFQ species harvested in that area and another.

Members of the fishing industry requested the Council to relieve the requirement specified in § 676.16(d). At its meeting in June 21–25, 1995, the Council recommended that NMFS implement an emergency rule to allow vessels required to keep daily logs and carry 100 percent observer coverage to retain IFQ halibut or IFQ sablefish in excess of the total amount of unharvested IFQ applicable to that vessel in the IFQ regulatory area in which the vessel is operating. The Council also recommended that the regulations be so amended for future years.

NMFS determined that an interim rule was appropriate to effect the changes requested by the Council and, in the interim rule published at 60 FR 45378, August 31, 1995, amended § 676.16(d) to allow vessel operators subject to recordkeeping and observer coverage regulations to fish for IFQ species in regulatory areas for which persons aboard the vessel hold IFQ, even when the amount of IFQ held for a specific area is less than the total amount of IFQ species on board the vessel.

A vessel operator must comply with the requirements at § 676.16(d), unless the vessel has an observer aboard pursuant to 50 CFR part 677 while fishing for the IFQ species in the regulatory area concerned and complies with the applicable daily fishing logbook requirements at 50 CFR 301.15, 672.5(b)(2), and 675.5(b)(2). The observer and recordkeeping requirements enable authorized officers to verify that the IFQ halibut or IFQ sablefish on board was lawfully harvested in the appropriate IFQ regulatory area by an IFQ card holder with sufficient unused IFQ applicable to the vessel category. The interim rule thus provided added flexibility to the IFQ holder's fishing schedule while still allowing NMFS to monitor closely IFQ harvests.

Although the Council requested that this relief be provided in all IFQ regulatory areas, current provisions in 50 CFR 301 remain in force and partly diminish the benefits of the present action. Specifically, provisions in § 301.14 require a vessel operator who intends to harvest halibut in areas 4A, 4B, 4C, or 4D to obtain a vessel

clearance in designated ports before commencing harvest or landing of halibut. This vessel clearance requirement, while not in direct conflict with the interim rule, may diminish the intended effect. Any changes to the requirements of § 301.14 must be approved and adopted by the International Pacific Halibut Commission.

Classification

This final rule finalizes actions made effective by interim rules published at 60 FR 6448 on February 2, 1995, and 60 FR 45378 on August 31, 1995. Though the requirement for prior notice and an opportunity for public comment was waived for good cause on both of the interim rules, an opportunity for comment was provided. NMFS received no comments and adopts the interim rules as final without change. In that this rule finalizes actions already in effect, a delayed effectiveness period is unnecessary and is therefore waived for good cause pursuant to 5 U.S.C. 553(d)(3).

This final rule does not require the collection of new information, but adopts a shorter period of time within which affected persons would have to submit information. The collection of information necessary for this rule has been approved by the Office of Management and Budget (OMB), OMB control number 0648–0272 (regarding IFQs for Pacific halibut and sablefish), OMB control number 0648–0280 (North Pacific Fisheries Research Plan), and OMB control number 0648–0213 (logbook family of forms).

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

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

Dated: November 22, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim rules amending 50 CFR part 676 that were published at 60 FR 6448, February 2, 1995, and 60 FR 45378, August 31, 1995, are adopted as a final rule without change.

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