

[Federal Register: May 31, 1994]

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DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration
50 CFR Part 676 [Docket No. 940546-4146; I.D. 050494A] RIN 0648-AD19
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 this proposed rule to implement Amendment 30 to the
Fishery Management Plan (FMP) for the Groundfish Fishery of the **Bering** Sea and
Aleutian Islands area (BSAI) and Amendment 34 to the FMP for Groundfish of the
Gulf of Alaska (GOA), and to make regulatory amendments affecting the Pacific
halibut and sablefish fisheries in and off of the State of Alaska (Alaska or
State). This action is necessary to raise the sablefish community development
quota (CDQ) allocation limit for qualified applicants from 12 percent to 33
percent, and to clarify the evidence that may be used to verify vessel leases
for the Pacific halibut and sablefish individual fishing quota (IFQ) program.
It is intended to allow total allocation of the sablefish CDQ reserve and to
provide IFQ program applicants with information about the evidence required
for vessel lease verification. DATES: Comments must be received by July 11,
1994.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries
Management Division, Alaska Region, NMFS, 709 W. 9th, Room 453, Juneau, AK
99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies
of Amendments 30 and 34 to the FMPs and the Regulatory Impact Review may be
obtained from the North Pacific Fishery Management Council, P.O. Box 103136,
Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, Fisheries Regulations
Specialist, Alaska Region, NMFS, at 907-586-7228. SUPPLEMENTARY INFORMATION:
Background

The Pacific halibut and sablefish CDQ program was designed to promote the
revitalization of rural communities in Western Alaska by providing those
communities access to nearby fishery resources. The program was developed
under the authority, and is consistent with, the management objectives of the
Magnuson Fishery Conservation and Management Act and the Northern Pacific
Halibut Act (Halibut Act). The current regulations permit the NMFS to allocate
up to 12 percent of the total sablefish CDQ reserve to any one applicant. This
action would implement Amendment 30 to the Bering Sea FMP, raising the
sablefish CDQ allocation limit for qualified applicants to 33 percent.
Amendment 34 to the Gulf of Alaska FMP would correct the inadvertent inclusion
of the CDQ program in that FMP by removing and reserving section 4.4.1.1.8.

The 12 percent limit was designed to prevent monopolization of the CDQ
allocations and to ensure an adequate distribution of benefits from the CDQ
program (57 FR 57130, December 3, 1992). The 12 percent limit for sablefish
CDQ allocations was set by the North Pacific Fishery Management Council
(Council) during the development phase of the Pacific halibut and sablefish
IFQ program, when 55 communities were initially determined to be eligible to
apply for sablefish CDQ allocations. The 12 percent limit was designed to
ensure that sufficient amounts of the sablefish CDQ reserve would be available
for all communities without excessive, and inefficient, competition.

No limit was set for Pacific halibut CDQ allocations because the Pacific
halibut CDQ reserve will be allocated to eligible applicants according to

their geographical proximity to an International Pacific Halibut Commission (IPHC) management area. This means that the Pacific halibut CDQ reserve from an IPHC management area will generally go to the community group or groups within that management area. The pollock CDQ program was implemented while the Pacific halibut and sablefish CDQ program was awaiting Secretarial approval. In anticipation of participating in the pollock CDQ program, the 55 eligible communities decided to pool their efforts in producing Community Development Plans (CDP) and managing CDQ harvest; they joined together in six groups. The 12 percent limit on allocation in the Pacific halibut and sablefish CDQ program is no longer feasible, because allocations to the six groups would allocate only 72 percent of the CDQ reserve resources.

The Council thus recommended raising the limit on sablefish CDQ allocations in the Pacific halibut and sablefish CDQ program. Proposed Action Raising the Sablefish CDQ Allocation Limit The proposed action would also change the terms ``community'' and ``communities'' to ``CDQ applicant'' and ``CDQ applicants,'' respectively. It would allow the Pacific halibut and sablefish CDQ program to operate under the same CDQ reserve allocation limits as the pollock CDQ program.

The proposed action would not change the amount of sablefish available for harvest by fishermen participating in the Pacific halibut and sablefish IFQ program. The sablefish CDQ reserve, 20 percent of the annual fixed-gear total allowable catch of sablefish for each management area in the BSAI, would be the same amount under the proposed action as it is under the current management program. Inclusion of IPHC Area 4A as a Compensating Non-CDQ Area

Currently, 50 CFR 676.24(i)(1) provides that:

The Regional Director will compensate persons that receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, and 3B. This compensation of halibut QS from areas 2C, 3A, and 3B will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

No halibut quota from area 4A is being made available to the halibut CDQ program, so area 4A should have been included with areas (2C, 3A, and 3B) that compensate persons who receive reduced halibut QS because of CDQ allocations.

To correct this omission, area 4A is added in the regulatory text as an area that will provide halibut QS as compensation in proportion to the amount of halibut QS foregone due to CDQ allocations. Vessel Lease Verification

The current regulatory language, found at 50 CFR 676.20(a)(1)(iii), provides that:

Evidence of a vessel lease shall be limited to a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years.

The proposed change to 50 CFR 676.20(a)(1)(iii) would provide that:

Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

The types of evidence that can be submitted to verify a vessel lease would be expanded. The Council intends to open the appeals process to persons who claim they had a lease but who are unable to produce the specific evidence

required under the current regulatory language. Other types of evidence that could be submitted under the proposed rule include canceled checks or receipts for IPHC or Commercial Fisheries Entry Commission permits, Internal Revenue Service tax forms showing a business deduction for the lease, or 1099 tax forms demonstrating the payment of crew.

The proposed language, like the current language, would not assure that the evidence submitted would verify the vessel lease claimed. NMFS will carefully evaluate all evidence submitted to verify a vessel lease agreement.

Classification

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. The 55 communities eligible to apply for sablefish CDQ allocations are expected to apply as six groups. This creates an inability to allocate all of the sablefish CDQ reserve, with the 12 percent limit, to achieve 100 percent allocation. Of the affected entities, only the estimated six CDQ applicants (made up of the 55 eligible communities) would be affected. While a substantial number of the CDQ groups would be affected by this action, there is no evidence that any of the criteria for significant economic impact on the CDQ groups would occur.

This proposed rule is exempt from prepublication review for purposes of E.O. 12866. List of Subjects in 50 CFR Part 676

Fisheries; Reporting and recordkeeping requirements.

Dated: May 24, 1994. Charles Karnella, Acting Assistant Administrator for Fisheries, 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 part 676 continues to read as follows:

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

2. Section 676.20(a)(1)(iii) is revised to read as follows:

Sec. 676.20 Individual allocations.

* * * * *

(a) * * *

(1) * * *

(iii) Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

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3. Section 676.24 is amended by revising paragraphs (b), (e)(1) and (i)(1) to read as follows:

Sec. 676.24 Western Alaska Community Development Quota Program.

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(b) Sablefish CDQ Program. In the proposed and final harvest limit specifications required under Sec. 675.20(a) of this chapter, NMFS will specify 20 percent of the fixed gear allocations of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under Sec. 675.24(c) of this

chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. NMFS will allocate no more than 33 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

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(e) Secretarial review and approval of CDPs. (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the CDQ applicant eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary will then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary will notify the Governor and the Council in writing, including the Secretary's reasons for approval. The decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP and the availability of the findings, will be published in the Federal Register. NMFS will allocate no more than 33 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A CDQ applicant may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per CDQ applicant will be accepted.

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(i) Compensation for CDQ allocations. (1) The Regional Director will compensate persons who receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. This compensation of halibut QS from areas 2C, 3A, 3B, and 4A will be allocated in proportion to the amount of halibut QS forgone due to the CDQ allocation authorized by this section.

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