

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 980923246-9106-02; I.D. 071598A]

RIN 0648-AK20

Fisheries in the Exclusive Economic Zone Off Alaska; Hired Skipper Requirements for the Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS publishes a final rule implementing a change in the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. This action modifies the vessel ownership requirements for quota share (QS) holders wishing to hire skippers to harvest the IFQ allocations derived from QS for Pacific halibut and sablefish in the fixed gear IFQ fisheries. This action is necessary to promote an owner-operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and to further the objectives of the IFQ Program.

DATES: Effective June 9, 1999.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) for this action may be obtained from the Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

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

SUPPLEMENTARY INFORMATION:**Background**

The IFQ Program is a limited access system for managing the fixed gear fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) in waters of the exclusive economic zone off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), recommended the IFQ Program, which NMFS implemented in 1995. The IFQ Program is designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and

the coastal communities where many of these fishermen are based. To this end, various program constraints limit consolidation of QS and ensure that practicing fishermen, rather than investment speculators, retain harvesting privileges. The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) and the IFQ Program implementing regulations prohibit all leasing of IFQ derived from QS in categories B, C, and D (QS which authorizes the harvest but not the processing of IFQ species onboard the vessel) and require that holders of such QS be aboard the vessel harvesting IFQ species during all fishing operations.

An exception to this owner-aboard provision allows initial recipients of B, C, or D category QS to employ a hired skipper to fish their IFQ provided that the QS holder owns the vessel on which the IFQ are being fished. This exception was created to allow fishermen who had operated their fishing businesses with hired skippers before the IFQ Program was implemented to continue operating this way under the IFQ Program. While the IFQ Program promotes an owner-operator fixed gear fishery for sablefish and halibut, this exception allows initial recipients of QS to remain ashore while having their IFQ harvested by a hired skipper. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

A problem developed in the first years of the IFQ Program because the regulations do not clearly define vessel ownership. Some initial recipients of QS purchased a nominal interest in a vessel, as little as 1 percent or less, and thereby save the costs of operating a wholly-owned vessel and crew. Although such nominal vessel ownership served the objective of fishing capacity reduction, it compromised the Council's social and economic intent for an owner-operator fishery in which QS holders actually participate in harvesting operations. Also, such nominal vessel ownerships created the potential for excessive loss of crew member jobs.

This action revises the regulations to specify a minimum vessel ownership interest that must be acquired before the QS holder may hire a skipper to harvest the IFQ. Under the new regulations, initial recipients of B, C, or D category QS who wish to hire skippers to fish the IFQ derived from their QS must own a minimum of a 20 percent interest in the

vessel on which the IFQ species are being harvested.

QS holders whose applications to hire skippers were approved prior to April 17, 1997, the date of the Council's first review of the analysis of this issue, are exempt from the requirement provided that (1) the QS holder's percentage of ownership in the vessel which the hired skipper will operate does not fall below the percentage held in that vessel at the time he or she had a hired-skipper application approved prior to April 17, 1997, and (2) the QS holder has acquired no additional QS after September 23, 1997, the date of the Council's final action to recommend this regulatory change. A QS holder who held less than a 20 percent interest in a vessel prior to April 17, 1997, must continue to hold at least that percentage in order to be eligible to hire a skipper to fish his or her IFQ on that vessel. Moreover, because an initial recipient of QS may hire a skipper to fish not only the QS acquired as an initial allocation but also any QS acquired through transfer, the maximum amount of QS that can be used under this exemption is the level held prior to September 23, 1997, the date of the Council's final action on this proposal. This restriction assures that only existing business arrangements regarding levels of vessel ownership and QS holdings can use this exemption.

Changes from the Proposed Rule

A sentence has been added to § 679.42(i)(1) and to § 679.42(j) to clarify the means by which a person's vessel ownership is determined. Presently, NMFS requests that vessel ownership be validated by submission of a facsimile of either a U.S. Coast Guard Abstract of Title or a bill of sale. While such documents may be preferable as evidence that a person holds the required minimum percentage of ownership interest, other documents may also provide adequate proof of ownership. Therefore, the regulatory language is amended to clarify that, for purposes of the minimum vessel ownership interest requirements, NMFS requires only that the evidence of ownership be in writing. NMFS will make its determination on the basis of written documentation only. This requirement is to ensure that vessel ownership claims are adequately supported in applications for hired skipper cards.

A more detailed explanation of this action may be found in the preamble to the proposed rule (63 FR 69256, December 16, 1998). The proposed rule invited public comment through January 16, 1999, on the proposed

action. NMFS received no comments on the proposed rule.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule requires a QS holder to own at least a 20 percent interest in a vessel to hire a skipper to fish his or her IFQ.

What small entities will this rule impact?

Any person who holds an initial allocation of QS, whether an individual or a corporation or a partnership, is allowed by the regulations to hire a skipper to fish the person's IFQ, provided that the QS holder owns the fishing boat on which the IFQ is harvested. This action defines exactly what is meant by "ownership" of a boat for purposes of the IFQ Program's hired skipper provisions: To hire a skipper to fish your IFQ, you must own at least 20 percent interest in the boat used to harvest your IFQ. For example, if you wish to hire a skipper to fish your IFQ and you hold only 15 percent ownership interest in your boat, you will have to acquire an additional 5 percent of ownership interest to be able to hire a skipper to fish your IFQ on that boat. Of course, you may still choose to be aboard the vessel when it fishes your IFQ, in which case you need not have any ownership interest in the boat.

Are there any exceptions to the 20-percent minimum ownership interest requirement?

Yes. If you hired a skipper prior to April 17, 1997, on a boat in which you owned less than 20 percent interest, you may continue to hire a skipper to fish your IFQ on that boat as long as you maintain the percentage of interest in the boat that you held on April 17, 1997. For example, if you held 10 percent interest in a boat on April 17, 1997, and had hired a skipper to fish your IFQ from that boat prior to that date, then you may continue to hire a skipper to fish your IFQ from that boat as long as you own no less than 10 percent of the boat. This is the grandfather clause to the 20-percent minimum vessel ownership requirement.

Are there any limitations on the grandfather clause?

Yes. The rule also requires that persons eligible to take advantage of the grandfather clause have acquired no additional QS through transfer after September 23, 1997. The grandfather

provision is limited, because, if you are eligible to hire a skipper, you may hire a skipper to fish not only the QS you acquired through initial issuance but also all QS that you acquired thereafter through approved transfer. While allowing for certain business practices that existed prior to April 17, 1997, the Council chose to limit the amount of QS that may be subject to the grandfather clause. For example, if you held 5 percent interest in a boat on which you employed a skipper to fish your IFQ prior to April 17, 1997, you may continue to use a hired skipper on that boat as long as you own no less than 5 percent interest in the boat and have not acquired any additional QS through transfer after September 23, 1997. If you have acquired additional QS after that date, you are no longer eligible to take advantage of the grandfather provision and must acquire additional interest in your boat to equal no less than 20 percent if you wish to hire a skipper to fish your IFQ. You may always fish your IFQ yourself and not be obliged to hold any ownership interest in the boat on which you fish your IFQ.

How will NMFS determine whether a person holds the required minimum percentage of vessel ownership?

NMFS will make that determination on the basis of written documentation submitted with the application for a hired skipper card. That documentation may be in the form of a U.S. Coast Guard Abstract of Title, or of a bill of sale, or other such documentation, as long as the evidence is in writing.

Classification

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to 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.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The requirement that QS holders provide written evidence of the percentage of vessel ownership clarifies a collection of information that has been approved by the Office of Management and Budget (OMB) under control number 0648-0272.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The total universe of small entities affected by this proposed action would comprise approximately 6,000

persons who hold initial allocations of QS and are eligible to hire skippers in the IFQ Program. NMFS has no data at present to indicate how many of these persons own their own vessels at the required minimum of 20 percent. Nor does NMFS have data to analyze the amount of financial burden that acquisition of additional ownership would impose on those who at present own less than 20 percent interest in a vessel and wish to hire skippers. The grandfather clause would in part mitigate the impact of the action by allowing those who had hired skippers prior to April 17, 1997, to continue to do so at the percentage of vessel ownership held on that date. However, consistent with Council intent, this action will likely reduce the number of QS holders employing hired skippers. Consequently, it will also affect persons who hire themselves out as skippers for vessels owned by others.

In developing this amendment, the Council considered numerous alternatives to develop an action that would minimize the negative economic impact while addressing the issue of nominal vessel ownership in the IFQ hired skipper provisions. Minimum vessel ownership percentages of 5, 20, 49, and 51 percent were analyzed and reviewed before recommending the present action as resolving the issue in a way least burdensome to the affected entities. Nevertheless, the financial impact of this action could potentially be borne by all initial recipients of QS in categories B, C, or D, as well as by skippers who would hire themselves out to operate vessels in the IFQ fisheries. No comments were received on the Initial Regulatory Flexibility Analysis. A copy of the FRFA analysis is available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: May 4, 1999.

Penelope D. Dalton,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 679 is amended as follows:

PART 679—FISHERIES IN 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, revise paragraph (i)(1); remove the first sentence of the

introductory text of paragraph (j) and add two sentences in its place, and add paragraph (j)(5) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

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(i) * * *
(1) An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual owns at least a 20-percent interest in the vessel and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20-percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that

individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

* * * * *

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations and partnerships.* Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided that the corporation or partnership owns at least a 20-percent interest in the vessel on which its IFQ is fished, and that it is represented on the vessel by a master employed by the corporation or partnership that received

the initial allocation of QS. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. * * *

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(5) A corporation or a partnership that received an initial allocation of QS assigned to categories B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

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