



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120926497-3269-01]

RIN 0648-BC62

Fisheries of the Exclusive Economic Zone off Alaska: Fixed-Gear Commercial Halibut and Sablefish Fisheries; Limitations on Use of Quota Share and the 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 to amend the hired master regulations of the Individual Fishing Quota Program (IFQ Program) for the fixed-gear commercial Pacific halibut and sablefish fisheries in the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). The IFQ Program allows initial recipients of catcher vessel halibut and sablefish quota share (QS) to hire a vessel master to harvest an annual allocation of individual fishing quota (IFQ) derived from the QS. If this action is approved, an initial QS recipient would not be allowed to use a hired master to harvest IFQ derived from catcher vessel QS that they received by transfer after February 12, 2010, with a limited exception for small amounts of QS. This action is necessary to maintain a predominantly owner-operated fishery. In addition, this action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern

Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the BSAI, the Fishery Management Plan for Groundfish of the GOA, and other applicable laws.

DATES: Comments must be received no later than 5 p.m., Alaska local time, on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2012–0185, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal website at www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0185, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. P.O. Box 21668, Juneau, AK 99802–1668.
- Fax: (907) 586–7557; Attn: Ellen Sebastian

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

An electronic copy of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) for this proposed regulatory amendment is available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule may be submitted to NMFS and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285. FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586-7228.

SUPPLEMENTARY INFORMATION

Background

NMFS proposes to modify the hired master regulations for management of the IFQ Program for the fixed-gear commercial fisheries for Pacific halibut and sablefish in waters off Alaska (IFQ Program). The IFQ Program is a limited access system for managing the fixed-gear halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries off Alaska. The IFQ Program was recommended by the North Pacific Fishery Management Council (Council) in 1992 and implementing rules were published by NMFS on November 9, 1993 (58 FR 59375). Fishing under the program began on March 15, 1995.

The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679 under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Fishing for Pacific halibut is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in

addition to, and not in conflict with, approved IPHC regulations. Such Council-recommended regulations may be implemented by NMFS only after approval by the Secretary of Commerce (Secretary).

The IFQ Program for the sablefish fishery is implemented by the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.). The Council recommended and NMFS approved the GOA FMP in 1978 and the BSAI FMP in 1982. Regulations implementing the FMPs and general regulations governing the IFQ Program appear at 50 CFR part 679.

The IFQ Program was intended primarily to reduce excessive fishing capacity in the commercial halibut and sablefish fixed-gear fisheries. The Council and NMFS designed the IFQ Program to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. Access to the halibut and sablefish fisheries is limited to those persons holding QS. The QS holder is the person authorized to exercise the harvesting privilege in specific regulatory areas. Under the program, NMFS initially issued QS to qualified applicants (initial recipients) that owned or leased a vessel that made fixed-gear landings of halibut or sablefish during the qualifying period from 1984 to 1990 for halibut, and from 1985 to 1990 for sablefish. Initial recipients received QS allocations based on their harvest during the qualifying period, the area of the harvest, and the type of vessel used to land the harvest. Quota shares equate to individual harvesting privileges that are given effect

on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a regulatory area.

All QS are categorized according to the size of the vessel (A, B, C, or D) from which IFQ halibut and sablefish may be fished and whether that IFQ halibut or sablefish may be processed aboard the vessel. The vessel categories were designed to ensure that the IFQ Program did not radically change the structure of the fleet in place at the time the IFQ Program was implemented. These vessel size restrictions prevent the fishery from being dominated by large vessels or by any particular vessel category. A description of the specific vessel size categories is provided in regulation at 50 CFR part 679 and is not repeated here.

Quota share is transferrable from one person to another. To limit consolidation and maintain diversity of the IFQ fleet, the Council recommended and NMFS implemented limits on the transfer (sale and purchase) and use of QS. For example, the IFQ Program only allows persons who were originally issued catcher vessel QS (category B, C, and D halibut QS and category B and C sablefish QS), or persons who qualify as IFQ crew members, to hold and transfer catcher vessel QS.

As the IFQ Program developed, the Council recommended, and NMFS implemented, provisions such as QS use caps, vessel use caps, and a block program to limit QS acquisitions. These provisions were intended to maintain a diverse owner-operated fleet and to prevent excessive consolidation of QS. The QS use caps limit the amount of QS that a person may hold, while the vessel use cap limits the total amount of IFQ pounds that can be landed from a vessel during a season. Additionally, all initially

issued QS that yielded relatively small amounts of IFQ annually was “blocked” or issued as an inseparable unit. Quota share blocks preserve small amounts of QS that are available at a relatively low cost to promote purchase of QS by crew members and new entrants to the IFQ fisheries. The block program also includes a “sweep-up” (consolidation) provision designed to minimize the number of very small blocks of QS that yield such a small amount of IFQ that they are economically disadvantageous to harvest. The consolidation provision allows small individual QS blocks to be permanently consolidated into larger QS blocks as long as the resulting QS block does not exceed consolidation limits specified in regulation.

The IFQ program also requires IFQ holders to be onboard the catcher vessel to maintain a predominantly “owner-operated” fishery with a narrow exemption for vessel category A QS holders and initial recipients of QS category B, C, and D QS. Vessel category A QS (catcher/processor QS) are not subject to the owner-operated requirement.

Vessel category A QS allows operators who had caught and processed catch at-sea during the QS qualifying years to continue to operate as catcher/processors. These catcher/processor vessels were not historically owner-operated prior to the implementation of the IFQ Program. Therefore, the IFQ Program did not seek to change the nature of operations in the catcher/processor fleet to limit the use of hired masters. Overall, only a small proportion of all QS is issued as vessel category A QS.

The requirement that individual holders of catcher vessel QS (vessel categories B, C, or D) be onboard the vessel during all IFQ fishing ensures that QS remain largely in the hands of active fishermen. However, the IFQ Program allows all initial

recipients of QS, including individuals and non-individual entities, to hire masters to fish the IFQ derived from their QS. Prior to the implementation of the IFQ Program, many individual fishermen had conducted their fishing businesses by hiring masters to skipper their fishing vessels. The IFQ Program allows initial recipients of catcher vessel QS to continue to employ hired masters to fish their IFQ, but only if the initial recipient maintains a minimum ownership interest in the vessel on which the IFQ halibut and sablefish are harvested. By limiting this exception to initial recipients, the Council anticipated that individual initial recipients would eventually retire from fishing and that non-individual initial recipients would dissolve or change composition over time. Eventually, QS would be transferred to other qualified individuals and the IFQ fisheries would become almost entirely owner-operated.

Need for Action

In February 2010, the Council received public testimony indicating that some QS initial recipients were increasingly using hired masters rather than continuing to personally operate their vessels when fishing with QS. In addition, the Council received information that initial recipients were purchasing increasing amounts of QS, and the IFQ derived from that purchased QS was being fished by hired masters. The Council was concerned about the apparent QS consolidation and reduced opportunity for new entrants to the fishery. The Council determined that the transition to a predominantly owner-operated fishery has been unreasonably delayed because the ability to hire a master applies to the QS holder and not the QS itself. This allows initial recipients to hire masters to harvest IFQ derived not only from their initially issued QS, but also IFQ derived from any QS received by transfer after initial issuance.

At subsequent meetings, the Council examined IFQ Program data detailing the use of hired masters, changes in QS holdings of initial recipients, QS transfers, and the rate of new entry into the fishery. Section 5.2 of the RIR/IRFA prepared for this proposed action (see ADDRESSES) indicates the use of hired masters has increased significantly above levels that existed at the start of the IFQ Program. Between 1998 and 2009, the number of individual initial recipients who hire masters in the halibut fishery increased from 110 to 210 (a 91 percent increase), while in the sablefish fishery the number of individual initial recipients using hired masters increased from 46 to 91 (a 98 percent increase). The percentage of halibut IFQ landed by hired masters increased from 7.9 percent of the total IFQ landings in 1998 to 19.3 percent in 2009. Similarly, the percentage of sablefish IFQ landed by hired masters increased from 7.7 percent of the total IFQ landings in 1998 to 15.0 percent in 2009. Table 50 in section 5.2 of the RIR/IRFA also shows that QS is being consolidated among individual and non-individual initial recipients in most halibut and sablefish management areas. The number of initial recipients has decreased in the past 10 years, while the average holdings of those QS holders have increased. Thus, QS has consolidated among fewer QS holders who hire masters to fish their QS. In addition, some initial recipients that had not previously hired a master are now doing so, and some that had previously hired a master have increased the amount of QS they hold for use by a hired master or are using masters for a higher percentage of their landings. Finally, section 5.2 of the RIR/IRFA shows that the rates at which initial recipients of halibut and sablefish QS are divesting themselves of QS and exiting the fishery have declined over the last 5 years.

After receiving public testimony and reviewing the analysis at its April 2011 meeting, the Council determined that it is likely that several factors are inhibiting new entrants from acquiring QS and slowing the transition to a predominantly owner-operated fishery. These factors include the increased use of hired masters, increased holdings of QS by initial recipients, and decreased numbers of initial QS recipients divesting their QS holdings. The Council determined that evolution to an owner-operated program is occurring at a slower pace than was originally envisioned and is therefore inhibiting achievement of the Council's objectives for the IFQ Program. The Council determined that the absence of a limitation on the use of hired masters could further delay this evolution. To address this concern, the Council recommended, and this proposed rule would implement, regulations that would prohibit the use of a hired master to fish IFQ halibut or sablefish derived from vessel category B, C, or D QS received by transfer after February 12, 2010, with some exceptions described later in this proposed rule.

At final action, the Council set February 12, 2010, as the date because it is the date that the Council adopted its problem statement for the proposed action. At final action, the Council concluded that this date would reduce an initial recipient's incentive to purchase additional QS that could be fished by hired masters. The Council was concerned that QS purchases occurring before the proposed action's implementation would frustrate rather than support the progress toward an owner-operated fleet.

The Council acknowledged that selecting this date to limit the use of hired masters might affect some individual and non-individual QS holders who may have

been unaware of the Council's action or who may have been unable to complete their purchase of QS prior to February 12, 2010. The Council considered alternate dates after February 12, 2010. The Council rejected these alternatives because dates after February 12, 2010, could allow initial recipients to further consolidate their holdings of QS, obstructing the goals of the Council to limit further increases in the amount of IFQ harvested by hired masters. The Council also considered alternatives to delay implementation for the proposed action to provide additional time for affected QS holders to evaluate how it would affect their individual business plans. The Council rejected these alternatives, noting that delaying the implementation of this regulation would also frustrate the Council's overall policy goal of encouraging a transition from initial QS recipients using hired masters to an owner-operated fishery.

The Council determined that the elapsed time between its recommendation and the implementation of the proposed action would provide a sufficient grace period for initial QS recipients to make any necessary changes to their business plans. The Council noted that under the proposed action, initial QS recipients would have options for using QS received by transfer after February 12, 2010. Specifically, initial recipients who received catcher vessel QS after February 12, 2010, could choose to sell those QS to other halibut and sablefish IFQ fishery participants, or to new entrants into the fishery. Other than selling the QS, the options and associated impacts differ between individual and non-individual initial recipients. An individual initial recipient who receives catcher vessel QS after February 12, 2010, could choose to fish the IFQ derived from that QS as an owner onboard. A non-individual initial recipient who received catcher vessel QS by transfer after February 12, 2010, could also choose to

fish the resulting IFQ using a hired master, but only until the effective date of this action. After the effective date, a non-individual initial recipient would be prohibited from fishing QS received by transfer after February 12, 2010, using a hired master, but could, as noted above, sell those QS. Alternatively, a non-individual initial recipient could continue to hold that QS, but the resulting IFQ could not be used because a non-individual entity must hire a master to harvest the IFQ. Section 5.2 of the RIR/IRFA provides additional information on the amount of QS received by initial recipients after February 12, 2010, and the potential effects of this action on those initial recipients.

The Council anticipated that its recommendation could reduce the economic incentive for initial recipients to increase their QS holdings above the amount they held as of February 12, 2010. This would support the Council's IFQ program objectives by (1) preventing further increase in the use of hired masters while minimizing disruption to operations of small businesses that have historically used hired masters, and (2) discouraging further consolidation of QS among initial recipients who use hired masters. The Council did not expect this action to disrupt existing hired master arrangements because persons who currently qualify for the hired master exemption could continue to use a hired master for QS held on or before February 12, 2010.

The Council also clarified how the proposed action would affect catcher vessel QS transferred to an initial recipient and consolidated into a block after February 12, 2010. The Council recommended that:

- if catcher vessel QS is consolidated into a QS block between February 12, 2010 and the effective date of the proposed action, the IFQ resulting from that consolidated QS block could be fished by a hired master, and

- if catcher vessel QS is consolidated into a QS block after the effective date of the proposed action, the IFQ resulting from that consolidated QS block could not be fished by a hired master, and the QS holder would be required to be onboard the vessel harvesting the IFQ derived from those QS.

As discussed in section 5.2 of the RIR/IRFA, the Council recommended these QS block provisions because it would be administratively burdensome to track and separate QS blocks consolidated prior to the implementation of this proposed action. NMFS reported to the Council at the February 2011 meeting that a relatively small amount of QS had been transferred to initial recipients and then consolidated into blocks since February 12, 2010. NMFS anticipates that additional QS may be consolidated into blocks by both individual and non-individual initial recipients until the proposed action is implemented. Tracking these QS is administratively burdensome because once a new block of QS is formed, NMFS cannot differentiate what portion of that QS block should be attributed to QS with the hired master privilege as opposed to that without the hired master privilege. Implementation of this action requires all QS to be separated into QS with the hired master privilege and QS without the hired master privilege. To avoid the administrative burden of reversing these consolidations, the Council recommended that initial recipients be allowed to retain the hired master exemption for those QS consolidated into blocks after February 12, 2010, but before the effective date of the amendment. Following the effective date of the proposed action, initial recipients could continue to use the QS block consolidation provision. However, the IFQ derived from the consolidated QS block could not be fished by a hired master.

The proposed action would not apply under the following circumstances in the IFQ Program:

- Category A (catcher/processor) QS are excluded from this action because this vessel category of QS is not subject to owner-operator requirements.
- Individual (persons who, for example, are not corporations or partnerships) initial recipients in IPHC Area 2C (halibut) and the Southeast region (sablefish) are excluded from this action because existing regulations at § 679.42(i)(3) prohibit individuals who are initial recipients from using hired masters to harvest their IFQ halibut or sablefish in these areas.
- Catcher vessel QS held by Community Development Quota (CDQ) groups are excluded from this action. CDQ groups are not subject to owner –operator requirements.

Proposed Action

Three regulatory amendments would be necessary to implement the Council's recommendation for the proposed action. The first two amendments would add regulations at § 679.42(i)(6) and (j)(10) to specify that a hired master could not be used to fish IFQ halibut or sablefish derived from catcher vessel QS that was received by transfer after February 12, 2010, unless the QS was consolidated into a block prior to the effective date of the proposed action. Third, NMFS proposes to add regulations under § 679.41(c)(11) specifying that NMFS would not approve a transfer of catcher vessel QS to a corporation, partnership, association, or other non-individual entity at any time. NMFS proposes these regulatory changes to make the regulations consistent with the Council's

intent to discourage further consolidation of catcher vessel QS among initial recipients who use hired masters.

Under these proposed regulatory changes, IFQ derived from catcher vessel QS received by transfer after February 12, 2010, must not be harvested by a hired master. Because a non-individual entity must hire a master to harvest its IFQ, the proposed change to § 679.41(c)(11) would prevent non-individual entities, such as corporations, from receiving additional catcher vessel QS by transfer after the effective date, with one exception. That exception, found at § 679.41(g)(3), provides that an individual initial catcher vessel QS recipient may transfer initially issued QS to a corporation that is solely owned by the same individual. Otherwise, individuals may not transfer QS received after initial issuance into a solely-owned corporation. NMFS proposes no changes to this existing exception. This exception allows individuals to transfer initially received QS to a solely-owned corporation for tax purposes, limiting liability, or for other business purposes.

To implement the proposed action, NMFS would redesignate catcher vessel QS as “eligible to be fished by a hired master” if the QS was (1) held by an initial recipient on or before February 12, 2010, or (2) received by transfer and consolidated into a QS block held by an initial recipient prior to the effective date of the proposed action. All other QS that did not meet these requirements would be designated “not eligible to be fished by a hired master”, including (1) category A QS, 2) CDQ QS, (2) individual initial recipient QS designated for areas 2C (halibut) and Southeast (sablefish), (3) individual and non-individual QS not held by an initial recipient, (4) unblocked QS transferred to an initial recipient after February 12, 2010, and (5) blocked QS transferred to an initial recipient

after the effective date. Following the redesignation of QS, two types of annual IFQ permits would be issued by NMFS. Quota share designated as eligible to be fished by a hired master would yield IFQ that may be harvested by a hired master. Quota share designated as not eligible to be fished by a hired master would yield IFQ that may not be harvested by a hired master. NMFS proposes to redesignate QS and issue the new types of IFQ permits prior to the beginning of the IFQ fishing year following implementation of this proposed action. The IFQ Program relies on an annual cycle to distribute QS, issue IFQ permits, arrange transfers and adjust IFQ holdings for a previous year's overages and underages. Implementing the proposed action at the beginning of the IFQ fishing season is necessary to avoid a large administrative burden for NMFS and affected participants. Mid-year implementation of the proposed action would require the reissuance of thousands of IFQ permits, increasing the costs of administering the IFQ Program and potentially causing considerable confusion in enforcement of regulations. Therefore, this action, if approved by the Secretary, would not be implemented until the beginning of the next fishing season following publication of the final rule.

Effects of the Proposed Action

The proposed action would affect the hired master privileges granted to initial recipients of catcher vessel QS. Under the proposed action, a number of options remain for initial recipients to maintain active and viable businesses in the halibut and sablefish fisheries. Initial recipients could continue to hire a master to harvest IFQ derived from QS held on or before February 12, 2010. Individual initial recipients who acquire QS after February 12, 2010, would need to decide whether to be onboard the vessel fishing the IFQ or transfer the QS to another person eligible to hold QS. Individual initial

recipients could continue to purchase additional QS provided they are onboard to harvest the resulting IFQ. Non-individual initial recipients of QS would be prohibited from acquiring additional catcher vessel QS because the proposed regulation would prohibit non-individual entities from using a hired master for QS received by transfer after February 12, 2010. Given the opportunities for initial recipients to continue to use hired masters for QS held before February 12, 2010, NMFS does not expect the proposed action to significantly disrupt existing business operations.

NMFS does not anticipate that the proposed action would significantly affect market availability or price of B, C, or D QS. It is difficult to predict the outcome of the action because the response of each QS holder will be different; some may choose not to purchase additional QS, some would be unable to purchase additional QS, and others may choose to finance QS purchases by crew or purchase more QS and be onboard to harvest the IFQ. The proposed action could increase opportunities for persons to purchase QS. Provisions of the action recognize business models developed since the inception of the IFQ Program while furthering the original goal of the IFQ program to move towards a predominantly owner-operated fishery.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the GOA FMP, the BSAI FMP, other provisions of the Magnuson-Stevens Act, the Halibut Act, and other applicable laws, subject to further consideration after public comment.

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

Regulatory Impact Review and Initial Regulatory Flexibility Analysis

A Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) were prepared for this action. The RIR assesses all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The IRFA was prepared as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The RFA recognizes and defines a business involved in fish harvesting as a small business if it is independently owned and operated and not dominant in its field of operation (including affiliates) and if it has combined annual gross receipts not in excess of \$4 million for all its affiliated operations worldwide.

A copy of this analysis is available from NMFS (see ADDRESSES). The IRFA describes the action, why this action is being proposed, the objectives and legal basis for the proposed rule, the type and number of small entities to which the proposed rule would apply, and the reporting, recordkeeping, and other compliance requirements of the proposed rule. The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated here.

The proposed action could directly regulate a maximum of 1,447 entities holding halibut QS and sablefish QS, which are eligible to hire masters. However, the actual number of such entities that may be directly regulated is expected to be much smaller because many of these participants fish their own IFQ, without a hired master; and some have not and will not acquire additional QS. For purposes of providing a numerical

estimate, had the rule been in effect in 2009, as few as 91 eligible entities that transferred QS for use by hired masters after February 12, 2009, would have been directly regulated.

Small entities regulated by the proposed action may be divided into two mutually exclusive groups to estimate their size relative to the \$4 million threshold. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not) for which gross revenue data exist. There are also operations that harvest halibut, but not groundfish, for which gross receipts data exist. These entities may also harvest species such as herring or salmon.

Section 6 of the RIR/IRFA estimates that in 2009 the total gross revenues for fixed-gear catcher vessels by entity, from all sources off Alaska, were not more than \$4 million in gross revenues, which has been the case since 2003. The average gross revenue for the small fixed-gear catcher vessels has been about \$500,000. Thus, all of the entities that harvest both halibut and groundfish are under the threshold. This includes all of the entities that harvest any sablefish. Since the IFQ Program limits the amount of annual IFQ that any single vessel may use to harvest halibut and sablefish and the maximum number of QS units an entity may use, NMFS believes that few vessels that harvest halibut, but not groundfish, would exceed the \$4 million threshold, either. Based upon gross receipts data for the halibut fishery, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a de minimis number) directly regulated by these restrictions could have been used to land fish worth more than \$4.0 million in combined gross receipts in 2010. Therefore, all halibut and sablefish vessels have been assumed to be “small entities” for purposes of the IRFA. This simplifying assumption may overestimate the number of small entities, since

it does not take into account vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

Based on the low revenues for the average groundfish vessel and the low cap on maximum halibut and sablefish revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of vessels. Therefore, the available data and analysis suggest that there are few, if any, large entities among the directly regulated entities subject to the proposed action.

The RIR reviews Alternative 1, the status quo, and Alternative 2, the preferred alternative. The Council did not identify any other alternatives that would have been substantially less burdensome. Alternative 1 would maintain the current regulations that allow all initial recipients of catcher vessel QS to hire a master to harvest their IFQ permits for any catcher vessel QS they hold. Current regulations enable initial QS recipients to continue to acquire QS up to IFQ Program caps and harvest accumulated IFQ with a hired master. This has resulted in increased amounts of IFQ being harvested by hired masters, which is contrary to the Council's objectives for the IFQ Program. Under Alternative 2, the preferred alternative, an initial QS recipient would not be allowed to use a hired master to harvest IFQ derived from catcher vessel QS that they received by transfer after February 12, 2010, with a limited exception for small amounts of QS. The preferred alternative may result in a loss of fishing opportunity for hired masters to harvest IFQ pounds. The proposed changes from this alternative would have distributional effects on initial recipients and hired masters, but will not affect production from the fisheries. Under Alternative 2, net benefits to the nation may increase, to the

extent that the Council’s objectives for an “owner-operated” fishery are more fully realized through this action.

There were no significant alternatives to the proposed rule identified that would achieve the Council’s objectives for the action and minimize adverse impacts on small entities. The Council considered alternative dates after which the use of hired masters would be prohibited. Although those alternative dates could have allowed more small entities to use hired masters, or to use hired masters for more of the QS they now hold or could acquire before another date, the use of hired masters is not necessary to harvest halibut and sablefish IFQ derived from QS held by individuals. None of the alternatives considered would limit the ability of small entities to receive QS by transfer and fish the resulting IFQ as owner-operators. The Council also considered and rejected an alternative to eliminate the hired master exemption from the IFQ Program, but determined that this would not sufficiently accommodate the existing business plans of initial catcher vessel QS recipients that use hired masters to harvest IFQ or their hired masters.

No Federal rules that might duplicate, overlap, or conflict with this proposed action have been identified.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information, OMB Control No. 0648–0272. The IFQ Program requirements are mentioned in this proposed rule; however, the public reporting burden for this collection-of-information is not directly affected by this proposed rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov, or fax to [\(202\) 395-7285](tel:(202)395-7285).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: April 22, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.41, add paragraph (c)(11) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(11) The person applying to receive QS assigned to vessel category B, C, or D is not a corporation partnership, association, or other non-individual entity, except as specified in paragraph (g)(3) of this section.

* * * * *

3. In § 679.42 add paragraphs (i)(6) and (j)(10) to read as follows:

§679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(6) Paragraphs (i)(1) and (i)(4) of this section do not apply to any QS assigned to vessel category B, C, or D received by transfer by any person described in paragraph (i)(1) after February 12, 2010, except a hired master may be used to harvest IFQ derived from QS blocks that were consolidated under §679.41(e)(2) or (e)(3) after February 12, 2010, and before [INSERT DATE FINAL RULE BECOMES EFFECTIVE].

(j) * * *

(10) Paragraphs (j)(1) and (j)(9) of this section do not apply to any QS assigned to vessel category B, C, or D received by transfer after February 12, 2010, by an entity described in paragraph (j)(1) except a hired master may be used to harvest IFQ derived from QS that were consolidated under §679.41(e)(2) or (e)(3) after February 12, 2010, and before [INSERT DATE FINAL RULE BECOMES EFFECTIVE].

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