



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120926497-4576-02]

RIN 0648-BC62

Fisheries of the Exclusive Economic Zone Off Alaska: Pacific Halibut and Sablefish

Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS) National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to amend the hired master provisions of the Individual Fishing Quota Program (IFQ Program) for the fixed-gear commercial Pacific halibut and sablefish fisheries in the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA). The IFQ Program allows initial recipients of catcher vessel halibut and sablefish quota share (QS) to hire a vessel master to harvest an annual allocation of individual fishing quota (IFQ) derived from the QS. This rule prohibits an initial QS recipient from using a hired master to harvest IFQ derived from catcher vessel QS received by transfer after February 12, 2010, with a limited exception for small amounts of QS. This final rule is necessary to maintain progress toward a predominantly owner-onboard fishery. In addition, this action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern

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

DATES: Effective December 1, 2014.

ADDRESSES: Electronic copies of this rule, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the proposed rule prepared for this regulatory amendment are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. The Final Supplemental Environmental Impact Statement/Environmental Impact Statement for the individual Fishing Quota Management Alternative for Fixed Gear Sablefish and Halibut Fisheries (IFQ Program FSEIS) is available from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement 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: Peggy Murphy, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

This final rule amends the hired master regulations for management of the IFQ Program for the fixed-gear commercial fisheries for Pacific halibut and sablefish in waters off Alaska. NMFS published a proposed rule for this action in the Federal Register on April 26, 2013 (78 FR 24707). The 30-day comment period on the proposed

rule ended May 28, 2013. NMFS received 15 comment letters on the proposed rule from 15 unique persons. A summary of these comments and NMFS' responses are provided in the "Comments and Responses" section of this preamble.

A detailed review of this action is provided in the proposed rule and a brief summary is provided here.

#### Background

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

The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 300, subpart E, and 50 CFR part 679 under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations. Such regulations may be implemented by NMFS only after approval by the Secretary of Commerce.

The IFQ Program for the sablefish fishery is implemented by the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)

(16 U.S.C. 1801 et seq.). Regulations implementing the FMPs and general regulations governing the IFQ Program appear at 50 CFR part 679.

The IFQ Program was intended primarily to reduce excessive fishing capacity in the commercial halibut and sablefish fixed-gear fisheries. The Council and NMFS designed the IFQ Program to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. Access to the halibut and sablefish fisheries is limited to those persons holding QS. The QS holder is the person authorized to exercise the harvesting privilege in specific regulatory areas. NMFS initially issued QS to qualified applicants (initial recipients) who owned or leased a vessel that made fixed-gear landings of halibut or sablefish during the qualifying period from 1984 to 1990 for halibut, and from 1985 to 1990 for sablefish. A person who received QS as an initial recipient was either (1) an individual or natural person, or (2) a non-individual entity or person, such as a corporation, partnership, or association. Initial recipients received QS allocations based on their harvest during the qualifying period, the area of the harvest, and the type of vessel used to land the harvest. Quota shares are individual harvesting privileges that are given effect on an annual basis through the issuance of IFQ permits. An annual IFQ permit authorizes the permit holder to harvest a specified amount of IFQ halibut or sablefish in a regulatory area.

All QS are categorized according to the size of the vessel (category B, C, or D, individually and collectively referred to as “catcher vessel QS”) from which IFQ halibut and sablefish may be fished and whether that IFQ halibut or sablefish may be processed on board the vessel (category A). The vessel categories were designed to ensure that the IFQ Program did not radically change the structure of the fleet in place at the time the

IFQ Program was implemented. A description of the specific vessel size categories is provided in regulation at 50 CFR part 679 and is not repeated here.

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

As the IFQ Program developed, the Council recommended, and NMFS implemented, provisions such as QS use caps, vessel use caps, and blocks of QS to limit QS acquisitions. These provisions were intended to maintain a diverse owner-onboard fleet and to prevent excessive consolidation of QS. Further discussion of these program elements can be found in the proposed rule published on April 26, 2013 (78 FR 24707). The block provision has direct application in this final rule. All initially issued QS that yielded relatively small amounts of IFQ annually was “blocked” or issued as an inseparable unit. Quota share blocks preserve small amounts of QS in blocked units that are available at a relatively low cost to promote purchase of QS by crew members and new entrants to the IFQ fisheries. The block program also includes a “sweep-up” (consolidation) provision designed to minimize the number of very small blocks of QS that yield such small amounts of IFQ that they are economically disadvantageous to harvest. The consolidation provision allows small individual QS blocks to be permanently consolidated into larger QS blocks as long as the resulting QS block does not exceed consolidation limits specified in regulation.

The IFQ Program also requires IFQ holders to be on board the catcher vessel during harvest and offloading to promote a predominantly “owner-onboard” fishery with a narrow exemption for vessel category A QS holders and initial recipients of QS category B, C, and D QS. Vessel category A QS (catcher/processor QS) are not subject to the owner-onboard requirement. A primarily owner-onboard catcher vessel fleet was an initial fundamental objective of the IFQ Program.

The requirement that individual holders of catcher vessel QS (vessel categories B, C, or D) be on board the vessel during all IFQ fishing ensures that QS remain largely in the hands of active fishermen. However, the IFQ Program allows all initial recipients of QS, including individuals and non-individual entities, to hire masters to fish the IFQ derived from their QS. This exception was allowed because some individual fishermen had conducted their fishing businesses by hiring masters to skipper their fishing vessels prior to the implementation of the IFQ Program. The IFQ Program continues to allow initial recipients of catcher vessel QS to employ hired masters to fish their IFQ, but only if the initial recipient maintains a minimum 20% ownership interest in the vessel on which the IFQ halibut and sablefish are harvested. By limiting this exception to initial recipients, the Council anticipated that individual and non-individual initial recipients would eventually be replaced by new entrants. The Council anticipated that eventually catcher vessel QS would be transferred to new entrants required to be on board the vessel during IFQ fishing, resulting in an entirely owner-onboard fishery. An owner-onboard fishery is consistent with the Council’s goal to promote stewardship by providing active fishermen with a vested interest in the long-term productivity of the halibut and sablefish resources. The owner-onboard

requirement also supports the Council's goal to provide entry-level opportunities for new fishermen as initial recipients of catcher vessel QS leave the fishery.

#### Rationale for and Effects of This Final Rule

In February 2010, the Council became aware that some QS initial recipients were increasingly using hired masters rather than continuing to be personally on board their vessels when fishing with QS. Increased use of hired masters was attributed to initial recipients purchasing increasing amounts of QS, and the IFQ derived from that QS was being fished by hired masters. The Council was concerned that initial recipients were consolidating QS to be fished by hired masters and were reducing opportunities for new entrants to the fishery. The Council determined that the transition to a predominately owner-onboard fishery has been unreasonably delayed because the ability to hire a master applies to the QS holder and not the QS itself. This allows initial recipients to hire masters to harvest IFQ derived not only from their initially issued QS, but also IFQ derived from any QS received by transfer after initial issuance. As a result, QS have become consolidated among fewer initial recipients of QS that use hired masters. Quota share are remaining in the hands of initial recipients who hire masters to fish the resulting IFQ instead of being transferred, which delays the progress toward the Program objective of an owner-onboard fishery and decreases opportunities for new entrants to the IFQ fishery.

At subsequent meetings, the Council examined IFQ Program data detailing the use of hired masters, changes in QS holdings of initial recipients, QS transfers, and the rate of new entry into the fishery. As discussed in detail in the proposed rule for this action, (78 FR 24707, April 26, 2013), the use of hired masters has increased

significantly above levels that existed at the start of the IFQ Program. This is demonstrated by significant increases in the numbers of individual initial recipients who hire masters in the halibut and sablefish IFQ fisheries and the number of landings made in these fisheries by hired masters. Data analysis also shows that QS are being consolidated among fewer individual and non-individual initial recipients who hire masters to fish the resulting IFQ. In addition, some initial recipients that had not previously hired a master are now doing so, and some that had previously hired a master have increased the amount of QS they hold for use by a hired master or are using masters for a higher percentage of their landings. Finally, the rates at which initial recipients of halibut and sablefish QS are divesting themselves of QS and exiting the fishery have declined over the last 5 years.

After receiving public testimony and reviewing the analysis at its April 2011 meeting, the Council determined that it is likely that several factors are inhibiting new entrants from acquiring QS and slowing progress toward a predominantly owner-onboard fishery. These factors include the increased use of hired masters, increased holdings of QS by initial recipients who may use a hired master to harvest the resulting IFQ, and decreased numbers of initial QS recipients divesting their QS holdings. The Council determined that evolution to an owner-onboard program is occurring at a slower pace than was originally envisioned and is therefore inhibiting achievement of the Council's goals for the IFQ Program. The Council determined that the absence of a limitation on the use of hired masters could further delay this progress. To address this problem, the Council recommended, and this final rule implements, regulations that prohibit the use of a hired master to fish IFQ halibut or sablefish derived from

catcher vessel category B, C, or D QS received by transfer after February 12, 2010, with some exceptions described later in this final rule.

The Council was concerned that QS purchases occurring before implementation of this final rule would hinder rather than support progress toward an owner-onboard catcher vessel fleet. Therefore, the Council chose February 12, 2010, as the date after which holders of QS received by transfer would not be able to hire a master to harvest the resulting IFQ because that is the date that the Council announced its interest in addressing this issue and adopted its problem statement for this action. The Council concluded that this date would reduce an initial recipient's incentive to purchase additional QS to be fished by hired masters prior to implementation of this final rule. The Council determined that the elapsed time between its recommendation and the implementation of this final rule would provide a sufficient grace period for initial QS recipients to make any necessary changes to their business plans.

The Council considered and rejected several alternative dates, such as the effective date of the final rule, because dates after February 12, 2010, could allow initial recipients to further consolidate their holdings of QS and exacerbate the problems the Council was addressing with this action. Additional acquisition of QS for harvest by hired masters obstructs the objective of the Council for a predominantly owner-onboard catcher vessel fleet. Instead, the Council wanted to prevent further increases in the amount of IFQ harvested by hired masters.

NMFS and the Council recognized that additional QS may be consolidated into blocks by both individual and non-individual initial recipients until this action takes effect. Tracking a new block of QS is administratively burdensome because NMFS

cannot differentiate what portion of that QS block should be attributed to QS with the hired master privilege as opposed to that without the hired master privilege. To avoid the administrative burden of reversing these consolidations, this final rule affects catcher vessel QS transferred to an initial recipient and consolidated into a QS block after February 12, 2010, as follows:

- If catcher vessel QS are consolidated into a QS block between February 12, 2010, and the effective date of this final rule (see DATES), the IFQ resulting from that consolidated QS block can be fished by a hired master, and
- If catcher vessel QS are consolidated into a QS block after the effective date of this final rule (see DATES), the IFQ resulting from that consolidated QS block cannot be fished by a hired master, and the QS holder is required to be on board the vessel harvesting the IFQ derived from those QS.

Under this final rule, initial QS recipients have options for using QS received by transfer after February 12, 2010. As noted above, QS that is consolidated into blocks before the effective date of this rule may be fished by a hired master. Moreover, initial recipients who received catcher vessel QS after February 12, 2010, may sell those QS to other halibut and sablefish IFQ fishery participants, or to new entrants into the fishery. Other than selling the QS, the options and associated impacts differ between individual and non-individual initial recipients. An individual initial recipient who receives catcher vessel QS after February 12, 2010, may fish the IFQ derived from that QS as an owner-onboard. A non-individual initial recipient that received catcher vessel QS by transfer after February 12, 2010, may fish the resulting IFQ using a hired master, but only until the effective date of this final rule. After the

effective date, a non-individual initial recipient will be prohibited from fishing QS received by transfer after February 12, 2010, using a hired master, but may, as noted above, sell those QS. Alternatively, a non-individual initial recipient may continue to hold that QS, but the resulting IFQ cannot be used because a non-individual entity must hire a master to harvest the IFQ.

The Council recognized that this rule may reduce the economic incentive for initial recipients to increase their QS holdings above the amount they held as of February 12, 2010. This supports the IFQ program objective of a predominantly owner-onboard catcher vessel fishery by (1) preventing further increase in the use of hired masters while minimizing disruption to operations of small businesses that have historically used hired masters, and (2) discouraging further consolidation of QS among initial recipients for harvest by hired masters. The Council did not expect this action to disrupt existing hired master arrangements because persons who currently qualify for the hired master exemption can continue to use a hired master for catcher vessel QS held on or before February 12, 2010.

This final rule will not apply under the following circumstances in the IFQ Program:

- Category A (catcher/processor) QS are excluded from this action because this vessel category of QS is not subject to owner-operator requirements.
- Individual (persons who, for example, are not corporations or partnerships) initial recipients in IPHC Area 2C (halibut) and the Southeast region (sablefish) are excluded from this action because existing regulations at § 679.42(i)(3)

prohibit individuals who are initial recipients from using hired masters to harvest their IFQ halibut or sablefish in these areas.

- Allocations of halibut and sablefish issued to Community Development Quota (CDQ) groups are excluded from this action. CDQ groups are not subject to owner-operator requirements.

#### Summary of Regulations Implemented by This Final Rule

Three regulatory amendments are necessary to implement the Council's recommendation for final action. The first two amendments add regulations at § 679.42(i)(8) and (j)(10) to specify that a hired master cannot be used to fish IFQ halibut or sablefish derived from catcher vessel QS that was received by transfer after February 12, 2010, unless the QS was consolidated into a block prior to the effective date of this final rule. The third amendment adds regulations under § 679.41(c)(11) specifying that NMFS will not approve a transfer of catcher vessel QS to a corporation, partnership, association, or other non-individual entity at any time. These regulatory changes are consistent with the Council's intent to discourage further acquisition of catcher vessel QS by initial recipients for harvest by hired masters.

Under this final rule, IFQ derived from catcher vessel QS received by transfer after February 12, 2010, cannot be harvested by a hired master. Because a non-individual entity must hire a master to harvest its IFQ, the change to § 679.41(c)(11) prevents non-individual entities, such as corporations, from receiving additional catcher vessel QS by transfer after the effective date, with one exception. That exception, found at § 679.41(g)(3), provides that an individual initial catcher vessel QS recipient may transfer initially issued QS to a corporation that is solely owned by the same individual.

Otherwise, individuals may not transfer QS received after initial issuance into a solely-owned corporation. NMFS makes no changes to this existing exception. This exception allows individuals to transfer initially received QS to a solely-owned corporation for tax purposes, limiting liability, or for other business purposes.

To implement this final rule, NMFS will redesignate catcher vessel QS as “eligible to be fished by a hired master” if the QS was (1) held by an initial recipient on or before February 12, 2010, or (2) received by transfer and consolidated into a QS block held by an initial recipient prior to the effective date of this final rule. All other catcher vessel QS that does not meet these requirements will be designated “not eligible to be fished by a hired master”, including (1) individual initial recipient QS designated for areas 2C (halibut) and Southeast (sablefish), (2) individual and non-individual QS not held by an initial recipient, (3) unblocked QS transferred to an initial recipient after February 12, 2010, and (4) blocked QS transferred to an initial recipient after the effective date of this final rule. Following the redesignation of QS, two types of annual IFQ permits will be issued by NMFS. Quota share designated as eligible to be fished by a hired master will yield IFQ that can be harvested by a hired master. Quota share designated as not eligible to be fished by a hired master will yield IFQ that cannot be harvested by a hired master. NMFS will redesignate QS and issue the new types of IFQ permits prior to the beginning of the IFQ fishing year following the date this final rule becomes effective and each year thereafter as transfers require.

#### Comments and Responses

NMFS received 15 comment letters during the public comment period for the proposed rule. Of the 15 comment letters received, one letter was from a representative

of a fishing industry organization, one letter was from a non-profit organization, and the remaining letters were from individual IFQ fishery participants and members of the public. One letter recommended broad changes to fisheries management that are outside the scope of this action. The remaining 14 letters contained 24 unique comments. A summary of the comments and NMFS' responses follow.

Comment 1: Three commenters supported the proposed rule because the original intent of the IFQ Program was to maintain the owner-onboard character of the fixed-gear fleet and promote an equitable transition to an owner-onboard fishery through the use of vessel size categories, vessel IFQ use caps, and the hired master exemption only for initial recipients of QS.

Response: NMFS acknowledges the commenters' support of the proposed rule.

#### Fairness and Consistency with Applicable Law

Comment 2: NMFS states that the proposed rule will further the owner-onboard IFQ fishery. However, the purpose of the original IFQ Program was to resolve problems that stemmed from the "open access" regulatory regime, not to promote an owner-onboard halibut and sablefish IFQ fishery.

Response. The Council and NMFS identified 10 objectives for the original IFQ Program. Section 2.3 of the IFQ Program FSEIS identifies and describes these objectives (see ADDRESSES). NMFS agrees that one objective of the IFQ Program was to address the conservation and management problems associated with the "open access" management regime. The Council also identified an objective to maintain the existing business relationships among vessel owners, crews, and processors and ensure that those directly involved in the halibut and sablefish IFQ fishery benefit from the IFQ program

by further ensuring that fishery is dominated by owner-onboard operations. However, the Council recognized the tension between many of its objectives, and therefore selected a set of program elements that provided a reasonable balance of competing objectives.

With respect to the objectives discussed above, the balance that the Council struck in the IFQ Program: (1) established the owner-onboard requirement to further the objective of owner-onboard fisheries; and (2) exempted initial recipients of QS, many of whom actively participated in harvesting activities on board their vessels and some of whom employed hired masters, from the owner-onboard requirement. The purposes of the exemption were to further the objective of maintaining existing business relationships and to avoid sudden disruption of business operations to those fishermen who had hired masters to fish for them. Because initial recipients could not transfer their exemption from the owner-onboard requirement, the Council and NMFS expected that in the future all catcher vessel QS would be held by individuals that had to be on board their vessels for the harvest of their IFQ. NMFS stated in the final rule to implement the IFQ Program that eventually, as the individuals and firms that received initial allocations were replaced by new QS holders, all catcher vessel QS would be transferred to individuals in keeping with the Council's basic objective of requiring QS holders to be on board the vessels during fishing operations (58 FR 59375, November 9, 1993).

Contrary to the commenter's assertion, the record of the IFQ Program development confirms that an objective of the IFQ Program was for owners of catcher vessel QS to be on board in the IFQ fishery. For example, the Council noted in Section 2.3.6 of the IFQ Program FSEIS (see ADDRESSES) that it desired that QS remain in the hands of active fishermen who would use them. That Analysis also explained that other

restrictions on who may control or use catcher vessel QS and IFQ are intended to assure that those directly involved in the fishery benefit from the IFQ Program and that the fisheries continue to be dominated by owner-onboard operations. The Council intended that active harvesters, and not investment speculators, remain as the “stock holders” in the fishery under limited access IFQ management (57 FR 57130, December 3, 1992). In the final rule implementing the IFQ Program, NMFS noted in response to comment that the Council’s basic policy is to require catcher vessel QS holders to be on board during fishing operations and sign required landing reports. The Council provided for an exception to this policy in its motion language and FMP amendment text for persons who receive initial catcher vessel QS except for holders of catcher vessel QS usable in Southeast Alaska and holders of catcher/processor QS. The Council noted that eventually, as the individuals and firms that received initial allocations are replaced by new ones, all catcher vessel QS would be transferred to individuals in keeping with the Council’s basic objective of requiring QS holders to be on board the vessel during fishing operations (58 FR 59375, November 9, 1993).

Comment 3: NMFS states that a purpose of the proposed rule is to prevent consolidation of the ownership of QS by preventing initial recipients from acquiring additional QS that is not subject to the owner-onboard requirement. A fundamental purpose of the IFQ Program was to encourage consolidation because the fishery was overcapitalized. To say that a goal of the IFQ Program was to prevent consolidation is to ignore the history and intended purpose of the program.

Response: The commenter is correct that one problem the IFQ Program addressed was excess harvesting capacity in the IFQ fisheries (58 FR 59375, November

9, 1993). However, the Council and NMFS were concerned that the IFQ Program might result in too much consolidation in the ownership of QS. In addition to the objectives identified in response to Comment 2, the Council identified the objective in Section 2.3 of the IFQ Program FSEIS (see ADDRESSES) to limit the concentration of QS ownership and IFQ usage that was expected to occur over time. Also, Section 2.3.3 of the IFQ Program FSEIS notes that the IFQ Program contained many features to prevent undue consolidation, including ownership caps on QS. The impetus for this final action to further restrict the owner-onboard exemption for initial QS recipients results from the Council's determination that allowing those initial recipients of QS who hire masters to acquire additional QS up to the ownership caps could impede the development of owner-onboard IFQ fisheries. Section 5.2 of the RIR/IRFA for this final action (see ADDRESSES) recognizes that individual initial recipients may increase their QS holdings, for which they may hire masters, up to the use cap. It is this capacity to increase the use of hired masters, instead of a more timely transition to an owner-onboard fleet, which concerns the Council.

Comment 4: The proposed action violates the Administrative Procedure Act (APA) because NMFS did not publish a timely notice of proposed rulemaking in the Federal Register regarding the applicability of the February 12, 2010, date. Therefore, it would be unlawful to prohibit persons who purchased QS between February 12, 2010, and the date of publication of the proposed rule from hiring a master to fish that QS unless those persons had actual notice of the Council's action. Moreover, the rule has an effective date of February 12, 2010, which precedes publication of the final rule. Because the rule has an effective date preceding the final rule's publication, the rule

violates the APA's requirement that rules take effect not less than 30 days after the final rule's publication.

Response: The APA does not require NMFS to have published a notice of the Council's action in the Federal Register prior to the notice of proposed rulemaking. NMFS published the notice of proposed rulemaking for this action on April 26, 2013 (78 FR 24707), with comments invited through May 28, 2013. This final rule will become effective 30 days following publication in the Federal Register (see DATES) consistent with the APA, and will apply to all persons participating in the sablefish and halibut IFQ fisheries.

The administrative record for this rule adequately describes the rationale for curtailing the hired master exemption for QS acquired after February 12, 2010:

- The supporting analysis notes that the Council acknowledged that a number of QS units were in the process of being transferred by NMFS, and more QS would continue to be transferred while the Council continued to work on the regulatory amendment;
- The supporting analysis states that the rule will only curtail further transfer of QS for use by hired masters, rather than eliminate the hired master provision altogether as had been suggested by stakeholders in previous program reviews;
- Under the Council's preferred alternative, QS transferred after February 12, 2010, would no longer be eligible to be used by hired masters in order to counter a trend of the increased use of hired masters;

- The objective of the Council’s preferred alternative is to cap the potential use of hired masters by eligible initial QS recipients to levels in existence as of February 12, 2010, the date that the Council began developing this regulatory amendment to curtail the trend of increasing use of hired masters in the sablefish and halibut IFQ fisheries. The Council selected this date to discourage persons from rushing to acquire even more QS, thereby exacerbating the very problem the Council was trying to address with this action.

Comment 5: The proposed rule is arbitrary and capricious by taking away the privilege of initial recipients to hire masters to fish QS acquired after February 12, 2010. The commenter emphasizes that the original IFQ rule allowed initial recipients of QS to acquire additional QS by transfer and allowed initial recipients to be exempt from the owner-onboard requirement with respect to all QS that they acquired by transfer.

Response: The commenter is correct that the final rule to implement the IFQ Program included an exemption from the owner-onboard requirement for initial recipients of catcher vessel QS outside of Southeast Alaska. The commenter is also correct that the IFQ Program final rule expressly extended the exemption from the owner-onboard requirement to QS that initial recipients acquired by transfer after implementation of the IFQ Program. The commenter is also correct that this final rule amends the exemption such that QS acquired after February 12, 2010, are no longer exempt from the owner-onboard requirement. However, the regulatory amendment implemented in this final rule is not arbitrary and capricious. The purpose of this action

is to promote the development of an owner-onboard IFQ fishery, which has been an objective of the IFQ Program since its inception. See NMFS's Response to Comment 2.

The RIR/IRFA for this final action demonstrates that the Council and NMFS evaluated a substantial amount of data on the IFQ Program (see ADDRESSES). Tables 9 – 11 and 17 - 20 in the RIR/IRFA include the number of individual halibut and sablefish QS holders from 1995 to 2009, the number of non-individual QS holders over those years, and their use of hired masters to fish their IFQ. Tables 21 - 22 in the RIR/IRFA include the number of IFQ halibut and sablefish pounds held by persons who may hire masters. In addition, Tables 33 - 40 in the RIR/IRFA include information on annual prices for QS and transfer rates for QS.

Data from Tables 9 and 11 in the RIR/IRFA show that, although the number of initial recipients holding QS has decreased, the number of individual initial recipients who hire masters in the halibut fishery increased from 110 in 1998 to 210 in 2009 (a 91 percent increase), while in the sablefish fishery the number increased from 46 to 91 (a 98 percent increase). Table 16 in the RIR/IRFA shows the percentage of halibut IFQ landed by hired masters increased from 7.9 percent of the total IFQ landings in 1998 to 19.3 percent in 2009. Similarly, the percentage of sablefish IFQ landed by hired masters increased from 7.7 percent of the total IFQ landings in 1998 to 15.0 percent in 2009.

The Council and NMFS also recognized that without a change in regulations, initial recipients of QS could continue to increase their holdings of QS that are exempt from the owner-onboard requirement up to the QS ownership use caps in current regulation. This potential for increased consolidation of QS for harvest by hired masters was the crux of the problem the Council faced. The Council and NMFS have clearly

explained their rationale for preventing initial recipients from acquiring more QS that would be exempt from the owner-onboard requirement. As noted in the responses to comments above, the Council has supported the objective of an owner-onboard fishery since the inception of the IFQ Program. This final rule furthers that objective by preventing initial recipients from acquiring more QS that can be fished without the QS holder being on board the vessel during the harvest of the IFQ. (see Response to Comment 2.)

The Council acknowledged that the use of hired masters is an existing practice in some halibut and sablefish business models and arrangements for both individual and non-individual initial recipients of QS. The Council considered and rejected an alternative to eliminate the hired master exemption from the IFQ Program. However, the Council determined, and NMFS agrees, that eliminating the hired master exemption would not sufficiently accommodate the existing business plans of hired masters or initial recipients that use a hired master to harvest IFQ (see Section 6 of the RIR/IRFA). Therefore, this action balances the interests of initial recipients of halibut and sablefish QS with the interests of new entrants to the fisheries, as well as furthering the Council's IFQ Program objective to move more expeditiously towards an owner-onboard catcher vessel IFQ fishery (see Section 5.2 of the RIR/IRFA).

Comment 6: It is arbitrary and capricious for NMFS to take action to increase the speed of transition to owner-onboard fisheries in the IFQ fisheries. First, the Council and NMFS did not establish a timetable for the transition when the original IFQ Program was established. Second, NMFS provides no evidence the proposed action will achieve the

stated objectives to encourage new entrants to the fishery and hasten the transition to an owner-onboard fleet.

Response: Although the Council and NMFS did not originally establish a timetable for the complete transition to an owner-onboard IFQ fishery, the lack of a timetable does not prevent the Council and NMFS from taking action now to hasten progress toward the objective of an owner-onboard IFQ fishery. NMFS must examine the relevant data and articulate a satisfactory explanation for its action. As noted in response to Comment 5, the Council examined relevant data from the IFQ Program and concluded that, among the competing objectives of maintaining business relationships and promoting an owner-onboard fishery, it needed to modify the exemption of initial recipients from the owner-onboard requirement to improve progress toward the objective of a predominantly owner-onboard fishery and prevent further acquisition of QS by fishermen who would hire masters to fish the IFQ derived from that QS. Thus, the administrative record reflects a rational basis for increasing the pace of the transition to owner-onboard fishery. In short, the Council and NMFS have evaluated the IFQ Program as it has developed and have modified the program in light of experience with that program.

NMFS disagrees with the commenter's assertion that it has not provided evidence that this action will achieve the stated objectives to encourage new entrants to the fishery and hasten the transition to an owner-onboard fleet. The Council determined, and NMFS agrees, that QS consolidation among initial recipients and increased use of hired masters likely has reduced the opportunity for new entrants to purchase QS and enter the fishery. As discussed in Section 5.2 of the RIR/IRFA, this action is likely to encourage new

entrants to the fishery in two ways. First, the action has the effect of placing an upper limit on the amount of IFQ that may be fished by a hired master. This likely will result in initial recipients transferring more QS than they would have if initial recipients were to retain the ability to hire a master for IFQ derived from QS received by transfer after February 12, 2010. It is difficult to predict with precision the impacts of this action on QS transfers or QS availability for new entrants because the response of each QS holder will be different. Some QS holders may be unable or choose not to purchase additional QS, some may choose to purchase more QS and be on board the vessel to harvest the IFQ, while others may finance QS purchases by crew or other eligible QS recipients who must be on board the vessel when the IFQ is harvested. However, it is likely that additional QS will be placed on the market and available for purchase by new entrants to the fishery and active fishermen who will be on board the vessel to harvest IFQ.

Second, this action reduces the incentive for initial QS recipients who use hired masters to purchase additional QS, which could alleviate some of this upward pressure on QS price and provide more opportunities for new entrants and active fishermen – including fishermen currently employed as hired masters – to purchase QS.

Comment 7: The proposed action violates section 504(a) the Rehabilitation Act of 1973, 29 U.S.C. 794(a), because it has a discriminatory impact on disabled persons. The comment is from a trade association that states that it has members who are initial recipients of QS that have acquired QS after February 12, 2010, or that wish to acquire additional QS, and who, because of a disability, cannot be on board a vessel during the harvest of this additional QS. The commenter claims that the rule has a discriminatory impact on disabled persons in violation of the Rehabilitation Act. The commenter

observes that many individual initial recipients of QS can no longer serve on board a vessel due to disability, adding that the rule prevents these individuals from increasing their QS holdings and using a hired skipper. The commenter proposes that a reasonable accommodation for this rule would exempt initial individual QS holders who have disabilities, thus allowing these individuals to continue hiring masters to fish their QS indefinitely.

Response: The Rehabilitation Act provides that no disabled person, by reason of the disability, shall be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program conducted by any Executive agency. 29 U.S.C. 794(a). To prove a government violation of the Rehabilitation Act, an applicant to a government program must show that he or she is an individual with a disability as defined under the Act; that apart from the disability, the individual is otherwise qualified to receive the program benefit; that the individual is denied the benefit solely by reason of the disability; and that the program receives federal financial assistance. See Toney v. U.S. Healthcare, Inc., 840 F.Supp. 357 (E.D. Pa. 1993), aff'd, 37 F.3d 1489 (3d. Cir. 1994). If the above is shown, then the government must provide a reasonable accommodation to the disabled individual, thus allowing the individual to participate in the program. However, if providing the accommodation would undermine a fundamental purpose or goal of the program, there is no Rehabilitation Act violation and no accommodation need be provided. See Southwestern Community College v. Davis, 442 U.S. 397, 410, 413 (1979) (the Rehabilitation Act does not require fundamental, major or substantial program modifications).

The Department of Commerce (Department) published regulations implementing the Rehabilitation Act and prohibiting discrimination in its programs on the basis of handicap. 15 CFR part 8c. The regulations provide that handicapped individuals qualified for a Department program will not be excluded from the program on the basis of the handicap. 15 CFR 8c.30. The Rehabilitation Act and the Department regulations apply to the IFQ Program. 15 CFR 8c.2. The regulations protect an “individual with handicaps,” which is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as being impaired by the Department. 15 CFR 8c.3. Although the regulations protect an individual who is disabled and qualified for the program, such a person must demonstrate that he or she can achieve the purpose of the program “[w]ithout modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature”. 15 CFR 8c.3.

NMFS has determined that the final rule is consistent with the Rehabilitation Act and Department regulations. Notwithstanding that some QS holders may be able to show they are qualified individuals with handicaps who, as a result of their disabilities, will be unable to be physically on board their vessels while fishing QS acquired after February 12, 2010, these persons would, under the regulations, have to show that they could meet or achieve the purposes of the IFQ Program without modifications in the program or activity that would result in a fundamental alteration in its nature. In this case, the record of the IFQ Program FEIS amply demonstrates that a fundamental objective of the IFQ Program was an owner-onboard IFQ fishery; that is, one of the program’s fundamental purposes is that QS owners be on board vessels while fishing their QS. Further extending

the exemption from the owner-onboard requirement would fundamentally alter that purpose. Therefore, neither the Rehabilitation Act nor Department regulations require that NMFS alter the owner-onboard provision to accommodate handicapped QS holders in this instance.

Comment 8: The proposed action is a prohibited retroactive application of law. Further, the Magnuson-Stevens Act does not expressly authorize the Council or NMFS to issue a retroactive rule; therefore, NMFS is prohibited from issuing this retroactive rule. Initial recipients of QS had entered into contracts for the transfer of QS that were binding before the Council adopted the retroactive date of February 12, 2010, in March of 2011. These legal contracts would be improperly changed by the proposed rule without NMFS having the express statutory authority to take such retroactive actions.

Response: A rule has impermissible retroactive effects when it changes the past legal consequences of past conduct without express statutory authority for such a rule. In contrast, a rule does not have impermissible retroactive effect merely because it applies to conduct preceding the rule's promulgation or upsets expectations based in prior law. NMFS has determined that this rule does not have an impermissible retroactive effect as that term has been defined in relevant jurisprudence. This rule does not change the past legal consequences of past conduct. The rule will not cancel or invalidate QS transfers occurring on or after February 12, 2010, or make those transfers illegal. While the rule may impact persons who contracted for QS on or after February 12, 2010, and upset investment expectations with respect to hiring masters to fish that QS, the rule does not invalidate those QS transfers.

Furthermore, this rule does not penalize the use of a hired master to harvest QS acquired on or after February 12, 2010, and before the effective date, nor does this rule invalidate, alter, or penalize the past use of QS and hired masters. The rule's effect is prospective; it affects and limits future hired master use, not past use. Moreover, even if the commenter were correct that the rule has retroactive effect, the Magnuson-Stevens Act expressly authorizes the Council and NMFS to revoke, limit, or modify QS at any time. 16 U.S.C. 1853a(b).

The Council evaluated alternative dates to February 12, 2010, in consideration of those initial QS recipients who may have been unaware of the Council's action in February 2010 and who acquired QS after that date for harvest by hired masters. However, the Council recognized that any date it selected would affect some persons who may have been unaware of the Council's action. The Council determined, and NMFS agrees, that it could not address every one of these circumstances by choosing a different date without compromising the intent of this action (see Section 5.2 of the RIR/IRFA).

Comment 9: The proposed regulatory amendments are arbitrary and capricious because they treat similarly situated persons differently. The proposed action would treat corporations holding catcher vessel QS differently than the corporations that participate in the halibut and sablefish fisheries through the Community Quota Entity (CQE) and Community Development Quota (CDQ) programs.

Response: As discussed in the final rule implementing the IFQ Program (58 FR 59375, November 9, 1993) and in the proposed rule for this action (78 FR 24707, April 26, 2013), the IFQ Program was developed to meet multiple objectives for different types of participants in the halibut and sablefish IFQ fisheries. As discussed in the response to

Comment 6, the Council and NMFS have articulated a legitimate fishery objective for this action. Furthermore, as explained below, there are reasons supporting any differences in the way fishery participants, including corporations, may be treated.

The Council and NMFS have articulated legitimate objectives for the CDQ and CQE halibut and sablefish fisheries that are consistent with the overall goals of the IFQ Program. The CDQ Program was proposed and implemented in conjunction with the IFQ Program to help develop commercial fisheries in communities on the Bering Sea coast by allowing them exclusive access to specified amounts of halibut and sablefish in the Bering Sea and Aleutian Islands (57 FR 57141, December 3, 1992). The CDQ Program provides a long-term asset to use for the community's benefit. The CQE Program modified the IFQ Program to provide additional opportunities for residents of fishery dependent communities to participate in halibut and sablefish fisheries by allowing eligible Gulf of Alaska communities to establish non-profit entities to purchase and hold QS for use by community residents (69 FR 23681, April 30, 2004). CQE Program QS cannot be sold unless it improves the community's ability to enhance or expand its participation in the CQE Program. Thus, the CQE Program is for community benefit as well as individual benefit. The CDQ and CQE Programs are intended to insure that some level of QS access remains for community residents in the long term. In contrast, non-individual, for-profit, corporations could leave the community, sell their QS, or otherwise act in their own best interest, rather than in the best interest of the community.

Section 5.2 of the RIR/IRFA describes that the CDQ and CQE programs are premised on the concept of allowing harvest privileges to be held by a community entity

and then leased to individual residents of the community. These programs do not include a vessel ownership requirement or owner-onboard provision because these are unnecessary for programs in which harvest privileges are non-transferable (CDQ program) or may be used only by the community fishery participants (CQE program) and are intended for long-term use by eligible communities. The concept of absentee ownership does not apply in the CDQ and CQE programs because QS are held by the community entity and tied to that community. These community-based programs are intended as stepping stones to individual ownership of QS, which, once acquired by individuals, will be subject to the owner-onboard requirement.

Comment 10: The proposed rule violates the fair and equitable test required by National Standard 4 of the Magnuson-Stevens Act and the Halibut Act. It is unfair to initial QS recipients who chose to purchase QS after February 12, 2010, and shows bias among the IFQ Program participants. Additionally, the proposed rule would impose significant disadvantages and hardships without offsetting the positive benefits of the existing IFQ Program.

Response: This action is consistent with National Standard 4 of the Magnuson-Stevens Act at 16 U.S.C. 1851(a)(4) and similar standards set forth in the Halibut Act at 16 U.S.C. 773c(c). National Standard 4 of the Magnuson-Stevens Act provides that conservation and management measures shall not discriminate between residents of different states. This action does not discriminate between residents of different states. Further, if it becomes necessary to allocate or assign fishing privileges among U.S. fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such a manner that

no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The Halibut Act at 16 U.S.C. 773c(c) states that if it becomes necessary to allocate or assign halibut fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen, based upon the rights and obligations in Federal law, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of halibut fishing privileges. The “fair and equitable” requirement in the Halibut Act is substantially the same as the “fair and equitable” requirement found in National Standard 4 of the Magnuson-Stevens Act, the only difference being the addition of the word “halibut” before “fishing privileges.” Because of this similarity, the National Standard 4 guidelines promulgated by NMFS and found at 50 CFR 600.325 help to illustrate why this action meets the statutory requirement.

NMFS has determined that this action is not subject to the statutory provisions regarding the fair and equitable allocation of fishing privileges because it is not a direct and deliberate distribution of the opportunity to participate in the fishery among identifiable discrete user groups or individuals. Any management measure can have incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of National Standard 4. (50 CFR 600.325(c)(1)). This action limits the use of hired masters to harvest a fishing privilege, which in this case is the QS that has been allocated or assigned to IFQ halibut and sablefish fishermen. Any distributional effect of this rule on IFQ fishermen and hired masters is an incidental allocative effect.

Even though this action does not result in the direct distribution of fishing privileges, this action is fair and equitable. As described in the response to Comment 6, the Council and NMFS have articulated a legitimate objective for this action - decreasing the use of hired masters by QS holders over time in order to hasten progress toward a predominantly owner-onboard catcher vessel halibut and sablefish IFQ fishery. Further, the guidelines to National Standard 4 (50 CFR 600.325(c)(3)(i)(A)) acknowledge that inherent in an allocation is the advantaging of one group to the detriment of another. The motive for any particular allocation should be justified in terms of fishery management objectives; otherwise, the disadvantaged user groups or individuals will suffer without cause. The fishery management objective of a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS starting with the 1995 implementation of the IFQ Program and continuing through this final rule. As summarized in Section 1 of the RIR/IRFA and in Comment 2, the owner-onboard requirement is designed such that QS remains largely in the hands of active fishermen rather than absentee owners or investment speculators in order to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. As previously noted, the Council and NMFS determined this action was necessary to prevent initial recipients of QS from continuing to acquire additional QS for harvest by hired masters, thereby prolonging the transition to an owner-onboard fishery.

The guidelines to National Standard 4 state that an allocation may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. “An allocation need not preserve the status quo in the fishery to qualify as

‘fair and equitable,’ if a restructuring of fishing privileges would maximize overall benefits” (50 CFR 600.325(c)(3)(i)(B)). The Council and NMFS found that the total benefits to the IFQ halibut and sablefish fishery resulting from this action will be increased relative to the status quo as this action should result in additional QS placed on the market for purchase by new entrants (see Section 5.2 of the RIR/IRFA).

Comment 11: The proposed rule will likely prevent achievement of optimum yield and violate National Standard 1 of the Magnuson-Stevens Act because initial recipients of QS will be prevented from transferring QS to address IFQ Program harvest limitations resulting from vessel use caps and allocations by geographic area.

Response: National Standard 1 of the Magnuson-Stevens Act at 16 U.S.C. 1851(a)(1) states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The term "optimum", with respect to the yield from a fishery, means in pertinent part the amount of fish which will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery. 16 U.S.C. 3(33). As described in the National Standard 1 guidelines promulgated by NMFS at 50 CFR 600.310(e)(3)(i)(B)(ii), optimum yield is the long-term average amount of desired yield from a stock, stock complex, or fishery.

The determination of optimum yield should consider overall benefit to the nation, and any relevant economic, social, or ecological factors.

The Council considered the effects of this action on total harvest of halibut and sablefish IFQ and determined that it would not impede harvest of the total allowable catch. The Council determined, and NMFS agrees, that harvesting activities will not significantly change under this action. Section 5.2 of the RIR/IRFA notes that while it is unknown what portion of halibut and sablefish IFQ pounds would not be harvested by hired masters under this action, those IFQ pounds may be harvested and landed by (1) the current individual QS holder; (2) another individual initial recipient upon transfer of the QS; (3) a crew member upon transfer of the QS; or (4) a new entrant QS holder upon transfer of the QS. The Council recognized that this action will reduce the use of hired masters and prevent initial recipients of QS from acquiring additional QS for harvest by hired masters. As a result the action will have distributional effects on both QS holders who use hired masters and persons who work as hired masters. Given the number of options for initial QS recipients to maintain active and viable businesses in the halibut and sablefish fisheries, however, NMFS does not anticipate that this action will prevent participants from fully harvesting IFQ or the halibut and sablefish fisheries from achieving optimum yield.

Comment 12: The proposed rule is arbitrary and capricious because there is no analysis of the economic impact of the proposed rule on the initial recipients of QS that are directly affected by the proposal, as well as other fishery participants.

Response: Prior to recommending this action, the Council reviewed the RIR/IRFA, which used the best available information to analyze the impacts of the action

on affected IFQ fishery participants. The RIR/IRFA included a significant amount of information to help the Council determine the likely economic impacts of the action, including discussions of (1) the kinds of business models and relationships that have developed around the use of the hired master provision; (2) changes in the way IFQ is harvested by all types of QS holders over time relative to the program goal of progress towards an owner-onboard fleet; (3) IFQ Program elements and factors outside the program that provide incentives or disincentives for QS holders to retire from the fishery; (4) changes in QS held over time by different types of QS holders; and (5) transfers of catcher vessel QS after February 12, 2010.

As noted in Section 5.2 of the RIR/IRFA, it is not possible to quantify the economic impacts or predict the outcomes of this action with certainty because the response of each QS holder to the action will be different. The Council acknowledged that this action could have negative economic impacts on some IFQ fishery participants, particularly for QS holders who use hired masters and persons who work as hired masters. The RIR/IRFA notes that while this action will require some businesses to change their business models, a number of options remain for initial recipients to maintain active and viable businesses in the halibut and sablefish fisheries without significant disruptions to existing business models. As described in the response to Comment 6, after reviewing the RIR/IRFA and receiving public testimony, the Council determined, and NMFS agrees, that this action is necessary to balance the interests of initial recipients of halibut and sablefish QS against the interests of new entrants to the fisheries and meet the original goals of the IFQ program to move towards an owner-onboard catcher vessel fishery.

Comment 13: Small businesses, corporations, partnerships, and limited liability companies should be exempt from the proposed rule because they are not individuals and cannot meet the owner-onboard requirement. It is unfair to treat non-individual QS holders differently than individual QS holders.

Response: As discussed in the response to Comment 6, the fishery management objective of a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS since the inception of the IFQ Program in 1995. The Program requires catcher vessel QS holders to be on board the vessel when the resulting IFQ is harvested in order to promote an owner-onboard catcher vessel fishery, with a narrow exception for initial QS recipients. This requirement is intended to ensure that catcher vessel QS are held by professional, active fishermen, rather than absentee owners or investment speculators. The preamble to the proposed rule describes that by limiting this exception to initial recipients, the Council anticipated that individual initial recipients would eventually retire from fishing and that non-individual initial recipients would dissolve or change composition over time. Eventually, QS would be transferred to other qualified individuals and the IFQ fisheries would become almost entirely owner-operated.

As discussed in Section 5.2 of the RIR/IRFA, the Council considered the impacts of this action on affected participants, including small businesses, partnerships, corporations, and other non-individual QS holders. Based on the information in the RIR/IRFA and provided in public testimony, the Council and NMFS considered the effect of this action on non-individual initial recipients who must hire a master and individual initial recipients whose business model is to hire a master. As noted in

Comment 10, NMFS has considered the distributional effect of this rule on IFQ fishermen and hired masters.

Comment 14: Several commenters opposed the owner-onboard objective for the IFQ Program. One commenter asserted that a person may be an active fisherman in the IFQ fishery without being on board the vessel. Instead, for example, persons can actively manage IFQ fishing operations from shore. Other commenters proposed that it would be more appropriate to rescind the hired master privilege for QS holders who have no ownership interest in a vessel.

Response: As described in the response to Comment 6, the fishery management objective of promoting a predominantly owner-onboard catcher vessel fishery has been articulated by the Council and NMFS since the inception of the IFQ Program in 1995. Revisions to the IFQ Program, such as those suggested in these comments, would substantially change policy adopted by the Council and approved by the Secretary of Commerce and outside the scope of this action.

Comment 15: The Council and NMFS fail to account for the fact that a significant number of QS units are held by corporations that must hire masters, many of whom hold and fish their own QS. Thus, when examining the total number of masters hired by corporations, the agency should remove from consideration those who independently hold their own QS.

Response: NMFS agrees that corporate or non-individual QS holders must hire masters to harvest their IFQ. The RIR/IRFA acknowledges that some of these hired masters hold QS/IFQ, some are part owners of the vessels on which they were hired to fish the non-individual's QS/IFQ, and some are shareholders or partners of shareholders

of the owners of the non-individual QS holding entity that hires them. The RIR/IRFA considered whether to adjust the data on non-individual QS holders that hire masters that hold their own QS but, it wasn't feasible. Section 5.1 of the RIR/IRFA explains that ownership could only be examined to the "first level of affiliation" (i.e., principal corporate owners) because ownership relationships are often complex, spanning multiple levels of investment and ownership for any person and vessel NMFS does not collect the detailed data. As a result, vessel and entity ownership and hired master QS holdings are likely underestimated. The data underrepresent the number of hired masters that are second (shareholder), third (partner of shareholder), or lower level owners of the business that hired them, or of vessels on which they fished. Specifically, more hired skippers than can be documented are actually fishing their own IFQ because they are already part of the non-individual QS holders.

The Council and NMFS considered the information included in Section 5.1 of the RIR/IRFA. This information shows changes of QS holdings from 2000 through 2010, by type of QS holder, including individual initial recipients, hired masters who hold QS, and persons other than initial recipients who received their QS through purchase or other transfers. The Council and NMFS considered QS holdings by hired masters when determining that this action was needed to improve progress toward the objective of a predominantly owner-onboard catcher vessel halibut and sablefish IFQ fishery by preventing further increases in the amount of IFQ fished by hired masters.

Comment 16: The action would displace crew who want to become hired masters, hired masters who may have made investments in some amount of QS and vessel ownership, and hired masters who do not want to take on the financial

responsibility and risk of owning QS and vessels. The action will result in more consolidation of QS, fewer vessels engaged in the fishery, loss of crew member and hired master jobs, and damage to the established fishery infrastructure. Contrary to the intent of the action, it would decrease involvement of second-generation participants in the IFQ fishery.

Response: After the effective date of this final rule (see DATES), initial recipients of QS may still hire masters to harvest IFQ derived from QS held on or before February 12, 2010. Thus, opportunities for crew members and new entrants to gain experience by being a hired master continue under this rule. Hired masters who currently participate in the IFQ fishery will not be removed from the IFQ fishery, but will be allowed to fish IFQ derived from QS that were (1) held by an initial recipient on or before February 12, 2010, or (2) transferred into a QS block between February 12, 2010, and the effective date of this rule. The Council and NMFS acknowledge that this action will require some QS holders and IFQ fishery participants to change their business models. NMFS anticipates that QS consolidation by initial recipients will decline and result in more opportunities for new entrants, hired masters, and crew members to purchase QS and participate in the IFQ Program. Data are not available to analyze the specific effects of this rule on these participants, but as discussed in the response to Comment 6, the Council and NMFS anticipate that this action will provide more opportunities for active fishermen and new entrants to purchase QS.

Comment 17: The proposed action is not needed because (1) the use of hired masters will eventually phase out as initial QS recipients leave the fishery, and (2) the

IFQ Program already has a number of QS, IFQ, and vessel use caps that control consolidation.

Response: Section 5.1 of the RIR/IRFA notes that without this action, the use of hired masters to harvest catcher vessel IFQ will eventually be phased out as initial QS recipients retire from the fishery and are replaced by new entrants who are required by current regulations to be on board their vessels when the IFQ is harvested. Until that occurs, however, the Council was concerned that an increasing percentage of annual IFQ will be harvested by hired masters. Section 5.2 of the RIR/IRFA examined QS consolidation among individual and non-individual initial recipients and found that over the past 10 years the number of initial recipients has decreased while the average QS holding of those QS holders have increased. Thus, QS has consolidated among fewer QS holders who hire masters to fish their QS. As discussed in the response to Comments 5 and 6, this is contrary to the Council's objective for a predominantly owner-onboard catcher vessel IFQ fishery.

NMFS agrees that IFQ regulations at § 679.42(e), (f), and (g) include provisions for QS use caps, vessel use caps, and a block program to limit QS acquisitions and maintain a diverse owner-onboard fleet. However, as described in the response to Comments 5 and 6, the Council determined, and NMFS agrees, that the apparent QS consolidation among initial recipients and increased use of hired masters has delayed progress toward an owner-onboard fishery and likely has reduced the opportunity for new entrants to purchase QS and enter the fishery.

### Economic Impacts

Comment 18: The proposed action adds another variable to the complicated IFQ Program by increasing the risks to lenders in the IFQ fishery and creating uncertainty about entry into the IFQ Program.

Response: NMFS does not anticipate this action will increase the risk to lenders for QS purchases. Currently, all persons who purchase catcher vessel QS and who are not initial recipients of QS may not hire masters and must be on board the vessels used to harvest the resulting IFQ. This action will prevent further increases in the portion of catcher vessel QS yielding IFQ that may be harvested by a hired master.

Section 5.1 of the RIR/IRFA discusses the bond, loan, and grant programs that may be used by new entrants in the IFQ fishery to purchase QS, equipment, and vessels, depending on their individual circumstances. The RIR/IRFA notes that due to the increased price of QS and other market realities, it has proven difficult for new entrants to obtain financing. However, as described above, NMFS does not anticipate that this action will increase the risk to lenders in the IFQ fishery or affect the ability of new entrants to use available financing programs.

Comment 19: The proposed restriction will have a number of negative economic impacts on QS holders. It would affect choices to buy and sell halibut and sablefish QS, reduce the value of QS, and impact investment choices and retirement and estate planning. The proposed action also would limit competition and result in financial impacts that could lead to a loss of investment in the IFQ fishing fleet.

Response: Section 5.2 of the RIR/IRFA indicated that this action is not likely to have a significant effect on QS supply or price. As discussed in the response to Comment 6, this action could alleviate some of the upward pressure on QS price by

creating a more level playing field for QS purchases among initial recipients, active fishermen who hold QS but who were not initial recipients, crew members, and potential new entrants. Additionally, initial recipients of catcher vessel QS may continue to hire a master to harvest IFQ derived from QS held on or before February 12, 2010; therefore, NMFS does not anticipate the value of this QS is likely to decline and negatively impact investment choices and retirement and estate planning.

As noted in Section 5.2 of the RIR/IRFA and in the response to Comment 12, it is not possible to quantify the economic impacts or predict the outcomes of this action with certainty. The Council recommended this action based on the best available information in the RIR/IRFA on the use of hired masters, changes in QS holdings of initial recipients, QS transfers, and the rate of new entry into the fishery. Given the opportunities for initial recipients to continue to use hired masters for catcher vessel QS held before February 12, 2010, NMFS does not expect this action to significantly disrupt existing business operations. In addition, NMFS anticipates increased opportunities for new entrants to the catcher vessel fishery and, therefore, increased competition and potential for investment in the IFQ fishery.

Comment 20: Fishermen and investors should not be further restricted at this time when severe total allowable catch reductions are probable. The increase in costs of supplies such as bait, fuel, food, repairs, insurance, and the additional costs of vessel monitoring systems and human observers, combined with drops in fishery catch limits have created an even greater need for partnerships and expense sharing among fishermen than has transpired over time with the use of hired masters.

Response: NMFS acknowledges the cost and benefits of combining business plans to offset the expenses of supplies and monitoring. While this approach may be more desirable at lower IFQ fishery catch limits, the potential increase in the use of hired masters conflicts with the Council's objective for an owner-onboard catcher vessel fishery. As discussed in the response to Comments 5 and 6, the Council considered data from the RIR/IRFA evaluating impacts of this action on affected fishery participants. The Council determined, and NMFS agrees, that this action is necessary to meet the IFQ Program objective for a predominantly owner-onboard catcher vessel halibut and sablefish IFQ fishery.

#### Other Issues

Comment 21: The rule will be ineffective because an initial recipient of QS can place his or her QS in the name of another individual, place a lien on the QS, and then draw up an agreement to resolve the lien. In effect, the initial recipient would stay on shore while the IFQ is fished to satisfy the lien agreement.

Response: The transaction described in the comment would require the parties to apply to NMFS for a QS transfer. Under this final rule, catcher vessel QS that was transferred to another person after February 12, 2010, will require that the QS recipient be on board the vessel when the IFQ derived from the QS is fished, unless the QS are consolidated into a block before the effective date of this final rule (see DATES).

Comment 22: The proposed rule indicates that category A QS and Community Development Quota (CDQ) allocations are not eligible to be fished by a hired master. This is incorrect; hired masters may be used to harvest category A IFQ and CDQ

allocations under the IFQ Program. The proposed rule should have stated that category A QS and CDQ allocations are excluded from the proposed action.

Response: NMFS agrees. Page 24710 of the preamble to the proposed rule for this action correctly indicated that category A (catcher/processor) QS and CDQ allocations would be excluded from this action (78 FR 24707, April 26, 2013). However, a subsequent paragraph incorrectly stated that to implement the proposed action, NMFS would designate category A QS and CDQ allocations as not eligible to be fished by a hired master. NMFS has corrected this statement in the “Rationale for and Effects of This Final Rule” section in this final rule to clarify that this action does not affect category A QS and the halibut and sablefish allocation to CDQ groups.

Comment 23: The proposed action would create a new and separate category of QS in the IFQ Program with additional unknown administrative and enforcement burdens. NMFS must acknowledge the burden that will cause.

Response: The commenter is correct that NMFS will implement this action by redesignating catcher vessel QS as “eligible to be fished by a hired master” if the QS was (1) held by an initial recipient on or before February 12, 2010, or (2) received by transfer and consolidated into a QS block held by an initial recipient prior to the effective date of this final rule (see DATES). All other catcher vessel QS that does not meet these requirements will be designated “not eligible to be fished by a hired master”.

Following the redesignation of catcher vessel QS, NMFS will issue two types of annual IFQ permits. Quota share designated as eligible to be fished by a hired master will yield IFQ that may be harvested by a hired master. Quota share designated as not eligible to be fished by a hired master will yield IFQ that may not be harvested by a hired

master. NMFS will redesignate QS and issue the new types of IFQ permits prior to the beginning of the IFQ fishing year following the effective date of this final rule. If QS designated as eligible to be fished by a hired master is subsequently transferred, it will be redesignated as not eligible to be fished by a hired master. The designation task will not delay timely IFQ issuance by NMFS' Restricted Access Management Division. This change in QS and IFQ designation will not affect the recordkeeping and reporting burden for IFQ fishery participants. NMFS does not anticipate any appreciable additional burden on enforcement. As described in the proposed rule preamble and in section 5.2 of the RIR/IRFA, implementing the action at the beginning of the IFQ fishing season is necessary to avoid a large administrative and enforcement burden for NMFS and affected participants.

Comment 24: The proposed regulation revokes a non-individual QS holder's eligibility to receive catcher vessel QS by transfer. This transfer eligibility is as valuable as QS, and our business will cease to function without it.

Response: NMFS agrees that the regulation implemented by this rule at § 679.41(c)(11) will prohibit a non-individual QS holder from receiving catcher vessel QS by transfer after the effective date of this rule (see DATES). As described in the response to Comment 13, the Council and NMFS considered the impacts of this action on affected participants, including small businesses, partnerships, corporations, and other non-individual QS holders. As discussed in the response to Comment 19, given the opportunities for initial recipients to continue to use hired masters for catcher vessel QS held before February 12, 2010, NMFS does not expect this action to significantly disrupt existing business operations.

## Changes From the Proposed Rule to the Final Rule

NMFS made one minor change from the proposed rule to the final rule to accommodate revisions to § 679.42(i) that were approved under separate rulemaking prior to publication of this final rule. On February 20, 2014 (78 FR 9995), NMFS published a final rule adding § 679.42(i)(6) and (7) to the regulations. These regulatory additions revise vessel ownership requirements in the IFQ Program that apply to initial individual recipients of catcher vessel QS who want an exemption from the owner-onboard requirement. To accommodate the addition of § 679.42(i)(6) and (7) to the regulations under a separate rule, this final rule implements a regulation at § 679.42(i)(8) to prohibit an individual initial QS recipient from using a hired master to harvest IFQ derived from catcher vessel QS that they receive by transfer after February 12, 2010. NMFS did not change the text of the regulation implemented by this final rule at § 679.42(i)(8) from the text that was proposed at § 679.42(i)(6) on April 26, 2013 (78 FR 24707).

## Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the IFQ halibut and sablefish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act, Halibut Act, and other applicable laws.

## 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 final regulatory flexibility analysis (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 also explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

#### Executive Order 12866

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

#### Final Regulatory Flexibility Analysis

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS’ responses to the comments, and a summary of the analyses completed to support the action. The IRFA was summarized in the “Classification” section of the preamble to the proposed rule. NMFS published the proposed rule on April 26, 2013 (78 FR 24707), with comments invited through May 28, 2013. NMFS received three comments on general economic impacts of the action on affected fishery participants (See Response to Comments 18-20). NMFS received two comments that addressed the impacts of this action on small entities. These comments and NMFS’ responses are summarized in Comments 10 and 11 in the preamble to this final rule. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here.

The FRFA describes the impacts on small entities; these impacts are defined in the IRFA and proposed rule for this action and not repeated here. Analytical requirements for the FRFA are described in the Regulatory Flexibility Act, sections 604(a)(1) through (5), and summarized below.

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.

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 final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

#### Need for and Objectives of this Final Rule

This final rule is necessary to amend regulations to prohibit the use of hired masters with initial recipient QS transferred after February 12, 2010. The objective of this action is to discourage any further consolidation of initial recipient QS for harvest by hired masters and meet the intent of the Council for an owner-onboard catcher vessel fishery.

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

The entities directly regulated by this action are individuals and non-individuals initially issued catcher vessel QS in the halibut and sablefish fisheries. There are a maximum of 1,447 entities holding halibut QS and sablefish QS that are eligible to hire masters. However, the actual number of such entities that may be directly regulated is expected to be much smaller because many of these participants fish their own IFQ without a hired master, and most have not and will not acquire additional QS.

The Small Business Administration 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.

Small entities regulated by this action may be divided into two mutually exclusive groups to estimate their size relative to the \$19 million threshold. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not) for which gross revenue data exist. There are also operations that harvest halibut, but not groundfish, for which gross receipts data exist. The analysis for this action estimates that in 2009 the total gross revenues for fixed-gear catcher vessels by entity, from all sources off Alaska, were not more than \$4 million in gross revenues, which has been the case since 2003. The average gross revenue for the small fixed-gear catcher vessels has been about \$500,000. Thus, all of the entities that harvest both halibut and groundfish are under the threshold. This includes all of the entities that harvest any sablefish. Since the IFQ Program limits the amount of annual IFQ that any single vessel may use to harvest halibut and sablefish and the maximum number of QS

units an entity may use, NMFS believes that few vessels that harvest halibut, but not groundfish, would exceed the \$19 million threshold, either. Based upon gross receipts data for the halibut fishery, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a de minimis number) directly regulated by these restrictions could have been used to land fish worth more than \$19.0 million in combined gross receipts in 2010. Therefore, all halibut and sablefish vessels have been assumed to be “small entities” for purposes of this FRFA. This simplifying assumption may overestimate the number of small entities, since it does not take into account vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships in the halibut and sablefish IFQ fisheries.

#### Recordkeeping and Reporting

No additional recordkeeping and reporting by directly regulated entities will be required by this action. NMFS will issue permit holders an annual permit that distinguishes their QS holding as eligible or not eligible to use a hired master.

#### Description of Significant Alternatives to the Final Rule

A FRFA requires a description of any significant alternatives to the preferred alternative that accomplish the stated objectives, are consistent with applicable statutes and that would minimize any significant economic impact of the rule on small entities. The range of potential actions included Alternative 1, the status quo, and Alternative 2, the preferred alternative. A detailed description of these alternatives is provided in Section 4.0 of the analysis for this action (see ADDRESSES).

The status quo alternative would have maintained the current regulations that allow all initial recipients of catcher vessel QS to hire masters to harvest their IFQ

permits for any catcher vessel QS they hold. Current regulations enable initial QS recipients to continue to acquire QS up to IFQ Program use caps and harvest accumulated IFQ with a hired master. This has resulted in increased amounts of IFQ being consolidated by initial recipients and harvested by hired masters, which is contrary to the Council's goals and objectives for the IFQ Program.

Under the preferred alternative, initial QS recipients will not be allowed to use hired masters to harvest IFQ derived from catcher vessel QS that they received by transfer after February 12, 2010, with a limited exception for small amounts of QS. The Council considered alternative dates after which the use of hired masters would be prohibited. Although those alternative dates could have allowed more small entities to use hired masters, or to use hired masters for more of the QS they now hold or could acquire before another date, the use of hired masters is not necessary to harvest halibut and sablefish IFQ derived from QS held by individuals.

The preferred alternative may change fishing opportunities for hired masters in the IFQ fishery. There is potential that the demand for hired masters will decline once initial recipients are no longer allowed to use hired masters to harvest IFQ pounds. The alternative does not limit the ability of small entities to receive QS by transfer and fish the resulting IFQ as owner-onboard. Changes resulting from this alternative will have distributional effects on initial recipients and hired masters, but will not affect production from the fisheries. The preferred alternative may increase net benefits to the nation to the extent that the Council's objectives for an owner-onboard fishery are more fully realized through this action.

The Council also considered and rejected an alternative to eliminate the hired master exemption from the IFQ Program, but determined that it did not sufficiently accommodate the existing business plans of initial catcher vessel QS recipients that use hired masters to harvest IFQ or their hired masters. The Council did not identify any other significant alternatives that would have been substantially less burdensome and would have achieved the Council's objectives for the action. The Council chose to recommend, and this final rule implements, the preferred alternative because it best meets the goals and objectives of the IFQ Program and minimizes the potential negative impacts to directly regulated small entities. Based on the best scientific information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities beyond those achieved under this action.

#### Collection-of-Information Requirement

This 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 control number 0648-0272. The IFQ Program requirements are mentioned in this final rule; however, the public reporting burden for this collection-of-information is not directly affected by this final rule. The 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 in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 23, 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, 50 CFR part 679 is amended as follows:

**PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

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

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

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

§ 679.41 Transfer of quota shares and IFQ.

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

3. In § 679.42, add and reserve paragraphs (i)(6) and (i)(7), and add paragraphs (i)(8) and (j)(10) to read as follows:

§679.42 Limitations on use of QS and IFQ.

\* \* \* \* \*

(i) \* \* \*

(8) Paragraphs (i)(1) and (i)(4) of this section do not apply to any QS assigned to vessel category B, C, or D received by transfer by any person described in paragraph (i)(1) after February 12, 2010, except a hired master may be used to harvest IFQ derived from QS blocks that were consolidated under §679.41(e)(2) or (e)(3) after February 12, 2010, and before December 1, 2014.

(j) \* \* \*

(10) Paragraphs (j)(1) and (j)(9) of this section do not apply to any QS assigned to vessel category B, C, or D received by transfer after February 12, 2010, by an entity described in paragraph (j)(1) except a hired master may be used to harvest IFQ derived

from QS that were consolidated under §679.41(e)(2) or (e)(3) after February 12, 2010,  
and before December 1, 2014.

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[FR Doc. 2014-17658 Filed 07/25/2014 at 8:45 am; Publication Date: 07/28/2014]