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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XF853

Notification of Availability and Request for Public Comment on Analysis of a Final Rule to Prohibit the Use of Hired Masters for Sablefish Catcher Vessel Quota Shares Received by Transfer after February 12, 2010

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

ACTION: Notification of availability; request for public comment.

SUMMARY: NMFS prepared an analysis of a final rule (Analysis) to prohibit the use of hired masters for sablefish catcher vessel quota shares received by transfer after February 12, 2010, in response to a November 16, 2016, order from the United States District Court, Western District of Washington (Fairweather Fish, Inc. et al. vs. Pritzker et al., Case No. 3:14-cv-05685-BHS). The Analysis describes the factors that NMFS considered in its determination that the final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) National Standards, subject to further consideration after public comment. NMFS requests public comment on the Analysis for consideration in its final determination of the consistency of the final rule with the Magnuson-Stevens Act National Standards.

DATES: Submit comments on or before [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES:

Availability of the Analysis

Internet: You may obtain a copy of the analysis at <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://www.alaskafisheries/noaa.gov>.

Comment submission: You may submit comments on the analysis, identified by NOAA-NMFS-2017-0145, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2017-0145, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P. O. Box 21668, Juneau, AK 99802.

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

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907-586-7228.

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

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

NMFS implemented the IFQ Program for the management of the fixed gear (hook-and-line and pot gear) sablefish and halibut fisheries off Alaska in 1995 (58 FR 59343; November 9, 1993). The Council and NMFS designed the IFQ Program to allocate harvest privileges among participants in the commercial sablefish and halibut fisheries to reduce fishing capacity that had led to an unsafe “race for fish” as vessels raced to harvest their annual catch limits as quickly as possible before the annual limit was reached. A central objective of the IFQ Program was to support the social and

economic character of the fisheries and the coastal fishing communities where much of the fisheries activities are based.

Under the IFQ Program, access to the fixed gear sablefish and halibut fisheries is limited to those persons holding quota share. NMFS issued separate quota share for sablefish and halibut to qualified applicants based on their historical participation during a set of qualifying years in the sablefish and halibut fisheries. Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of either the total allowable catch in the sablefish fishery or the annual commercial catch limit in the halibut fishery.

NMFS annually issues IFQ permits to each quota share holder based on their quota share holdings and the amount of sablefish and halibut available for harvest. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. IFQ is expressed in pounds and is based on the amount of quota share held in relation to the total quota share pool for each regulatory area with an assigned catch limit.

The Council intended for the IFQ catcher vessel fleet to be composed primarily of quota share holders that actively participate in the fisheries by being on the vessel used to fish their IFQ. To achieve this objective, NMFS implemented requirements that individual holders of catcher vessel quota share be on board the vessel during all IFQ fishing to ensure that quota share to remain largely in the hands of active fishermen. This owner-onboard requirement was intended to promote stewardship by providing active fishermen with a vested interest in the long-term productivity of the sablefish and halibut resources. The Council and NMFS also intended for the owner-onboard requirement to

provide entry level opportunities for new fishermen as initial quota share recipients transferred their quota share to new entrants and left the fishery.

The Council intended for catcher vessel quota share to be held by owner-onboard operations. However, the Council and NMFS allowed initial quota share recipients to use a hired master – a person designated by the quota share holder to land their IFQ – in order to provide initial recipients of quota share with the flexibility to continue in the business practices that they had had prior to the implementation of the IFQ Program and minimize disruption to existing business arrangements. Eligibility to use a hired master is tied to the quota share holder and not the quota share, so initial recipients could use a hired master on quota share that they acquired over time.

The Council and NMFS have amended the hired master use provision several times since implementation of the IFQ Program to further restrict the use of hired masters and ensure that quota share holders remain vested participants in the IFQ fisheries. The most recent amendment further restricted the use of hired masters by prohibiting initial quota share recipients from using a hired master to harvest IFQ derived from catcher vessel quota share received by transfer after February 12, 2010 (79 FR 43679; July 28, 2014). The final rule to implement this restriction is a limited amendment to the IFQ Program that specifies which quota share yields IFQ that can be fished by a hired master instead of the quota share holder.

The preamble to the final rule describes the need for further restrictions on the use of hired masters in the IFQ Program, and a brief summary is provided here. In February 2010, the Council received testimony that some quota share initial recipients were increasingly using hired masters rather than continuing to be personally on board their

vessels when fishing with quota share. Increased use of hired masters was attributed to initial recipients purchasing increasing amounts of quota share, and the IFQ derived from that quota share was being fished by hired masters. The Council was concerned that initial recipients were consolidating quota share 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 quota share holder and not the quota share itself. This allowed initial recipients to hire masters to harvest IFQ derived not only from their initially issued quota share, but also IFQ derived from any quota share received by transfer after initial issuance. As a result, quota share had become consolidated among fewer initial recipients of quota share 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.

To address this problem, the Council recommended and NMFS implemented the final rule to prohibit the use of a hired master to fish IFQ sablefish and halibut derived from catcher vessel quota share received by transfer after February 12, 2010, with some exceptions described in the final rule (79 FR 43679; July 28, 2014). The Analysis provides additional detail on the need for the final rule and the anticipated impacts of the final rule on affected fishery participants.

On November 16, 2016, the United States District Court, Western District of Washington found that NMFS did not properly assess the final rule in light of the

National Standards in the Magnuson-Stevens Act. The United States District Court remanded the final rule to NMFS for further consideration of the National Standards in section 301(a) of the Magnuson-Stevens Act. NMFS completed this consideration after evaluating the information used to prepare the final rule, information presented to the United States District Court, and the best available information relevant to the impacts of the final rule. NMFS has determined that the final rule is consistent with the National Standards as required by the Magnuson-Stevens Act, subject to further consideration after public comment. The Analysis describes the factors NMFS considered in making this determination. NMFS requests public comment on the Analysis for consideration in its final determination of the consistency of the final rule with the Magnuson-Stevens Act National Standards.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 4, 2018.

Jennifer M. Wallace,
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National Marine Fisheries Service.

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