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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 120416009-4095-02]

RIN 0648-BB78

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS adopts a final rule that modifies the vessel ownership requirement for an exemption from the owner-on-board requirement in the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut and sablefish fisheries off Alaska. This rule imposes a 12-month vessel ownership requirement on initial individual recipients of quota share (QS) who wish an exemption from the owner-on-board requirement and who wish to use a hired master to harvest their IFQ. For the 12-month period prior to applying to use a hired master, an individual QS holder must own a minimum 20-percent interest in the vessel that the hired master will use to fish the IFQ on behalf of the individual QS holder. The rule temporarily suspends the 12-month vessel ownership requirement for an initial individual recipient of QS whose vessel has been totally lost, irreparably damaged, or so damaged that the vessel requires at least 60 days

for repairs. This action is intended to maintain a predominantly owner-operated fishery in the Pacific halibut and sablefish fisheries. 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. This rule will go into effect 13 months after the publication of the rule in the Federal Register.

DATES: Effective [INSERT DATE 390 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except for § 679.5(l)(7)(i), which will be effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: An electronic copy of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA or Analysis) prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <https://alaskafisheries.noaa.gov/cm/analyses/>. An electronic copy of the RIR/IRFA dated November 9, 2005, prepared for the prior action on the same subject is also at <https://alaskafisheries.noaa.gov/cm/analyses/>. An electronic copy of the Proposed Rule (77 FR 65843, October 31, 2012) may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <https://alaskafisheries.noaa.gov/regs/summary.htm>.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by e-mail to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or fax to

(202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Mary Alice McKeen, 907-586-7228.

SUPPLEMENTARY INFORMATION: This rule amends the vessel ownership requirement for initial individual recipients of QS in the IFQ Program who wish to hire a master to harvest their IFQ rather than be on board the vessel themselves for the harvest of their IFQ. IFQ Program regulations are located primarily at 50 CFR 679.40 to 679.45. This rule also modifies regulations at § 679.5 that specify reporting requirements for Registered Buyers who receive and purchase landings of halibut and sablefish. This modification corrects an unintended error in a final rule recently promulgated by NMFS.

Under the current regulations of the IFQ Program, initial recipients of catcher vessel QS may receive an exemption from the owner-on-board provision, and may hire a master to harvest their annual IFQ, if those initial recipients own a minimum 20-percent interest in the vessel that the hired master will use (§ 679.42(i)(1)). This rule adds a 12-month vessel ownership requirement for initial individual recipients of catcher vessel QS. This rule provides that for the 12-month period prior to applying to use a hired master, an individual QS holder must own a minimum 20-percent interest in the vessel that the hired master will use to harvest the IFQ. This rule temporarily suspends the 12-month vessel ownership requirement for an individual QS holder who loses a vessel. This rule does not apply to individual QS holders in Southeast Alaska (halibut QS for IFQ regulatory Area 2C and sablefish QS for the IFQ regulatory area east of 140° long.) because they may not hire a master to harvest their IFQ.

NMFS published a proposed rule with the 12-month vessel ownership provision in the Federal Register on October 31, 2012 (77 FR 65843). The 30-day comment period

on the proposed rule ended on November 30, 2012. NMFS received six comment letters by November 30, 2012, and one comment letter on December 5, 2012. NMFS considered these 7 comment letters, which contained 22 unique comments. These comments are summarized and responded to in the “Comments and Responses” section of this preamble. In response to public comments on the proposed rule and further review by NMFS, NMFS changed the regulatory text between the proposed rule and this final rule. These changes are described in the “Changes From the Proposed Rule” section of this preamble.

#### Background

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (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. The IPHC regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce.

Under the Halibut Act, the North Pacific Fishery Management Council (Council) may recommend that the Secretary of Commerce adopt additional management regulations for the halibut fishery in Alaska waters that are not in conflict with regulations adopted by the IPHC (16 U.S.C. 773c(c)). The Council exercised this authority through development of the IFQ Program and continues to exercise this authority when it recommends changes to the IFQ Program.

NMFS manages sablefish as a groundfish species under the Fishery Management

Plan for Groundfish of the Gulf of Alaska (GOA groundfish FMP) and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI groundfish FMP). The fishery management plans are 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. After consulting with the Council, NMFS establishes an annual total allowable catch (TAC) for each groundfish species, including sablefish, in the Gulf of Alaska and BSAI. NMFS establishes TACs and other groundfish harvest specifications 2 years in advance. For an example, see the Groundfish Harvest Specifications for 2013 and 2014 for BSAI (78 FR 13813, March 1, 2013).

#### Individual Fishing Quota (IFQ) Program

In 1995, NMFS implemented the IFQ Program under the authority of the Magnuson-Stevens Act and the Halibut Act (58 FR 59375, November 9, 1993). The IFQ Program applies to the fixed-gear commercial halibut and sablefish fisheries in the Exclusive Economic Zone off Alaska. Under the IFQ Program, NMFS initially awarded quota share (QS) to applicants that owned or leased vessels from which halibut or sablefish landings occurred in 1988 to 1990 (50 CFR 679.40). A person that received QS as an initial recipient was either an (1) individual or natural person or (2) a non-individual entity or legal person, such as a corporation, partnership, or association.

NMFS initially issued QS in Category A, B, C, and D. Once issued, the category of QS limits how the QS holder can use the QS. Category A QS is catcher/processor QS. Category A QS authorizes the QS holder to harvest and process the pounds specified on the IFQ permit from a vessel of any length. Category A QS has no owner-on-board requirement. Category B, C, and D QS is catcher vessel QS. Category B, C, and D QS

authorizes the QS holder to catch or harvest the pounds specified on the QS holder's IFQ permit from vessels within specific categories of vessel length (see § 679.42(a)(5) for additional detail). This rule applies only to catcher vessel QS: Category B, C, and D QS. When this preamble refers to QS, it means catcher vessel QS—Category B, C and, D QS—unless otherwise indicated.

Each year, in accordance with the Halibut Act and the Magnuson-Stevens Act, NMFS establishes a halibut catch limit and sablefish TAC. NMFS divides among QS holders the portion of the halibut catch limit and sablefish TAC that is allocated to the fixed gear fishery (§ 679.40). NMFS translates each QS holder's units into a number of halibut or sablefish pounds that the QS holder may harvest. This number of pounds is the Individual Fishing Quota or IFQ belonging to the QS holder. With a few exceptions not relevant to this rule, NMFS sends every QS holder an annual IFQ permit. The IFQ permit authorizes the IFQ permit holder to harvest a specified number of halibut or sablefish pounds in a particular year. The IFQ may only be harvested in the regulatory area designated on the IFQ permit. If the IFQ permit is for a catcher vessel, the IFQ permit specifies the maximum length of the catcher vessel from which the IFQ may be fished.

#### Owner-on-board Requirement in the IFQ Program

The owner-on-board requirement is a central feature of the IFQ Program. The IFQ regulations require individuals who hold catcher vessel QS to be on board the vessel at all times during an IFQ fishing trip and to be present during the landing at the end of the trip (§ 679.42(c)). The purpose of the owner-on-board requirement is to maintain the predominantly owner-operator character of the IFQ fisheries and to ensure that catcher

vessel QS remains largely in the hands of active fishermen.

In designing the IFQ Program, however, the Council exempted initial individual recipients of catcher vessel QS from the owner-on-board requirement, as long as the initial individual recipients owned the vessels from which their IFQ was fished (§ 679.42(i)). The exemption from the owner-on-board requirement did not, however, apply to individuals who received QS for Southeast Alaska: halibut QS for IFQ regulatory Area 2C and sablefish QS for the IFQ regulatory area east of 140° long. (§ 679.42(i)(3)).

The Council also exempted non-individual entities that were initial recipients of QS from the owner-on-board requirement, as long as they owned the vessel from which the IFQ was fished (§ 679.42(j)). Unlike individuals, non-individual entities do not have the option of being “on the boat” while their IFQ is fished. That is because non-individual entities are legal entities only. A corporation cannot get on a vessel. If non-individual entities are to harvest their IFQ at all, they must use a hired master or hired skipper. Thus, non-individual entities must own the vessel that the hired master will use simply as a condition of being able to harvest their QS and associated IFQ at all.

For all initial recipients of QS—individuals and non-individuals—the Council recommended, and NMFS adopted, a regulation in 1999 that specified a minimum percentage of ownership that an initial recipient must have to show that they “owned” a vessel that a hired master will use (64 FR 24960, May 10, 1999). Under current regulations, an initial recipient must own a minimum 20-percent ownership interest in the vessel that a hired master will use on behalf of an initial recipient. But current regulations do not specify a duration—for how long—an initial recipient must have that 20-percent vessel ownership interest.

## Acquiring QS by Transfer in the IFQ Program

The IFQ Program has two ways to acquire QS: (1) by initial issuance and (2) by transfer. Only initial recipients of QS are exempt from the owner-on-board requirement by owning the vessel that their hired master will use. Under current regulation, an initial recipient may be exempt from the owner-on-board requirement for all QS that an initial recipient holds: whether the initial recipient acquired the QS by initial issuance or by transfer. NMFS has proposed a regulation that would prevent an initial recipient from using a hired master to harvest QS that an initial recipient acquired by transfer after February 12, 2010, with a limited exception for small amounts of QS (78 FR 24707, April 26, 2013). The IFQ Program restricts who may acquire QS by transfer. If an individual wishes to acquire QS by transfer, the individual must be an initial recipient of QS or an individual who has 150 days experience in a harvesting crew in a commercial fishery in the United States (§ 679.2, § 679.42(g)).

Except for Community Quota Entities, which are discussed in Comment 10, if a non-individual entity, such as a corporation or a partnership, wishes to acquire QS by transfer, the non-individual entity must have been an initial recipient of QS. Furthermore, if a non-individual entity undergoes a change, and a change includes the addition of any shareholder to a cooperation or any partner to a partnership, the non-individual entity cannot acquire additional QS by transfer and loses the ability to use a hired master for all of its QS (§ 679.42(j)). The result of the restrictions in current regulations is that new entrants into the IFQ fisheries—persons who did not receive QS at the inception of the IFQ Program—must be individuals with substantial crew experience in a domestic commercial fishery.

By limiting the exemption from the owner-on-board requirement to initial recipients and by requiring that new QS holders have crew experience, the Council anticipated that all QS would eventually be held by active fishermen who would be subject to the owner-on-board requirement. The Council anticipated that initial recipients who were individuals would retire from the fishery and transfer their QS. The Council took this action because it concluded that initial individual recipients of QS were hiring masters instead of retiring from the fishery.

#### Rationale for this Final Rule

This rule results from a long-standing commitment by the Council to enforce a feature of the IFQ Program that has been present since the beginning of the IFQ Program, namely that if an individual QS holder wishes an exemption from the owner-on-board requirement, the QS holder must have an ownership interest in the vessel that the hired master will use. The Council concluded that the current IFQ regulations did not prevent initial individual recipients of QS from circumventing the intention of the vessel ownership requirement and from hiring masters to harvest their IFQ from vessels in which individual QS holders had an ownership interest only for the duration of an IFQ trip.

This rule specifies the duration of vessel ownership interest that an individual QS holder must have if the QS holder wishes an exemption from the owner-on-board requirement. An initial individual recipient of QS must own a minimum 20-percent ownership interest in the vessel that the hired master will use to fish the IFQ for the 12-month period prior to when the individual QS holder applies to use a hired master. If an individual QS holder experiences a vessel loss, this rule suspends the 12-month vessel

ownership requirement until December 31 of the year following the vessel loss. This rule suspends the vessel ownership requirement in three situations of vessel loss: a total, physical loss of a vessel; a vessel that has been irreparably damaged; and a temporary loss or temporary disablement of a vessel, meaning an accident that materially and adversely affects the vessel's seaworthiness or fitness for service and requires at least 60 days of repairs.

The preamble to the proposed rule contains further explanation of the need for this action, previous actions on the same subject, and the rationale for this rule (77 FR 65843, October 31, 2012). NMFS' responses to comments also provide additional detail on this action.

#### Terminology

This preamble refers to "the individual QS holder" as the individual who is subject to the owner-on-board requirement and who may be exempt from the owner-on-board requirement by owning the vessel that the hired master will use. To apply for a hired master permit, the QS holder must have received an IFQ permit. However, this preamble generally uses the term individual QS holder rather than individual IFQ permit holder.

This preamble uses the terms "hired skipper" and "hired master" interchangeably as is common practice by participants in the IFQ fishery. The Analysis for this action uses the term "hired skipper." The proposed rule and final rule text use the term "hired master." A hired skipper or hired master is the person who is named on a hired master permit. The hired master permit enables the hired master to harvest the halibut or sablefish on the IFQ permit that NMFS has issued to the QS holder. The QS holder

applies for the hired master permit, designates the individual who will be the hired master, and designates the vessel that the hired master will use.

This preamble uses the term “vessel loss” to refer to the three types of vessel loss described in the preceding section.

#### Changes From the Proposed Rule

This section explains the 16 changes in the regulatory text from the proposed rule to the final rule. Changes 14 and 15 were made in response to public comments. The other changes make minor clarifications in the text of the final rule and correct an unintended error in a final rule recently promulgated by NMFS. This section also clarifies a statement in the preamble to the proposed rule regarding the submission of United States Coast Guard Form 2692 to report a marine casualty.

The changes from the proposed rule text in the final rule text are as follows.

1. The final rule clarifies the role of additional written documentation in § 679.42(i)(1)(i) and (ii). The final rule clarifies that if an individual QS holder wishes an exemption from the owner-on-board requirement, the formal ownership documents for the vessel that the hired master will use must list the individual QS holder as an owner of the vessel. If these formal documents do not show the individual QS holder as owning the required 20-percent ownership for 12 months, the individual QS holder may prove that fact with additional written documentation. The proposed rule at § 679.42(i)(1)(i) stated that for a documented vessel, the individual QS holder must have “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.”

The proposed rule at § 679.42(i)(1)(ii) stated that for an undocumented vessel, which means a vessel that is not federally documented, the individual QS holder must have “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.” This language does not clearly state what must be on the Abstract of Title or State license and what may be on other written documentation.

The preamble to the proposed rule clearly stated that the individual QS holder must be an owner on the documents of record showing vessel ownership—the Abstract of Title for federally documented vessels and the State license for State-documented vessels—and that the individual QS holder could submit additional written documentation only if those documents did not show the required 20-percent ownership interest for the 12-month ownership period: “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” (77 FR 65847, October 31, 2012).

Accordingly, NMFS clarifies the final rule in § 679.42(i)(1)(i) and (ii) and conforms it to the preamble to the proposed rule and the current regulation. The final rule provides that an individual QS holder may claim an exemption from the owner-on-board requirement if the individual QS holder is an owner of a documented vessel “as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the individual [QS holder] as an owner and, if necessary to show 20-percent ownership for

12 months, additional written documentation.” With a non-documented vessel, an individual QS holder may claim an exemption from the owner-on-board requirement if the individual QS holder is an owner of the vessel “as shown by a State of Alaska license or registration that lists the individual [QS holder] as an owner and, if necessary to show 20-percent ownership for 12 months, additional written documentation.”

2. The final rule revises the proposed regulatory text at § 679.42(i)(1)(i), § 679.42(i)(1)(ii), and § 679.42(i)(1)(v) by replacing “for the previous 12 months” with “during the 12-month period previous to the application by the individual [QS holder] for a hired master permit.” This change more precisely defines the 12-month period.

3. The final rule revises proposed regulatory text at § 679.42(i)(1)(iv)(B) by replacing the phrase “individual entity” with “individual” because “individual entity” is not a recognized term and is a confusing term.

4. The final rule clarifies that the 12-month vessel ownership requirement applies to all individual QS holders who seek exemption from the owner-on-board requirement based on ownership of a vessel from which their IFQ will be fished. Under current regulation, § 679.42(i)(1) establishes the general requirement that an individual QS holder can be exempt from the owner-on-board requirement by owning 20 percent of the vessel that the hired master will use. Under current regulation, § 679.42(i)(4) states that the exemption in § 679.42(i)(1) is available to an individual that meets the 20-percent vessel ownership requirement by owning an interest in the non-individual entity, such as a corporation, that owns the vessel that the hired master will use. For example, under § 679.42(i)(4), if a corporation is the sole owner of a vessel, and an individual QS holder owns 20 percent of the corporation (typically by owning 20 percent of the shares in a

corporation), the individual QS holder meets the 20-percent vessel ownership requirement and may hire a master to fish IFQ from that vessel.

The proposed rule modified the 20-percent vessel ownership requirement in § 679.42(i)(1) by adding a time requirement to it: the individual QS holder is exempt from the owner-on-board requirement if the individual owns 20 percent of the vessel for the 12-month period prior to when the individual applies for a hired master permit. The proposed rule did not explicitly modify § 679.42(i)(4) to apply the 12-month vessel ownership requirement when an individual QS holder claims an exemption from the owner-on-board requirement by owning an interest in the entity that owns the vessel.

The final rule corrects that omission and revises § 679.42(i)(4). The final rule revises § 679.42(i)(4) by applying the 12-month ownership requirement to individual QS holders who claim an exemption from the owner-on-board requirement by owning an interest in the corporation or other entity that owns the vessel. Under the final rule, those QS holders must show a 20-percent ownership interest in the vessel “during the 12-month period previous to the application by the individual for a hired master permit.” Every part of the rationale in the proposed rule applies with equal force to individual QS holders who claim an exemption from the owner-on-board requirement by owning 20 percent of a vessel in their own name and individual QS holders who claim an exemption by owning an interest in the corporation or partnership that owns the vessel.

5. The final rule changes § 679.42(i)(4) to clarify the provision. The last sentence in § 679.42(i)(4) currently states, “For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, association or other non-individual entity by that individual multiplied by the percentage

of ownership of the vessel by the corporation, partnership, or other non-individual entity.” The final rule revises this sentence in § 679.42(i)(4) to more clearly state whose interest in the vessel must be determined, namely the interest of the individual QS holder, and how to calculate that interest, “For purposes of this paragraph, an individual’s interest in a vessel is determined by the percentage ownership by the individual of a corporation, partnership, association or other non-individual entity that has an ownership interest in the vessel multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other non-individual entity.” For example, under the existing regulation and this final rule, if an individual owns 50 percent of a corporation, and the corporation has a 50 percent ownership interest in the vessel, the individual’s ownership interest in the vessel is .50 multiplied by .50, which means the individual has a .25 or 25 percent ownership interest in the vessel.

6. The final rule clarifies the proposed rule at § 679.42(i)(6) and (7) to state that, in the event of vessel loss and vessel disablement, the QS holder does not have to meet the 12-month vessel ownership requirement but still must meet the 20-percent vessel ownership interest requirement.

The Council clearly stated its intent on this point at its October and November 2007 meetings. The Council motions at both meetings explicitly state that, in the event of a total vessel loss or a vessel needing significant repairs, the QS holder is exempt from the 12-month vessel ownership requirement, but not the 20-percent vessel ownership requirement (Council Minutes, NPFMC website, <http://www.alaskafisheries.noaa.gov/npfmc>). The Analysis states that, in the event of total vessel loss or temporary vessel loss due to repairs, the QS holder would be exempt

from the 12-month vessel ownership requirement, but not the 20-percent requirement. The proposed rule explicitly stated in the preamble: “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.” (77 FR 65847, October 31, 2012).

The text of the proposed rule stated that in the event of total loss or temporary disablement of a vessel, the owner of the vessel “may remain exempt” from the owner-on-board requirement but did not specify completely the terms of the QS holder’s continuing exemption. The Council motions, the Analysis, and the preamble to the proposed rule all clearly state that, in the event that the individual QS holder suffers a total or temporary loss of a vessel, the QS holder’s exemption from the owner-on-board requirement is still conditioned on the QS holder owning a 20-percent interest in the vessel that will fish the QS holder’s IFQ. The final rule corrects the proposed rule on this point.

7. The final rule revises the proposed regulatory text at § 679.42(i)(6) and § 679.42(i)(7) by replacing “owner,” “owner of such vessel,” and “owner of lost vessel” with “individual.” NMFS makes this change because the rule applies to individuals who are initial recipients of QS and because the existing regulatory text uses “individual.”

8. The final rule reorganizes the proposed regulatory text in § 679.4(i)(6) and (i)(7) by adding the phrase “provided the individual meets the following requirements,” and then numbering all the requirements that the individual QS holder must meet,

because the proposed rule included only two of four requirements in the numbered list.

9. The final rule revises the opening phrase in the proposed regulatory text at § 679.42(i)(6) from “[i]n the event of the total loss of a vessel” to “[i]n the event of the total loss or irreparable damage to a vessel,” because the rule applies to situations of a total loss of a vessel and irreparable damage to a vessel. For the same reason, the final rule makes a similar change later in § 679.42(i)(6), namely from “[t]he lost vessel must be” in 679.42(i)(6)(i) to “[t]he lost vessel or irreparably damaged vessel is” in § 679.42(i)(6)(ii).

10. The final rule revises the first sentence of § 679.42(i)(6) and (i)(7) by substituting the phrase “the year following the year in which” for the phrase “the year following the year that which” so that the final rule text states, “the individual may remain exempt [from the owner-on-board requirement] under paragraph (i)(1) of this section until December 31 of the year following the year in which the vessel was [lost, damaged, or disabled].” This change eliminates the grammatically incorrect phrase “the year that which” and makes clear the ending date of the exemption.

11. The final rule revises the proposed regulatory text in § 679.42(i)(6) and (i)(7) from that the lost or disabled vessel must have been used to harvest halibut IFQ or sablefish IFQ “by the owner” to that the vessel must have been used to harvest halibut IFQ or sablefish IFQ “of the individual.” NMFS makes this change because the lost or disabled vessel must have harvested IFQ belonging to the individual QS holder but the IFQ did not have to be harvested by the individual QS holder.

12. The final rule changes the references in the proposed regulatory text at § 679.42(i)(7) from “damaged” vessel to “disabled” vessel to distinguish the disabled

vessel in § 679.42(i)(7) from the irreparably damaged vessel in § 679.42(i)(6).

13. The final rule revises the proposed regulatory text in § 679.42(i)(7) from the requirement that “necessary repairs require at least 60 days to be completed” to the more precise requirement that “[t]he repairs from the accident require at least 60 days to be completed.”

14. The final rule eliminates the phrase “or negligence” from the proposed rule at § 679.42(i)(6). The proposed rule at § 679.42(i)(6) temporarily suspended the 12-month vessel ownership requirement for a QS holder who suffered a total loss of a vessel as long as the QS holder showed that the total loss 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.”

The “or negligence” phrase was the subject of a public comment noted in Comment 11. The commenter noted that the proposed rule limited the ability of a QS holder to use a hired master on a replacement vessel if the QS holder lost their prior vessel due to an act of negligence by the vessel owner or the vessel owner’s agent. The commenter identified vessel groundings as an event that could cause a vessel loss. The commenter stated that most vessel groundings are the result of some level of negligence, that a common cause for grounding is that a skipper or a crew member falls asleep during wheel watches and that it would be difficult for NMFS to determine negligence.

NMFS agrees with the comment. NMFS concludes that the proposed rule mistakenly required NMFS to determine if a QS holder lost a vessel due to negligence and to deny suspension of the 12-month vessel ownership requirement on that basis. Except for the negligence language, the proposed rule incorporated the standard in the

American Fisheries Act (AFA) for determining the cause of a total vessel loss and for limiting the use of a replacement vessel. The AFA did not require NMFS to determine whether negligence was the cause of any loss or damage to an AFA vessel. The standard in the AFA in 2007, when the Council considered this action, was that in the event of a total or constructive loss of an AFA vessel, the owner of the vessel could replace the vessel if the loss was caused by any of the causes that were specifically enumerated, namely “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 if the cause of the vessel loss fell within a remaining catchall category, “any other event not caused by the willful misconduct of the owner or agent” (section 208(g) of the AFA, <https://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa.pdf>).

The Analysis for this action contains no indication that the Council intended that NMFS determine whether a total vessel loss was due to negligence--a determination that could be difficult and time-consuming--and deny the suspension of the 12-month ownership requirement on that basis. The preamble to the proposed rule did not state that NMFS should determine whether a total vessel loss was due to negligence and deny the suspension of the 12-month ownership requirement on that basis. NMFS concludes that the proposed rule text did not comport with Council intent and erroneously contained the negligence limitation. The final rule retains the AFA standard at § 679.42(i)(6)(i), modified for the IFQ context, namely to use a hired master on a replacement vessel, the individual QS holder must show that the “loss or irreparable damage to the vessel was caused by an act of God, an act of war, a collision, an act or omission of a party other than the individual [QS holder] or agent of the individual [QS holder], or any other event

not caused by the willful misconduct of the individual [QS holder] or agent of the individual [QS holder].”

15. The final rule eliminates the changes in the proposed rule to § 679.42(j). Section 679.42(j) is the current regulation that governs the use of IFQ by corporations, partnerships, associations, or other non-individual entities that hold QS. The proposed rule added the 12-month ownership requirement to § 679.42(j). The application of the proposed rule to QS holders that are non-individual entities was the subject of the public comment described in Comment 17. In response to this comment, NMFS reexamined the record of this action. NMFS concluded that the Council did not intend to impose the 12-month vessel ownership requirement on non-individual QS holders, such as corporations, partnerships, or associations. NMFS therefore eliminates the changes to § 679.42(j) in the final rule.

The Analysis for this action states unequivocally that the action approved by the Council imposed the 12-month ownership requirement only on individual QS holders. Section 5 of the Analysis states: “For clarity, QS and QS holders who must hire skippers are not subject to this action or considered in this analysis. Persons who ‘must’ hire skippers are all non-individual QS holders.” Non-individual QS holders means corporations, partnerships, associations, and other legal entities that hold QS. Non-individual QS holders were “not subject to this action or considered in this analysis.”

Individual QS holders were subject to the Council’s action and were considered in the Analysis of this action. Individual QS holders means natural persons that hold QS. Individual QS holders who initially received Quota Share may, but not must, hire a skipper to harvest their annual IFQ. The Analysis showed that from 1995 to 2010, the

number of individual QS holders declined through attrition but the remaining individual QS holders were increasing their use of hired masters (Analysis, Table 3, Table 4, Table 7; see ADDRESSES).

The proposed rule cited this evidence to describe the problem that the rule was designed to solve, “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.” (77 FR 65846, October 31, 2012). This problem statement only applies, and only could apply, to individual QS holders because it is only individual QS holders, who could have retired from active participation and begun hiring skippers to fish their IFQ permits. Non-individual QS holders never were, and never could have been, active in the fishery by fishing their own IFQ permits. Thus, the record of this action does not support applying the proposed rule to QS held by non-individual entities. NMFS also clarifies a statement in the preamble to the proposed rule with regard to Form 2692 and a QS holder’s claim that a vessel is temporarily disabled. Form 2692 is a United States Coast Guard (USCG) form. The current title of Form 2692 is “Report of Marine Casualty.” The former title of Form 2692 was “Report of Marine Accident, Injury or Death.” The preamble to the proposed rule stated: “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” (77 FR 65847, October 31, 2012).

The preamble implies that Form 2692 may not be required in situations where a QS holder claims that he or she cannot meet the 12-month vessel ownership requirement because the QS holder's vessel is temporarily disabled. This is not the case. To prove a claim of temporary vessel disablement under § 679.42(i)(7), the individual QS holder must show that the vessel is disabled "from repairs required by an accident that materially and adversely affected the vessel's seaworthiness or fitness for service." Under USCG regulations at 46 CFR 4.05-1, if a vessel is involved in "an occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route," a vessel operator or other person in charge of the vessel must report the incident to the USCG. The USCG form for reporting marine accidents is Form 2692: <http://marineinvestigations.us>. Thus, although it is true that a vessel operator does not have to report all accidents to the USCG, a vessel operator or other person in charge of a vessel does have to report to the USCG on Form 2692 all accidents that constitute a "temporary vessel disablement" under this rule. To prove a claim of temporary vessel disablement, the individual QS holder must submit to NMFS a copy of Form 2692 that has been submitted to the USCG concerning the accident.

NMFS notes that if an individual submits to NMFS a copy of Form 2692 that has been submitted to the USCG, that form alone does not show that the individual QS holder meets the requirements in the rule to show that a vessel is temporarily disabled. The individual QS holder must also submit documentation that the accident will require, or has required, at least 60 days of repairs.

16. The final rule modifies regulations at § 679.5(l)(7)(i) to correct reporting requirements for Registered Buyers who receive and purchase landings of sablefish or

halibut or Community Development Quota (CDQ) halibut. The regulations at § 679.5(l)(7)(i) require Registered Buyers to annually submit an IFQ Buyer Report to NMFS. The information submitted on IFQ Buyer Reports is used to calculate and assess fees to recover the costs of managing and enforcing the IFQ Program from fishery participants (§ 679.43). NMFS also uses information submitted on IFQ Buyer Reports to calculate and assess observer deployment fees for the North Pacific Groundfish Observer Program (§ 679.55). These reporting requirements were promulgated in a 2012 observer program final rule (77 FR 70062, November 21, 2012). NMFS inadvertently revised these reporting requirements in a final rule to implement a halibut catch sharing plan for guided sport and commercial fisheries in Alaska (78 FR 75844, December 12, 2013). The halibut catch sharing plan final rule incorrectly removed the requirement for Registered Buyers of landings of CDQ halibut to submit an IFQ Buyer Report. The halibut catch sharing plan final rule also incorrectly revised regulations specifying the information that must be included on an IFQ Buyer Report and the methods for submitting the report to NMFS. This final rule revises § 679.5(l)(7)(i) to correct these inadvertent errors.

#### Comments and Responses

NMFS received 7 letters that contained 22 comments on the proposed rule.

Comment 1. One commenter supports the proposed rule. The commenter supports the Council's goal of preserving the historical character of the commercial Pacific halibut and sablefish fisheries as owner/operator fisheries and believes the proposed rule is an effective way to promote that goal.

Response. NMFS notes this support.

Comment 2. The commenter asserts that the Federal system of fishery management is a fraud and does not benefit the public who are the real owners of these fish.

Response. This comment does not specifically address the proposed rule. The issue of the overall validity of Federal management of marine resources is outside the scope of this action. The commenter raises no relevant issues or concerns that were not addressed in the preamble to the proposed rule or the Analysis prepared for this action

Comment 3. The proposed rule accomplishes little in light of recent Council action that limits the exemption that initial individual recipients have from the owner-on-board requirement for QS that they acquire after February 12, 2010. This other Council action violates the American with Disabilities Act.

Response. The commenter is correct that the Council has recommended, and NMFS has recently proposed, a rule that largely eliminates the exemption from the owner-on-board requirement for QS that initial individual QS recipients acquire by transfer after February 12, 2010 (78 FR 24707, April 26, 2013). NMFS will consider comments that it receives on that proposed rule when it responds to comments on that proposed rule.

NMFS agrees that this other proposed rule, if adopted, would prevent initial individual QS recipients from expanding the amount of QS that is subject to an exemption from the owner-on-board requirement. This other proposed rule, however, does not obviate the need for this rule. First, the other action is a proposed, not a final, rule. Second, the other action does not affect in any way QS that initial individual recipients of QS acquired on or before February 12, 2010, either by initial issuance or

transfer. Without the rule that is the subject of this action, for all QS acquired on or before February 12, 2010, an initial individual recipient of QS could still use a hired master to harvest that QS from a vessel in which the QS holder had only a temporary ownership interest. With the rule that is the subject of this action, except for situations of total or temporary vessel loss, an initial individual QS holder who wishes an exemption from the owner-on-board requirement for any QS that the individual holds must maintain a minimum 20-percent ownership interest in the vessel that the hired master will use for the 12-month period before the individual applies to use a hired master. The effect of this rule is separate and distinct from the action that was the subject of this comment.

Comment 4. The proposed rule does very little to promote the movement of QS from the first-generation fishing families to Community Quota Entities or second-generation fishermen.

Response. The rule gives initial individual recipients of QS a choice among three responses to this rule: 1) the individual QS holder harvests his or her IFQ by being on board the vessel; 2) the individual QS holder harvests his or her IFQ through a hired master and maintains a 20-percent ownership interest in the vessel for the 12 months before hiring the master; or 3) the individual QS holder transfers his or her QS. Any of these actions by individual QS holders represents an improvement over the status quo and furthers an objective of the Council in taking this action.

To the extent that individual QS holders choose the first alternative, and harvest their IFQ by being on board the vessel, this furthers the Council's objective of compliance with the owner-on-board requirement in the IFQ fisheries. To the extent that individual QS holders choose the second alternative, and maintain the required vessel

ownership interest, this promotes the Council's objective that QS holders have a meaningful interest in the vessel from which their IFQ is fished as a condition for using a hired master. To the extent that individual QS holders choose the third alternative, and transfer QS, this increases the opportunity for Community Quota Entities (CQEs) and individuals with substantial crew experience to acquire QS because CQEs and individuals with substantial crew experience meet the requirements in regulation to receive QS by transfer. NMFS notes that if a CQE acquires QS, the QS will be fished by a resident of a small, rural community that the CQE represents. NMFS examines CQEs further in Comment 10.

Comment 5. The proposed rule is like requiring a homeowner to own a new home for 12 months before moving into it.

Response. Under this rule, an initial individual recipient of QS may fish his or her IFQ from any vessel, including a vessel in which the individual has no ownership interest, as long as the individual is on board the vessel for the entire trip and landing. Thus, for the first 12 months that an individual owns a 20-percent interest in a vessel, the individual can fish his or her IFQ from that vessel, as long as the individual is on board the vessel. If the individual QS holder does not want to harvest IFQ from a vessel he or she has owned for 12 months, and does not want to be on board a new vessel, the individual has a transferable asset, namely QS, an asset that the individual received as an initial recipient and that the individual may transfer for value.

Comment 6. The proposed rule makes it difficult for QS holders to acquire a new vessel by purchase or by construction because the QS holder cannot use that new vessel to fish his or her IFQ for 12 months. The proposed rule makes it difficult to obtain

financing for a new vessel because the QS holder cannot use that new vessel to fish his or her IFQ for 12 months.

Response. An initial individual recipient of QS may fish his or her IFQ from any vessel for any reason, as long as the individual QS holder is on board the vessel during the trip and landing. If the ability to use a vessel immediately to fish IFQ is a key to financing purchase of a new vessel, the individual QS holder can use a new vessel immediately by being on board the vessel during the harvest of the IFQ.

If the individual is unwilling or unable to be on board the vessel, this suggests that the individual has ceased active participation in the fishery. When an individual is no longer an active participant in the IFQ fishery, the Council intended that person would transfer his or her QS and, in that way, allow future generations to participate in the commercial harvest of Pacific halibut and sablefish in Alaska. If the proposed rule causes QS holders who are no longer active fishermen to divest themselves of QS, that is what the Council intended.

Comment 7. The proposed rule is an attempt to cause well-meaning fishing families to sell out.

Response. NMFS disagrees. As noted, the proposed rule gives initial individual recipients of QS a choice: 1) harvest their IFQ by being on board the vessel; 2) harvest their IFQ through a hired master and maintain a 20-percent ownership interest in the vessel for the 12 months prior to using the hired master; 3) transfer their QS. If the QS holder chooses to transfer QS, the QS holder can transfer it to a family member, as long as the family member is eligible to receive QS by transfer. To receive QS by transfer, an individual either must have initially received QS or must have 150 days experience

working as part of a harvesting crew in any U.S. commercial fishery, a requirement that favors fishing families. The QS holder may transfer their QS to a family member on terms that the QS holder chooses: as a gift, at a discounted price, or at full-market value.

Comment 8. The proposed rule discriminates against initial recipients. The proposed rule does not apply to second generation QS holders.

Response. The commenter is correct that the proposed rule only applies to first-generation QS holders, or initial individual recipients of QS, because initial individual recipients are exempt from the owner-on-board requirement by owning the vessel from which their IFQ will be harvested. This rule tightens the vessel ownership exemption by requiring that initial individual recipients own the vessel for 12 months prior to using a hired master. Individuals who are second-generation QS holders are never exempt from the owner-on-board requirement based on vessel ownership. Therefore, the proposed rule does not, and actually could not, apply to them.

Comment 9. The proposed rule is an attempt to prevent QS holders from marketing quota to different vessels.

Response. NMFS agrees that the rule seeks to prevent individuals from marketing their QS to different vessels if, by that, the commenter means that a QS holder will use hired masters to harvest IFQ on a number of different vessels in which the QS holder has only a short-term ownership interest, such as an ownership interest for only the duration of the IFQ trip. If an individual QS holder has a substantial, long-term interest in a vessel, which the Council specified as a 20-percent ownership interest for 12 months, the proposed rule allows the QS holder to “market” his or her QS to that vessel.

Comment 10. The proposed rule does not apply to Community Development

Quota (CDQ) groups or Community Quota Entities (CQEs). CDQ groups and CQEs have an unfair financial advantage over other QS holders because CDQ groups and CQEs are tax-exempt.

Response. The CDQ Program was established in 1992 (57 FR 54936, November 23, 1992). The CDQ groups are six non-profit corporations that represent one or more communities in western Alaska. CDQ groups do not receive QS. CDQ groups do receive an annual allocation of Pacific halibut, sablefish, and other species in the BSAI. CDQ groups use the revenue derived from the harvest of their fisheries allocations to fund economic development activities and provide employment opportunities for the communities they represent (77 FR 6492, February 8, 2012).

CQEs are non-profit corporations that may acquire halibut QS by transfer. CQEs represent one or more small, rural communities that are located adjacent to the coast of the Gulf of Alaska. Since NMFS began issuing QS in 1995, the amount of QS and the number of resident QS holders has declined substantially in these communities. The purpose of CQEs is to minimize the adverse, economic impact of the IFQ Program on these communities and to provide the opportunity for the sustained participation of these communities in the IFQ fisheries. NMFS adopted the CQE rule in 2004 (69 FR 23681, April 30, 2004). If a CQE acquires QS, it must harvest its IFQ through a resident of the community that the CQE represents (50 CFR 679.41(c)(10)). Twenty-nine CQEs have formed representing 30 communities. Only two CQEs hold any QS. For additional detail on CQE holdings, see <https://alaskafisheries.noaa.gov/ram/>.

The commenter is correct that this rule does not apply to CDQ groups and CQEs. This rule applies to individual QS holders to prevent these QS holders from using hired

masters to harvest their QS based on short-term ownership of vessels that the hired masters are using. CDQ groups and CQEs are non-profit corporations. CDQ groups must use hired masters to harvest fish on their behalf. CQEs must lease their IFQ to community residents. Neither entity is causing the problem that this rule seeks to solve.

The commenter is also correct that CDQ groups and CQEs are non-profit corporations that are tax-exempt according to the provisions in Federal and State laws. The question of tax exemption for non-profit corporations is beyond the scope of this rule.

NMFS notes that this rule applies to individual QS holders who received QS as initial recipients and who may transfer that QS on financial terms of their choosing. CDQ groups do not receive a transferable asset; they can harvest their allocation every year but they cannot sell or transfer the allocation. CQEs do hold QS and may transfer it, subject to restrictions. But CQEs only acquire QS by purchase.

Comment 11. The proposed rule at § 679.42(i)(6) limits the ability of a QS holder to use a hired master if the QS holder lost their prior vessel due to any act of negligence by the vessel owner or the vessel owner's agent. Most vessel groundings are the result of some level of negligence. A common cause for grounding is that a skipper or a crew member falls asleep during wheel watches. It would be difficult for NMFS to determine negligence.

Response. NMFS agrees with the action requested by this comment and eliminates the negligence limitation in § 679.42(i)(6) in the final rule. NMFS concludes that the rule, as proposed, did not comport with Council intent. NMFS explains the basis for this conclusion in the section, "Changes From the Proposed Rule."

Comment 12. The proposed rule will encourage vessel owners to continue fishing in smaller, unsafe vessels because the cost of having a new vessel without any revenue for 12 months could be prohibitive.

Response. NMFS does not believe that the rule will result in a less safe IFQ fleet. First, all vessels are subject to safety regulations. Second, a primary benefit of the IFQ program is to promote safety by decreasing the race for fish. A QS holder has a specific amount of halibut or sablefish that the QS holder is authorized to harvest throughout the season and therefore does not need to fish in poor weather. Third, the commenter does not provide evidence that the status quo is leading QS holders to invest in newer, safer, or larger IFQ vessels. The problem that led to this rule was that the Council concluded that some QS holders were claiming exemption from the owner-on-board requirement by acquiring an ownership interest in a vessel for only the duration of the IFQ trip. It does not seem likely that short-term ownership of a vessel would motivate a QS holder to invest in improvements to the vessel or to invest in a new vessel. In fact, the opposite seems more likely, namely that if a QS holder can only be exempt from the owner-on-board requirement by owning an interest in a vessel for 12 months, then the QS holder may be more interested in upgrading the vessel.

Most importantly, the rule does not prevent a QS holder from owning a newer, bigger, or safer vessel and immediately using that vessel to harvest his or her IFQ. An individual QS holder can immediately use a new vessel to harvest his or her IFQ, and immediately get revenue from the new vessel, as long as the individual QS holder is on board the vessel for the IFQ trip and landing.

Comment 13. The proposed rule is based on a false assumption that a vessel lease

cannot be a long-term arrangement—extending for 12 months or more—that shows as meaningful a commitment to the fishery as a 20-percent ownership of a vessel.

Response. From the inception of the IFQ Program, an individual QS holder had to either fish his or her own IFQ permit by being on board the vessel or use a hired master who fished from a vessel that the QS holder owned. A vessel leased by the QS holder has never been a sufficient basis for the QS holder to use a hired master in the IFQ Program.

NMFS acknowledges it is possible that a QS holder could lease a vessel and that the vessel owner and the QS holder would agree that the QS holder would pay expenses that a vessel owner normally would. The commenter does not provide any evidence that this is a common practice and any rationale why a QS holder would want to lease a vessel and take on expenses, such as repairs, that contribute to the long-term life of the vessel beyond the lease period. However, if a QS holder has leased a vessel on financial terms that more closely resemble a 20-percent ownership interest for 12 months, the final rule gives the QS holder 13 months to choose whether to be on board the vessel during the IFQ harvest, convert the lease to an ownership interest, or transfer the QS.

Comment 14. Under the proposed rule, a QS holder might have an ownership interest in a vessel that was a paper transaction only.

Response. The commenter is correct that this rule only requires that an individual QS holder prove the required 12-month period of vessel ownership as reflected in the formal records of the title to the vessel. The QS holder does not have to submit details to NMFS of the financial transactions that led to the ownership interest. The Council, however, believes that imposing a 12-month period of vessel ownership, coupled with the

requirement that the QS holder prove ownership by standardized documentation, decreases the likelihood that QS holders will have an ownership interest on “paper only.”

The Council took this action because it believed that some individual QS holders owned a 20-percent interest in the vessel only for the duration of a trip as a way to claim an exemption from the owner-on-board requirement. The Council concluded that if the QS holder had to own a 20-percent interest for 12 months, the QS holder would more likely have an actual, meaningful ownership interest in the vessel. This rule increases the likelihood that a QS holder would be interested in the condition of the vessel for at least a 12-month period, not merely for the duration of the IFQ trip.

The Council also recommended, and NMFS adopted, a regulation that QS holders who wish an exemption from the owner-on-board requirement must submit formal documents showing a minimum 20-percent ownership interest in the vessel from which their IFQ would be fished: an United States Coast Guard Abstract of Title for federally-documented vessels, a State of Alaska vessel license or registration for State-documented vessels (72 FR 44795, August 9, 2007). This means that the QS holder’s claimed ownership interest in the vessel cannot be proven merely by a verbal agreement or informal written agreement between the QS holder and other owner(s) of the vessel. The QS holder’s interest must be reflected in formal vessel ownership documents maintained by the Federal or State government.

Comment 15. If a QS holder experienced an engine failure near the end of the season, and the repairs would only take 30 days, the QS holder would lose the rest of the fishery for that year.

Response. The commenter is correct that if an individual QS holder’s vessel has

an accident that will take less than 60 days to repair, then the individual QS holder may not hire a master to fish his or her IFQ on a vessel that the individual QS holder has not owned for 12 months. As the commenter implies, the QS holder can harvest his or her IFQ any time during the year and this scenario is only a potential problem if the engine failure occurred near the end of the season. In that situation, the individual QS holder could finish out the season with any vessel as long as the individual QS holder was on board the vessel during the harvest of the QS holder's IFQ.

Comment 16. The proposed rule underestimates the documentation and time required to prove ownership of a vessel by other types of documentation.

Response. Under the current regulation, a QS holder must prove a minimum 20-percent ownership of a vessel by standard documents that a vessel owner should have fairly easily available: an Abstract of Title for a federally documented vessel and a State of Alaska vessel license or registration for a State-licensed vessel. If those documents show a minimum of 20-percent ownership for the past 12 months, the QS holder need not submit other types of documentation. If, for any reason, the standard documents do not show that the QS holder has a 20-percent ownership interest for at least 12 months, the QS holder must submit additional documentation.

The need to submit other types of documentation seems most likely to occur when an individual QS holder owns a vessel with other persons. NMFS hopes, and expects, that most QS holders would have formalized their ownership arrangements with other persons in documents that exist independently from the application by the QS holder to use a hired master. Proving vessel ownership should not require creating documents but merely retrieving them.

But since retrieving documents takes time, and that time should be included in the estimate of compliance time, NMFS agrees that the time estimate in the proposed rule was too low. The time estimate in the proposed rule was an estimate of an average of 30 minutes to fill out the form, “Application for IFQ/CDQ Hired Master Permit.” NMFS agrees that the average time to fill out the form would likely be more than 30 minutes. NMFS revises its estimate to the average time to fill out the Application for IFQ/CDQ Hired Master Permit from 30 minutes to 60 minutes.

Comment 17. Corporate owners of vessels do not have the ability to be on board the vessel and thus have no alternative to fishing their IFQ from a vessel that they have owned for the 12 months prior to the harvest. Corporate owners could not upgrade to a new vessel and use it immediately to fish their IFQ. Corporate owners would have to maintain a 20-percent interest in a second vessel in case they experienced a problem with their first vessel that was not covered by this rule.

Response. NMFS agrees with this comment. NMFS withdraws the changes in the proposed rule to § 679.42(j), which is the regulation that governs the use of QS held by corporations and other non-individual entities. NMFS concludes that the Council did not intend to apply the 12-month vessel ownership requirement to the use of QS by non-individual entities. NMFS explains the basis for this conclusion in the section, “Changes From the Proposed Rule.”

Comment 18. The proposed rule makes it harder for new entrants, such as IFQ crewmembers, to get into the fishery. Under the current rules, new entrants to the halibut and sablefish fishery can buy a vessel, convey a 20-percent interest to an initial recipient, and make money immediately by harvesting IFQ under a hired skipper permit. A new

entrant into the IFQ fisheries cannot afford to purchase a vessel and own the vessel for 12 months, but not get any money from the use of the vessel to harvest IFQs for 12 months.

Response. NMFS disagrees that the overall effect of the rule will make it harder for new entrants, such as IFQ crew members, to enter the fishery. First, the Analysis for this action does not show that the status quo management is promoting new entrants into the IFQ fisheries. In the 12-year period of 1998 to 2010, the annual fishable IFQ halibut pounds held by initial individual recipients decreased only slightly from 43 percent to 40 percent of the total IFQ halibut pool. Over the same period, the annual fishable IFQ sablefish pounds held by initial individual recipients decreased only slightly from 28 percent to 22 percent of the total IFQ sablefish pool (Analysis, Table 6; see ADDRESSES). Under current regulations, new entrants are acquiring QS at a very slow rate.

Second, the final rule still allows QS holders to form agreements with individuals seeking entry into the IFQ fisheries. The commenter states that the status quo promotes the entry of new persons into the IFQ fisheries by allowing new entrants to purchase vessels. The commenter is correct that under the status quo, a person who owns a vessel may agree with an individual QS holder to fish their IFQ immediately, without the QS holder being on board the vessel, as long as the QS holder acquires a 20-percent interest in the vessel for the duration of the IFQ trip. The commenter is also correct that after the final rule goes into effect, individual QS holders will not be able to receive an exemption from the owner-on-board requirement, unless they maintain an ownership interest in the vessel for the 12 months before they want the exemption.

After the final rule goes into effect, an individual seeking entry into the IFQ

fishery by buying a vessel first, rather than buying QS first, will still be able to offer a QS holder the immediate use of a vessel to harvest IFQ, but only if the QS holder is on board the vessel for the harvest. The rule will not put any individual seeking entry into the IFQ fishery at a competitive disadvantage: no vessel owner will be able to offer an individual QS holder an immediate exemption from the owner-on-board requirement. Except for vessel loss situations, all individual QS holders will have to wait 12 months to claim an exemption from the owner-on-board requirement.

When faced with the choice between 1) being on board the vessel for the harvest of their QS, 2) maintaining a 20-percent ownership interest in a vessel for 12 months, or 3) transferring their QS, some QS holders will choose to be on board the vessel. Some QS holders will choose to maintain a 20-percent interest in a vessel for 12 months as a way of preserving their eligibility for an exemption from the owner-on-board requirement. This will result in an increased demand by QS holders for longer-term ownership agreements with individuals who are seeking entry into the IFQ fisheries and who own vessels suitable for fishing IFQ. Some QS holders will choose the third alternative and transfer their QS. This will result in the increased availability of QS to persons seeking entry into the IFQ fisheries.

Comment 19. The proposed rule is an attempt by Alaskans to make non-Alaskans sell out.

Response. The 12-month vessel ownership requirement in this rule applies to all initial individual recipients of QS who wish to use a hired master to harvest their IFQ. The proposed rule applies equally to residents and non-residents of Alaska and does not discriminate based on residency.

Comment 20. The proposed rule would drive down prices for used vessels and weaken construction of new vessels.

Response. With regard to the claim that the proposed rule would drive down the price of used vessels, the commenter does not clearly explain why he believes this would happen and why it would be bad if it did happen. It seems that the commenter is asserting that the proposed rule will cause a decrease in demand for vessels to harvest IFQ, and therefore a decrease in the price of used vessels, because QS holders will collectively use fewer vessels to harvest their IFQ allotments.

NMFS does not believe that this is a problem with the proposed rule for four reasons. First, it is not NMFS's responsibility to manage the IFQ fisheries to maintain any particular price level for IFQ vessels. When vessel prices decrease, this helps people who want to buy vessels and enter the fishery. When vessel prices increase, this helps people who want to sell their vessels. It is NMFS's responsibility to establish the rules for the issuance, use, and transfer of QS through the Council process in the Halibut Act and the Magnuson-Stevens Act. Within those rules, the market establishes the price of QS and the market establishes the price of vessels that harvest QS.

Second, the rule established by this regulation is that QS holders cannot use a hired master by "owning" a 20-percent interest in a vessel for the duration of a trip, "owning" a 20-percent interest in another vessel for the duration of a trip, "owning" a 20-percent interest in another vessel for the duration of a trip, and so forth. Under this rule, a QS holder must now own one vessel for 12 months before the QS holder can use a hired master to fish QS from that vessel. If this rule decreases the total number of vessels that harvest IFQ allotments, that means that QS holders were using hired masters on several

vessels during a fishing year, which is the practice that the Council action and this rule seeks to stop.

Third, this rule may result in some QS holders transferring their QS. To the extent that this occurs, the rule will result in more QS on the market and could increase the number of vessels harvesting IFQ.

Finally, NMFS does not anticipate that this rule will have a significant effect on IFQ vessel prices upward or downward. The market determines the price of vessels that harvest IFQ as a result of the overall demand for these vessels and the overall supply of these vessels. This rule affects, at most, vessels that harvest 40 percent of the halibut QS pool and 32 percent of the sablefish QS pool, the percent of the QS pool held by initial individual recipients. The restrictions in this rule thus will not affect the demand for vessels that harvest 60 percent of the halibut QS pool and 68 percent of the sablefish QS pool. The restrictions in this rule do not affect other factors that determine price of vessels and the supply of vessels, such as the price of halibut, the price of sablefish, the amount of the TAC for each species, the extent to which IFQ vessels can harvest other species, the availability and terms of financing, and general economic conditions.

As for the assertion that the proposed rule will weaken the construction of new vessels, the commenter offers no evidence that the status quo is leading to the construction of new vessels to participate in the IFQ fisheries. Under the final rule, an individual QS holder can arrange for construction of a vessel and use the vessel to fish IFQ as long as the individual QS holder is on board the vessel during the harvest of the IFQ.

For NMFS's response to other comments involving new vessels, upgrading

vessels and new entrants into the IFQ fisheries, see NMFS's response to Comments 6, 12, and 18.

Comment 21. The problem—short-term ownership of vessels so the QS holders do not have to be on board the vessel—has never been quantified. The “problem” is a personal issue brought forth by two Alaskans with strong political ties.

Response. NMFS disagrees that the 12-month vessel ownership requirement in this rule is the result of personal issues rather than policy judgments. In recommending the 12-month ownership requirement, the Council was responding to genuine, longstanding policy concerns and data supporting those concerns. As described in the preamble to the proposed rule, from the beginning of the IFQ Program, the Council has sought to enforce an important feature of the program, namely if a QS holder wishes to harvest his or her IFQ through a hired master, the QS must have an ownership interest in the vessel which the hired master will use. The preamble also describes the actions that the Council has recommended, and that NMFS has adopted, to ensure that if a QS holder takes advantage of the exemption from the owner-on-board requirement, the QS holder's ownership interest in the vessel is actual and meaningful (77 FR 65843, October 31, 2012). This rule establishes the benchmark for a meaningful and actual ownership interest in a vessel, namely the QS holder maintains a continuous 20-percent ownership interest in the vessel for 12 months prior to when the QS holder wishes to use the hired master.

The preamble to the proposed rule described the data supporting the Council's concerns: “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” (77 FR 65846, October 31, 2012). The Analysis for this action shows that for the IFQ halibut fishery, from 1998 to 2010, the number of individual QS holders that had landings and could hire masters declined from 1,005 individual QS holders to 696 individual QS holders, a decline of approximately 30 percent, but the number of individual QS holders that had landings and did hire masters increased from 110 to 216, an increase of approximately 100 percent (Analysis, Table 3; see ADDRESSES). For the IFQ sablefish fishery, from 1998 to 2010, the number of individual QS holders that had landings and could hire masters declined from 232 to 151, a decline of 35 percent, but the number of individual QS holders that had landings and did hire masters increased from 46 to 92, an increase of 100 percent. (Analysis, Table 4; see ADDRESSES). This data shows that the number of individual QS holders is declining but the remaining individual QS holders are increasingly using hired masters.

Comment 22. The alleged problem—sham ownership of vessels fishing IFQ without the QS holder on board the vessel—will solve itself because all initial recipients will eventually die.

Response. NMFS agrees that in the long run this problem will be resolved because all initial individual recipients of QS will eventually leave the fishery because of voluntary retirement or death and eventually all QS will be held by individuals who are subject to the owner-on-board requirement. However, initial individual recipients of QS still hold a considerable amount of QS. As of 2010, initial individual recipients held 40

percent of the halibut QS pool and 32 percent the sablefish QS pool (Analysis, Table 3, Table 4; see ADDRESSES).

Under current regulation, these QS holders must have a 20-percent ownership interest in the vessel that a hired master uses to fish their IFQ, but these QS holders may only own a 20-percent interest in the vessel for the duration of a trip. The Council recommended this rule to require that, if initial recipients of QS wish to continue to hire masters to fish their QS, they must maintain a longer-term ownership interest—namely 12 months—in the vessel that the hired master will use to fish their IFQ.

#### OMB Revisions to Paperwork Reduction Act References in 15 CFR 902.1(b)

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises and adds data elements within a collection-of-information for recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to reference correctly the sections resulting from this final rule. In addition, corrections and omissions from previous rules are added.

#### Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Halibut Act, the GOA groundfish FMP, the BSAI groundfish FMP, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable laws.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries finds good cause to waive prior notice and opportunity for

public comment otherwise required by the section for the revisions to registered buyer reporting requirements found at § 679.5(1)(7)(i) that are implemented by this final rule. NOAA finds that prior notice and opportunity for public comment are unnecessary because the revisions to § 679.5(1)(7)(i) do not substantively change the recordkeeping and reporting requirements specified in that section. The revisions correct an inadvertent error made by a final rule recently promulgated by NOAA as described in the “Changes from Proposed to Final Rule” section of the preamble above. Prior notice and comment are also unnecessary because the public had an opportunity to comment on the registered buyer reporting requirements during the observer program rule-making. Prior notice and comment are also contrary to the public interest because immediate publication reduces potential public confusion associated with the catch-sharing plan rule’s inadvertent error in registered buyer reporting requirements. Because prior notice and opportunity for public comment are not required by 5 U.S.C. 553(b)(B), or any other law, for the regulatory revision at § 679.5(1)(7)(i), the analytical requirements of the Regulatory Flexibility Act, 5. U.S.C. 601 et. seq. are inapplicable.

#### Regulatory Impact Review

The Council and NMFS conducted a Regulatory Impact Review (RIR) pursuant to Executive Order 12866. NMFS published a summary of the RIR in the preamble to the proposed rule (77 FR 65843, October 31, 2012). The RIR assessed the costs and benefits of Alternative 1 and Alternative 2. Alternative 1 was no action or the status quo. Alternative 2 was imposition of the 12-month vessel ownership requirement on initial individual QS holders as a condition of their using a hired master and an exemption from the 12-month vessel ownership requirement in situations of permanent vessel loss or

temporary vessel disablement. The Council concluded that Alternative 2 is likely to result in net benefits to the nation and recommended Alternative 2. NMFS published the RIR with the Initial Regulatory Flexibility Analysis (IRFA) and in this rule refers to the RIR/IRFA as the Analysis. A copy of the Analysis is available from NMFS (see ADDRESSES). The NMFS Assistant Administrator has determined that this rule is not significant for purposes of Executive Order 12866.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This section shall be the Small Entity Compliance Guide for this rule.

This rule modifies § 679.42(i) of part 679, Title 50. The full text of 50 CFR 679.42 and all IFQ regulations is available at <http://www.ecfr.gov>.

This rule applies to individuals who were initial recipients of catcher vessel QS, namely QS in Category B, C, or D, with one geographical exception. This rule does not apply to catcher vessel QS that initial individual recipients received in what is commonly known as Southeast Alaska: it does not apply to QS issued for halibut in IFQ regulatory area 2C and sablefish in the IFQ regulatory area east of 140° long. This rule does not apply to initial recipients of QS that were non-individual entities, such as corporations, partnerships, or associations. This rule does not apply to initial recipients of catcher

processor QS, which is Category A QS.

To harvest halibut or sablefish in a fishing year, an initial individual recipient of QS in Category B, C, or D receives an annual IFQ permit. The QS holder/IFQ permit holder must be present on board the vessel at all times during the fishing trip and during the landing which occurs pursuant to the authority of the IFQ permit, except if IFQ regulations authorize a hired master to harvest and land IFQ species without the QS holder being on board the vessel. If a QS holder wishes to use a hired master to harvest his or her IFQ, the QS holder must apply for, and receive, a hired master permit that will authorize the hired master to harvest the IFQ belonging to the QS holder. The Application for IFQ/CDQ Hired Master Permit and all other IFQ applications are on the NMFS Alaska Region website at <https://alaskafisheries.noaa.gov/ram/ifq.htm>.

Under this rule, an individual QS holder may use a hired master to harvest his or her IFQ, if the QS holder was an initial individual recipient of QS and if the QS holder continuously owned a minimum 20-percent ownership interest in the vessel that the hired vessel will use to harvest the IFQ for 12 months prior to the QS holder's application for a hired master permit.

An individual QS holder may claim an ownership interest in a documented or non-documented vessel. A documented vessel means a vessel documented with the United States Coast Guard in accord with Federal requirements. A non-documented vessel means a vessel that is not federally documented but is documented with the State of Alaska.

If the hired master will use a documented vessel to harvest the IFQ belonging to the QS holder, the QS holder must submit, with the application for a hired master permit,

documentation showing that the QS holder has owned a minimum 20-percent ownership interest in the vessel for the 12 months before the application. For a documented vessel, the QS holder must submit an Abstract of Title showing that the QS holder is an owner of the vessel. If the Abstract of Title does not show that the QS holder owns at least a 20-percent ownership interest in the vessel or does not show that the QS holder has owned a 20-percent ownership interest for 12 months prior to the application, the QS holder must submit additional written documentation to prove either the 20-percent vessel ownership interest or the 12-month ownership period.

If the hired master will use a non-documented vessel to harvest the IFQ belonging to the individual QS holder, the individual QS holder must submit, with the application for a hired master permit, a State of Alaska vessel license or vessel registration that lists the QS holder as an owner of the vessel. If the State of Alaska vessel license or vessel registration does not show that the QS holder owns at least a 20-percent ownership interest in the vessel that the hired master will use for the 12-month period prior to the application by the QS holder for a hired master permit, the QS holder must submit additional documentation.

#### Suspension of 12-month Vessel Ownership Requirement if QS Holder Experiences a Total Physical Loss of a Vessel or Irreparable Damage to a Vessel

This rule provides a temporary suspension of the 12-month vessel ownership requirement if an individual QS holder experiences a total, physical loss of a vessel or irreparable damage to a vessel and the vessel has been used to harvest IFQ belonging to the QS holder. If an individual QS holder experiences a total loss of a vessel, either because the vessel is physically lost or irreparably damaged, and wishes an exemption

from the owner-on-board requirement on that basis, the individual QS holder must completely fill out the sections of the Application for IFQ/CDQ Hired Master Permit that pertain to the total loss of a vessel or irreparable damage to a vessel. Through the Application, and the materials submitted with it, the individual QS holder must show that he or she meets the following requirements:

1. The total loss or the irreparable damage to the vessel 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 of the individual QS holder or agent of the individual QS holder;
2. The vessel that was lost or irreparably damaged was a commercial fishing vessel that had been previously used to harvest halibut IFQ or sablefish IFQ of the individual QS holder who is applying for a hired master permit;
3. The individual QS holder submits to NMFS a copy of the USCG Form 2692 that has been submitted to the United States Coast Guard. Form 2692 is “Report of Marine Casualty.” An operator of a commercial vessel operating in the navigable waters of the United States is required to file Form 2692 any time that a vessel is involved in an unintended grounding; a loss of life; an injury that requires professional medical treatment; an occurrence causing property damage in excess of \$25,000; an occurrence materially and adversely affecting the vessel’s seaworthiness or fitness for service or route; and other situations as specified in 46 CFR 4.05-1. Form 2692 and instructions to fill it out are at <http://marineinvestigations.us>;
4. The individual QS holder is applying to use a hired master on a vessel in

which the individual QS holder has a minimum 20-percent ownership interest as of the date of the application by the individual QS holder for a hired master permit.

If the applicant meets the requirements for issuance of a hired master permit based on total loss or irreparable damage to a vessel, the individual QS holder may use a hired master until December 31 of the year following the total loss or irreparable damage.

Suspension of 12-month Vessel Ownership Requirement if Temporary Disablement of a Vessel

If an individual QS holder experiences a temporary disablement of a vessel, and wishes an exemption from the owner-on-board requirement, the individual QS holder must completely fill out the sections of the Application for IFQ/CDQ Hired Master Permit that pertain to the temporary disablement of a vessel. Through the application, and materials submitted with it, the individual QS holder must show that he or she meets the following requirements:

1. The temporary disablement of the vessel results from repairs required by an accident that materially and adversely affected the vessel's seaworthiness or fitness for service;
2. The repairs from the accident require at least 60 days to be completed;
3. The disabled vessel is a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ of the individual QS holder who is applying for a hired master permit;
4. The individual QS holder submits to NMFS a copy of the USCG Form 2692 that has been submitted to the United States Coast Guard. Form 2692 is "Report

of Marine Casualty.” An operator of a commercial vessel operating in the navigable waters of the United States is required to file Form 2692 any time that a vessel is involved in an occurrence that materially and adversely affecting the vessel’s seaworthiness or fitness for service, as specified in 46 CFR 4.05-1. Form 2692 and instructions to fill it out are available at <http://marineinvestigations.us>;

5. The individual QS holder is applying to use a hired master on a vessel in which the individual QS holder has a minimum 20-percent ownership interest as of the date of the application by the individual QS holder for a hired master permit.

An applicant will need to submit documentation to show that the repairs required by the accident require at least 60 days to be completed. That documentation will typically be an estimate or statement from the business entity that will conduct the repairs.

If the applicant meets the requirements for a hired master permit based on temporary disablement of a vessel, the individual QS holder may use a hired master until December 31 of the year following the temporary disablement of the vessel.

#### Review of Application for a Hired Master Permit

NMFS will review all applications for a hired master permit. If NMFS concludes that the applicant meets the requirements for a hired master permit, NMFS will approve the Application for IFQ/CDQ Hired Master Permit and issue a hired master permit to the individual specified on the application.

If NMFS concludes that it cannot approve the application based on the application and the materials submitted with the application, NMFS will provide the applicant with an opportunity to submit additional information or submit a revised application. NMFS

will review any additional submissions by the applicant. If NMFS still concludes that the applicant does not meet the requirements of a hired master permit, NMFS will provide the applicant with an Initial Administrative Determination (IAD). The IAD will explain the basis for the denial of the application and will explain how the applicant may appeal the denial of the application.

#### Final Regulatory Flexibility Analysis (FRFA)

The Regulatory Flexibility Act (RFA) contains the requirements for the FRFA in section 604(a)(1) through (5) of the RFA. The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the

other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

NMFS prepared an Initial Review Flexibility Analysis (IRFA) that addressed the requirements described in section 603(b)(1) through (5) of the RFA. This FRFA incorporates the IRFA and the summary of the IRFA in the proposed rule (77 FR 65843, October 31, 2012). NMFS published the IRFA with the Regulatory Impact Review on January 5, 2012. The RIR/IRFA or Analysis is available at the NMFS Alaska Region website: <http://alaskafisheries.noaa.gov>.

#### A Succinct Statement of the Need for, and Objectives of, the Rule

The objective of this rule is to amend halibut and sablefish IFQ regulations to implement Council intent for initial individual recipients of QS who wish to exercise the hired skipper privilege. The need for, and objectives of, this rule are further explained in the preamble to the proposed rule in the sections, “The Need for Action” and “The Proposed Action.” (77 FR 65843, October 31, 2012).

#### Summary of Significant Issues Raised During Public Comment

NMFS did not receive any public comments that were explicitly directed to the Analysis (RIR/IRFA). But several comments objected to the proposed rule on the grounds that, short of a QS holder experiencing the a total or temporary loss of a vessel, the proposed rule would prevent a QS holder from using a hired master to fish their IFQ, unless the hired master was using a vessel that the QS holder had owned for 12 months. One comment on the proposed rule stated that the proposed rule would have a special impact on non-individual QS holders, namely QS holders that are corporations, partnerships, associations, or any other type of non-individual entity, because these QS

holders do not have the option of fishing their QS themselves rather than using a hired master.

The comments on the proposed rule were not accurate with respect to individual QS holders because under the proposed rule, individual QS holders can use any vessel to harvest their IFQ as long as they are on board the vessel. The comments were accurate with respect to QS held by non-individual entities because, under the proposed rule, a non-individual entity such as a corporation or a partnership does not have the option of getting on the vessel and fishing their QS themselves.

These comments implicitly raised an issue with the Analysis because Section 5 of the Analysis explicitly stated that the Council action imposed the 12-month ownership requirement on individual QS holders and did not impose the 12-month ownership requirement on non-individual QS holders, such as corporations, partnerships, or associations. Section 5 of the Analysis also stated that the Analysis did not analyze the effect of imposing the 12-month ownership requirement on non-individual entities. The Analysis also described the regulated entities as individuals only, namely the 1,307 individual holders of catcher vessel QS eligible to hire skippers in 2010 that may hire skippers (Analysis, Table 2; see ADDRESSES). The Classification Section in the proposed rule described the regulated entities as individual QS holders only (77 FR 65843, October 31, 2012). As a result of these public comments, NMFS realized that it was an error for the proposed rule to apply the 12-month ownership requirement to non-individual entities. NMFS therefore eliminated those provisions in the final rule. NMFS provides further explanation of this change in the section of this preamble, “Changes From the Proposed Rule.”

## Number and Description of Small Entities Regulated by the Final Rule

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013. (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.* at 37400 (Table 1).

Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20 final rule, a final regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards and determined that the new size standards do not affect the analyses prepared for this action. Under the former, lower, size standards, all entities subject to this action were considered small entities; thus they all would continue to be considered small under the new standards.

The "universe" of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. This action directly regulates individuals who were initial recipients of catcher vessel QS and who still hold catcher vessel QS. In 2010, there were a total of 1,307 initial individual recipients of catcher vessel QS: 1,056 halibut QS holders and 251 sablefish QS holders (Analysis, Table 2; see ADDRESSES). Under current regulations, these individual QS holders may use a hired master to harvest their IFQ if the individual QS holder owns a 20-percent interest in the vessel that the hired master uses to harvest

the IFQ. This rule adds a 12-month ownership period to the vessel ownership provision. Under the final rule, an initial individual QS holder may use a hired master to harvest their IFQ if the individual QS holder owns a 20-percent ownership interest in the vessel for the 12 months prior to the application by the QS holder to use a hired master.

Although, under the current regulation, all initial individual QS holders may hire masters based on vessel ownership, not all individual QS holders do hire masters. The Analysis contained data on how many individual QS holders had landings and did hire masters in 2010. Looking at halibut QS holders first, 665 individual QS holders had landings under an IFQ permit; 216 of these individual QS holders, or 32 percent, used hired masters (Analysis, Table 3; see ADDRESSES). Turning to sablefish QS holders, 151 individual QS holders had landings under an IFQ permit; 92 of these individual QS holders, or 61 percent, used hired masters (Analysis, Table 4; see ADDRESSES).

The final rule also directly regulates hired masters. Under the current regulation, an individual may receive a hired master permit to harvest and land IFQ upon proof that the QS holder/IFQ permit holder owns a minimum 20-percent interest in the vessel that the hired master will use. Under the final rule, an individual may receive a hired master permit to harvest and land IFQ upon proof that the hired master will use a vessel in which the IFQ permit holder has owned a 20-percent interest for the 12 months prior to the application by the IFQ permit holder for the hired master permit. In 2010, the number of individuals with hired master permits in the halibut IFQ fishery was 217; the number of individuals with hired master permits in the sablefish IFQ fishery was 127 (Analysis, Table 7; see ADDRESSES).

It is unknown to what extent this rule will result in individual QS holders

choosing not to use hired masters in the future. It is unknown because that will depend on how individual QS holders respond to this rule: how many QS holders will choose to harvest their IFQ themselves rather than use a hired skipper; how many will meet the 12-month ownership requirement and continue to use a hired skipper; and how many will transfer their QS, which will likely make QS available to a number of hired skippers because hired skippers are likely to meet the requirements to receive QS by transfer.

Only individuals may receive QS by transfer and the individual either must be an initial recipient of QS or must have participated for 150 days in a harvesting crew in a U.S. commercial fishery. In 2010, approximately 60 percent of halibut IFQ hired skippers also owned their own QS; 70 percent of sablefish IFQ hired skippers also owned their own QS (Analysis, Table 8; see ADDRESSES). NMFS does not know how many of these hired skippers received QS as initial recipients. However, almost all persons who have a hired skipper permit are likely to have, or can get, 150 days of participating in a harvest crew in a U.S. commercial fishery by fishing pursuant to their hired skipper permit. If this rule results in the transfer of QS, the persons holding hired skipper permits are therefore likely to be eligible to acquire that QS by transfer.

#### Recordkeeping and Reporting Requirements

To use a hired master, an individual QS holder must submit a complete Application for IFQ/CDQ Hired Master Permit. To complete this application, an individual QS holder must submit documentation that he or she owns a minimum 20-percent ownership interest in the vessel that the hired master will use for the period of 12 months prior to the application by the QS holder to use the hired master. If the QS holder claims ownership of a documented vessel, the QS holder must submit an Abstract of Title

that shows the QS as an owner. If the Abstract of Title does not show that the QS holder has a minimum 20-percent vessel ownership interest for the 12-month period prior to the application for a hired master, the QS holder must submit additional written documentation. If the QS holder claims ownership of a non-documented vessel, the QS holder must submit a State of Alaska license or registration showing the QS holder is an owner of the vessel. As with the Abstract of Title, if the State document does not show that the QS holder has a minimum 20-percent vessel ownership interest for the 12-month period prior to the application for a hired master permit, then the QS holder must submit additional written documentation.

Under the final rule, if the individual QS holder wishes to use a hired master and receive an exemption from the 12-month vessel ownership requirement, then the QS holder must show that the QS holder's vessel has been lost, irreparably damaged, or temporarily disabled by an accident that materially and adversely affects the vessel's seaworthiness or fitness for service. To receive this exemption, the QS holder must provide to NMFS a copy of USCG Form 2692 that has been submitted to the USCG. Under 46 CFR 4.05, a vessel owner is already under an obligation to submit Form 2692 to the USCG when a vessel is lost, irreparably damaged, or suffers an accident that materially and adversely affects the vessel's seaworthiness or fitness for service. If the QS holder is seeking an exemption from the 12-month vessel ownership based on temporary disablement of the vessel, the QS holder must also submit documentation that the vessel needs repairs that require 60 days or more.

The skills necessary to comply with the recordkeeping and reporting requirements for small entities regulated by this rule are the ability to read, write, and understand

English; the ability to retrieve and submit vessel ownership documents; and the ability to submit other documents necessary to complete an application for a hired master permit, including Form 2692 in the event of vessel loss or temporary vessel disablement. No professional skills are necessary to comply with these recordkeeping and reporting requirements.

#### Description of Significant Alternatives to the Proposed Action that Minimize Adverse Impacts on Small Entities

The Council and NMFS analyzed the alternative of no action and the action contained in the proposed and final rules. The “no-action” alternative would not achieve the objective of the proposed rule because it would allow individual QS holders to use a hired master to harvest their IFQ based on ownership of a vessel only for the duration of the IFQ trip. NMFS is not aware of any alternatives that would accomplish the objectives of this action while minimizing the adverse economic impact on small entities.

In adopting the preferred alternative, the Council chose 12 months as the appropriate length of time that an individual QS holder had to own a vessel before the individual QS holder could hire a master to fish IFQ from that vessel. In 2005, when the Council first recommended the 12-month ownership requirement, it considered different periods of time during which a QS holder would have to own the vessel in advance of using a hired master: 6 months, 12 months, 24 months, and the year of application for a hired master period plus the previous calendar year. (RIR/IRFA, November 9, 2005, see ADDRESSES) The Council chose one year (12 months) because that time period typically includes an entire fishing season and most QS holders make operating decisions, including a decision to hire a skipper, on a year-to-year basis. NMFS affirms

that reasoning for this action.

### Collection of Information Requirements

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0272. Public reporting burden for Application for IFQ/CDQ Hired Master Permit is estimated to average 60 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. The time-to-complete the application was changed from 30 minutes per response to 60 minutes per response due to a public comment on the proposed rule.

This final rule also corrects an error in regulatory text in a previous final rule pertaining to the IFQ Value and Volume Report that does not affect the burden or cost of completing the form. 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. Send comments regarding this burden estimate or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto: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.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 18, 2014

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Samuel D. Rauch III,  
Deputy Assistant Administrator  
For Regulatory Programs,  
National Marine Fisheries Service

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE  
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR”;

a. Remove entries for “679.7(a)(7)(vii) through (ix), 679.7(n)(1)(x)”; “679.7(f)”;

“679.7(f)(8)(ii)”; “679.7(k)”; “679.7(n)(4)(ii)”; “679.20(a)(8)(ii)”; “679.21(f) and (g)”;  
 679.21(h)”; “679.27(j)(5)”; “679.28(b), (c), (d), (e), (g), and (j)”; “679.28(k)”; “679.30”;  
 “679.32(c)(1) and (2)”; “679.32(f)”; “679.42”; “679.42(a)(1)(i) through (ii), (b) through  
 (e), (g), (h)(1), (h)(1)(i), (h)(2), and (h)(2)(i)”; “679.42(a)(2)(iii), (h)(1)(ii), and  
 (h)(2)(ii)”; “679.61(c), (d), (e), and (f)”; “679.65(a), (c), and (d)”; and “679.65(b) through  
 (e)”;

b. Add entries in alphanumeric order for “679.7(a)(7)(i)”; “679.7(a)(7)(vii)  
 through (ix)”; “679.7(b)(6)and (7) and (c)(3) and (c)(4)”; “679.7(f)(1) through (f)(7) and  
 (f)(9) through (16)”; “679.7(f)(8)”; “679.7(k)”; “679.7(n)(1)”; “679.7(n)(2) and (n)(4)  
 through (8)”; “679.7(n)(3)”; “679.21(f) and (g)”; “679.28(b) through (e) and (i)”  
 “679.28(j) and (k)”; “679.31(c)”; “679.32(c)(1) through (3)”; “679.42(a) through (j)”;  
 “679.42(k)”; “679.61(a) through (f)”; and “679.65”.

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
679.7(a)(7)(i)	-0206
679.7(a)(7)(vii) through (ix)	-0334
* * * * *	
679.7(b)(6) and (7) and (c)(3) and (c)(4)	-0206, -0334
* * * * *	
679.7(f)(1) through (f)(7) and (f)(9) through (16)	-0269, -0272
679.7(f)(8)	-0206, -0334
* * * * *	
679.7(k)	-0393, -0330

*****	
679.7(n)(1)	-0334
679.7(n)(2) and (n)(4) through (8)	-0545
679.7(n)(3)	-0445
*****	
679.21(f) and (g)	-0393, -0401
*****	
679.28(b) through (e) and (i)	-0330
679.28(j) and (k)	-0515
*****	
679.31(c)	-0269
679.32(c)(1) through (3)	-0269
*****	
679.42(a) through (j)	-0272, -0665
679.42(k)	-0445
*****	
679.61(a) through (f)	-0393, -0401
*****	
679.65	-0633
*****	

TITLE 50—WILDLIFE AND FISHERIES

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. 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.

4. In § 679.5, revise paragraph (l)(7)(i) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

\*\*\*\*\*

(l) \*\*\*

(7) \*\*\*

(i) IFQ Registered Buyer Ex-vessel Volume and Value Report (IFQ Buyer Report)—(A) Applicability. An IFQ Registered Buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut or CDQ landings of halibut must submit annually to NMFS a complete IFQ Buyer Report as

described in this paragraph (1) and as provided by NMFS for each reporting period, as described at § 679.5(1)(7)(i)(E), in which the Registered Buyer receives IFQ fish or CDQ halibut.

(B) Due date. A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish or CDQ halibut.

(C) Information required. A complete IFQ Buyer Report must include the following information as instructed on the report form at

<http://alaskafisheries.noaa.gov/ram>:

(1) IFQ Registered Buyer identification.

(2) Pounds purchased and values paid. (i) The monthly total weights, represented in IFQ equivalent pounds by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(ii) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(3) Value paid for price adjustments — (i) Retro-payments. The monthly total U.S. dollar amount of any retro-payments (correlated by IFQ species or CDQ halibut, landing month(s), and month of payment) made in the current year to IFQ, or to CDQ halibut permit holders for landings made during the previous calendar year;

(ii) Electronic submittal. Certification, including the NMFS ID and password of the IFQ Registered Buyer; or

(iii) Non-electronic submittal. Certification, including the printed name and

signature of the individual submitting the IFQ Buyer Report on behalf of the Registered Buyer, and date of signature.

(D) Submittal. If applicable, the Registered Buyer must complete an IFQ Buyer Report and submit by mail or FAX to NMFS at the address provided on the form, or electronically to NMFS online at <http://alaskafisheries.noaa.gov/ram>.

(E) Reporting period. The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

\* \* \* \* \*

5. In § 679.42,

a. Revise paragraphs (i)(1)(i), (i)(1)(ii), and (i)(4); and

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

§ 679.42 Limitations on use of QS and IFQ.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(i) For a documented vessel, during the 12-month period previous to the application by the individual for a hired master permit, continuously owned a minimum 20-percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the individual as an owner and, if necessary to show 20-percent ownership for 12 months, additional written documentation; or

(ii) For an undocumented vessel, during the 12-month period previous to the application by the individual for a hired master permit, continuously owned a minimum 20-percent interest in the vessel as shown by a State of Alaska license or registration that

lists the individual as an owner and, if necessary to show the 20-percent ownership for 12 months, additional 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 (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 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 during the 12-month period previous to the application by the individual for a hired master permit.

\* \* \* \* \*

(4) The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, association or other

non-individual entity in which the individual is a shareholder, partner, or member, provided that during the 12-month period previous to the application by the individual for a hired master permit, the individual continuously maintained a minimum 20-percent ownership interest in the vessel owned by the corporation, partnership, association or other non-individual entity. For purposes of this paragraph, an individual's interest in a vessel is determined by the percentage ownership by the individual of a corporation, partnership, association or other non-individual entity that has an ownership interest in the vessel multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other non-individual entity.

\* \* \* \* \*

(6) In the event of the total loss or irreparable damage to a vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the individual may remain exempt under paragraph (i)(1) of this section until December 31 of the year following the year in which the vessel was lost or damaged, provided that the individual meets the following requirements:

(i) The loss or irreparable damage to the vessel was caused by an act of God, an act of war, a collision, an act or omission of a party other than the individual or agent of the individual, or any other event not caused by the willful misconduct of the individual or agent of the individual;

(ii) The lost or irreparably damaged vessel is a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ of the individual who qualifies for the exemption in paragraph (i)(1) of this section;

(iii) As part of the application for exemption, the individual submits to NMFS a

copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05; and

(iv) The individual is applying to use a hired master on a vessel in which the individual has a minimum 20-percent ownership interest as of the date of the application by the individual for a hired master permit.

(7) In the event of temporary disablement of a vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the individual may remain exempt under paragraph (i)(1) of this section until December 31 of the year following the year in which the vessel was disabled, provided that the individual meets the following requirements:

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

(ii) The repairs from the accident require at least 60 days to be completed;

(iii) The disabled vessel is a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ of the individual who qualifies for the exemption in paragraph (i)(1) of this section;

(iv) The individual submits to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05; and

(v) The individual is applying to use a hired master on a vessel in which the individual has a minimum 20-percent ownership interest as of the date of the application by the individual for a hired master permit.

\* \* \* \* \*

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