



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120416009-2548-01]

RIN 0648-BB78

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to IFQ Program Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to the vessel ownership requirement of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries in and off of Alaska. The IFQ Program requires that initial recipients of certain classes of quota shares own a minimum of 20-percent interest in any vessel on which they hire a master to fish their IFQ permits. This action proposes to require such quota share holders to have held a minimum of 20-percent ownership interest in the vessel for at least 12 consecutive months prior to the submission of any application to hire a master. This proposed action also would temporarily exempt from the 12-month ownership requirement an initial recipient whose vessel has been totally lost, as by sinking or fire, or so damaged that the vessel would require at least 60 days to be repaired. This action is necessary to maintain a predominantly owner-operated

fishery. 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 Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable laws.

DATES: Comments on the proposed rule and supporting documents must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA-NMFS-2011-0300, by any one of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal at www.regulations.gov. To submit comments via the e-Rulemaking Portal, enter NOAA–NMFS–2012–0040 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Comment Now” icon on the right of that line.
- **Mail:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.
- **Hand delivery to the Federal Building:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska

Region, NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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.

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) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information.

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 or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) for Amendment 94 and the RIRs for the regulatory amendments to add three communities to the list of CQE eligible communities and allow CQEs in Area 3A to purchase D category halibut QS prepared for this action are 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 this action may be submitted to

NMFS at the above address and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202)-395-7285.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Executive Summary

This proposed rule would implement a regulatory amendment to the vessel ownership requirements of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries in and off of Alaska. The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (NMFS) manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). NMFS manages fishing for sablefish through regulations established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). IFQ Program regulations may be found at 50 CFR part 679.

The North Pacific Fishery Management Council (Council) designed the IFQ Program to preserve, as much as possible, the historical character of the Pacific halibut and sablefish fisheries. The IFQ Program accomplishes this in part by ensuring that quota share (QS) are held mainly by those who actually do the fishing. Initial recipients of QS, however, are allowed to hire masters to fish their IFQ permits provided that the QS holder owns a minimum of 20-percent interest in the vessel on which the IFQ is fished by the hired master. The Council intended for initial recipients of QS to transfer their QS to other eligible fishermen upon retiring to eventually return to an owner-operated fishery. Current regulations have not prevented some QS holders from

circumventing the intent of the vessel ownership requirement by acquiring temporary ownership interest in a vessel expressly for the purpose of hiring a master to fish the QS holder's IFQ permit.

This proposed action would revise the vessel ownership regulations to require QS holders to own a minimum of 20-percent interest in their vessels for at least 12 consecutive months prior to the submission of an application to hire a master to NMFS. This regulatory amendment would prevent QS holders from acquiring temporary vessel ownership in order to circumvent Council intent of an owner-operated fishery.

This proposed rule would also temporarily exempt from the 12-month ownership requirement a QS holder whose vessel has been lost as by sinking or fire, or damaged or is in need of repairs that will take at least 60 days to complete. This exemption would allow owners of such vessels to acquire a temporary 20-percent ownership interest in another vessel for the purpose of hiring a master to fish their IFQ permits from the date of the loss of or damage to the vessel until December 31 of the following year. If approved by the Secretary, the 12-month ownership requirement would not be effective until one year following the effective date of this final rule to give sufficient time for compliance by QS holders.

Background

The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Halibut Act. The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject

to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. Additional management regulations not in conflict with regulations adopted by the IPHC (such as the IFQ Program) may be recommended by the Council and implemented by the Secretary. The Council has exercised this authority most notably in the development of the IFQ Program codified at 50 CFR part 679, subpart D.

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) in the exclusive economic zone (EEZ) are managed by NMFS under fishery management plans (FMPs). The FMPs were prepared by the Council under the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) and are implemented by regulations at 50 CFR part 679. NMFS manages fishing for sablefish (Anoplopoma fimbria) through regulations established under the authority of the Magnuson-Stevens Act. NMFS manages sablefish as a groundfish species under the FMP for Groundfish of the Gulf of Alaska. The fixed-gear sablefish fishery is subject to the same IFQ Program that governs the halibut fishery.

The IFQ Program is a limited access system for managing the fixed-gear fisheries for Pacific halibut and sablefish in waters of the EEZ off of Alaska. The program was recommended by the Council and, in 1995, implemented by NMFS under the authority of the Magnuson-Stevens Act and the Halibut Act. Intended primarily to reduce excessive fishing capacity, the IFQ Program is also designed to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. Each year, an amount of QS yields a specific amount of individual

harvesting privileges and is issued as an IFQ permit. An annual IFQ permit authorizes the permit holder to harvest a specified amount of an IFQ species in a regulatory area. All QS are categorized according to the size of the vessel (A, B, C, or D) from which IFQ species may be fished and whether IFQ species may be processed aboard the vessel. The vessel categories were designed to ensure that the IFQ Program not radically change the existing fleet structure. The program includes restrictions to prevent the fishery from being dominated by large boats or by any particular vessel class. A description of the specific vessel size classes is provided in regulation at 50 CFR part 679 and is not repeated here.

Various other constraints limit the transfer of QS and the use of IFQ permits to ensure that the privilege of harvesting IFQ species is retained mainly by those commercial fishermen actively fishing. The IFQ Program includes several provisions, such as QS holding caps and vessel use caps, to protect participants from being adversely affected by excessive consolidation. Other provisions of the IFQ Program require IFQ holders to be onboard the vessel to maintain a predominantly “owner-operated” fishery with a narrow exemption for initial recipients of QS. The requirement that individual owners 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.

In designing the IFQ Program, however, the Council exempted from this owner-onboard requirement fishermen who received initial allocations of catcher vessel QS at the inception of the program. Many of these fishermen had conducted their fishing businesses by hiring masters to skipper their fishing vessels before the IFQ Program was implemented. So that these fishermen may continue to do so as QS holders, the IFQ

Program allows initial recipients of catcher vessel QS to employ hired masters to fish his or her IFQ, but only if the initial recipient owns the vessel on which the IFQ species are harvested. By limiting this exception to initial recipients, the Council anticipated that all initial recipients would eventually retire from fishing, at which time their QS would be transferred to other qualified fishermen and the IFQ fisheries would again become predominantly owner-operated.

Previous Actions

The Council has revised the hired master provisions several times since the implementation of the IFQ Program to ensure the effectiveness of the vessel ownership requirement in maintaining an owner-operated fleet in the IFQ fisheries. In 1999, the Council became aware that some QS holders were circumventing the intent of the vessel ownership requirement by acquiring a nominal ownership interest in a vessel expressly for the purpose of hiring a master. On the Council's recommendation, NMFS revised the IFQ regulations to prevent this practice by defining vessel ownership (for purposes of the hired master provisions) as a minimum of 20-percent interest in any vessel on which a hired master fishes the QS holder's IFQ permit (May 10, 1999; 64 FR 24960).

Then, in 2006, the Council determined that the intent of the vessel ownership restrictions continued to be circumvented. In response, the Council recommended two additional regulatory changes to the IFQ vessel ownership restrictions: first, initial recipients of catcher vessel QS wishing to hire masters must provide NMFS with formal United States Coast Guard or State of Alaska documents verifying their ownership of the vessel; second, those documents must show that the QS holder has held 20-percent ownership interest in the vessel for at least 12 consecutive months prior to applying to

NMFS for a permit to employ a hired master to fish the IFQ permit. The Council's recommended action also would have created a temporary exemption from the 12-month ownership requirement for a QS holder whose vessel is lost or damaged irreparably. This exemption would have allowed an initial QS recipient to acquire temporary ownership interest in another vessel in order to continue having his or her IFQ fished by a hired master.

To implement these recommendations from the Council, NMFS included these ownership recommendations in an omnibus package of proposed regulatory changes to the IFQ regulations published at 71 FR 64218 on November 1, 2006. Public comments on that proposed rule, however, identified instances where the proposed 12-month ownership regulations needed greater clarification and definition. The proposed regulations had used the phrase "constructive total loss," which is a term used by insurance companies for property—in this case, fishing vessels—that are damaged to such an extent that the cost of repairs would exceed the value of the property. Public comment on the proposed rule asked that in the final rule the regulations be revised to define the phrase "constructive total loss" to include vessels that are out of the fishery for 30 days or longer for repairs. Responding to this comment in the final rule, NMFS acknowledged that the phrase "constructive total loss" was not defined in the rule, but noted that the standard definition of the phrase pertains only to vessels that are damaged irreparably (because the cost of repair would exceed the value of the vessel) and not to vessels simply in need of repair (72 FR 44795, August 9, 2007). NMFS noted furthermore that it could not redefine the term to include vessels in need of repair because the Council did not recommend including repair as a condition for exemption from the

12-month ownership requirement. NMFS further noted that the proposed rule had not given notice that such a provision might be adopted, as required by the Administrative Procedure Act.

Public comment on the proposed rule also called attention to a significant, unintended consequence of the 12-month ownership requirement as proposed. At present, in the absence of a 12-month ownership requirement, a QS holder whose vessel is being repaired may acquire a temporary ownership interest in another vessel to have his or her IFQ permit fished by a hired master. Were NMFS to implement the 12-month ownership requirement as described in the proposed rule (71 FR 64218, November 1, 2006), temporary ownership of a vessel would have been allowed for the purpose of hiring a master only in the event of the total loss of the vessel. A QS holder whose vessel is simply under repair would no longer be permitted to acquire temporary ownership of another vessel in order to continue having his or her IFQ permit fished by a hired master. Note that although individual QS holders may always go fishing themselves and are not required to own the vessel as long as they are on board for the fishing of their IFQ permit, corporate QS holders must necessarily hire a skipper (NMFS does not expect an entire corporation will board the vessel to fish the corporate-owned QS, but requires an authorized individual to be on board and responsible for each landing). However, if a QS holder was not prepared to be on board a vessel for the fishing of his or her IFQ permit, the 12-month ownership requirement, as formerly defined, would have forced QS holders to forego revenue from their IFQ permit during the time that their fishing vessels were out of service for repairs. The proposed 12-month ownership requirement was not

intended by the Council to prohibit temporary ownership arrangements to accommodate a QS holder whose vessel needs repair.

The substantive issues that the public raised about the exemption from the ownership provisions could not be resolved under the Council's original recommendation. Accordingly, the final rule published in the Federal Register on August 9, 2007 (72 FR 44795) listed the United States Coast Guard or State of Alaska documents a QS holder must submit to NMFS to prove 20 percent ownership of a vessel, but did not include the 12-month ownership requirement and exemption. NMFS removed these two components of the action and returned to the Council for clarification on these issues.

In a letter to the Council dated September 19, 2007, and in view of the public comment, NMFS identified five policy questions for the 12-month ownership requirement that needed to be resolved before proceeding further with rule promulgation:

- If the QS holder suffers a total loss of a vessel, how long is he or she exempt from the ownership requirement?
- For a QS holder to be exempt from the ownership requirement, which vessel owned by the QS holder has to have suffered a total loss?
- What is the definition of the phrase “constructive total loss”? Should it include a vessel that is repaired after having been declared a “constructive total loss” for insurance purposes?
- Should a QS holder be able to hire a master on a vessel that the QS holder does not own if the QS holder's vessel is temporarily out of service for repairs?
- What should be the effective date of the 20-percent/12-month ownership requirement?

At its December 2007 meeting, the Council addressed the five policy questions raised by NMFS and subsequently revised its recommendation to NMFS. The Council clarified that a vessel owner would be exempt from the 12-month ownership requirement only if his or her vessel were totally lost, for example by sinking or fire, or temporarily lost as a result of major repair work that requires at least 60 days to complete. In either case, exception from the 12-month ownership requirement would be limited to a time period from the date of the incident that resulted in the loss or need for repair of the vessel until December 31 of the following year. The vessel owner, or initial QS recipient who qualifies to hire a master, must have previously used the lost or damaged vessel to harvest halibut IFQ or sablefish IFQ in order to be eligible for the exemption. The Council recommended that NMFS delay the effective date of the 20-percent/12-month ownership requirement for 13 months after the publication of the final rule.

NMFS determined that the Council's revised recommendations require publication of a revised proposed rule. The Council introduced a new concept of "temporary loss" for the exemption from the 12-month ownership requirement. "Temporary loss" is substantially different from "constructive total loss" used in the original proposed rule to describe the exemption. Although a 12-month ownership requirement was contemplated in the proposed rule, the proposed exemption from this requirement would have applied only to the actual total loss of a vessel and not to a vessel's temporary loss because of damage that requires major repairs. This proposed rule solicits public comment on this recommendation.

The Need for Action

The Council recommendation that an initial QS holder hold a minimum of 20-percent ownership interest of a vessel for at least 12 consecutive months is meant to maintain a predominantly owner-operated fishery and to prevent the leasing of IFQ permits to the owner or skipper of another vessel. The Council recommended this action in response to public testimony that initial recipients of QS were circumventing the intent of the Council with regard to vessel ownership restrictions and, as a result, impeding the intended transition to an owner-operator fishery. QS holders who are not initial recipients of QS in the IFQ Program are unable to hire a master and must be onboard the vessel while fishing their IFQ permits, except in the case of an emergency medical transfer. An emergency medical transfer may be approved if the applicant demonstrates that he or she is unable to participate in the IFQ fishery because of a severe medical condition. Individuals otherwise eligible to use a hired master may not do so in Areas 2C (for halibut) or SE for sablefish. The Council intended for initial recipients of QS to transfer their QS to other eligible fishermen upon retiring to eventually return to an owner-operated fishery. However, the Council became aware that some initial QS holders who used to be active in the fishery, but since retired, had not transferred their QS to other qualified fishermen. Instead, these initial recipients of QS were using hired masters to fish their IFQ permits.

The Council also became aware that some QS holders were informally acquiring 20-percent ownership interest in a vessel for a de minimus payment (e.g., one dollar) and for a limited period (e.g., for the duration of a fishing trip) solely for the purpose of hiring a master to fish the QS holder's IFQ permit. The 12-month restriction would eliminate the opportunity for QS holders to form short-term agreements which transfer vessel

ownership for the duration of a fishing trip or trips. Over the course of the IFQ Program, the number of initial QS holders who may hire a master has declined through attrition, while the reliance on hired masters by those QS holders has increased. While this may appear contradictory, it demonstrates that initial recipients who used to be active in the fishery are retired from active participation and instead are hiring skippers to fish their IFQ permits. The period when formerly active individual QS holders typically hire skippers is 1) during retirement of a formerly active QS holder and, 2) after transfer of QS upon the death of a QS holder to his or her spouse.

The Proposed Action

This proposed action would require that initial recipients of catcher vessel QS (vessel categories B, C, and D) who wish to hire a master to fish their IFQ permit hold a minimum of 20-percent ownership interest in a vessel for at least 12 consecutive months prior to the submission of an Application for IFQ/CDQ Hired Master Permit to NMFS. The QS holder who presumably is an owner of a documented vessel would be required to submit a U.S. Abstract of Title issued by the U.S. Coast Guard upon the submission of an Application for IFQ/CDQ Hired Master Permit to show that the QS holder is at least 20-percent owner of the vessel, and has been for at least 12 consecutive months. A documented vessel is registered and issued a marine certificate by the U.S. Coast Guard. A QS holder who is the owner of an undocumented vessel would be required to submit a State of Alaska boat registration or a commercial vessel license upon the submission of an Application for IFQ/CDQ Hired Master Permit that shows the QS holder has had at least 20-percent ownership interest in the vessel for at least 12 consecutive months. An undocumented vessel is registered by the Department of Motor Vehicles and does not

have a marine certificate issued by the U.S. Coast Guard. If the U.S. Abstract of Title or State of Alaska documents do not prove the required percentage interest and duration, the QS holder would be required to submit additional written documentation to NMFS establishing the required percentage of ownership interest and duration. The additional written documentation that NMFS may request to establish ownership interest and the duration of ownership may include, but is not limited to, a copy of the purchase and sale agreement, or other corporate, partnership, or association documents. The additional documentation must show the required percentage interest of the vessel and duration of ownership. Unlike the situation above for documented vessels, a single record will not prove ownership interest. Therefore, a determination based on other evidence must be made. If NMFS determines that the documentation fails to demonstrate the applicant's required ownership interest in the vessel, NMFS would provide the applicant with an opportunity to provide supporting evidence. If the applicant's ownership interest is unsubstantiated at the end of the evidence period, NMFS would issue an initial administrative determination (IAD). The IAD would describe why NMFS is initially denying some or all of an applicant's claim and would provide instructions on how to appeal the IAD to the NMFS National Appeals Office (NAO).

Current regulations already require an applicant to submit the U.S. Abstract of Title issued by the U.S. Coast Guard, State of Alaska vessel license registration, or additional documentation establishing 20-percent ownership interest in a vessel on an Application for IFQ/CDQ Hired Master Permit. Therefore, the same types of documentation would be required by an applicant as a result of this proposed rule, although more recent documentation may need to be provided for NMFS to determine

whether the QS holder has had at least 20-percent ownership interest in the vessel for at least 12 consecutive months.

The proposed regulations, if approved, would not be effective until 13 months after the publication date of the final rule for this action to give sufficient time for compliance by QS holders. The Council considered a range of timeframes from six months to two years for the requirement of continuous ownership in order for QS holders to be eligible to hire a skipper. The Council's selected the period of 13 months following publication of the final rule because it typically incorporates an entire fishing season. Most fishing businesses make operating decisions, including a decision to hire a skipper, on an annual basis.

A temporary exemption from the 12-month ownership requirement would be granted to QS holders whose vessels are totally lost, as by sinking or fire, or whose vessels are in need of repairs from major damage arising from an accident such as sinking, grounding, or fire and that will require the vessel to undergo repair for at least 60 days. The minimum 60-day repair time would only include the time required to repair the damage caused by the accident. In such cases, a QS holder would be exempted from the 12-month ownership requirement from the date of the loss of or damage to the vessel until December 31 of the following year. The Council intended for the temporary disablement of the vessel to result from repairs required from an accident that materially and adversely affect the vessel's seaworthiness or fitness for service, such as a loss of the vessel's primary steering systems or an accidental grounding such as from sinking, grounding, or fire, and not from routine maintenance of the vessel. NMFS would adapt similar vessel loss language from the American Fisheries Act (Public Law 105-277, Title

II of Division C) to address the vessel loss provision for the IFQ Program. The vessel that triggers the vessel repair exemption of this provision must be a commercial fishing vessel that has been previously used to harvest halibut IFQ or sablefish IFQ by the QS holder who is qualified to hire a master and not a second vessel used for some other purposes.

The owner of a lost or damaged vessel (documented or undocumented) is required by USCG regulations to submit U.S. Coast Guard (USCG) Form 2692, Report of Marine Accident, Injury, or Death, to the USCG as specified in 46 CFR 4.05. NMFS would require a QS holder seeking an exemption from the 12-month ownership requirement exemption to submit an Application for IFQ/CDQ Hired Master Permit to NMFS and attach a copy of USCG Form 2692. USCG Form 2692 would support the veracity of the need for the 60 day duration of the repair, or claim of total loss of a vessel. NMFS determined that USCG Form 2692 would best provide evidence of the need for repairs or evidence of total loss of a vessel. The form may not be submitted to the U.S. Coast Guard for the notification of routine maintenance of a vessel because vessel maintenance is not associated with a marine accident. The U.S. Coast Guard requires written reports of accidents whenever an accident involves a U.S vessel, or when the accident occurs upon the navigable waters of the U.S. If USCG Form 2692 is not required to be completed for a vessel at the time of an incident that caused the 60-day duration of repair, then the vessel owner would be required to provide additional documentation to NMFS demonstrating that the vessel meets the requirements of this exception. Documentation of vessel repairs or maintenance that do not result from a vessel accident is not sufficient for authorization of the exemption. If NMFS determines that the documentation fails to

demonstrate that the vessel meets the requirements of this exception, NMFS would provide the applicant with an opportunity to provide supporting evidence. If the applicant's ownership interest is unsubstantiated at the end of the evidence period, NMFS would issue an IAD. The IAD would describe why NMFS is initially denying some or all of an applicant's claim and would provide instructions on how to appeal the IAD to the NAO.

The exemption to the 12-month ownership requirement would allow the QS holder to acquire a 20-percent ownership interest in another vessel temporarily so that the QS holder would not lose the revenue that would be generated by his or her IFQ during the time needed to repair the damaged vessel or replace the lost one. The exemption for loss of or damage to a vessel applies to the 12-month ownership requirement only, and not the 20-percent ownership requirement. If a QS holder's vessel is damaged and undergoing repairs that will take at least 60 days, the QS holder may acquire temporary interest in another vessel in order to hire a master, but that temporary interest must constitute a minimum of 20 percent ownership of the vessel.

For example, if an individual QS holder loses use of his or her vessel (that was previously used to fish IFQ) at any time during 2014, that person would be exempted from the 12-month ownership requirement until December 31 of the following year, 2015. During this time, an individual QS holder may choose to be onboard a vessel to fish his or her own IFQ permit, and not be required to own any interest in the vessel. However, if that individual QS holder chooses to hire a master, he or she would be required to acquire a 20-percent ownership interest in another vessel during the time that his or her IFQ permit is fished by a hired master. The length of time the QS holder would

be able to use the exemption would depend on when during the year the vessel is lost; if the vessel is lost in January of 2014, the QS holder would have almost two years before he or she would have to once again satisfy the 12-month ownership requirement to be able to hire a master. If the QS holder loses the vessel in December of 2014, however, he or she would have less time—little more than a year—before having to satisfy the 12-month ownership requirement.

NMFS notes that in this latter example, if the QS holder loses a vessel in December 2014 and does not acquire a new vessel until June 1, 2015, he or she will have owned the new vessel for only seven months—from June 1 until December 31—before being required to again satisfy the 12-month ownership requirement. Hence, the QS holder would have to wait another five months before hiring a master to fish an IFQ permit on the new vessel. The IFQ season typically opens in March, but the QS holder will not have owned a vessel for the required 12 months until June, three months after the 2015 IFQ season is likely to open. This could delay the QS holder's hiring a master to fish an IFQ permit on the new vessel until some time after the IFQ season has begun.

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 Halibut Act, the FMPs, the national standards and other provisions of the Magnuson-Stevens 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.

The Council recommended this action to the Secretary of Commerce for adoption pursuant to its authority under the Magnuson-Stevens Act and the Halibut Act. An RIR/IRFA for the proposed regulatory amendments describes the management background, the purpose and need for the action, the management alternatives, and the socioeconomic impacts of the alternatives (see ADDRESSES).

The RIR assesses the costs and benefits of available regulatory alternatives. The Council considered all quantitative and qualitative measures and chose a preferred alternative based on those measures that maximize net benefits to affected individuals and communities under the halibut and sablefish IFQ Program.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA prepared for the action assesses potential impacts on small entities for purposes of the Regulatory Flexibility Act. The Council reviewed multiple alternatives for the action, including a “no action” alternative and a preferred alternative in an IRFA that describes the potential adverse impacts of the proposed alternatives on small entities.

The objective of the proposed action is to amend halibut and sablefish IFQ regulations to implement Council intent for the hired skipper privilege. The legal basis for the proposed action is explained in the preamble of this proposed rule. In summary, NMFS manages the North Pacific halibut fisheries in Convention waters under the authority of the Halibut Act and the sablefish fisheries in the waters of the EEZ off Alaska under the authority of the Magnuson-Stevens Act. Regulations at 50 CFR 300.60 through 300.65 govern the Pacific halibut fisheries in the waters of the United States. The annual Pacific halibut management measures for 2011 were published in the Federal

Register on March 16, 2011 at 76 FR 14300. Regulations at 50 CFR 679.1 through 50 CFR 679.28 govern the sablefish fishery. Regulations at 50 CFR 679.30 through 50 CFR 679.45 govern the halibut and sablefish IFQ and Community Development Quota (CDQ) programs.

For reasons described below, NMFS defines all halibut and sablefish vessels as small businesses for the purpose of this analysis. This proposed action could directly regulate as many as 1,307 entities holding halibut and sablefish QS, which are eligible to hire skippers; however, the actual number of such entities that may be directly regulated is expected to be much smaller, because many of these participants are currently acting in compliance with Council intent and are onboard the vessel when their IFQ is harvested. Only 32 percent of halibut permit holders and 61 percent of sablefish permit holders hired masters in 2010. It is unknown to what extent this action may restrict some eligible QS holders from hiring a skipper in the future, but at most, 214 halibut IFQ hired masters and 118 sablefish IFQ hired masters who were hired in 2010 also would be affected by this action.

The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from certain restrictions placed on those vessels. The IFQ Program restricts the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to 1 percent of all IFQ total allowable catch (TAC) issued for halibut in Area 2C (44,000 net lb in 2010); the same percentage cap is set for sablefish in Southeast Alaska (56,879 round lb in 2010). The vessel cap is 0.5 percent of the IFQ issued for halibut in all areas (201,490 net lb in 2010); the same percentage cap is set for sablefish in all Alaska areas (248,767 round lb in 2010). NMFS annually publishes

standard prices for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating IFQ holder cost recovery fee liabilities. In 2010, the most recent year for which complete price data are available, the ex-vessel price per pound for halibut in Area 2C and in all Alaska areas was \$5.57 and \$5.22, respectively; and for sablefish in Southeast and all Alaska areas it was \$4.35 and \$4.09, respectively (December 10, 2010: 75 FR 76957). The harvest limits and prices, identified above, reflect the maximum ex-vessel gross revenues in 2010 accruing to a vessel operator who owned the maximum permissible amount of QS units for halibut (\$245,000 in Area 2C and \$1,090,000 in Area 3A) and sablefish (\$247,000 in Southeast and \$993,000), respectively. Although some halibut and sablefish IFQ operations participate in other revenue generating activities, the halibut and sablefish IFQ fisheries probably represent their largest single source of annual gross receipts.

Based upon available data and more general economic activity information on vessels in these IFQ fisheries, no vessel subject to these restrictions could have landed more than \$4 million in combined gross receipts in 2010. Therefore, all halibut and sablefish vessels are assumed to be small entities, for purposes of the IRFA. However, this simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations. No reliable data exists on vessel affiliation. NMFS does not have gross revenue data for halibut and sablefish IFQ operations. The best available data is from the 2011 Stock Assessment and Fishery Evaluation (SAFE) report, which contains data on revenues from all sources for operations harvesting groundfish in 2010. Based on data on the low revenues for average operations harvesting groundfish in 2010, 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 requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of IFQ species constitutes a key element of the halibut and sablefish IFQ Program. The Council remains concerned about alleged abuses of the regulatory provision allowing vessel owners who received QS at initial allocation to hire masters to harvest their IFQ permits without being onboard the vessel. The objective of this proposed action is to improve implementation of the owner-on-board provisions of the original program, while providing an opportunity to hire a master when appropriate.

The RIR/IRFA notes that none of these small entities would be adversely impacted by this action.

The RIR reviews Alternative 1, the status quo, and Alternative 2, the preferred alternative. Alternative 1 would maintain the current 20-percent vessel ownership requirement for catcher vessel QS holders to hire a master to harvest IFQ permits. Current regulations do not require that QS holders establish that they owned their vessel for any specified period of time prior to their submitting an application to use a hired master. Alternative 2, the preferred alternative, would require that QS holders have owned 20-percent interest in their vessel for a minimum of 12 consecutive months before NMFS may approve an application to employ a hired master to fish the QS holder's IFQ permits. This alternative may result in a loss of fishing opportunity to harvest IFQ pounds for the hired masters; the proposed changes from this alternative would have

distributional effects on both parties, which will not affect production from the fisheries noticeably. Net benefits to the nation may increase, to the extent that the Council's objectives for an "owner-operator" fishery are more fully realized through this action.

The Council also considered other options, ranging from 6 to 24 months, for the minimum amount of time that QS holders would be required to demonstrate a 20-percent ownership interest in a vessel. In recommending the preferred alternative, the Council determined that the 12-month minimum ownership interest best met its objectives for the action because it would demonstrate a sufficient commitment by a QS holder to vessel ownership while also providing operational flexibility for a QS holder to adapt to changing vessel needs or business plans.

Collection of Information

OMB Control No. 0648-0272

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648-0272. Public reporting burden for Application for IFQ/CDQ Hired Master Permit is estimated to average 30 minutes per response, including 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 (enter office name) at the ADDRESSES above, and e-mail to OIRA_Submission@omb.eop.gov , or fax to 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.

No additional recordkeeping and reporting requirements are associated with this action. NMFS is not aware of any other federal rules that would duplicate, overlap, or conflict with this action.

According to NOAA Administrative Order (NAO) 216–6, including the criteria used to determine significance; this rule would not have a significant effect, individually or cumulatively, on the human environment beyond those effects identified in the previous National Environmental Protection Act (NEPA) analysis. An environmental impact statement (EIS; dated December 1992) was prepared for the final rule implementing the original halibut and sablefish IFQ and CDQ programs (58 FR 59375; November 9, 1993). The scope of the EIS includes the potential environmental impacts of this proposed rule because the EIS analyzed the original IFQ Program, which included analysis of biological and socioeconomic impacts on the environment, affected fishermen, and affected communities. Based on the nature of the proposed rule and the previous environmental analysis, this proposed rule is categorically excluded from the

requirement to prepare an environmental assessment or EIS, in accordance with Section 5.05b of NAO 216–6. Copies of the EIS for the original halibut and sablefish IFQ and CDQ programs and the categorical exclusion for this action are available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 26, 2012.

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, 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 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 § 679.42,

a. Revise paragraphs (i)(1)(i), (i)(1)(ii), (j)(1)(i), and (j)(1)(ii); and

b. Add paragraphs (i)(1)(iv), (i)(1)(v), (i)(6), (i)(7), (j)(i)(iv), (j)(1)(v), (j)(10) and (j)(11) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(1) * * *

(i) For a documented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard, and any other documentation that shows the individual as an owner indicating percentage ownership; or

(ii) For an undocumented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by a State of Alaska license or registration, and any other documentation that shows the individual as an owner indicating percentage of ownership; and

* * * * *

(iv) NMFS review of application for exemption —(A) Initial evaluation. The Regional Administrator will evaluate an application for a hired master submitted in accordance with paragraphs (i)(1), (i)(6), and (i)(7) of this section. An applicant who fails to submit the information specified in the application for a hired master will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) Initial administrative determinations (IAD). The Regional Administrator will prepare and send an IAD to an individual entity submitting an application for a hired master submitted in accordance with paragraphs (i)(1), (i)(6), and (i)(7) of this section if the Regional Administrator determines that the information required to be submitted to NMFS is deficient or if the applicant fails to submit the required information. The IAD will indicate the deficiencies with the information submitted. An applicant who receives an IAD may appeal under the appeals procedures set out at §679.43.

(v) Upon request by the Regional Administrator or an authorized officer, a person must submit additional written documentation necessary to establish the required minimum 20-percent interest in the vessel for the previous 12 months .

* * * * *

(6) In the event of the total loss of a vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the owner of such vessel may remain exempt under paragraph (i)(1) of this section until December 31 of the year following that which the vessel was lost or damaged, provided that such loss or irreparable damage was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct or negligence of the owner or agent.

(i) The lost vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (i)(1) of this section.

(ii) As part of the application for exemption, the owner of the lost vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

(7) In the event of repairs to a vessel owned by a person who qualifies for the exemption in paragraph (i)(1) of this section, the owner of such vessel may remain exempt under paragraph (i)(1) of this section until December 31 of the year following that which the vessel was damaged, provided that the necessary repairs require at least 60 days to be completed.

(i) The temporary disablement of the vessel must result from repairs required from an accident that materially and adversely affected the vessel's seaworthiness or fitness for service, such as from sinking, grounding, or fire.

(ii) The damaged vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (i)(1) of this section.

(iii) The owner of the damaged vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

(j) * * *

(1) * * *

(i) For a documented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard, and any other documentation indicating percentage ownership that shows the corporation, partnership, association, or other non-individual entity as an owner and, if necessary to prove the required ownership, other written documentation; or

(ii) For an undocumented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by a State of Alaska vessel registration, and any other documentation indicating percentage of ownership that shows the corporation, partnership, association, or other non-individual entity as an owner and, if necessary to prove the required ownership, other written documentation; and

* * * * *

(iv) NMFS review of application for exemption—(A) Initial evaluation. The Regional Administrator will evaluate an application for a hired master submitted in accordance with paragraphs (j)(1), (j)(10), and (j)(11) of this section. An applicant who fails to submit the information specified in the application for a hired master will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) Initial administrative determinations (IAD). The Regional Administrator will prepare and send an IAD to a non-individual entity submitting an application for a hired master and the additional documentation required in paragraphs (j)(1), (j)(10), and (j)(11) of this section if the Regional Administrator determines that the information required to be submitted to NMFS is deficient or if the applicant fails to submit the required information. The IAD will indicate the deficiencies with the information submitted. An applicant who receives an IAD may appeal under the appeals procedures set out at §679.43.

(v) Upon request by the Regional Administrator or an authorized officer, a person must submit additional written documentation necessary to establish the required 20-percent interest for the previous 12 months in the vessel.

* * * * *

(10) In the event of the total loss of a vessel owned by a non-individual entity that qualifies for the exemption in paragraph (j)(1) of this section, the owner of such vessel may remain exempt under paragraph (j)(1) of this section until December 31 of the year following that in which the vessel was lost or damaged, provided that such loss or irreparable damage was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct or negligence of the owner or agent.

(i) The lost vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (j)(1) of this section.

(ii) The owner of the lost vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

(11) In the event of repairs to a vessel owned by a non-individual entity that qualifies for the exemption in paragraph (j)(1) of this section, the owner of such vessel may remain exempt under paragraph (j)(1) of this section until December 31 of the year following that in which the vessel was damaged, provided that the necessary repairs require at least 60 days to be completed.

(i) The temporary disablement of the vessel must result from repairs required from an accident that materially and adversely affected the vessel's seaworthiness or fitness for service, such as from sinking, grounding, or fire.

(ii) The damaged vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (j)(1) of this section.

(iii) The owner of the damaged vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

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