

§ 20.11(h and l). However, nothing in this paragraph prohibits the taking of light geese on or over the following lands or areas that are not otherwise baited areas:

(A) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice as described in § 20.11(g, i, l, and m);

(B) From a blind or other place of concealment camouflaged with natural vegetation;

(C) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(D) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel-iron, or other shots that are authorized in § 20.21(j).

(f) Under what conditions would the conservation order be suspended? We will annually assess the overall impact and effectiveness of the conservation order on each light goose population to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that an individual light goose population no longer presents a serious threat of injury to the area or areas involved, we will initiate action to suspend the conservation order for the specific light goose population in question. However, resumption of growth by the light goose population in question may warrant reinstatement of such regulations to control the population. Depending on the status of individual light goose populations, it is possible that a conservation order may be in effect for one or more light goose populations, but not others.

(g) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018-0103. Agencies may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The recordkeeping and reporting requirements imposed under § 21.60 will be utilized to administer this program, particularly in the assessment of impacts that alternative regulatory strategies may have on light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take light geese within the guidelines provided by the Service.

Dated: October 5, 2001.

Joseph E. Doddridge,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010823213-1213-01; 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 54 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 54 to the FMP for Groundfish of the Gulf of Alaska (collectively, Amendments 54/54). These amendments would make three changes in the Individual Fishing Quota (IFQ) Program: (1) allow a quota share (QS) holder's indirect ownership of 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 specific to estates; and (3) revise sablefish use limits to be expressed in QS units rather than as percentages of the QS pool. These

proposed amendments are intended to improve the effectiveness of the IFQ Program and are 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: Comments on the proposed rule must be received by November 26, 2001.

ADDRESSES: Comments must be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 54/54 and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for the amendments are available from NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228 or email at john.lepore.noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 nautical miles offshore) of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed under their respective FMPs. Both FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act, Public Law 94-265, 16 U.S.C. 1801. The GOA and BSAI FMPs were approved by NMFS and became effective in 1978 and 1982, respectively. The IFQ Program, a limited access management system for the fixed gear Pacific halibut and sablefish fisheries off Alaska, was approved by NMFS in January 1993, and fully implemented beginning in March 1995. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679, Fisheries of the Exclusive Economic Zone Off Alaska, under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations promulgated under the authority of the Halibut Act.

Indirect Vessel Ownership

The IFQ Program contains a number of provisions designed to promote an owner-operator IFQ fishing fleet. For example, one exception to the owner-onboard provisions of the IFQ Program allows initial recipients of QS in

categories B, C, or D (catcher vessel QS) to employ hired skippers to fish their IFQ, provided that the QS holder owns the vessel on which the IFQ species are being fished. This exception was created to allow IFQ fishermen who had operated their fishing businesses in this manner before implementation of the IFQ Program to continue such business practices. While the IFQ Program prohibits leasing of IFQ derived from catcher vessel QS, this exception allows initial recipients of catcher vessel QS to remain ashore while having their IFQ harvested by a hired skipper. Corporations, partnerships, and other collective entities that hold initial allocations of QS must designate a hired skipper, the individual who will actually fish the IFQ derived from the collective's QS.

Since implementing the IFQ Program in 1995, NMFS has broadly interpreted the regulations' vessel ownership provision to allow a person holding an initial allocation of QS to hire a skipper to fish the QS holder's IFQ on a vessel owned by another "person," provided that the QS holder can show an association to the owner of the vessel through corporate or other collective ties. For example, the QS holder may be a shareholder or partner in the corporation or partnership that owns the vessel or a collective QS holder may have the individual owner of the vessel as a shareholder or partner in the collective.

At the beginning of the 1997 IFQ season, NMFS announced to the IFQ fleet that this policy of broadly interpreting the hired skipper provision's vessel ownership requirement would continue in effect for the 1997 season, or until the Council determined whether the policy comports with its original intention. In September 1997, the Council requested an analysis of alternatives for this issue and, in October 1998, recommended that the regulations be revised to provide explicitly for this policy. This proposed action would allow a QS holder's association to a collective entity to substitute for the QS holder's vessel ownership in his or her own name for purposes of hiring a skipper to fish the QS holder's IFQ.

The hired skipper provisions define "vessel ownership" as a minimum of 20 percent interest in the vessel to prevent persons from acquiring minimal or nominal vessel ownership interest simply to exploit the hired skipper provision in ways not intended by the Council (see 64 FR 24960, May 10, 1999). To maintain the intent of the requirement for minimum ownership interest in a vessel, a QS holder would

have to hold the same 20 percent minimum interest in the collective that he or she otherwise would have to hold in a vessel to hire a skipper to fish his or her IFQ. For example, an individual wishing to hire a skipper to fish his or her IFQ on a vessel owned by a corporation in which he or she is a shareholder must hold a minimum of 20 percent interest in the corporation. Likewise, a corporation may hire a skipper to fish its collectively held IFQ on a vessel owned by a shareholder in the corporation only if that shareholder holds a minimum of 20 percent interest in the vessel, either indirectly through an interest in the corporation or through direct ownership of the vessel or through a combination of both indirect and direct ownership of the vessel.

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 provides a means for determining corporations, partnerships, and other collective entities to be qualified to hold catcher vessel QS. The regulations pertaining to collective QS holdings provide that upon any "change" in a collective entity, any collectively held QS will cease to generate annual IFQ for harvesting IFQ species until the QS is transferred to a qualified individual. The regulations define a "change" in the collective entity to mean the addition of a shareholder or partner to the collective entity. By thus defining such a "change," the Council clearly expressed its intent to prevent collective entities from holding catcher vessel QS and using the resulting IFQ indefinitely.

The current IFQ regulations do not address changes in estates holding QS. Under the current rules, an estate may be issued an initial allocation of catcher vessel QS based on the qualifications of a deceased fisherman. However, because an estate is not a "collective" with the potential to acquire additional members, the present definition of a "change in the corporation or partnership" provides no way of determining at which point an estate's QS holdings will cease to generate annual IFQ. This allows an estate to hold QS and fish the resulting IFQ indefinitely.

To assure that catcher vessel QS held by estates eventually transfer into the possession of qualified individuals, these proposed amendments would revise the definition of "a change in the corporation or partnership" to state that for estates holding QS a "change" occurs upon a legal order for final distribution of the estate. At the point that an estate's holdings are legally

distributed, the estate is effectively dissolved. Allowing an estate to continue holding catcher vessel QS and fishing the resulting IFQ beyond that point would compromise the Council's intent to ensure that catcher vessel QS eventually transfer to qualified individuals. Therefore, when an estate "changes" in this manner, its QS would be restricted from generating annual IFQ until the QS is transferred to a qualified individual. This requirement would prevent estates from holding QS and fishing the resulting IFQ indefinitely. Upon a legal order for the final distribution of an estate, the estate's QS holdings would become restricted in the same way QS held by a corporation or partnership becomes restricted when the corporation or partnership adds a shareholder or partner.

Sablefish Use Limits

The IFQ Program limits the amount of QS an individual may use to harvest IFQ species. Such use limits were created to address the concern that an unrestricted market for QS could result in a few powerful interests controlling most of the landings. They were also created to address the possibility of excessive decreases in the number and demographic distribution of vessels and fishermen participating in the IFQ Program. 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 available in a given year.

In 1997, in an action that increased the halibut use limits in IFQ regulatory area 4, 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). A use limit expressed as a percentage of the QS pool provides a variable use limit, because the size of the QS pool may vary from year to year. 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. To allow QS holders the means to gauge more accurately the position of their holdings in relation to the use limits and thus to manage their fishing businesses in a more rational manner, NMFS, in consultation with the Council, revised the halibut use limits to provide a fixed limit that does not change according to the size of the QS pool. This revision of the halibut use limits was accomplished with a regulatory amendment, because the halibut provisions of the IFQ Program are implemented under authority of the

Halibut Act, and no halibut fishery management plan exists.

The sablefish use limits are set in the FMPs and can be revised only through the FMP amendment process specified at section 304 of the Magnuson-Stevens Act. If approved, proposed Amendments 54/54 would standardize the application of use limits for halibut and sablefish by providing sablefish QS holders with the same benefit of a stable use limit by which to manage their fishing businesses more rationally.

Current regulations at 50 CFR 679.42 (e) restrict sablefish QS use, so that (1) no person, individually or collectively, may use an amount of sablefish QS greater than 1 percent of the combined total sablefish QS for the GOA and BSAI IFQ regulatory areas, unless the amount in excess of 1 percent was received in the initial allocation of QS; and (2) in the IFQ regulatory area east of 140° W. long., no person, individually or collectively, may use more than 1 percent of the total amount of QS for this area, unless the amount in excess of 1 percent was received in the initial allocation of QS. This action would revise the sablefish use limit percentages to 3,229,721 units of sablefish QS; and (2) for the IFQ regulatory area 2C: 688,485 units of sablefish QS.

The 1996 regulatory amendment that changed halibut use limits to QS units based the limit on that year's QS pool (62 FR 7947, February 21, 1997). In that action, NMFS implied that sablefish use limits would be similarly changed. For the sake of consistency and to meet expectations raised by NMFS in the former action, the sablefish use limits would be based also on the 1996 QS pool. NMFS is particularly interested in receiving public comments on this aspect of the proposed amendments.

This alternative would not change the amount of QS that an individual could use. It simply proposes to set those limits in QS units, instead of as a percentage of the QS pool.

Classification

At this time, NMFS has not determined that the FMP amendments that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and the provisions of the Halibut Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

This action proposes to make changes to the IFQ program that are necessary to ensure the program continues to be managed in a manner intended by the Council. The proposed changes would: (1) Specify the vessel ownership level for purposes of hiring a skipper, (2) 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 proposed rule would allow a QS holder's indirect ownership of a vessel, through corporate or other 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 QS. This action merely modifies NMFS' regulations to more explicitly reflect current NMFS' policy of allowing QS holders to substitute a corporate link to vessel ownership for purposes of hiring a skipper.

Another alternative considered was to prohibit a corporation or partnership from hiring a skipper to fish its collectively held QS on a vessel owned by an individual, even if that individual is a member of the corporation or partnership. Under such an alternative, an individual would not be allowed to hire a skipper to fish his or her individually held QS on a vessel owned by a corporation or partnership, even if that individual is a shareholder or partner in the collective that owns the vessel. This could result in considerable disruptions to small entities, as it would deviate from current NMFS practice and could prevent collective entities from fishing the QS of their shareholders or partners. Such collective entities would suffer considerable adverse impacts if they were unable to use their vessels to catch IFQ fish.

Although the proposed action may cause individual partners or shareholders to incur costs associated with meeting the proposed ownership requirements, this proposed action is unlikely to have adverse effects on the small entities themselves, as corporations or partnerships will not incur significant new costs and their net values will remain unchanged.

The proposed rule would also revise the definition of a "change in corporation or partnership" to include language specific to estates. NMFS proposes that upon a legal order for final distribution of the estate the estate would lose its eligibility to hold QS. Upon such legal order for the final distribution, the estate's QS holdings would become restricted in the same way QS held by a corporation or partnership becomes restricted when the corporation or partnership adds a shareholder or partner and would

accordingly be required to transfer any estate-held QS to a qualified individual. It is the intent of the IFQ Program to promote an owner-operator fleet in the fixed gear fisheries for Pacific halibut and sablefish.

This alternative should make more QS available on the open market for qualified individuals. Market prices for QS could go down, thereby making it easier for qualified small entities to acquire and use QS. Under the other alternative, keeping the status quo, QS held by an estate does not automatically transfer. Such estates could continue to receive annual allocations of QS, thereby limiting the supply of QS available. This could raise the price of such shares such that it could prevent others who desire to fish and are otherwise qualified from purchasing those shares. Such an occurrence would frustrate the intent of the IFQ Program to promote an owner-operator fleet.

The proposed rule would revise sablefish use limits to be expressed in QS units, rather than as a percentage of the QS pool. In 1996, the Council recommended that halibut use limits be expressed as fixed numbers of QS units, rather than percentage. This change was implemented by NMFS and provided halibut QS holders with a more stable reference for measuring their halibut QS holdings against area use limits. Amendment 54/54 would change the calculation of sablefish use limits to a fixed number of QS units, based on the 1996 QS pools, for consistency with the halibut fishery and eliminate operational problems resulting from differing QS systems in the IFQ fishery.

This proposed rule would eliminate year-to-year fluctuations in the user limit and facilitate the ability of sablefish IFQ fishermen to stay within the user limit for sablefish QS. Under the no action alternative to the proposed action, sablefish fishing capacity, measured in terms of QS, may fluctuate each year as the TAC changes. This uncertainty may impose a burden on fishermen close to, or at, the user limit. They may be forced to adjust their holdings each year to stay within the user limit for sablefish. As individual fishermen are likely to catch the same amount of sablefish under either system, the proposed action mostly likely reduces impacts on small entities as it eases compliance with sablefish user limits and sablefish fixed gear fishermen, who also catch halibut, would no longer have to operate under two different use limit systems. Because the halibut fixed gear fishery is operating successfully under the fixed QS number system, the most feasible alternative is to use the fixed number

QS system for sablefish, rather than devise a completely different system for both fisheries.

At the end of 2000, NMFS determined that 4,546 entities hold QS (3,649 unique persons hold halibut QS and 897 unique persons hold sablefish QS). Given the average price levels for halibut and sablefish and the maximum amount of QS for both species that could be held by any unique entity, the maximum amount of annual revenue would not exceed 3 million dollars (implied maximum of \$1,400,000). Therefore, all these entities would be treated as small entities for purposes of the Regulatory Flexibility Act (RFA). However, this likely overestimates the number of small entities that may be affected by this action because it does not take into account income these entities may derive from other fisheries and assumes that all QS holders would be affected by these changes.

No additional recordkeeping and reporting requirements are associated with this action, nor is NMFS aware of any other Federal rules that would duplicate, overlap, or conflict with this proposed action. At present, the data necessary to determine the full extent of impact to small entities is not available to NMFS (i.e., operational cost data). Therefore, NMFS is unable to conclude that this action has no impact on small entities as defined by the RFA. A copy of the IRFA is available from NMFS (see ADDRESSES). NMFS specifically requests comments on any additional alternatives to these proposed actions that may achieve the stated goals and reduce impacts to small entities.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 5, 2001.

William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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.*, and 3631 *et seq.*

2. In § 679.42, paragraphs (e), (j)(2), and (j)(3) are revised, and paragraphs (i)(3) and (j)(6) 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 with a minimum of 20 percent interest, provided that the corporation, partnership, or other entity owns a minimum of 20 percent interest in the vessel.

* * * * *

(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.

* * * * *

(6) 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 holds a minimum of 20 percent interest in the corporation, partnership, or other entity, provided that the person who owns the vessel possesses a minimum of 20 percent interest in the vessel.

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