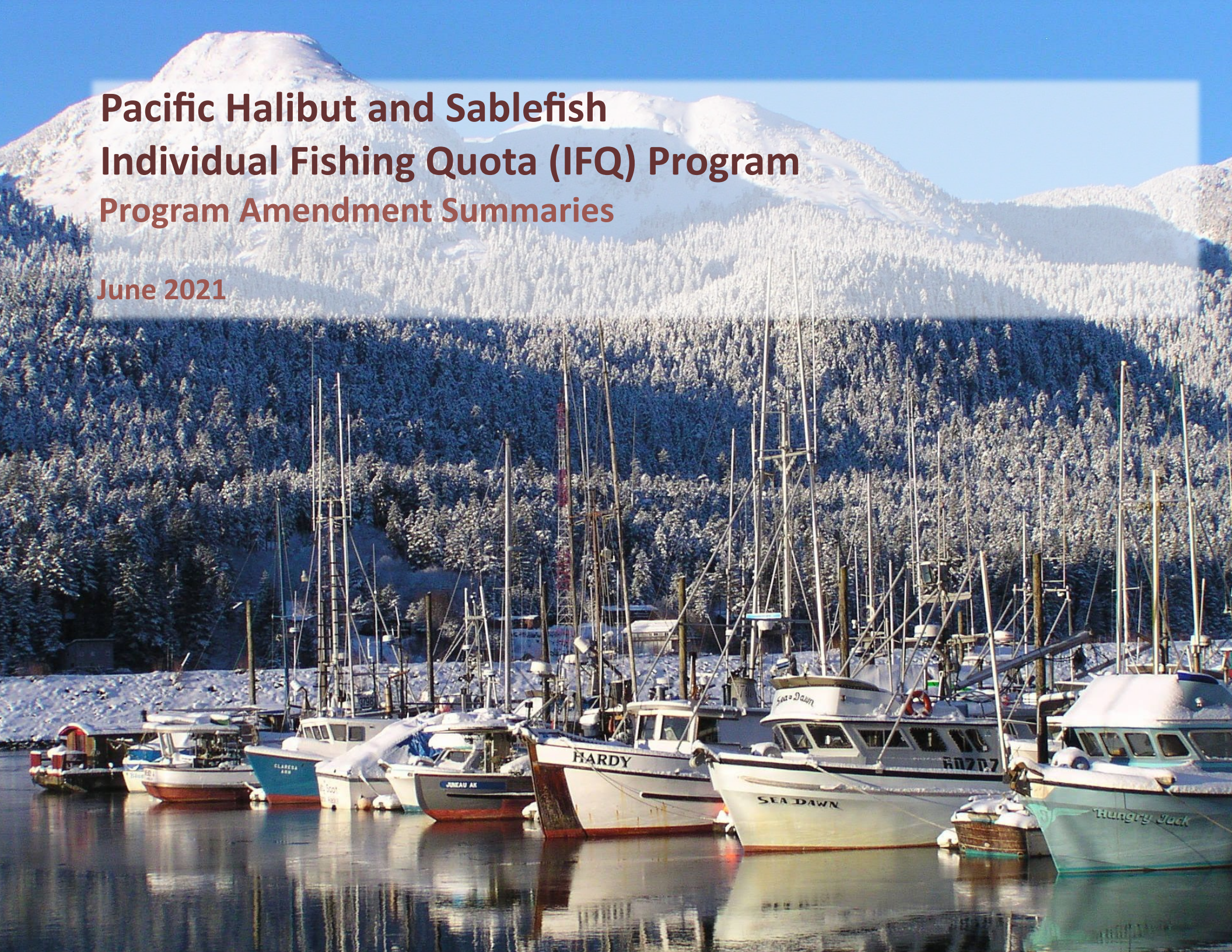


Pacific Halibut and Sablefish Individual Fishing Quota (IFQ) Program Program Amendment Summaries

June 2021





The fishery management program in the North Pacific is widely considered to be among the best in the world and has resulted in over 40 years of sustainable and profitable fisheries off Alaska. Program policies and measures are developed by the North Pacific Fishery Management Council through the preparation and maintenance of fishery management plans (FMPs) and recommend changes to Federal regulations. The Council frequently recommends changes to its FMPs and to Federal regulations to respond to new scientific information, changes in the environment, changes in policy, and operational changes in the fisheries. The amendments are developed through the Council's open and transparent regulatory process and implemented by the National Marine Fisheries Service (NMFS) Alaska Regional Office.

The existing management program has evolved greatly over time, with the FMPs and regulations being built and modified meeting by meeting, amendment by amendment. To fully appreciate and understand this evolution, Council staff has prepared summaries of each regulatory amendment to the Halibut and Sablefish Fixed-Gear IFQ Program. These summaries provide an overview of the purpose and need, analysis, regulation, and results of each action.

Two previous volumes of amendment summaries have been completed—one for the Bering Sea and Aleutian Islands Groundfish FMP in May 2016 and a second for the Gulf of Alaska Groundfish FMP in April 2019.

For more information about the IFQ Program or the Council process, I encourage you to visit the NPFMC website at www.npfmc.org.

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This report was prepared by Angela Forristall with contributions from other Council staff including David Witherell, Diana Evans, Jim Armstrong, Sara Cleaver, Sam Cunningham, Kate Haapala, Anna Henry, Steve MacLean, Sarah Marrinan, Jon McCracken, Diana Stram, and Michael Fey. Maria Davis, Shannon Gleason, and Sarah LaBelle assisted with the layout and design. Printed June 2021.

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Inside cover photo courtesy of NPFMC.

Introduction

Fishery Management Councils

The Magnuson-Stevens Fishery Conservation and Management Act of 1976 (MSA) assigned Federal fisheries management authority to eight regional councils: North Pacific, Western Pacific, Pacific, Gulf of Mexico, New England, Mid-Atlantic, South Atlantic, and Caribbean. Each council was charged with preparing

and maintaining Fishery Management Plans (FMPs) that reflect both the National Standards and determine the management and conservation objectives and specifications for each region. FMPs delineate regional management priorities and are responsive to unique challenges and concerns of each region while fulfilling the goals defined in the MSA. Under the Magnuson-Stevens Act, the councils are

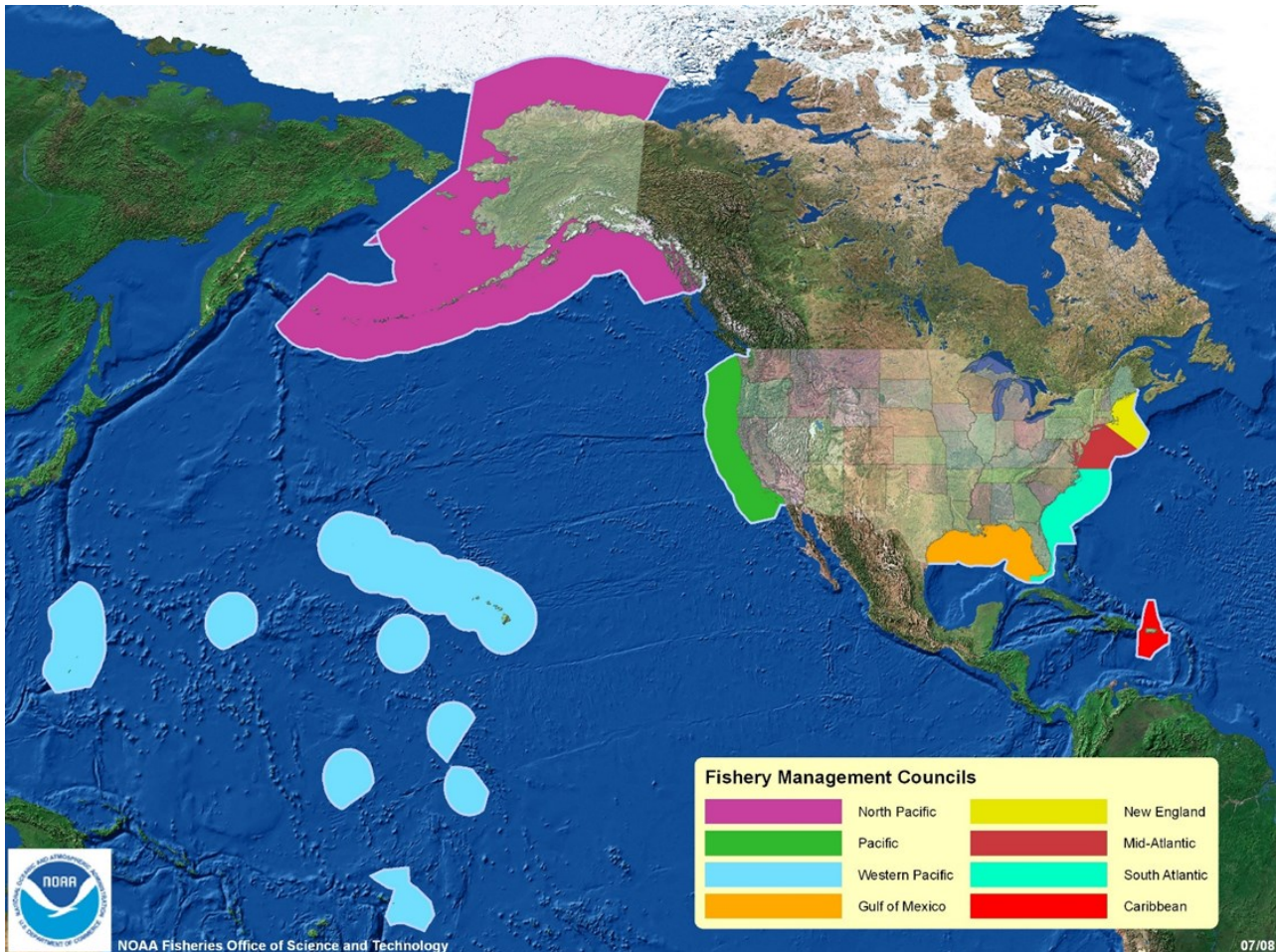
authorized to prepare and submit to the Secretary of Commerce for approval, disapproval or partial approval, an FMP and any necessary amendments, for each fishery under its authority that requires conservation and management. The Council conducts public hearings so as to allow all interested persons an opportunity to be heard in the development of FMPs and amendments, and reviews and revises,

as appropriate, the assessments and specifications with respect to the optimum yield from each fishery.

Halibut Management Authority

The International Pacific Halibut Commission (IPHC) and NMFS manage Pacific halibut fisheries through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the target fishery for Pacific halibut under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations governing the fishery for Pacific halibut developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the Federal Register as annual management measures pursuant to 50 CFR 300.62.

Section 773c(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. After preparing regulations, the Council submits them to the Secretary for review. The Council has exercised this authority in the development of Federal regulations for the halibut fishery such as the development of the IFQ Program for the commercial halibut and sablefish fisheries.



NOAA Fisheries Office of Science and Technology

07/08



The IFQ Program for the Fixed-Gear Halibut and Sablefish Fisheries

In 1991, the Council recommended an Individual Fishing Quota (IFQ) Program for management of the fixed gear halibut and sablefish fisheries off of Alaska. The Secretary of Commerce approved the Council's IFQ Program as a regulatory amendment in 1993, and the program was implemented by NMFS for the fishing season in 1995 (58 FR 215). The fundamental component of the IFQ Program is quota share (QS), issued to participants as a percentage of the QS pool for a species-specific IFQ regulatory area, which is translated into annual IFQ allocations in the form of fishable pounds.

The IFQ Program was developed to address issues associated with the race-for-fish that had resulted from the open-access and effort control management of the halibut and sablefish fisheries. Specifically, the Council identified several problems that emerged in these fisheries due to the previous management regime, including increased harvesting capacity, decreased product quality, increased conflicts among fishermen, adverse effects on halibut and sablefish stocks, and unintended distributions of benefits and costs from the fisheries.

The Council identified 10 policy objectives that it intended to address through specific elements of the IFQ Program. Specifically, in selecting the elements of the IFQ Program the Council attempted to do the following: 1) Address the problems that

occurred with the open-access management regime. The Council identified 10 specific problems: Allocation conflicts, gear conflicts, deadloss from lost gear, bycatch loss, discard mortality, excess harvesting capacity, product wholesomeness, safety, economic stability in the fisheries and communities, and rural coastal community development of a small boat fleet. 2) Link the initial QS allocations to recent dependence on the halibut and sablefish fixed gear fisheries. 3) Broadly distribute QS to prevent excessively large QS from being given to some persons. 4) Maintain the diversity in the fleet with respect to vessel categories. 5) Maintain the existing business relationships among vessel owners, crews, and processors. 6) Assure that those directly involved in the fishery benefit from the IFQ Program by assuring that these two fisheries are dominated by owner/operator operations. 7) Limit the concentration of QS ownership and IFQ usage that will occur over time. 8) Limit the adjustment cost to current participants including Alaskan coastal communities. 9) Increase the ability of rural coastal communities adjacent to the Bering Sea and Aleutian Islands to share in the wealth generated by the IFQ Program. 10) Achieve previously stated Council goals and objectives and meet MSA requirements.

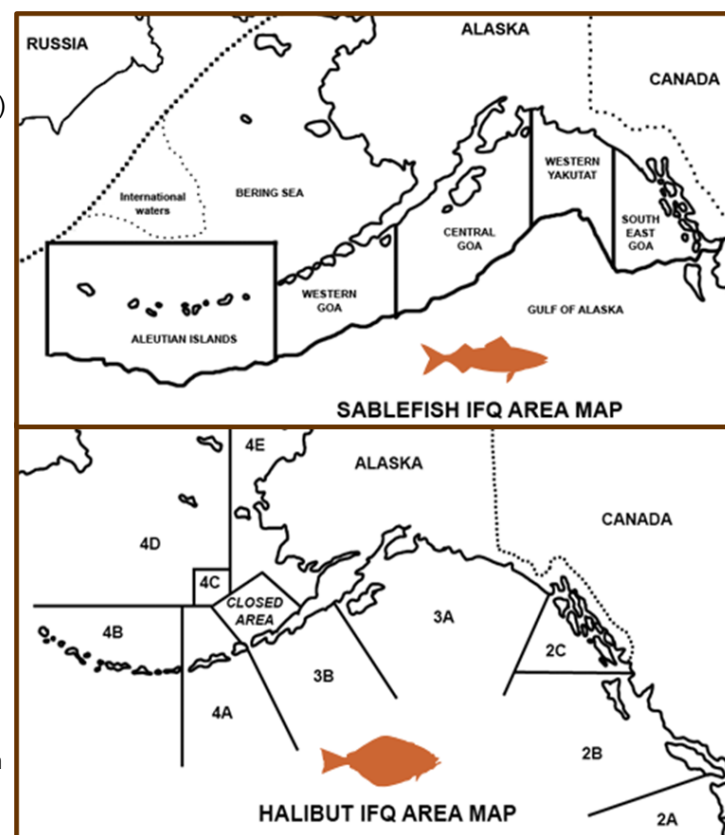
Over time, the IFQ Program has been amended many times to meet the changing fishery management needs. To illustrate the evolution of the IFQ Program, summaries of each regulatory change were prepared and compiled into a comprehensive reference document. This volume is meant to serve as

a research tool for a general audience and to illustrate how fisheries management adapts and changes over time. Each summary serves as a guide for understanding the IFQ Program. Each summary can also be used as a stand-alone document to understand a particular issue, or the development of a subject over the course of multiple changes to the IFQ Program.

The summaries of the regulatory changes made to the IFQ Program consist of five main parts: 1) the date when the action was adopted by the Council, the proposed rule, final rule, and effective date (s) of implementation; 2) purpose and need, a brief background of the reason the action was initiated; 3) regulation summary, which summarizes the regulation as it appears in the federal register; 4) analysis summary; and 5) results, which describes quantified changes that resulted from the amendment, and later amendments that resulted from the action.

The IFQ Program changes are presented sequentially to show how the Program has evolved over time. Each change to the IFQ Program, while

addressing a seemingly isolated problem, has national – sometimes international – implications; each serves as a case study to inform policy change at the macro level. The regulatory actions should not be interpreted as linear change over time, but a complex web of management action. Each change influenced, and was influenced by, a number of other adjustments made to the IFQ Program. No change happened in isolation, and drawing those connections is critical to understanding the complexity of fisheries management.



Amendments by Council Action Date

Title	Page	Title	Page	Title	Page
1993		April		2001	
September		Allow Longline Pot Gear in the Bering Sea Sablefish Fishery	24	December	
Modified Block Provision	10	Individual Fishing Quota Vessel Sweep Up	25	Increase Area 4E Trip Limits and Allow Harvest of Area 4D CDQ Halibut in Area 4E	35
1994		June		2002	
December		Increase Halibut Quota Share Use Limits in Area 4	26	March	
Sablefish Season Alignment	11	1997		Catch Sharing Plan: Revise Illegal Halibut Definition, Allow Halibut Parts in Crab Pots, Recognize Traditional Halibut Use*	40
Remove Previous, Unnecessary Management Measures	12	June		April	
Omnibus Amendment 1: Vessel Clearance and 10 Percent Adjustment Policy	13	Seabird Avoidance Device Requirements	27	Prior Notice of Landing Requirements	37
1995		Retention of Undersized Halibut in Area 4E	28	Community Quota Entity Program	38
January		September		June	
Transfer of Sablefish and Community Development Quota Compensation Quota Shares	15	Hired Skipper Requirements	29	Community Development Quota Policy and Administrative Changes	41
April		1998		2003	
Omnibus Amendment 2: Fair start Provision, owner-on-board restrictions, IFQ Halibut By-catch, Reporting Requirements	16	February		January	
June		Local Area Management Plan for Pacific Halibut in Sitka Sound	30	Retain and Land All Demersal Shelf Rockfish	42
Determination and Appeals	18	June		2004	
September		Sitka Pinnacles Marine Reserves	31	October	
Add Akutan to the List of CDQ Communities	19	October		Calculation of Program Costs Under IFQ Cost Recovery Program	43
October		Establish Definitional Difference Between Halibut CDQ and Groundfish CDQ Fishing	32	December	
Limited Processing of Non-IFQ Species	20	Omnibus Amendment 3: Vessel Trailing, PNOL Exemption for Lingcod Fishermen, Gear Type Reporting, Surviving Spouse Transfer Provision	33	Allow Area 4C Halibut to be Fished in Area 4D	44
1996		Indirect Ownership Use Caps	34	Omnibus Amendment 4: Medical Transfers, Modify Block Program, Prohibit Additional Harvest in State Waters	45
January		2000		2003	
Individual Fishing Quota Vessel Fish Down	21	March		*Regulation did not require Council Action, date indicates effective date.	
Modify Prior Notice of Landing Requirement	22	Cost Recovery Program*		39	
Standard Allowance for Ice and Slime	23				



Amendments by Council Action Date

Title	Page	Title	Page	Title	Page
2006		2011		2018	
June		April		October	
Use of Commercial Halibut QS and the Processing of Non-IFQ Species	46	Narrow Hired skipper Qualification Requirements	55	Authorize BSAI Halibut Pots	64
Allow Longline Pots in June and Temporary Military Transfers	47	October		2019	
Revoke Inactive QS	48	Revise Vessel Use Caps Held by CQEs	56	April	
July		2012		Modification to the Medical Beneficiary Transfer Provision	65
Exclude Tagged Halibut and Tagged Sablefish Catches*	49	October		June	
2007		Charter and Commercial Halibut Catch Sharing Plan	57	"Fish Up" Provision for CQE Area 3A Category D Halibut QS	66
February		December			
Modification to Seabird Avoidance Requirements	50	Allow CQEs to Hold and Transfer Small Blocks of Sablefish Quota Share	58		
December		2014			
Establish Minimum Ownership Requirement to be Eligible to Hire a Master	51	April			
2008		Loosen Gear Identification Requirements*	59		
June		2015			
Elimination of Seabird Avoidance Requirements for HAL <= 55 ft LOA in Part of Area 4E	52	April			
2010		Authorize GOA Sablefish Longline Pots	60		
October		October			
Observer Program Restructuring	53	Revise Authorized Payment for Cost Recovery Fees	61		
December		2016			
Establish a CQE Program in Area 4B	54	December			
		Allow RQE to Hold Commercial Halibut QS	62		
		2017			
		June			
		Allow CDQ Groups to Lease Halibut IFQ	63		

*Regulation did not require Council Action, date indicates effective date.



Amendments by Issue

Title	Page	Title	Page	Title	Page
Administrative		CDQ (continued)		Leasing/Transfer	
Sablefish Season Alignment	11	Community Development Quota Policy and Ad-	41	Transfer of Sablefish and Community Develop-	15
Remove Previous, Unnecessary Management Measures	12	Allow CDQ Groups to Lease Halibut IFQ	63	Omnibus Amendment 3: Vessel Trailing, PNOL Exemption for Lingcod Fishermen, Gear Type Reporting, Surviving Spouse Transfer Provision	33
Omnibus Amendment 1: Vessel Clearance and 10 Percent Adjustment Policy	13	Authorize BSAI Halibut Pots	64	Indirect Ownership Use Caps	34
Determination and Appeals	18	CQE		Community Development Quota Policy and Ad-	41
Cost Recovery Program	39	Community Quota Entity Program	38	Administrative Changes	41
Community Development Quota Policy and Administrative Changes	41	Establish a CQE Program in Area 4B	54	Omnibus Amendment 4: Medical Transfers, Modify Block Program, Prohibit Additional Harvest in State Waters	45
Revoke Inactive QS	48	Revise Vessel Use Caps Held by CQEs	56	Allow Longline Pots in June and Temporary Military Transfer	47
Revise Authorized Payment for Cost Recovery Fees	61	Allow CQEs to Hold and Transfer Small Blocks of Sablefish Quota Share	58	Charter and Commercial Halibut Catch Sharing Plan	57
Authorize BSAI Halibut Pots	64	“Fish Up” Provision for CQE Area 3A Category D Halibut QS	66	Allow CQEs to Hold and Transfer Small Blocks of Sablefish Quota Share	58
Modification to the Medical Beneficiary Transfer Provision	65	Fish Down/Fish Up		Allow RQE to Hold Commercial Halibut QS	62
Charter		Individual Fishing Quota Vessel Fish Down	21	Allow CDQ Groups to Lease Halibut IFQ	63
Charter and Commercial Halibut Catch Sharing Plan	57	Omnibus Amendment 4: Medical Transfers, Modify Block Program, Prohibit Additional Harvest in State Waters	45	Modification to the Medical Beneficiary Transfer Provision	65
Allow RQE to Hold Commercial Halibut QS	62	“Fish Up” Provision for CQE Area 3A Category D	66	Observer Program	
CDQ		Hired Skipper		Observer Program Restructuring	53
Transfer of Sablefish and Community Development Quota Compensation Quota Shares	15	Hired Skipper Requirements	29	Owner-on-Board	
Add Akutan to the List of CDQ Communities	19	Indirect Ownership Use Caps	34	Omnibus Amendment 2: Fair Start Provision, Owner-On-Board Restrictions, IFQ Halibut By-catch, Reporting Requirements	16
Retention of Undersized Halibut in Area 4E	28	Omnibus Amendment 4: Medical, Transfers, Modify Block Program, Prohibit Additional Harvest in State Waters	45		
Establish Definitional Differences Between Halibut CDQ and Groundfish CDQ Fishing	32	Establish Minimum Ownership Requirement to be	51		
Increase Area 4E Trip Limits and Allow Harvest of Area 4D CDQ Halibut in Area 4E	35	Narrow Hired Skipper Qualification Requirements	55		



Amendments by Issue

Title	Page	Title	Page	Title	Page
QS Block Limits		Reporting Requirement (continued)		Sweep Up	
Modified Block Provision	10	Catch Sharing Plan: Revise Illegal Halibut Definition, Allow Halibut Parts in Crab Pots, Recognize Traditional Halibut Use*	40	Modified Block Provision	10
Omnibus Amendment 4: Medical Transfers, Modify Block Program, Prohibit Additional Harvest in State Waters	45	Authorize BSAI Halibut Pots	64	Individual Fishing Quota Vessel Sweep Up	25
Allow CQEs to Hold and Transfer Small Blocks of Sablefish Quota Share	58	Seabird/Habitat Conservation		Transshipment	
Allow RQE to Hold Commercial Halibut QS	62	Seabird Avoidance Device Requirements	27	Omnibus Amendment 2: Fair Start Provision, Owner-on-Board Restrictions, IFQ Halibut By-catch, Reporting Requirements	16
Reporting Requirement		Sitka Pinnacles Marine Reserves	31	Use Cap	
Remove Previous, Unnecessary Management Measures	12	Improve Seabird Avoidance Measures	36	Sablefish Season Alignment	11
Omnibus Amendment 1: Vessel Clearance and 10 Percent Adjustment Policy	13	Modification to Seabird Avoidance Requirements	50	Remove Previous, Unnecessary Management Measures	12
Omnibus Amendment 2: Fair Start Provision, Owner-on-Board Restrictions, IFQ Halibut By-catch, Reporting Requirements	16	Elimination of Seabird Avoidance Requirements for HAL ≤ 55 ft LOA in Part of Area 4E	52	Omnibus Amendment 1: Vessel Clearance and 10 Percent Adjustment Policy	13
Determination and Appeals	18	Spatial Management		Determination and Appeals	18
Add Akutan to the List of CDQ Communities	19	Sablefish Season Alignment	11	Increase Halibut Quota Share Use Limits in Area 4	26
Modify Prior Notice of Landing Requirements	22	Remove Previous, Unnecessary Management Measures	12	Indirect Ownership Use Caps	34
Standard Allowance for Ice and Slime	23	Allow Longline Pot Gear in the Bering Sea Sablefish Fisher	24	Vessel Classes/Caps	
Omnibus Amendment 3: Vessel Trailing, PNOL Exemption for Lingcod Fishermen, Gear Type Reporting, Surviving Spouse Transfer Provision	33	Local Area Management Plan for Pacific Halibut in Sitka Sound	30	Remove Previous, Unnecessary Management Measures	12
Prior Notice of Landing Requirements	37	Sitka Pinnacles Marine Reserves	31	Limited Processing of Non-IFQ Fishing Quota Species	20
Retain and Land All Demersal Shelf Rockfish	42	Increase Area 4E Trip Limits to Allow Harvest of Area 4D Halibut in Area 4E	35	Use of Commercial Halibut QS and the Processing of Non-IFQ Species	46
Calculation of Program Costs Under IFQ Cost Recovery Program	43	Allow Area 4C Halibut to be Fished in Area 4D	44	Revise Vessel Use Caps Held by CQEs	56
Exclude Tagged Halibut and Tagged Sablefish Catches	49	Allow Longline Pots in June and Temporary Military Transfers	47	Allow CDQ Groups to Lease Halibut IFQ	63
Loosen Gear Identification Requirements	59	Authorize GOA Sablefish Pots	60	"Fish Up" Provision for CQE Area 3A Category D Halibut QS	66
		Authorize BSAI Halibut Pots	64		



Common Acronyms

ABC	Acceptable Biological Catch	ft	Foot or Feet	RIR	Regulatory Impact Review
ADF&G	Alaska Department of Fish and Game	GHL	Guideline Harvest Level	RPA	Reasonable and Prudent Alternative
AEQ	Adult Equivalent	GOA	Gulf of Alaska	SAFE	Stock Assessment and Fishery Evaluation
AFA	American Fisheries Act	HAPC	Habitat Area of Particular Concern	TAC	Total Allowable Catch
AFSC	Alaska Fisheries Science Center	HCA	Habitat Conservation Area	U.S.	United States
AI	Aleutian Islands	IRFA	Initial Regulatory Flexibility Analysis	USCG	United States Coast Guard
AKFIN	Alaska Fisheries Information Network	IPA	Incentive Plan Agreement	USFWS	United States Fish and Wildlife Service
BASIS	Bering Sea-Aleutian Salmon International Survey	lb(s)	pound(s)	VMS	vessel monitoring system
BOF	Board of Fish	LLP	License Limitation Program	VRHS	Voluntary Rolling Hotspot System
BSAI	Bering Sea and Aleutian Islands	LOA	Length Overall	W	West
CAS	Catch Accounting System	m	Meter or Meters		
CDQ	Community Development Quota	MRA	Maximum Retainable Amount		
CEQ	Council on Environmental Quality	MSA	Magnuson-Stevens Fishery Conservation and Management Act		
CFR	Code of Federal Regulations	MMPA	Marine Mammal Protection Act		
CP	Catcher/Processor	MSST	minimum stock size threshold		
CQE	Community Quota Entity	mt or t	Metric Ton		
CV	Catcher Vessel	NBSRA	Northern Bering Sea Research Area		
CVOA	Catcher Vessel Operations Area	NEPA	National Environmental Policy Act		
CWT	coded-wire tag	NMFS	National Marine Fishery Service		
DPS	distinct population segment	NOAA	National Oceanographic and Atmospheric Administration		
E	East	NPFMC	North Pacific Fishery Management Council		
E.O.	Executive Order	OMB	Office of Management and Budget		
EA	Environmental Assessment	OY	Optimum Yield		
EEZ	Exclusive Economic Zone	PSC	Prohibited Species Catch		
EFH	essential fish habitat	PPA	Preliminary Preferred Alternative		
EIS	Environmental Impact Statement	PRA	Paperwork Reduction Act		
EM	Electronic Monitoring	PSEIS	Programmatic Supplemental Environmental Impact Statement		
ESA	Endangered Species Act	PWS	Prince William Sound		
FMP	fishery management plan	QS	Quota Share		
FONSI	Finding of No Significant Impact	RFA	Regulatory Flexibility Act		
FR	Federal Register				
FRFA	Final Regulatory Flexibility Analysis				



QS Block Limits, Sweep Up

Modified Block Provision

Council Action
September, 1993

Proposed Rule
June 28, 1994
59 FR 33272

Final Rule
October 7, 1994
59 FR 51135
BSAI Amend. 31
GOA Amend. 35

Effective
November 7, 1994

Purpose and Need

The IFQ Program originally assigned privileges to harvest halibut and sablefish in the form of quota shares (QS). Original QS allocations were based on historical harvest in the fishery. These allocations could be transferred to allow new entrants to buy into the fishery or be purchased by current fishery participants. During the development of the program, there was concern over the potential for excessive consolidation of QS, reduction of the longline fleet and the resulting social and economic effects on coastal communities, shore-based processors, and fishermen.

The purpose of this provision was to reduce the maximum potential consolidation relative to the existing IFQ program by significantly increasing the theoretical minimum number of quota shareholders and thereby easing the transition from open access to IFQ. The goal was not only to provide for the long-term productivity of the halibut and sablefish fisheries, but to also protect small producers, part-time participants, and entry level participants. These types of participants tend to disappear when excessive consolidation occurs. The Modified Block Provision was intended to protect these small entities without interfering with the opportunities currently available under the IFQ program for larger operations.

Analysis

A 283-page EA/RIR (May 1994) was prepared that considered the Modified Block Provision, two other proposals, and a no-action alternative. Under the no-action alternative, the IFQ program was expected to reduce the number of halibut and sablefish quota share fishermen to 200 and 100, respectively. The two alternatives that were not chosen would have created unique, variable size blocks or partial blocks that could be transferred across catcher vessel classes, resulting in increased transaction costs for individuals who want to sell or buy additional quota share. The Modified Block Program retains most of the features of the original IFQ program, including the same ownership constraints and vessel size categories, but it also allows a person to purchase relatively small amounts of unblocked quota share with lower associated transaction costs.

Regulation Summary

The Modified Block Provision established that:

- (1) the initial allocation of QS that represents less than 20,000 pounds of IFQ would be issued as a block,
- (2) QS that represents 20,000 pounds or more of IFQ will be "unblocked" QS, and
- (3) QS in a block cannot be separated, but must be transferred as a block. Fishermen can hold up to two blocks of quota for each species per IFQ regulatory area, but a person holding any amounts of unblocked QS are limited to one block per IFQ regulatory area.

A "sweep up" provision was included in this regulation and allows fishermen to combine small amounts of quota into fishable amounts - up to but not exceeding 1,000 pounds for halibut and 3,000 pounds for sablefish. The amendment also clarified that blocked and unblocked quota share is transferable subject to the approval of the NMFS Regional Director. Because the Modified Block Provision created the potential that some QS would become non-transferable because the size would exceed the quota share use limits established in prior regulations (50 CFR 676.22 (e)(f)), it also allowed for the transfer of a quota share block exceeding the use limits by providing that one block could be divided into two.

Results

The Modified Block Provision created both blocked and unblocked quota shares based on the 1994 quota. As anticipated, there has been some consolidation of quota share, but the degree that this could occur was limited by this provision.

The regulation was amended in 1996 with the implementation of 61 FR 67962 and again in 2007 with 72 FR 44795. In 1996, there was a moderate increase in the amount of QS allowed to be swept-up in response to longline fishermen reporting original levels were not equal to the harvest of a viable fishing trip. In 2007, the number of QS blocks one fisherman could hold was increased to three and the sweep-up limits for Area 2C and 3A were increased.



Sablefish Season Alignment

Council Action
December, 1994

Proposed Rule
January 12, 1995
60 FR 2935

Final Rule
March 6, 1995
60 FR 12152

Effective
March 1, 1995

Purpose and Need

Under the IFQ Program, halibut and sablefish are managed together. Halibut and sablefish are both harvested with longline fixed gear. The Program was designed to address numerous issues with the previous derby-style fisheries, which included allocation and gear conflicts, high discard mortality, and economic instability. After implementation, the halibut and sablefish seasons were lengthened from just a few days to eight months.

Each January, the IPHC sets the IFQ halibut season start date. An additional provision was necessary to authorize the Alaska Regional Director the authority to start the IFQ sablefish fishing season. The purpose of this regulation was to provide flexibility in starting the IFQ sablefish season and enable fishermen with IFQ QS for both species to retain both species, rather than having to discard one species because its season was closed.

Analysis

An RIR was prepared for the changes made to the IFQ program. The changes were found to be minor and resulted in no substantial alterations to the previous management process.

Regulation Summary

This framework provision gave the Alaska Regional Director authority to announce the start of the Sablefish IFQ season. This rule established the sablefish fixed gear directed fishing season to start at 12 noon (AKT) on March 15th and end at 12 noon (AKT) on November 15th and that the announcement of the season open and close dates will be published in the federal register each year.

Results

By aligning the fishing seasons, the IFQ Program provided participants with the opportunity to diversify into both fisheries. There was a substantial increase in the percent of all IFQ vessels fishing in both IFQ fisheries following implementation of the program, and dual participation has since stabilized to just under 25% of all IFQ vessels as of 2020. The regulation also resulted in the reduction of regulatory discards and resulting mortalities.



Longline vessel in Kodiak. Photo courtesy of H. Savikko.



Spatial Management, Use Cap

Remove Previous, Unnecessary Management Measures

Council Action
December, 1994

Proposed Rule
January 12, 1995
60 FR 2925

Final Rule
March 15, 1995
60 FR 14651

Effective
March 15, 1995

Purpose and Need

Before the IFQ program, the halibut and sablefish fisheries were managed under an open access regime. This management style resulted in a derby-style fishery for halibut, which fostered short, competitive seasons. The IFQ program changed the nature of the way the fishery was prosecuted. Thus, some measures that had been in place during the open access regime became no longer necessary.

One such provision was the closure of Area 4B when commercial halibut fishing reached 315,000 pounds and the withholding of the remaining harvest limit until the fishery reopened on August 15th. This regulation had been intended to protect small vessel summer fishing opportunities. Trip harvest limits had also been used to manage halibut harvest when catch limits were being approached because they slowed the rate of harvest. Harvest limits per trip in Area 4B based on vessel size were intended to increase the competitive advantage of small vessels that catch and land their halibut exclusively in 4B and enhance the economic development of the Pribilof Islands.

The IFQ program provides each permitted fisherman with an individual share of the harvest limit for a fishing area, which the fisherman may harvest anytime during the fishing season that he or she deems to be the safest and most economical. Thus, the IFQ program eliminates the need for the previous regulations intended to equalize competitive abilities. The

development of the Community Development Quota (CDQ) program in conjunction with the IFQ program provides near-shore communities with long-term, stable employment and access to the fishery that may otherwise be inaccessible due to high capital investment needed to enter. The program apportioned a designated percentage of annual fixed gear total allowable catch (TAC) in Area 4 to these communities. Removing regulations for trip limits in this area was necessary to uphold western Alaska communities' opportunity to participate in the fisheries.

Analysis

NMFS prepared an RIR for this action and concluded there would be no significant economic or social impact. During Council discussion, fishing trip limits were determined to be no longer necessary as a way to slow the fishery as harvest patterns under the IFQ Program are set by a combination of available IFQ, market conditions, weather and ocean conditions and the harvesters' schedules instead of open fishing periods. The IFQ program provides each permitted fisherman with an individual share of the harvest limit for a fishing area, which the fisherman may harvest anytime during the fishing season that he or she deems to be the safest and most economical. Thus, the IFQ program eliminates the need for regulations such as harvest limits per fishing period intended to equalize the competitive abilities of fishers.

Regulation Summary

This ruling removed three previous management measures;

- (1) closing area 4B to commercial halibut fishing when commercial harvest amounts to 315,000 pounds and withholding the remainder of the area's harvest limit until the next reopening,
- (2) dividing area 4E into two sub-sections, with the southeastern subsection designated as a test fishery that closes when 30 percent of the total Area 4E quota has been harvested from this region, and

(3) trip harvest limits for areas 4B, 4C, and 4E.

Results

The removal of the previous regulations eliminated unnecessary provisions that became either duplicative, redundant, or irrelevant under the IFQ program. Allocated quota has eliminated the need for harvest and trip limits as there is no longer a race-to-fish.



Halibut caught by a longline vessel. Photo courtesy of NPFMC.



Administrative, Over/Under, Reporting Requirements, Vessel Classes/Caps

Omnibus Amendment 1: Vessel Clearance and 10 Percent Adjustment Policy

Council Action
December, 1994

Proposed Rule
January 12, 1995
60 FR 2935

Final Rule
June 1, 1995
60 FR 22307

Effective
June 1, 1995

Purpose and Need

This action amended various portions of the IFQ Program and to make the Program more responsive to conservation and management goals. Some of the changes made were intended to clarify regulations that were ambiguous and others added provisions intended to increase the efficacy of the IFQ program.

The first set of changes made by this regulation were intended to improve information obtained during vessel clearance. Vessel clearance was a reporting requirement for vessels planning to land IFQ species at a foreign port and had to be obtained after the conclusion of all IFQ fishing. Clearance had to be obtained from specified primary ports in Alaska before the vessel left the federal waters off Alaska. The purpose of this requirement was to provide necessary information to NMFS Enforcement and thwart the landing of unreported IFQ species in foreign ports. Misreported catch data provides inaccurate information for the management and assessment of fish stocks and could affect the Acceptable Biological Catch (ABCs) and TACs. In 1994, the IPHC staff suggested expanding vessel clearance provisions to better suit the IFQ Program and Council staff developed a set of recommendations in response.

The second major change made by this regulatory action addressed the difficulty of harvesting one's exact annual IFQ allocation. At the time of IFQ Program implementation, there was

concern that fishermen would resolve overages by high-grading. This created the impetus for an overages-and-underages policy - allowing a small amount of overage with a deduction from the following year's IFQ allocation and including an underage provision to provide equitable treatment to QS holders who did not harvest their full IFQ.

Analysis

A 13-page RIR (April 1995) was prepared for this action. It estimated that less than 20 percent of the 7,200 vessel owners involved in the IFQ program would be affected, which would increase compliance costs.

Alternative discussions to the changes made to vessel clearance requirements included mimicking the Canadian "hail out" and "hail in" requirements. NMFS did not endorse this requirement because it would increase the amount of recordkeeping and recording required and the amount of information collected would not be justified by the incremental gains achieved.

NMFS determined that setting the adjustment policy at 10 percent (over or under) would provide a cushion around the exact amount of IFQ poundage available and that the average harvest over multiple seasons would be close to the amount available in a person's IFQ account.

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Halibut/sablefish longliner F/V Ida Lee. Photo courtesy of NPFMC.



Regulation Summary

The first group of changes made to clarify and expand upon vessel clearance landing and reporting requirements did so by:

- (1) adding the definition of a “clearing officer” who is authorized to provide vessel clearances and other duties,
- (2) requiring a vessel operator to provide the NMFS Alaska region with the name and location of the registered buyer the IFQ species will be landed, the vessel identification, the estimated weight to be landed, the ID numbers of the IFQ card(s) used to make the landing, and the anticipated date and time of landing 6 hours before landing occurs,
- (3) allowing IPHC personnel to sample all IFQ halibut landings for biological information,
- (4) requiring a vessel operator to provide the weight of the IFQ species when receiving prelanding written clearance in the state of Alaska,
- (5) obtaining prelanding written clearance reports to be obtained before departing waters of the EEZ for waters offshore Alaska,
- (6) providing a departure report to NMFS, Alaska Region that includes the weight of IFQ species on board and intended date and time of prelanding vessel clearance if vessel operators are obtaining prelanding written clearance at a port outside of the State of Alaska,
- (7) designating geographic locations of primary ports where a vessel operator can obtain vessel clearance,
- (8) requiring vessel operators to obtain vessel clearance located at a primary port in Alaska,
- (9) designating Port Hardy, Prince Rupert, and Vancouver, B.C. as the only Canadian

ports where IFQ species may be landed, and

(10) requiring fishermen to land and weigh all IFQ species on board at the same time and place as the first landing of any species on board.

The second major action established the 10 percent adjustment policy. Any fisherman who harvests or lands IFQ species in an amount greater than the amount available in the person’s annual IFQ account, up to 10 percent, will have their account adjusted by that amount the following year. If a person does not harvest their full annual IFQ allocation, this amendment also allows for the addition of up to 10 percent of their account to be added to the individual’s account for the following year.

The amendment also made a few clerical adjustments, including providing the appropriate product recovery rate for sablefish and conversion factors for halibut deductions made to a person’s annual IFQ account.

Results

In 2003 (68 FR 3485), vessel clearance requirements were removed and replaced with IFQ Departure Reports, which could be obtained verbally and did not require vessels to return to a primary port in Alaska before leaving federal waters to deliver IFQ fish to a foreign port.

Given the difficulty in harvesting an IFQ species down to a specific poundage allowance, the 10 percent adjustment policy is routinely employed. The percentage of all permit accounts for which there was an adjustment made under the 10 percent adjustment policy averaged between 79 percent and 80 percent for the halibut and sablefish IFQ fisheries, respectively, from 1998 to 2014. For both fisheries, underage adjustments have exceeded overage adjustments in every year since implementation of the IFQ Program. This indicates that the 10 percent adjustment policy allows substantial flexibility to QS holders, without creating a conservation concern for the halibut/sablefish resource.

CDQ, Leasing/Transfer

Transfer of Sablefish Community Development Quota Compensation Quota Shares

Council Action
January, 1995

Proposed Rule
October 13, 1995
60 FR 53331

Final Rule
January 24, 1996
61 FR 1844
BSAI Amend. 32
GOA Amend. 36

Effective
February 23, 1996

Purpose and Need

The Community Development Quota (CDQ) program was proposed in conjunction with the IFQ program for sablefish and halibut management. The CDQ program apportioned designated percentages of the annual fixed gear total allowable catch (TAC) of sablefish and halibut to eligible Western Alaska communities, intending to provide near-shore communities with long-term, stable employment and access to the fishery resource. Apportioning part of the fixed gear halibut and sablefish TAC to communities reduced the amount of that TAC available for harvest by persons receiving annual allocations of IFQ. As a result, as part of the IFQ Program, CDQ compensation quota shares (QS) were issued as partial compensation to persons who received (reduced) quota shares in CDQ areas.

Two problems were identified that inhibited the current transfer of CDQ compensation quota shares. Firstly, most CDQ compensation QS would be issued in allocations of less than 20,000 lbs and therefore would be blocked under the nonseverable block provision (59 FR 51135). The block provision was added to the IFQ program to prevent excessive consolidation of fishing privileges. Blocked quota share, especially small blocks such as the CDQ compensation QS, is difficult to market because of the two-block limit. The second problem is that the IFQ program allowed transfer of quota shares only within the same vessel category, to

prevent significant consolidation into large vessel operations.

However, residents of CDQ areas traditionally employed smaller vessels than non-residents who received initially issued QS in the CDQ areas, making it difficult for residents of CDQ areas to increase their holdings as they must purchase larger vessels as well as initially issued QS in the larger vessel categories. A regulatory change to the IFQ program was proposed to relieve the unintended consequences of the IFQ transfer restrictions, which are contrary to the original purpose of providing CDQ compensation quota shares. Relieving transfer restrictions on initial recipients of CDQ compensation QS effectively increases the remunerative value of those shares and facilitates the full utilization of the allocated resources managed under the IFQ program.

Analysis

A 21-page RIR (January 1995) was prepared for this regulatory change. Including the status quo, two alternatives addressing the block provision and three alternatives addressing the transfer across vessel length classes were considered. The option that was not chosen would have allowed "pooling" of quota shares with other compensation shareholders, as opposed to exempting CDQ compensation QS from the block provision in perpetuity. With regard to transfer across vessel length classes, the other alternative not chosen would have allowed a one-time trade across vessel classes as defined by a transaction

involving initially issued large vessel QS in CDQ areas and small vessel CDQ compensation QS in non-CDQ areas. The alternative chosen is more flexible by not defining the type of transaction allowed.

Regulation Summary

The change exempted some CDQ compensation QS from the block provision and allowed for a one year period of relief (one-time transfer) from the restriction against transferring CDQ compensation QS across vessel length categories. Regulations state that if a person is issued CDQ compensation QS for an area where the person already has regular QS, then their CDQ compensation QS is combined with their existing QS and is either "blocked" or "unblocked" depending on the sum total of their QS (this makes much of the CDQ compensation QS unidentifiable after issuance). If a person is issued CDQ compensation QS for an area in which the person doesn't have other QS, the QS is left unblocked. The exemption does not include Category "A" vessels (vessels of any length authorized to process IFQ species).

Results

Since the amendment was approved, coastal communities that rely on the small vessel fleet have benefitted by having IFQ in more accessible areas. The action did not significantly change the overall character of the fleet because CDQ compensation quota share accounted for only 3.5% of the total amount of quota share issued in the non-

CDQ areas of the Gulf of Alaska. The amount of swappable CDQ compensation QS—catcher vessel QS that can be fished on any size vessel until its first transfer—declined sharply by year-end 1998, even though there were very few actual swaps of this type of QS to other vessel categories. Most of the decline came from regular transfers, where CDQ compensation QS also loses its swappable status. Over the 1995-98 time period there were only five swaps in Southeast area, four in West Yakutat, and three each in the Central and Western Gulf.



CDQ halibut F/V Aleut Crusader.
Photo courtesy of NPFMC.



Leasing/Transfer, Owner-on-Board, Reporting Requirements, Transshipment

Omnibus Amendment 2: Fair Start Provision, Owner-On-Board Restrictions, IFQ Halibut Bycatch, Reporting Requirements

Council Action
April, 1995

Proposed Rule
April 24, 1996
61 FR 18116

Final Rule
September 9, 1996
61 FR 41523

Effective
September 9, 1996

Purpose and Need

One previous omnibus package (60 FR 22307) had been adopted since the original enactment. NMFS published this second omnibus package of amendments to address a suite of additional issues that were identified. These included:

(1) The 72-hour "Fair Start" provision – Under open-access management, a 72-hour "Fair Start" provision was put into place to prohibit fishermen from deploying fixed gear during the 72-hours preceding the opening of the fixed gear sablefish fishing season. This was necessary to ensure that all fishermen in fixed gear sablefish fisheries would have equitable opportunities for harvest during extremely brief fishing seasons.

(2) Owner-aboard restriction – Original regulations only permitted IFQ landings to occur between 06:00 and 18:00. This provision caused unintended inconveniences to fisherman who arrive in port outside of this window. The purpose of the revision to this rule was to allow vessel owners a greater degree of flexibility.

(3) Delivery of IFQ halibut bycatch by salmon fishermen – Salmon fishermen with IFQ halibut permits are required to retain halibut bycatch concurrently with legal salmon landings. However, the 6-hour prior landings notice and 12-hour landing window in place for IFQ halibut (but not requirements for salmon fishing) created complications when trying to deliver both salmon and incidentally caught

halibut. Salmon troll fishermen requested relief from the prior-notice reporting requirement so that halibut bycatch could be offloaded at the same time as salmon.

(4) Tagged halibut and sablefish – The IPHC was concerned that data from tagged halibut could be lost if landing these tagged halibut counted against a fisherman's quota. Provisional changes to encouraging the landing of tagged species were made to ensure that the information provided by these fish was not lost.

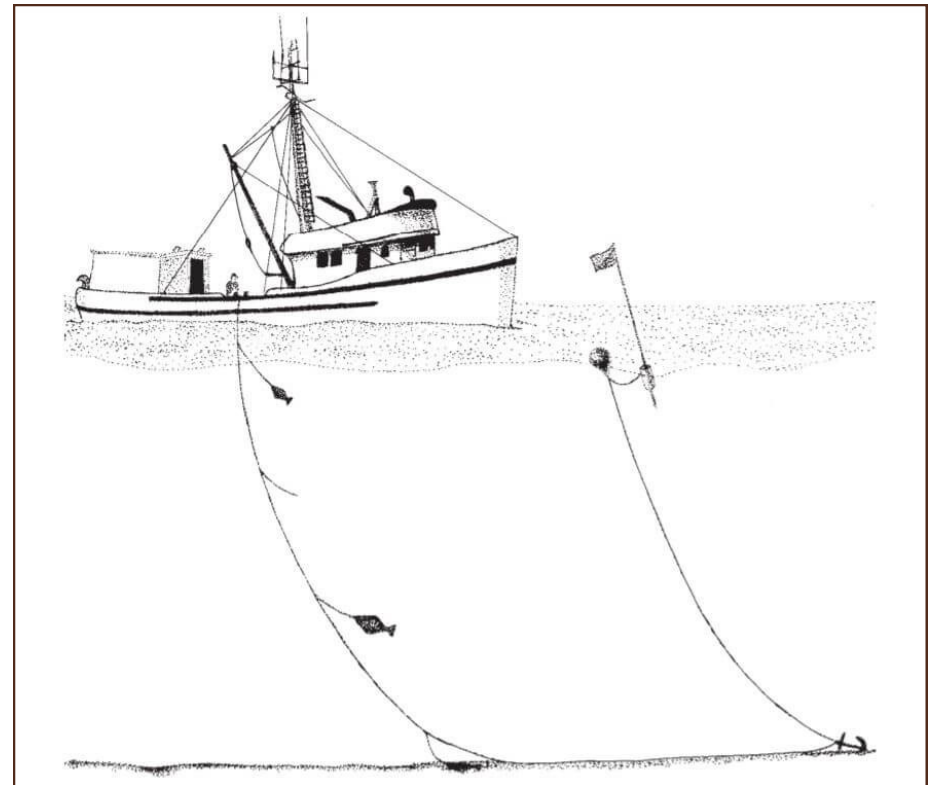
(5) Revision to the transfer process – The IFQ program originally allowed a person to lease up to 10 percent of their QS for an assigned vessel category for up to 3 years, but the intent of this provision was partially complicated by the Modified Block Provision. Due to this provision, blocked QS could only be leased on an "all-or-nothing" basis. A change of wording was necessary to allow blocks to be broken up for the purposes of leasing. The original program also did not create any temporary emergency transfer of QS due to death or serious injury or any administrative discretion to grant a temporary transfer to alleviate an emergency circumstance. This ruling lifted some of the restrictions on quota leasing and provided support for the surviving spouse of a deceased QS holder.

Analysis

A 12-page RIR (December 1995) was prepared for this omnibus amendment package. Although the analysis did not look at any alternatives to the changes proposed, it did outline the expected benefits of each proposal. These benefits included increased safety, increased ex-vessel price for halibut and sablefish,

increased product quality, decreased cost associated with lost gear and equipment, decreased processing and market costs, and decreased discard mortality rates.

Continued on next page.



Commercial longliner. Photo courtesy of IPHC.



Regulation Summary

This amendment made the following changes:

- (1) Elimination of the 72-hour “Fair Start” provision, as it was no longer necessary under the IFQ Program which lengthened the fixed gear sablefish season and eliminated the race-for-fish.
- (2) Revision of the owner-aboard restriction to allow fishermen to leave their vessels during the time between their arrival in port and the beginning of landing operations.
- (3) Exempt salmon troll from the 6-hour prior notice requirement and the 12-hour landing window for the sole purpose of landing 500 pounds or less of IFQ halibut bycatch concurrently with legal salmon landings.
- (4) Allow tagged halibut or sablefish to be landed without being debited to a person’s IFQ halibut or IFQ sablefish quota.
- (5) Make two revisions to the transfer process: (a) allow a person to transfer up to 10 percent of their annual allocation of IFQ in an IFQ regulatory area, whether the QS was blocked or unblocked and (b) allow the surviving spouse of a deceased QS or IFQ holder to transfer any current year’s IFQ for the duration of the allocation year and to transfer annual allocations of IFQ for up to 3 calendar years from the date of the deceased holder.

Results

The removal of the 72-hour “Fair-Start” provision and lifting of landing requirements on salmon fisherman with IFQ halibut QS removed unnecessary burdens on fisherman. The added provision that tagged halibut and sablefish would no longer count against an individual’s IFQ - but could still be retained for individual use or sold - added incentives for fishermen to land tagged species and ensure they were made available for examination. Allowing a 10 percent lease of QS restored the Council’s initial intent of allowing operational flexibility for fishermen in a dynamic environment while also keeping QS in the hands of active fishermen. The additional provision to allow the surviving spouse to transfer IFQ allocations resulting from the QS holdings of a deceased spouse for up to 3 years allowed for the survivor to obtain pecuniary benefit from the QS for that period and allow adequate time to resolve permanently any issues that may arise dur to receiving QS or IFQ by right of survivorship.

The third omnibus amendment to the IFQ program (66 FR 27908) implemented in 2001 expanded the provision allowing the transfer of a deceased QS holders IFQ to any heirs of the deceased in the absence of a surviving spouse.



Longline vessel in St. Paul. Photo courtesy of NPFMC.

Administrative, Reporting Requirements, Use Cap

Determination and Appeals

Council Action
June, 1995

Proposed Rule
February 2, 1995
60 FR 6448;
August 31, 1995
60 FR 45378

Final Rule
November 30, 1995
60 FR 61497

Effective
November 30, 1995

Purpose and Need

This action finalized two changes to the IFQ regulations that were originally made effective by interim rules.

The first rule concerned the development of an appeals process. The shift to an IFQ Program from the original open-access management of the halibut and sablefish fisheries resulted in significant impacts to current participants. Initial quota share allocations were determined based on the person's historical participation in the halibut and sablefish fisheries from 1984-1990. QS were assigned by vessel class based on overall length of the vessel upon which a qualifying person made halibut or sablefish landings. In the initial year of the IFQ program, numerous appeals involved multiple parties who disputed over who owned or leased a vessel that made qualified landings. The purpose of establishing an appeals process was to protect individuals whose interests were directly and adversely affected by initial administrative determinations of quota allocation.

The second rule change concerned an IFQ offloading requirement when fishing between regulatory areas. This rule was made to ensure the close monitoring of halibut and sablefish harvest and ensure that an IFQ holder harvested in areas only specific to his or her permit. The way the initial language was written, an IFQ permit holder would often have to offload all IFQ species caught in one regulatory area before fishing in another

regulatory area even if they carried an observer and completed a logbook. This requirement was extremely burdensome for individuals with small amounts of IFQ in multiple areas. For example, a fisherman with 5 mt of IFQ halibut in each of two adjacent areas is not able to harvest the total of 10 mt of halibut during the same fishing trip. Harvesting any halibut in the second area in addition to the 5 mt already harvested in the first area and still on board the vessel would violate the previous regulation because the total amount on board the vessel would exceed the fisherman's 5 mt IFQ for halibut in the second area. Industry members requested the Council relieve this requirement, and NMFS implemented an emergency rule that would allow catcher-processors and catcher vessels subject to recordkeeping and 100 percent observer coverage requirements to retain IFQ halibut or IFQ sablefish in excess of the total amount of unharvested IFQ applicable to that vessel in the regulatory area currently being fished.

Analysis

A regulatory flexibility analysis prepared for the appeals process and an interim rule was made effective immediately. It was determined that any delays would be harmful to the public, because it delayed the opportunity for a successful appellant to use any fishing privileges resulting from an appeal.

The prior notice and public comments requirements were waived for the change in regulations regarding offloading

requirements. NMFS determined the original landings requirement did not provide any benefit for the accuracy of catch monitoring and had an unintended wasteful effect in cases where there is already observer coverage and the vessel operator complies with daily fishing log requirements.

Regulation Summary

The appeals process developed by the final rule reduced the interim-rule's two-stage appeals procedure to a single-step process, shortened the length of time required for filing appeals from 90 days to 60 days, and shortened the period of delayed effectiveness of an appellate officer's decision from 45 days to 30 days. This provision also created a QS reserve pool - quota to be eventually awarded to specific appellants and reserved in the total QS pool for the purposes of determining the amount of IFQ to be assigned to each QS holder. Without the reserve pool, resolutions of such appeals during the 1995 IFQ fishing season would not allow the prevailing party to receive IFQ and use it during that season.

The second interim rule that was made final allowed vessel operators to retain IFQ halibut or sablefish in excess of the total amount of unharvested IFQ applicable to that vessel in the IFQ regulatory area that the vessel is operating as long as they keep daily logs and carry 100 percent observer coverage. A vessel not subject to the daily fishing logbook requirements or without

observer coverage remains prohibited from having more of an IFQ species on board than they possess in IFQ in a particular regulatory area.

Results

The determinations and appeals process and establishment of the QS pool reserve addressed issues that arose when QS was issued for the season while IFQ allocation was still being contested by an applicant and pending a final decision. Without the reserve pool, resolutions of such appeals during the 1995 IFQ fishing season would not have allowed the prevailing party to receive IFQ and use it during that season.



CDQ, Reporting Requirements

Add Akutan to the List of CDQ Communities

Council Action
September, 1995

Proposed Rule
May 15, 1996
61 FR 24475

Final Rule
September 9, 1996
61 FR 41744

Effective
September 9, 1996

Purpose and Need

The Community Development Quota (CDQ) program was proposed in conjunction with the IFQ program for sablefish and halibut management. The CDQ program apportioned designated percentages of the annual fixed gear total allowable catch (TAC) of sablefish and halibut (and pollock) to eligible Western Alaska communities. The purpose of the CDQ program is to provide the CDQ communities with a means for starting or supporting commercial seafood activities that will result in ongoing, regionally based, commercial seafood or related businesses. There are six CDQ groups* - nonprofit corporations whose boards of directors and staff manage and administer CDQ allocations, investments, and economic development projects for the villages in their region.

The halibut and sablefish CDQ (and pollock CDQ) regulations list four criteria for determining the eligibility of western Alaska communities to participate in the CDQ programs. Akutan was originally omitted from inclusion in the CDQ program on the basis that the city previously had a processing plant. Evidence was put forth to the Council that the city and its residents receive little economic benefit from the processing plant due to the nature of the processing plant's operations. In addition, the city had not previously developed any harvesting capabilities. The purpose of adding Akutan to the CDQ program was to provide them with fishing opportunities that would otherwise be inaccessible

to them due to the high cost of entry into these fisheries.

Analysis

A 12-page EA/RIR was prepared to analyze the impacts of adding Akutan to the list of eligible CDQ communities. It was found that the original exclusion of Akutan from the CDQ program was based on erroneous assumptions. The analysis determined the five other communities currently participating in the program would be impacted, as the CDQ support allocated to Akutan would reduce the resources available to the other communities – potentially by more than 5 percent. However, the impact on other communities is not a factor when determining eligibility under the CDQ program.

Regulation Summary

The rule added the city of Akutan to the list of western Alaska communities that are eligible to participate in the CDQ programs. Akutan is a part of the Aleutian Pribilof Island Community Development Association (APICDA).

It also added two provisions impacting the pollock CDQ fisheries - it removed the authority for processing vessels to use scales to weigh total catch in the CDQ fishery and it prohibited processor vessels from filling fish holding bins above the level of viewing port.

Results

Reported data on CDQ participation occurs on the CDQ group level, rather than the community level, so it is hard to determine the exact extent of Akutan's participation in the CDQ halibut and sablefish fishery. However, APICDA holds 100% of the Area 4B halibut CDQ allocation and 15% of the Area 4C allocation, totaling almost 2,000,000 pounds of TAC in 2017. The group is also annually allocated about 20% of the total sablefish CDQ TAC. Akutan hosts the largest seafood processing plant in North American, run by Trident Seafoods. APICDA has partnered with Trident in multiple fishing-related joint ventures in the region.



Akutan viewed from the water. Photo credit Anna Henry.

*The six CDQ groups are: The Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen's Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSEDC), and the Yukon Delta Fisheries Development Association (YDFDA)



Limited Processing of Non-Individual Fishing Quota Species

Council Action
October, 1995

Proposed Rule
April 2, 1996
61 FR 14547

Final Rule
June 27, 1996
61 FR 33382
BSAI Amend. 33
GOA Amend. 37

Effective
July 26, 1996

Purpose and Need

Included in the IFQ program is a provision prohibiting the processing (freezing) of fish, other than IFQ halibut or sablefish, on board a harvesting freezer vessel if, along with that fish, IFQ sablefish were harvested by a person who has catcher vessel quota shares of sablefish. The Council's intent in allowing the use of catcher vessel quota share on freezer vessels was to increase the fishing opportunities of IFQs held by crew members. The prohibition on freezing non-IFQ species came out of a Council concern that, if the owners of large, industrial-type processing vessels could harvest IFQ species with IFQ assigned to vessel categories B, C, and D while processed fish are on board, these operators could acquire the majority of the "catcher vessel" quota share that would normally be harvested by smaller boats without processing capabilities. These smaller vessels usually use shoreside local processors in coastal communities. The Council did not want to dramatically change the character of the fisheries and deprive coastal communities of the revenue generated by small vessel deliveries of IFQ species.

The combination of allowing catcher vessel quota share to be used on freezer vessels with the prohibition on processing non-IFQ species resulted in unanticipated waste of non-IFQ species caught incidentally to sablefish. Persons are

required to retain all Pacific cod and rockfish caught incidentally to IFQ sablefish. Pacific cod and rockfish have a shorter "shelf life" than sablefish, and a typical sablefish fishing trip is too long to maintain sufficient quality of incidentally caught non-IFQ fish. Without the ability to freeze the non-IFQ species, the fish was often landed in poor condition, decreasing the market value of the fish significantly.

The purpose of this regulatory change was to address the lost revenue and waste that occurs because fish other than IFQ halibut and sablefish are discarded, or if not discarded, become a low quality product, due to the prohibition on processing fish other than IFQ halibut and sablefish. This change was necessary to allow fuller use of the fishery resources in and off of Alaska.



Pacific cod. Photo courtesy of NPFMC.

Analysis

A 14-page EA/RIR (March 1996) was prepared for this regulatory change. The analysis determined that the proposal would not have a significant economic impact on a substantial number of small entities, and would not adversely affect shore-based plants because most of the cod and rockfish caught incidentally to IFQ sablefish was not marketable due to poor landing quality. Two alternatives including the status quo were considered. The alternative chosen allows for the freezing of non-IFQ species when catcher vessel QS is used on freezer vessels.

Regulation Summary

This amendment authorized the processing of fish other than IFQ sablefish on board a harvesting vessel that is also harvesting authorized sablefish IFQ. This authorization was not originally extended to individuals harvesting IFQ halibut, due to the fact that halibut is characteristically prosecuted by local vessels that do not have onboard processing capabilities. Several additional, minor modifications were made to the regulations implementing the IFQ Program in order to accommodate the new provision. The regulation states that while non-IFQ species could be frozen onboard, the freezing of IFQ

sablefish caught with catcher vessel quota share on a freezer vessel would continue to be prohibited.

Results

In 1996, only thirty-eight sablefish quota share recipients in the freezer vessel category were eligible to use catcher vessel quota share from the 188 quota shareholders in the less than 60 feet vessel class and 763 quota shareholders in the greater than 60 feet vessel class. Allowing non-IFQ species caught incidentally to IFQ sablefish to be frozen onboard freezer longliners enhanced product quality and allowed for the recovery of revenue otherwise lost to discards.

In 2008, 73 FR 8822 lifted the prohibition on the processing of non-IFQ species with category A IFQ halibut.



Individual Fishing Quota Vessel Fish Down

Council Action
January, 1996

Proposed Rule
June 25, 1996
61 FR 31787

Final Rule
August 22, 1996
61 FR 43312
BSAI Amend. 42
GOA Amend. 42

Effective
August 16, 1996

Purpose and Need

During the first year of the IFQ Program in 1995, IFQ fishermen reported that the prohibition against using or transferring QS across vessel categories limited their ability to improve the profitability of their operations. Many fishermen had received QS that represented far fewer pounds than their catch history prior to the IFQ Program. Small boat fishermen reported the scarcity of medium- and large-size QS blocks (≥5,000 pounds) available to smaller vessels and requested that the Council enable them to purchase shares from QS holders in larger vessel size categories. Also, category B vessel operators reported difficulties in using or marketing small category B blocks and requested the opportunity either to downsize operations or to sell smaller QS blocks to owners of smaller vessels.

The purpose of this amendment was to relieve certain restrictions in the IFQ Program, increase the flexibility of QS use and transfer while maintaining the management goals of the IFQ Program and providing small boat fishermen with more opportunities to improve the profitability of their operations.

Analysis

A 15-page EA/RIR (February 1996) and a supplemental Final Regulatory Flexibility Analysis (FRFA) examined two alternatives to the status quo. The Council ultimately recommended an alternative to allow QS to be “fished down” on

smaller vessels. This alternative included an exemption for Southeast Alaska. Allowing the “fish down” to occur only for category B blocks less than 5,000 pounds in Southeast still benefits crewmen and small vessel owners who would be able to use small category B blocks on smaller vessels without affecting the market price of category B medium and large blocks and unblocked QS.

Regulation Summary

This regulatory amendment allowed QS initially assigned to a larger vessel category to be used on smaller vessels, while continuing to prohibit the use of QS or its associated IFQ assigned to smaller vessel categories on larger vessels. QS will continue to be assigned to vessel categories by existing criteria at Sec. 679.40(a)(5) (i) through (vi) and will retain original vessel category assignments. However, halibut and sablefish QS and their associated IFQ assigned to vessel Category B can be used on vessels of any size and halibut QS assigned to vessel Category C can be used on vessels of categories C and D. The regulations continue to prohibit the use of QS and IFQ on vessels larger than the maximum length on average (LOA) of the category to which the QS was originally assigned. It does not apply to halibut in IFQ regulatory areas 2C or to sablefish east of 140° W. long. Halibut QS assigned to vessel Category B in IFQ regulatory areas 2C and sablefish QS east of 140° W. long. are prohibited from use on vessels less than or equal to 60 feet LOA except in QS blocks

equivalent to less than 5,000 pounds based on the 1996 TAC.

Results

The regulatory change is assumed to have attained its goal of increasing the availability of QS to owners of smaller vessels. This regulatory change was expanded in 2007 with 72 FR 44795, which eliminated the exception described above, and allowed IFQ derived from Category B QS to be used on vessels greater than 60 feet for a) halibut in Area 2C, and b) sablefish in the Southeast Outside District.

Vessel Categories

Vessel length	Freezer Vessel (any length)	Catcher Vessel	
		Sablefish	Halibut
Over 60'	A	B	B
35' to 60'		C	C
0 to 35'			D

1996 NOAA Report to the Fleet. Photo courtesy of NMFS.



Reporting Requirements

Modify Prior Notice of Landing Requirement

Council Action
January, 1996

Proposed Rule
February 21, 1997
62 FR 7993

Final Rule
June 12, 1997
62 FR 26246

Effective
June 12, 1997

Purpose and Need

In the implementing rules for the IFQ program, NMFS required that a vessel operator wishing to land IFQ species notify NMFS no less than 6 hours prior to the landing in a prior notice of landing (PNOL) report and include the name and location of the registered buyer to whom the fish will be landed and the anticipated date and time of landing. The intent of this system was to provide enough notice so that NMFS Enforcement personnel may be present to monitor the landing and ensure compliance with program regulations.

The original regulation did not specifically require fishermen to make the landing at the time scheduled in the report, but only restricted landing before 6 hours have elapsed since the PNOL report was submitted. Moreover, NMFS Enforcement could neither force an anticipated date and time nor require fishermen to land at the time reported so long as the landing is not made within 6 hours from the time the prior-notice report was submitted. In short, it failed to require fishermen land IFQ species at the time scheduled. An action was necessary to reinforce the enforcement rationale underlying the original requirement and improve compliance with IFQ regulations.

Analysis

A RIR was prepared for this amendment. NMFS invited comments on a variety of aspects of the proposed rule to this amendment but received none. The estimated reporting burden associated with the prior notice of landing was determined to be .2 hours and \$2.00 per response and was not found to be a significant economic impact on a substantial number of small entities; therefore, a regulatory flexibility analysis was not prepared.

Regulation Summary

This regulatory amendment modified the original PNOL requirements by defining the length of time within which a six-hour prior notice is valid. It required that fishermen land IFQ species at the time specified in the prior notice or within two hours of that specified time. If the vessel does not make the landing within the two-hour limit, the vessel operator is required to submit a new prior-notice report subject to all the requirements of the original report. This action also clarified that the prior notice report must provide the location of landing, as "location" had previously been left ambiguous and could mean the business address of the registered buyer.

Results

This ruling increased compliance with the intent of the original program regulation but left little flexibility for vessel operators to seek markets prior to reporting the time and location of a landing. In 2003, 68 FR 44473 modified the PNOL requirements by changing the time limit from 6-hours to 3-hours.



Halibut longline fishing. Photo courtesy of Rhonda Hubbard.



Reporting Requirements

Standard Allowances for Ice and Slime

Council Action
January, 1996

Proposed Rule
June 17, 1997
62 FR 32734

Final Rule
December 12, 1997
62 FR 60667

Effective
December 12, 1997

Purpose and Need

Accurately accounting for the harvest of IFQ species is crucial for proper monitoring and management of the IFQ Program. It came to the Council's attention that up to 15 percent of industry participants had been adjusting the "initial accurate weight of . . . product obtained at the time of landing" required to be reported to NMFS by up to 9 percent to account for ice and slime on unwashed Pacific halibut and sablefish managed under the IFQ program. The regulation at the time neither establish standard allowances for ice and slime nor allowed participants to adjust the weights for reporting purposes to account for ice and slime.

Anecdotal reports also indicated that some purchasers of IFQ halibut and IFQ sablefish had used deductions as a method to induce participants to deliver their harvest to them. This method of "capturing" a participant's business is unfair to other purchasers of IFQ halibut and sablefish who do not make any adjustment or who at least use a smaller, more accurate percentage for the deduction. This could also harm the fisheries as a portion of which is being harvested is not accounted for since it is reported as "ice and slime" by the purchaser. Establishing standard allowances for ice and slime and having NMFS apply them for all participants would "level the playing field" for IFQ purchasers and participants.

Analysis

A nine-page EA/RIR (October 1997) was prepared for this action that compared a no-action alternative to a second alternative that would create a zero or two percent standard allowance for ice and slime for IFQ halibut and sablefish. The two percent standard allowance alternative was selected and offered for public comment. One comment was made on the proposed rule that supported a standard allowance for ice and slime but requested that it be set at 4 percent. NMFS upheld that the 2 percent standard allowance was supported by the best available data and that calculating the allowance by comparing recovery rates of purchased product to processed product – as the comment writer suggested – is not statistically accurate because it does not account for other variables.

Regulation Summary

This measure implemented a two percent standard allowance for ice and slime on unwashed IFQ species. The 2 percent allowance was based on a long-standing industry convention accepted by the IPHC. The allowance is implemented by incorporating it into the conversion factors and product recovery rates NMFS uses to adjust reported weights to "standardized" weight measurements when debiting a participant's IFQ account. Changes were made within the regulatory text to clarify how weights are to be reported and to remove ambiguities concerning IFQ

program requirements and deducted amounts.

Results

By NMFS adopting the standard allowance and performing the weight adjustments instead of industry participants doing so, the practice of some processors using large allowances for a competitive edge was eliminated and a standardized method ensured more equitable usage of IFQ allocations.

A correction was published one month after the initial action (December 12, 1997; 62 FR 66311) correcting the conversion factor typographical error for a product code included in the final rule.



Halibut sorting. Photo courtesy of NPFMC.



Allow Longline Pot Gear in the Bering Sea Sablefish Fishery

Council Action
April, 1996

Proposed Rule
July 16, 1996
61 FR 37041

Final Rule
September 12, 1996
61 FR 49076

Effective
September 12, 1996

Purpose and Need

Prior to the IFQ Program, there was substantial conflict between longline pot gear and hook-and-line fishermen. If longline pot gear is set over previously deployed hook-and-line gear (or visa versa), the weaker hook-and-line gear is typically more likely to be damaged or lost as it is being retrieved. Deployment of hook-and-line and pot gear in the same fishing areas also results in grounds preemption under a race-to-fish situation. In 1992, the Council prohibited longline pot gear in the Bering Sea to minimize gear conflicts and grounds preemption. In 1995, the IFQ Program extended the sablefish season in Federal waters off Alaska to 8 months. By allowing the fleet to spread its operations over time, the IFQ Program greatly reduced the possibility of congestion and preemption.

Commercial fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota was under-harvested due in part to interactions with killer whales. Killer whales frequently pick sablefish off longline hooks and this consumption represented undocumented fishing mortality. Even though the sablefish quota may be under harvested by fishermen, overall fishing mortality could be higher than the specified quota, resulting in overharvests. The purpose of this amendment was to maximize sablefish harvest and minimize loss to killer whale depredation.

Analysis

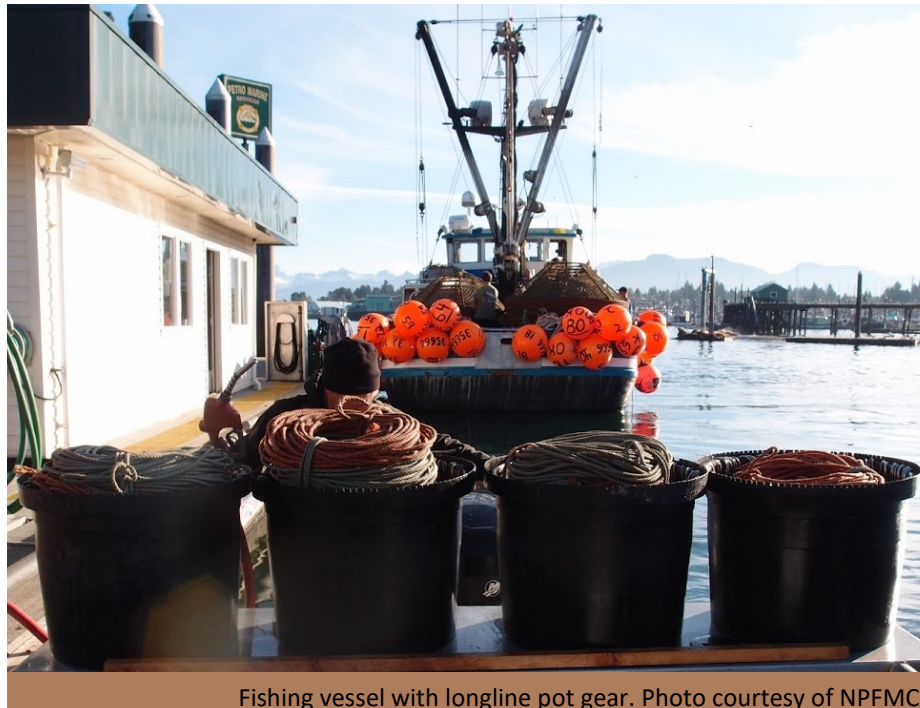
An Initial Regulatory Flexibility Analysis was developed for this regulatory change. The analysis compared the status quo to either allowing the use of longline pot gear either by season (Alternative 2a) or by area (Alternative 2b). The chosen alternative – Alternative 2a – was chosen as the as it would best reduce killer whale interactions while also mitigating possible disadvantages to fishermen who cannot afford to switch from hook-and-line to longline pot by closing the longline pot fishery for the month of June.

Regulation Summary

This action allowed for the use of longline pot gear in the Bering Sea directed sablefish fishery. It also established a closure of the longline pot fishery for the month of June to minimize potential gear conflicts during this time.

Results

The Council has continued to balance the risk of gear conflicts with the evolving need to adapt gear types to avoid whale encounters and minimize whale depredation. Allowing the use of longline pots in the Bering Sea sablefish fishery with this regulatory change provided participants with increased flexibility in fishing methods to avoid loss of catch to whales in the Bering Sea. (Sablefish pots are also legal in the Aleutian Islands.) In 2017, longline pot gear was authorized for the GOA sablefish IFQ fishery (81 FR 95435). In 2020, the retention of halibut in pot gear in the BSAI was authorized (85 FR 840).



Fishing vessel with longline pot gear. Photo courtesy of NPFMC.



Individual Fishing Quota Vessel Sweep Up

Council Action
April, 1996

Proposed Rule
September 27, 1996
61 FR 50797

Final Rule
December 26, 1996
61 FR 67962
BSAI Amend. 43
GOA Amend. 43

Effective
December 20, 1996

Purpose and Need

This regulatory change to the IFQ Program was deemed necessary to increase the consolidation (“sweep-up”) levels for small quota share (QS) blocks for Pacific halibut and sablefish managed under the IFQ program. The Modified Block Provision, implemented in 1995, included a sweep-up provision that allowed halibut blocks to be combined until the sum reached 1,000 pounds and sablefish blocks to be combined until the sum reached 3,000 pounds. The IFQ longline industry reported that those sweep-up levels did not equal the harvest of a viable fishing trip, and proposed a moderate increase in these levels to allow greater amounts of QS to be swept-up into economically “fishable” amounts, without overly increasing consolidation or allowing the creation of large-sized blocks. This action was intended to maintain consistency with the objectives of the IFQ program (i.e., prevent excessive consolidation of QS, maintain diversity of the fishing fleet, and allow new entrants into the fishery), while increasing the program’s flexibility by allowing a moderately greater amount of QS to be “swept-up” into larger amounts that can be fished more economically.

Analysis

A 32-page EA/RIR (November 27, 1996) included a range of alternatives of setting the sweep-up level at 1,000, 3,000, and 5,000 pounds for halibut and 3,000, 5,000, and 7,000 pounds for sablefish. The Council rejected the status quo levels (the lowest) and the highest levels. The analysis concluded that a moderate increase in the sweep-up levels would likely increase the transfer of very small, blocked QS to crew and small boat fishermen who seek to increase their holdings. While some price increases in small block shares might occur, a price differential was projected to remain between smaller and larger QS blocks. If the ability to transfer and consolidate small blocks increased through this action, then the number of unfished blocks would decrease.

Regulation Summary

The change increased the sweep-up levels for small QS blocks for Pacific halibut and sablefish from a 1,000 pounds maximum for Pacific halibut and 3,000 pounds maximum for sablefish to a 3,000 pounds maximum and a 5,000 pounds maximum, respectively. Two other changes were recommended to accompany these increases:

- (1) The base year TAC for determining the pounds would be the 1996, rather than 1994, TAC which was used for the first sweep-up levels;
- (2) Once QS levels are established for the appropriate regulatory areas based on the 1996 TAC, those QS levels would be fixed and codified. This would eliminate any confusion as to the appropriate sweep-up level in pounds, which would fluctuate with changes in the annual TAC.

Results

After the implementation of this change, the number of sweep-up transactions increased substantially related to the higher sweep-up limits. The number of sweep-up transfers has decreased since the first four years of the IFQ Program across all IFQ areas, from an average of 40 sweep up transfers between 1995 and 1998 to an average of 13 transfers between 2011 and 2014 for halibut, and from an average of 8 sweep up transfers between 1995 and 1998 to an average of 3 transfers between 2011 and 2014 for sablefish.

This trend is aligned with intuition in that the easiest opportunities for coordinating sweep-up transfers would have likely occurred in the first several years following the IFQ Program, as some initial QS recipients were exiting and others were consolidating QS. However, this decrease in sweep up transfers may also be due to the manner in which the RAM database tracks sweep-up transfers by new entrants.

In 2007, 72 FR 44795 further amended the halibut quota share (QS) block provision to increase the halibut sweep-up limits in Area 2C and Area 3A.



Increase Halibut Quota Share Use Limits in Area 4

Council Action
June, 1996

Proposed Rule
December 2, 1996
61 FR 63812

Final Rule
March 24, 1997
62 FR 7947

Effective
March 24, 1997

Purpose and Need

During the original implementation of the Halibut and Sablefish Fixed-Gear IFQ Program, limits on QS use were created in response to concerns that an unrestricted market for QS could result in a few powerful interests controlling most of the IFQ landings. Original regulations allowed a single QS holder to use no more than 1/2 percent of the total amount of halibut QS for IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E combined, unless the amount in excess of this limit was received in the initial allocation of QS. The total allowable catch of halibut changes annually in response to fish stocks, meaning the IFQ based on a certain percent of QS would vary from year to year.

Representatives of the fishing industry testified to the Council that the limited profits available from halibut harvests under the 1/2 percent limit were insufficient to justify the expense of traveling to remote fishing grounds in the BSAI. Furthermore, most QS is distributed among multiple areas, further exacerbating the problem of the low use cap. Also, since use limits were originally expressed as a percentage of the QS pool - which can vary from year to year - a fisherman's QS holdings that are at the limit in one year could potentially exceed the use limit in the next year without the fisherman adding more QS to his or her holdings if the QS pool changed in size. This measure provided relief by raising the use limits and basing the limits on a percentage of a fixed

number rather than a percentage of a potentially fluctuating QS pool.

Analysis

The Council prepared a 19-page EA/RIR/IRFA for this proposal and looked at three options - (1) no change, (2a) increasing the halibut QS use of the total amount of halibut QS for Area 4 to one percent, and (2b) increasing the use cap to two percent. The analysis determined approximately 500 halibut QS holders in regulatory areas 4A through 4D would benefit from an increase in Area 4 QS use limit, either as a QS buyer or seller. Forty-five QS holders would be allowed to increase their holdings above the current limit to the new limit. The action could significantly improve the profitability of operations for fishermen wishing to harvest IFQ halibut in remote areas of the western BSAI.

Regulation Summary

This action increased the halibut use limit in Area 4 to 1 1/2 percent and changed the baseline from an annually calculated number to the number of QS units in the 1996 QS pool - 495,000 QS units. By setting the use limit at a fixed number of QS units, this action provides QS holders with an unchanging QS limit that will not vary according to the size of the QS pool. For consistency, regulations which set the QS use limits for IFQ regulatory areas 2C, 3A, and 3B were also revised to set the halibut QS use limit for all IFQ regulatory areas at a

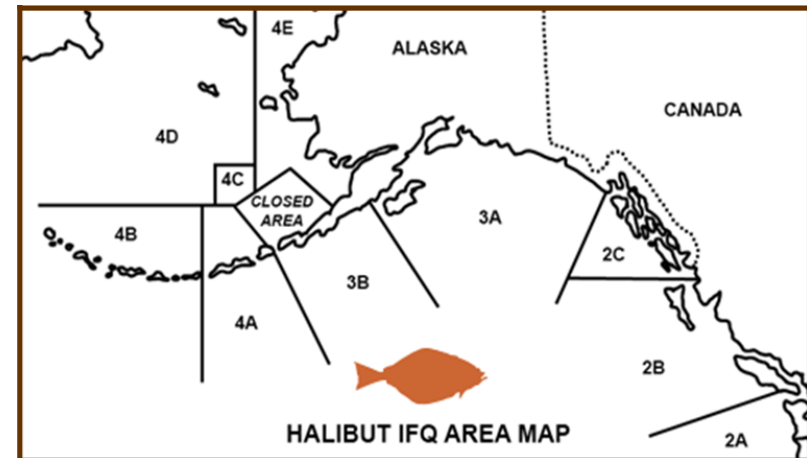
fixed number of QS units rather than a percentage of the annual QS pool.

Results

Between 32 and 50 additional QS holders were able to increase their QS use cap to the 1 1/2 percent cap. The increase in use limit provides a greater economic incentive to harvest halibut in remote areas of the western BSAI. The invariable use limit allows QS holders to judge more accurately whether their holdings exceed the use limit.

In 2002, NMFS implemented a regulatory change (67 FR 20915) to also change sablefish use limits from percentages of total numbers of QS units to a specific number. Since sablefish IFQ use limits are set in the Groundfish FMPs, the regulatory change for halibut could not change the calculation of sablefish limits at the same time.

In 2020, the vessel use caps were temporarily lifted (85 FR 41197) in response to the COVID-19 pandemic in areas 4B, 4C, and 4D to ensure that allocations of halibut IFQ could be harvested by the limited number of vessels operating in the area due to travel restrictions and health mandates.



Seabird Avoidance Device Requirements

Council Action
June, 1997

Proposed Rule
December 15, 1997
62 FR 65635

Final Rule
March 6, 1998
63 FR 11161

Effective
April 6, 1998

Purpose and Need

Millions of birds, representing over 80 species, occur over the waters of the EEZ off Alaska. The presence of “free” food in the form of offal and bait attract many birds to fishing operations. In the process of feeding, birds sometimes come into contact with fishing gear and are accidentally killed. Most birds taken during hook-and-line operations are attracted to the baited hooks when the gear is being set. These birds become hooked at the surface and are then dragged underwater where they drown.

Several industry groups representing hook-and-line vessels in the Gulf of Alaska and Bering Sea/Aleutian Islands petitioned the NPFMC and NMFS to impose regulatory measures intended to reduce the incidental

mortality of seabirds in their fisheries. This action was motivated by recent takes of short-tailed albatross. A biological opinion issued for the GOA and BSAI groundfish fisheries limited the allowable incidental take to four short-tailed albatrosses in 2-years. The purpose this regulation was to ensure that the limit for short-tailed albatross takes was not exceeded and to minimize mortality to other seabirds.

Analysis

NMFS prepared a 29-page EA/RIR for the development of this rule. A variety of alternative methods for seabird deterrence were analyzed that would achieve the action’s goal while minimizing the economic impacts. To provide maximum flexibility to participants in the fishery, these alternatives

were all included in the rule as options from which a vessel operator may chose in deciding how to comply.

Although it was determined that the action could result in severe economic impact on small entities, the status quo alternative could result in even more severe economic impacts. Failure to establish any seabird avoidance measures could increase the likelihood of exceeding the allowed incidental take for short-tailed albatross which would lead to more stringent measures, including closures.

Although little scientific information demonstrates a relationship between vessel size and seabird bycatch, public testimony supported the exemption of small vessels from some of the avoidance measures. Smaller vessels already practice more extensive measures because these vessels already deploy gear at slower speeds, discharge smaller amounts of offal, and fish in nearshore areas where there is a decreased likelihood of encountering short-tailed albatross or other pelagic seabirds.

Regulation Summary

The regulation applied the same measures implemented for the GOA and BSAI groundfish fisheries. These include requirements on how to execute hook-and-line operations: sink baited hooks, avoid dumping offal or dump in a manner that distracts seabirds from baited hooks, and release any live birds brought on board.

It also stipulates that vessels greater than or equal to 26 feet must employ at least one avoidance measure. Avoidance measures include setting gear during twilight, towing streamers, buoys, boards, or sticks, or deploying hooks underwater. Vessels less than 26 feet are exempt from these requirements.

Results

Ongoing analysis and changes in the frequency and nature of interactions between the hook-and-line fishery and pelagic seabirds has resulted in ongoing programmatic changes. Seabird avoidance measures in the longline fishery were increased in 2004 (69 FR 1930) to require streamer lines. In 2008 (72 FR 71601), gear standards were strengthened for small vessels and eliminated requirements in some areas. In 2009 (74 FR 13355), requirements were eliminated for hook-and-line vessels less than or equal to 55 feet LOA in portions of Area 4E. Compliance with regulations remains relatively high, and there were only 45 observed instances of failure to use seabird avoidance gear from 2005-2015.



Seabirds viewed from a fishing vessel.
Photo courtesy of NPFMC.



Retention of Undersized Halibut in Area 4E

Council Action
June, 1997

Proposed Rule
March 9, 1998
63 FR 11401

Final Rule
May 5, 1998
63 FR 24571

Effective
June 4, 1998

Purpose and Need

Original regulations required that all undersized halibut (less than 32 inches) caught with commercial gear be released. In 1996, the Council was requested by Alaska Native tribal organizations on behalf of Yupik descendants to lift this prohibition. That same year, the Council received a report about enforcement issues related to the fishing practices of Western Alaskan Natives. In response, the Council established a Halibut Subsistence Committee to review undersized halibut

retention while fishing for IFQ and/or CDQ halibut and other issues related to subsistence fishing for halibut. The Committee provided its recommendations to the Council, who developed this action. The purpose of the action was to enable native fishing communities to follow with the traditional practice of keeping all fish in order to utilize the fish to the fullest extent possible, and acknowledge the Yupik belief that fish is irreparably harmed by its capture and release, which can also damage the entire stock.



CDQ halibut vessel in St. Paul.
Photo courtesy of NPFMC.

Analysis

A 13-page EA/RIR was developed for this regulatory amendment. The alternatives included in the analysis were (1) the status quo and (2) revising minimum size retention regulations to allow the retention of undersized CDQ halibut. It was determined that the status quo would continue conflicts between federal and state enforcement agencies and rural Alaskans engaged in customary traditions. Alternative 2 was determined to not endanger the halibut resource as a limited amount of removals result from food fish taken home by the commercial CDQ fishery.

Regulation Summary

This regulation allows individuals halibut fishing in IPHC Regulatory Area 4E with authorized commercial gear to retain halibut less than 32 inches with the head on, or less than 34 inches with the head off (undersized halibut) for personal use. All halibut QS in Area 4E are allocated to the CDQ program, and the exclusive nature of the area eliminates potential difficulties in distinguishing between IFQ and CDQ halibut when enforcing minimum size limits.

The rule also explicitly states that commercial sale of undersized halibut is still prohibited.

Results

Starting with the 2002 Catch Sharing Plan for Pacific halibut (67 FR 12885) the exception to retain undersized halibut implemented with this regulatory change was extended to individuals CDQ fishing in Area 4D, so long as the vessel is landed at a port within one of these regulatory areas in recognition of the customary and traditional use of halibut in these areas. Two of the six CDQ groups (CVRF and BBEDC) CDQ fish in Area 4E, and four of the six groups (YDFDA, NSEDC, CVRF, and BBEDC) CDQ fish in Area 4D.

(The six CDQ communities are: Aleutian Pribilof Island Community Development Area (APICDA), Bristol Bay Economic Development Corporation (BBEDC), Central Bering Sea Fishermen’s Association (CBSFA), Costal Villages Region Fund (CVRF), Norton Sound Economic Development Corporation (NSEDC), Yukon Delta Fisheries Development Association (YDFDA)).



Hired Skipper

Hired Skipper Requirements

Council Action
September, 1997

Proposed Rule
December 16, 1998
63 FR 69256

Final Rule
June 9, 1999
64 FR 24960

Effective
May 26, 1999

Purpose and Need

The IFQ Program was designed to reduce excessive fishing capacity, while maintaining the social and economic character of the halibut and sablefish fixed gear fishery and the coastal communities where many of the fishermen are based. Various program constraints limited consolidation of QS and ensure that practicing fishermen, rather than investment speculators, retain harvesting privileges.

This ruling was necessary to promote an owner-operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries. An exception to the owner-aboard provision in the original implementation of the Program allowed initial recipients of B, C, or D category QS to employ a hired skipper to fish their IFQ provided that the QS holder owns the vessel on which the IFQ are being fished. This was created to allow initial QS holders who operated their fishing business with a hired skipper before the IFQ Program to continue operating this way. By limiting this exception to initial QS recipients, the Council designed the provision so that it would eventually expire with the eventual transfer of all QS out of the possession of initial recipients.

Some initial recipients of QS purchased a small interest in a vessel, as little as 1 percent or less, and thereby saved the cost of operating a wholly-owned vessel and crew. Such small ownership compromised the Council's social and economic intent for an owner-operated fishery, and such nominal vessel ownerships

created the potential for excessive loss of crew member jobs. The Council therefore revised the regulation with this action to specify initial recipients of B, C, or D category QS who wish to hire skippers must own a minimum of a 20 percent interest in the harvesting vessel.

Analysis

NMFS prepared a FRFA for this action. In developing this amendment, the IFQ Industry Implementation Team recommended a minimum of 51 percent controlling interests and the Council considered alternatives including requiring minimum vessel interests of 5, 20, 49, or 51 percent before recommending the 20-percent requirement. It was concluded that all initial recipients of category B, C, or D QS as well as the skippers who hire themselves out could potentially be financially impacted by this decision, but the 20 percent requirement was determined to best resolve the issue in the least burdensome way.

Regulation Summary

The regulation changed the requirements for hiring a skipper to state that initial recipients of B, C, or D category QS who wish to hire skippers to fish the IFQ derived from their QS are required to own a minimum of 20 percent interest in the vessel on which the IFQ species are being fished. QS holders who hired skippers prior to

April 17, 1997 are exempt from the minimum vessel ownership interest requirement so long as the QS holder's percentage of vessel ownership does not fall below the percentage held on that date and the QS holder has not acquired additional QS through transfer after September 23, 1997. Vessel ownership will be determined by NMFS on the basis of written documentation only.

Results

The hired master provision was put into place as a "grandfather" provision to allow vessel owners who, before the IFQ program was implemented, hired someone else to run their vessels to continue to do so. The number of both non-individual

(corporations) and individual QS holders who are eligible to hire skippers declined due to attrition. However, there is a general trend of increasing hired master activity and QS held by hired masters for halibut and sablefish with an increased rate of change seen in 2020. 66.7% of the halibut IFQ was fished by hired masters in 2016 and 75.6% in 2020. For sablefish, 82.7% was fished by hired masters and 87.6% in 2020.

The ownership requirements for the purposes of hiring a skipper were amended in 2002 (67 FR 20915) to allow a QS holder's association to a vessel owner, through corporate or other collective ties, to substitute for the QS holder's vessel ownership and again in 2015 (79 FR 9995) to require QS holders to hold a minimum of 20 percent ownership interest in a vessel for at least 12 consecutive months before hiring a master.



Skipper Anderson in the wheelhouse. Photo courtesy of L. Anderson.



Local Area Management Plan for Pacific Halibut in Sitka Sound

Council Action
February, 1998

Proposed Rule
April 28, 1999
64 FR 22826

Final Rule
September 29, 1999
64 FR 52468

Effective
October 29, 1999

Purpose and Need

The number of vessels that could potentially harvest halibut from Sitka Sound increased from 57 to 74 vessels between 1995 and 1996, due in part to changes in the commercial halibut fishery by the initiation of the IFQ Program. In 1997, the Sitka Halibut Task Force, appointed by the chairman of the Sitka Fish and Game Advisory Committee, identified that there were too many harvesters of halibut

competing for the limited halibut resource within the relatively small area of Sitka Sound. Small scale local depletion was not identified to have a significant biological effect on the halibut resource as a whole, but the decreased availability of halibut for personal use fishermen was diminishing the quality of life for local residence.

The purpose of this measure was to resolve the conflicts that had arisen between gear and user groups by creating a local area

management plan (LAMP) for Sitka Sound that would allocate the declining resource among subsistence, personal use, sport, charter, large commercial boat, and small commercial boat users.

Analysis

The Sitka Halibut Task Force identified a list of statements that were unanimously agreed upon by all sectors that supported the need for local halibut management of Sitka Sound. The Council initiated the process to facilitate this process in 1996. In 1999, after numerous Council meetings and public testimonies on the issue, a 35-page EA/RIR/FRFA was developed. A status quo and two alternatives that would both create a LAMP were analyzed. Alternative two limited category D vessels to have on board no more than 1,000 pounds of halibut in open seasons and only allowed halibut fishing for personal, subsistence, and/or non-guided sport fishing in the area defined for category D longliners in June, July, and August. Alternative 3, the preferred alternative, limited category D vessels to have on board no more than 2,000 pounds of halibut in open seasons and prohibited charter vessels from fishing in the area defined for category D longliners in June, July, and August. The preferred alternative was determined to protect the interests of non-guided anglers and potentially displace 29 commercial category A-C vessels and 200 charter boats from waters inside of Sitka Sound to other Area 2C waters.

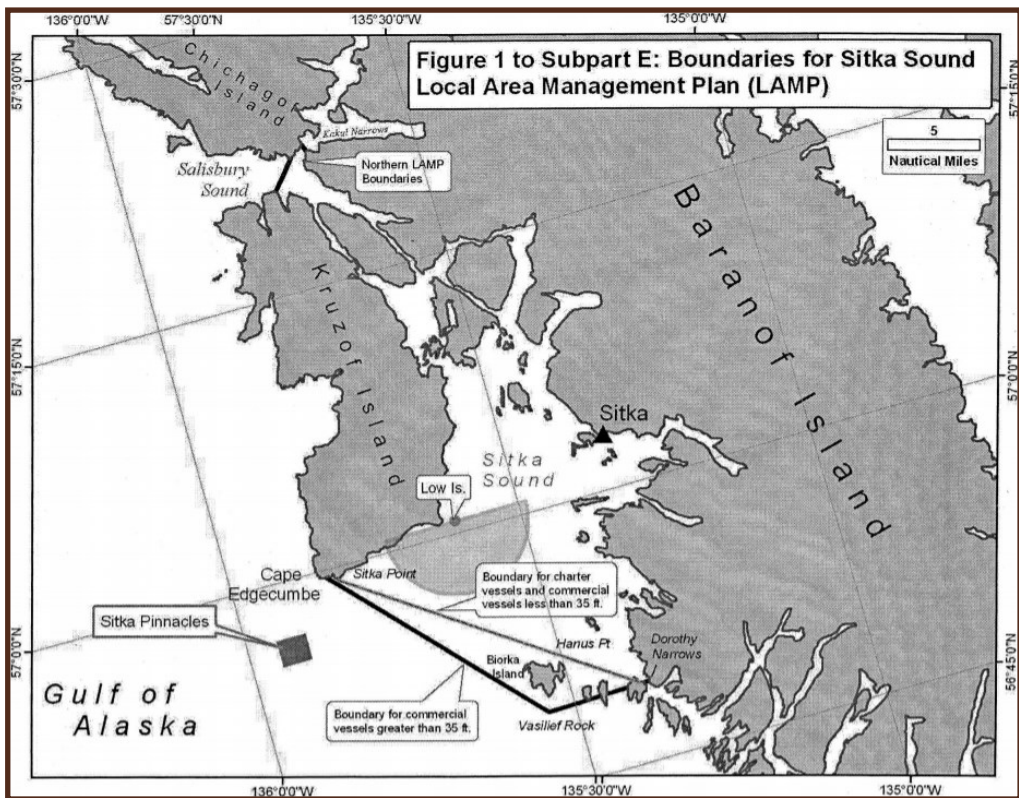
Regulation Summary

The LAMP created for Sitka Sound by this regulation:

- (1) prohibited halibut commercial vessels greater than 35 feet from harvesting halibut in Sitka Sound,
- (2) prohibited halibut commercial vessels less than or equal to 35 feet from harvesting halibut in Sitka Sound during June, July, and August with a 1,000 pound trip limit during the remainder of the IFQ fishing season, and
- (3) only allowed subsistence/personal use and non-guided sport fishing in Sitka sound during June, July, and August.

Results

After the development of the Sitka LAMP, the Alaska Board of Fisheries and the Council jointly adopted a protocol for the development of future LAMPs modeled after the experiences of the Sitka Task Force. Both the Board and the Council see LAMPs as useful steps in resolving user conflicts and addressing issues of local depletion. No other LAMPs have been adopted at this time.



Seabird/Habitat Conservation, Spatial Management

Sitka Pinnacles Marine Reserve

Council Action
June, 1998

Proposed Rule
June 26, 2000
65 FR 39342

Final Rule
November 9, 2000
65 FR 67305
GOA Amend. 59

Effective
December 11, 2000

Purpose and Need

The Magnuson-Stevens Act mandate to identify, conserve, and enhance essential fish habitat (EFH) is regarded as an important tool for sustainable fisheries and healthy ecosystems. This mandate recognizes the role of the ecosystem and identifies EFH as the waters and substrate necessary to fish for spawning, breeding, feeding, and growth to maturity.

The Sitka Pinnacles area, in the Southeast Outside District of the GOA near Cape Edgecumbe, provides highly productive habitat for many species at different stages of their life cycles. Information collected during manned submersible surveys of groundfish habitat by the Alaska Department of Fish & Game (ADF&G) indicates that the diversity and density of fish around the Sitka Pinnacles are much greater than the typical eastern continental shelf of the GOA. The pinnacles habitat is fragile, and the concentration of fishes in a relatively small, compact space can lend itself to overfishing of certain species.

Prior to the closure in 2000, the area had been used for fishing – especially with hook-and-line gear – for decades. In the early 1990's, the State of Alaska began attempting to preserve lingcod populations in nearby State waters (the Sitka Pinnacles are in Federal waters) through closures during winter and eventually through spring and late summer. In May 1998, the commercial and sportfish divisions of ADF&G submitted joint proposals to the State's Board of Fish (BOF)

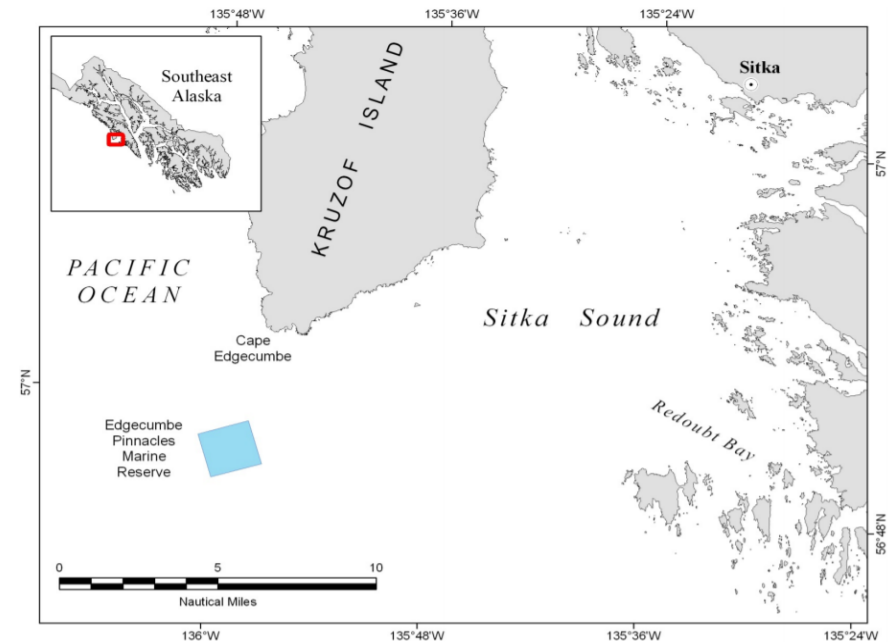
and the Council to close the Sitka Pinnacles area. The BOF closed the area to fishing for lingcod and black rockfish, which are species under its jurisdiction. The Council identified that closure of this area would allow a vital ecosystem to be maintained in an area surrounded by heavy fishing pressure. Since the State of Alaska had already implemented a prohibition on fishing for lingcod and rockfish within the prescribed area, the purpose of this regulatory amendment was to mirror the state prohibition for federally managed fisheries and make the closure more comprehensive.

Analysis

A 20-page EA/RIR (November 1999) was prepared for this amendment. Two alternatives including the status quo were considered. The action alternative considered two options: (1) close the pinnacles area to fishing for all federally-managed species, and anchoring by all fishing vessels subject to federal fisheries jurisdiction; and (2) the preferred option to close the pinnacles area to fishing and anchoring by commercial groundfish fishing vessels and commercial and sport halibut fishing vessels.

Regulation Summary

The creation of the Sitka (Edgecumbe) Pinnacles Marine Reserve resulting from this action prohibited fishing in an area containing important fish habitat, totaling 2.5 square nautical miles, off Cape Edgecumbe near Sitka, Alaska. This amendment closed



Map of Pinnacle closure area. Photo courtesy of ADF&G.

this area to groundfish fishing and anchoring by commercial groundfish vessels, to halibut fishing and anchoring by IFQ halibut fishing vessels, to sport fishing for halibut, and to anchoring by any vessel if halibut is on board. The area is defined by a square, with lines connecting the following *points in a clockwise manner: 56°55.5' N Latitude, 135°54' W Longitude; 56°57' N Latitude, 135°57' W Longitude; 56°55.5' N Latitude, 135°57' W Longitude.

Results

The Sitka Pinnacles Marine Reserve was implemented in 2000 and the Marine

Protected Area (MPA) appears to be effective at protecting the late juvenile and adult sablefish and Pacific halibut that use the area, although a comprehensive survey of the population in the area is still lacking. Closure of this area is supported by the local fleet of commercial, charter, sport, and subsistence fishermen. Compliance with the MPA regulations appears to be high.

*Coordinate corrections were made to this amendment in 2001 (66 FR 8372). These corrections are incorporated in this summary.



Establish Definitional Difference Between Halibut CDQ and Groundfish CDQ Fishing

Council Action
October, 1998

Proposed Rule
February 8, 1999
64 FR 6025

Final Rule
May 26, 1999
64 FR 20210

Effective
May 26, 1999

Purpose and Need

NMFS established the fixed gear halibut and sablefish CDQ fisheries along with the fixed gear halibut and sablefish Individual Fishing Quota (IFQ) Program. The IFQ regulations provide for the reporting of halibut and sablefish CDQ caught with fixed gear through the end of 1998. As the recipients of annual allocations, CDQ groups were originally required to obtain a CDQ permit from NMFS. Each individual who landed fixed gear halibut or sablefish CDQ was required to have a NMFS-issued CDQ card and to telephone NMFS to provide 6 hours prior notice of landing. Registered buyers were required to report CDQ landings to NMFS using the electronic reporting system and transaction terminals.

In the 1997 proposed rule to implement Amendment 39 to the BSAI Groundfish FMP, NMFS proposed to consolidate all the CDQ fisheries under one set of monitoring and catch accounting regulations. No distinction was made between the requirements for vessels of the same size fishing in the halibut CDQ fisheries versus fishing in the groundfish CDQ fisheries. Public comment on proposed Amendment 39 highlighted the stark differences between the groundfish and halibut fisheries. In 1997, 75 percent of the halibut catch was landed by small boats and skiffs under 32 ft LOA to about 10 small shoreside processors. In contrast, most groundfish CDQ was harvested by large catcher/processor vessels delivering groundfish to shoreside processing plants

located in relatively large ports.

In response to these concerns, NMFS issued a rule to revise sections of the regulations that govern the separate CDQ fisheries and to further define how the halibut CDQ fisheries will be managed to better address the aspects of the halibut CDQ fishery unique from the groundfish CDQ fishery.

Analysis

A 22-page EA/RIR/IRFA (April 1999) was completed for this rule. It compared Alternative 1, a no action alternative, Alternative 2 – manage the catch of halibut CDQ under regulations for the IFQ Program - and Alternative 3 – manage the catch of halibut CDQ under regulations for the multispecies groundfish CDQ fisheries. Alternatives 2 and 3 differed in the way that catch of halibut CDQ would be reported – under IFQ regulations or under multispecies groundfish CDQ regulations. Alternative 2 was selected as the Council's preferred alternative.

Regulation Summary

This regulatory action implemented numerous changes to address the differences between halibut CDQ and groundfish CDQ fishing for more effective management. These were:

(1) Adding a definition for “halibut CDQ fishing” to mean fishing that results in the landing of halibut CDQ in a delivery by a catcher vessel or a set by a catcher



CDQ halibut fisherman.
Photo courtesy of NPFMC.

processor where retained halibut CDQ and halibut IFQ is the largest proportion of the catch. It likewise amends the definition of “groundfish CDQ fishing” so that a vessel is either groundfish CDQ or halibut CDQ fishing, but not both at the same time.

(2) Removing reporting requirements to list halibut CDQ cardholders, vessels less than 60 ft LOA that land groundfish while halibut CDQ fishing in the Community Development Plan (CDP) as it is redundant with information available from the Restricted Access Management Division.

(3) Maintaining that IFQ regulations continue to govern the permitting, harvesting and landing of halibut CDQ and that vessels harvesting halibut CDQ while groundfish CDQ fishing comply with all requirements for the multispecies groundfish CDQ fisheries.

(4) Stipulating vessels less than 60 ft and halibut CDQ fishing are not required to retain all groundfish CDQ species (unless

IFQ program regulations or the Improved Retention/Improvement Utilization regulations stipulate otherwise) and registered buyers taking deliveries from these vessels are not required to have a CDQ observer monitor deliveries. Additionally, groundfish (excluding sablefish) landed by these vessels while halibut CDQ fishing does not need to be reported by the manager of a shoreside processor and is not subtracted from the CDQ group's CDQ allocations but accrues against the non-CDQ groundfish TAC limit.

(5) Specifying vessels less than 60 ft LOA halibut CDQ fishing are not required to retain and deliver all groundfish and that groundfish bycatch does not accrue against groundfish CDQs, but vessels greater than 60 feet LOA and halibut CDQ fishing must account for all groundfish bycatch against the CDQ group's groundfish allocation, must carry one CDQ observer, and CPs must carry two CDQ observers.

This action also made changes to the reporting requirements for shoreside processors and CDQ groups and made minor technical/editorial changes to groundfish CDQ regulations.

Results

This rule recognized the inherent differences in the composition and operations of the halibut CDQ and groundfish CDQ fisheries, which resulted in improved management more tailored to the unique characteristics of each fishery.



Leasing/Transfer, Reporting Requirement

Omnibus Amendment 3: Vessel Trailing, PNOL Exemption for Lingcod Fishermen, Gear Type Reporting, Surviving Spouse Transfer Provision

Council Action
October, 1998

Proposed Rule
December 14, 2000;
65 FR 78126

Final Rule
May 21, 2001;
66 FR 27908

Effective
June 20, 2001

Purpose and Need

The IFQ Program is continually assessed for its responsiveness to conservation and management goals, and two previous omnibus packages (60 FR 22307, May 5, 1995; 61 FR 41523, August 9, 1996) had previously been adopted since the original enactment of the program.

With the third omnibus package, NMFS issues numerous changes that were primarily technical in nature and implemented to clarify regulations or reduce the chances for misinterpretation. Four changes that were more substantive in nature were made in response to issues that had been brought up to the Council and NMFS. These issues pertained to:

- (1) Vessels that are removed from the water and put onto a trailer before IFQ harvest is offloaded.
- (2) Lingcod dinglebar fishermen illegally discarding IFQ halibut bycatch to avoid the requirement that lingcod fishermen who take small amounts of halibut bycatch must comply with the IFQ Program's 6-hour prior notice of landing (PNOL) and 12-hour landing window requirements.
- (3) The exclusion of gear type on landings reports, which is pertinent information to effectively manage the IFQ Program, as it is limited to fixed gear.
- (4) The limited scope of the surviving-spouse transfer provision made in 1996 (61 FR 415223), which allowed the temporary transfer of QS and IFQ to a surviving spouse for up to three

years after the passing of a QS holder so the spouse may still benefit from the QS through direct fishing of leasing of IFQ.

The purpose of the changes included in the third omnibus amendment to the IFQ Program were to ensure proper compliance with the original intent of Program requirements, remove unnecessary regulations that resulted in illegal action, and provide relief to surviving family members of IFQ QS holders.

Analysis

NMFS prepared an FRFA for this omnibus amendment and determined that all QS holders, seafood processors, and transporters will be impacted by these changes as well as families of deceased QS holders who are beneficially impacted by the extension of the temporary transfer privileges.

Regulation Summary

The third omnibus amendment includes 13 total amendments to the IFQ program, four of which were particularly substantive in their impacts to the implementation of the IFQ Program and nine that were changes to regulatory language to increase clarity and consistency.

Substantive changes:

- (1) Amended the definition of an IFQ landing to include vessels that are removed from the water and put on trailers to be moved elsewhere to offload, rather than offloading the IFQ harvests dockside. The previous omission of this clarification inhibited NMFS' ability to monitor IFQ landings to ensure proper accounting of

harvests against IFQ balances in IFQ landing reports.

- (2) Added exemption for lingcod fishermen using dinglebar gear from the IFQ 6-hour PNOL and 12-hour landing window requirements. NMFS believed lingcod fishermen should be exempt since halibut bycatch from the lingcod fishery is not large enough to jeopardize effective monitoring of IFQ landings.

- (3) Added gear type to the information required on a completed IFQ landing report.

- (4) Amended the survivorship transfer provisions to allow the temporary transfer of a deceased QS holder's QS and IFQ to a designated beneficiary (not limited only to a surviving spouse) for a period of three years or until the QS is awarded to a legal heir.

Definitional changes/technical clarifications:

- (1) Revised "IFQ management plan" to read "IFQ management measures".

- (2) Amended the language defining which vessels are required to observe IFQ regulation requirements when open-access sablefish fishing in Alaska State waters to make clear these regulations only apply to current fishermen and not those who have participated in the IFQ Program in the past.

- (3) Added nomenclature to reflect changes in NMFS' Restricted Access Management (RAM) program by changing "Chief RAM Division" to "Program Administrator RAM".

- (4) Removed the reference to an "accompanying statement" establishing IFQ balances. The IFQ card itself is sufficient to

establish a fisherman's IFQ balance.

- (5) Amended the information required for a shipment report to clarify that for IFQ landings that involve more than one registered buyer, one of the registered buyers is responsible for compliance with shipment reports and submission of all reports to NMFS.

- (6) Made minor corrections to errors arising from the consolidation of IFQ and CDQ permitting and recordkeeping regulations.

- (7) Added the requirement that corporations and partnerships holding QS provide an annual update on the status of the corporation/partnership and all current shareholders to ensure that such entities that have either been dissolved or have acquired additional shareholders/partners are not erroneously issued annual IFQ.

- (8) Amended the appeals submission process to allow appeals to be submitted by fax machine.

- (9) Amended requirements for certain IFQ forms and reports to be consistent with requirements of the Paperwork Reduction Act (PRA).

Results

The changes in this amendment package were intended to clarify programmatic language and ensure proper compliance with the initial intent of regulations outlined in the IFQ Program. It enabled closer and more accurate accounting for the activities of participants, streamlined reporting requirements, and provided economic relief to relatives of deceased QS holders.



Hired Skipper, Leasing/Transfer, Use Cap

Indirect Ownership Use Caps

Council Action
October, 1998

Proposed Rule
October 12, 2001
66 FR 52090

Final Rule
April 29, 2002
67 FR 20915
BSAI Amend. 54
GOA Amend. 54

Effective
April 29, 2002

Purpose and Need

During the 1995-97 IFQ seasons, NMFS broadly interpreted the FMP and regulatory language to allow persons holding initial allocation QS to hire skippers to fish their IFQ on vessels owned by other “persons,” provided that the QS holder could show a corporate association to the owner of the vessel. This policy allows individual QS holders to hire skippers to fish their IFQ on vessels owned by corporations or partnerships in which the individual QS holders are shareholders or partners. The policy also allows corporations or partnerships holding QS to fish the collectively held QS on a vessel owned by individuals who are shareholders or partners in the corporation or partnership.

At the beginning of the 1997 IFQ season, NMFS announced to the IFQ fleet that this policy of broadly interpreting the term “person” as it pertains to the IFQ hired skipper provisions would continue until the Council could clarify its original intent. In 1999, NMFS published 64 FR 24960 to clarify the definition of “vessel ownership” to mean a minimum of 20 percent interest in a vessel, and with this rule further defined the ownership provision to allow a QS holder’s association to a collective entity to substitute for vessel ownership.

Additionally, the IFQ implementing regulations provided that any “change” in a corporation, partnership, or other entity, will cause the QS to cease generating annual IFQ for harvesting IFQ halibut or sablefish until the QS is

transferred to a qualified individual. However, the definition of when a “change” occurs for an estate holding QS was never defined. An estate’s QS was not automatically transferred to an heir with the final distribution of the estate, and the purpose of clarifying this definition was to ensure that estates do not hold onto QS and fish the resulting IFQ indefinitely.

One other clarifying Groundfish FMP language change pertaining to sablefish use limits was included in this action.

Analysis

A 20-page EA/RIR/IRFA (Secretarial review draft dated January 2001) was prepared for this regulatory change. Originally, five actions were proposed in this analysis. One, which dealt with a leasing provision, was removed at final action. Another action allowed QS holders to provide NMFS/RAM with the name of an immediate family member as a beneficiary to whom the existing survivorship transfer privileges will be granted in the absence of a surviving spouse (regulatory amendment). Ultimately, three separate management actions were considered for the amendment. One status quo and one proposed alternative were considered for each action.

Regulation Summary

The three actions adopted in the amendment were:

(1) Revise the IFQ Program to allow a QS holder’s association to a vessel owner,

through corporate or other collective ties, to substitute for the QS holder’s vessel ownership per se for purposes of hiring a skipper to fish the QS holder’s IFQ. An individual who has an ownership interest in a non-individual entity is allowed to employ a hired skipper on a vessel owned by that entity, as long as the individual maintains the minimum 20 percent ownership interest requirement in the vessel. An individual’s interest in a vessel is determined by the percentage ownership by the individual of a nonindividual entity that has an ownership interest in the vessel multiplied by the percentage of ownership of the vessel by the non-individual entity.

(2) Revise the definition of “a change in the corporation or partnership” in the to include language specific to estates. Estates are included under the definition of the term “Person” in 50 CFR 679.2 as “corporations, partnerships, associations, or other entities.”

(3) Change sablefish use limits from percentages of the total number of QS units in the QS pool for each area to a specific number of QS units. In June 1996 (62 FR 7947), the Council approved a regulatory amendment to increase the Bering Sea (Area 4) halibut use caps from ½ percent to the QS equivalents of 1½ percent based on 1996 QS pools. This amendment also revised the halibut use limits to be expressed as a fixed number of QS units rather than as a percentage, in order to provide QS holders with a more stable reference for measuring their holdings against area use caps. Sablefish IFQ use

limits are set in the BSAI and GOA Groundfish FMPs. Consequently, the regulatory change to the halibut use limits could not at the same time change the calculation of sablefish use limits to a fixed number of QS units for consistency. This FMP amendment would affect that revision to calculate the sablefish in QS units based on the appropriate percentage of the 1996 QS pools. This change would standardize the application of use caps for both halibut and sablefish fisheries and would provide the same level of predictability for sablefish QS holdings as currently exists for halibut QS.

Results

This amendment codified the existing management policy and methodology that were being employed by NMFS at the time to determine the ownership interest a shareholder had in a vessel. Furthermore, it accommodated the fact that many people move vessel ownership to limited liability companies to protect personal assets. From 2002-2019, halibut harvest by hired skippers was between 40-50%, and sablefish harvest between 55-60%. The hired-master provision was further revised by 72 FR 44795 in 2007 and 79 FR 9995 and 79 FR 43679 in 2014.



CDQ, Spatial Management

Increase Area 4E Trip Limits and Allow Harvest of Area 4D CDQ Halibut in Area 4E

Council Action
December, 2001

Proposed Rule
October 15, 2002
67 FR 63600

Final Rule
March 3, 2003
68 FR 9902

Effective
April 2, 2003

Purpose and Need

The annual halibut catch limits for Areas 4B, 4C, and 4D are divided between the IFQ and CDQ programs. One hundred percent of the Area 4E annual catch limit is allocated to the CDQ program. The halibut CDQ catch limits, or reserves, are divided among eligible CDQ communities in accordance with Community Development Plans (CDP) submitted by CDQ managing organizations (CDQ groups) and approved by NMFS.

Between 1995 and 2003, four different CDQ groups (BBEDC, CVRF, NSEDC, and YDFDA) received annual allocations of Area

4D halibut and two CDQ groups (BBEDC and CVRF) have received annual allocations of Area 4E halibut. Between 1995 and 2001, the annual halibut CDQ reserve ranged from 231,000 to 609,000 lb (104.78 to 276.24 mt) in Area 4D and from 120,000 to 390,000 lb (54.43 to 176.9 mt) in Area 4E.

In January 1999, CDQ groups that received Area 4D quota but not Area 4E quota (NSEDC and YDFDA) asked the IPHC to determine whether it would be acceptable to harvest 4D quota in 4E. Almost all of the 56 communities represented by these groups are adjacent to Area 4E. The IPHC already considers halibut in Areas 4C, 4D, and 4E to be a single stock and had no objections to the request.

Trip limits were initially designed and implemented to protect fishermen who landed their total annual catch of halibut at ports in Area 4E from competition with fishermen using vessels large enough to land their Area 4E halibut catch at ports in other regulatory areas. In December 1994, the Council recommended eliminating the trip limits as they were deemed unnecessary once the IFQ/CDQ program was implemented. The trip limit for Area 4E was inadvertently kept in the federal code (50 CFR part 679), but when this was raised to the Council, they declined to remove the legacy regulation with the goal of preventing consolidation of the Area 4E halibut fishery.

Analysis

An EA/RIR/IRFA was prepared for this

amendment. Three alternatives were considered with the action that would modify the Area 4 CSP: (1) a no action alternative, (2) the preferred alternative of allowing Area 4D halibut CDQ to be harvested in Area 4E, and (3) allowing halibut CDQ specifically allocated to Area 4D or 4E to be harvested in either of these two areas. Four alternatives were considered with the action to modify Area 4E trip limits, including a no action alternative and the preferred alternative of increasing the trip limit to 10,000 pounds through September 1 each year.

For both changes, the no-action alternative was determined to unnecessarily limit the further development of local inshore halibut CDQ fisheries and the preferred alternatives were determined to be the least burdensome to those impacted by the action.

Regulation Summary

This amendment modified the Area 4 Catch Sharing Plan (CSP) to incorporate the Council's recommendation that Area 4D halibut CDQ may be harvested either in Area 4D or 4E. The regulation clearly stated that this does not change the existing Area 4 CSP framework that apportions the combined Area 4C-E annual limit among Areas 4C, 4D, and 4E implemented by the IPHC. The regulation included the Council's recommendation that Area 4D halibut CDQ that had been transferred to Area 4E can be transferred back to Area 4D and that no documents are required to transfer halibut

CDQ between the two areas.

Instead of eliminating trip limits, the Council recommended that the trip limit be increased from 6,000 pounds to 10,000 pounds to allow near-shore small-scale halibut CDQ harvesters more flexibility.

Results

The modification of the CSP for areas 4D and 4E enabled two more CDQ groups – YDFDA and NSEDC - to fish their halibut CDQ QS in Area 4E. Specific landings data for halibut CDQ per CDQ group and quota area is confidential so determining how these two groups have benefited from this adjustment is difficult. However, YDFDA is allocated 20% of the halibut CDQ quota for Area 4D and NSEDC is allocated 30% with no allocation for any other area despite their proximity to Area 4E. This change has enabled the groups to fish in areas more accessible to where the communities are located, which was predicted to result in economic savings and fuller utilization of QS.

In 2005, further localized depletion of halibut in Area 4C created the impetus for the implementation of 70 FR 73328 which allowed Area 4C IFQ and CDQ quota to be fished in either area 4C or 4D.

Increasing trip limits created a safer fishery by enabling CDQ groups who would otherwise have been economically constrained by using a large vessel to do so in winter months when weather and sea conditions are more adverse.



Halibut being brought up on a longline.
Photo courtesy of Julianne Curry.



Improve Seabird Avoidance Measures

Council Action
December, 2001

Proposed Rule
February 7, 2003
68 FR 6386

Final Rule
January 13, 2004
69 FR 1930

Effective
February 12, 2004

Purpose and Need

In 1996, several industry groups representing hook-and-line vessels in the Gulf of Alaska and Bering Sea/Aleutian Islands petitioned the NPFMC and NMFS to impose regulatory measures intended to reduce the incidental mortality of seabirds in their fisheries, which resulted in the implementation of avoidance device requirements in 1998 (63 FR 11161).

From 1998-2000, the Washington Sea Grant Program (WSGP) conducted a 2-year study on the effectiveness of the seabird avoidance requirements. The purpose of this action was to update the original requirements based on the findings of this study and the recommendations the WSGP made to the Council.

Analysis

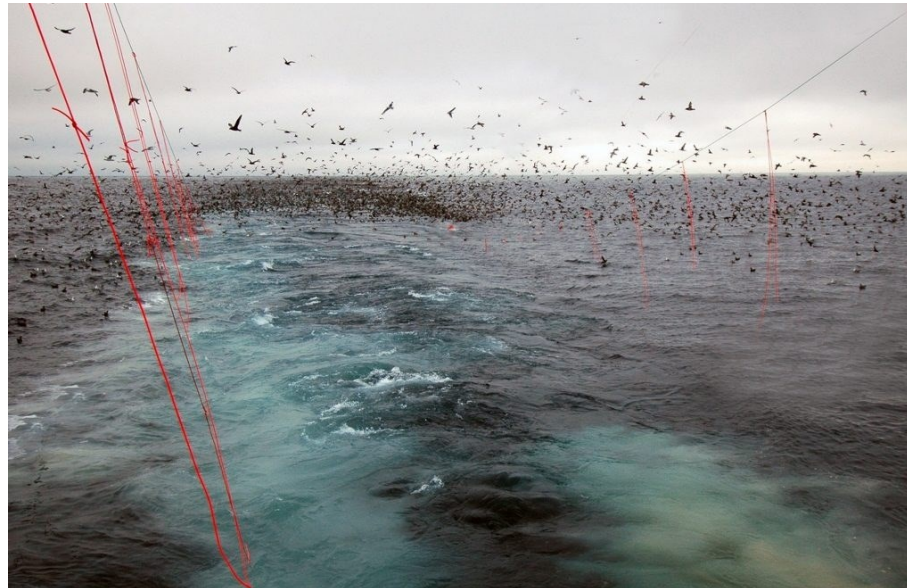
An EA/RIR/IRFA was prepared for these regulatory changes. Three alternatives were considered: (1) a status quo alternative, (2) revisions to existing regulations that did not specifically address performance standards and material standards for bird streamer lines, and (3) the preferred and selected alternative that was based on the recommendations made by the WSGP. Vessels under 26 feet were exempt from the requirements to minimize economic impacts on small vessel operators.

Regulation Summary

The regulations implemented by this action required IFQ Sablefish and Halibut Fixed-Gear Program vessels greater than 26 feet LOA and less than 55 feet LOA that are with or without masts, poles, or rigging to have (1) a minimum of one buoy bag line of a specified performance standard and one other specified device and (2) a minimum of one streamer line of a specified performance standard and one other specified device. Vessels greater than 55 feet LOA are required to use a minimum of paired streamer lines of a specified performance standard unless the vessel is using snap gear.

Results

Although this regulatory change strengthened seabird avoidance requirements, ongoing analysis and changes in the frequency and nature of interactions between the hook-and-line fishery and pelagic seabirds has resulted in the loosening of some avoidance requirements and refinement of others. These changes have included alterations to the gear standards for certain vessel classes and the elimination of avoidance requirements in certain areas (72 FR 71601; 74 FR 13355).



Streamer lines to reduce seabird bycatch.
Photo courtesy of Washington Sea Grant.



Reporting Requirements

Prior Notice of Landing Requirement

Purpose and Need

During the implementation of the IFQ Program, the NOAA Office of Law Enforcement and the International Pacific Halibut Commission staff indicated that prior notice of landing (PNOL) would be helpful for personnel staffing. Regulations enacted with the implementation of the IFQ Program in 1995 required a six-hour advance notice as well as the name of the registered buyer and location to which the delivery was being made.

In 1997, NMFS issued a regulatory change (62 FR 26246) to clarify the PNOL system to address compliance issues. Over the next few years, IFQ fishing industry expressed four main concerns about specific aspects of the PNOL requirement. (1) Existing regulations require vessel operators to commit to a specific Registered Buyer at least 6 hours before landing, which disadvantaged fishermen in price negotiations; (2) communications at sea are often limited and a vessel operator may rely on a third party to call in the PNOL to the toll-free number in Juneau; (3) Registered Buyers are restricted in their ability to bid on a load of IFQ fish if they have to wait 6 hours to begin offloading fish from a vessel; and (4) if a particular processor is operating at maximum capacity, or experiences mechanical or other operational difficulties, at the time a vessel is scheduled to deliver to that processor, then that vessel must locate another Registered Buyer, and provide a six hour notice before offloading to this other Registered Buyer,

rendering vessels unable to respond to necessary changes in business conditions.

This action was necessary to improve IFQ fishing operations, while complying with IFQ Program requirements, to improve NMFS' ability to efficiently administer the program, and to improve the clarity and consistency of IFQ Program regulations.

Analysis

A 34-page RIR/IRFA was prepared for this regulatory amendment. It analyzed a status quo and action alternative for each of the three main action items in the amendment package. The analysis determined that the impacts projected for the proposed actions appeared to be largely positive, but without the data necessary to make that determination conclusively, NMFS could not certify that these actions would not have a significant adverse effect on a substantial number of small entities within the meaning of the RFA.

Regulation Summary

This amendment consisted of three federal regulatory and Groundfish FMP changes related to recordkeeping and reporting of halibut and sablefish IFQ vessels: (1) modify PNOL reporting requirements by (a) replacing the reporting of "registered buyers" with "location of landings" and (b) change the minimum PNOL reporting requirements from six hours to three hours, (2) eliminate the shipment report and require that IFQ species be reported on the product transfer report, and (3) require a

verbal departure report instead of the vessel clearance requirement for vessels with IFQ halibut or sablefish leaving the jurisdiction of the Council.

Results

The revised recordkeeping and reporting requirements have improved fishing operations and NMFS' ability to administer the IFQ Program.

Council Action
April, 2002

Proposed Rule
January 24, 2003
68 FR 3485

Final Rule
July 29, 2003
68 FR 44473
BSAI Amend. 72
GOA Amend. 64

Effective
August 28, 2003



Vessels in Kodiak harbor. Photo courtesy of Elizabeth Figus.



Community Quota Entity Program

Council Action
*April, 2002*Proposed Rule
September 2, 2003
*68 FR 52173*Final Rule
April 30, 2004
69 FR 23681
*GOA Amend. 66*Effective
June 4, 2004

Purpose and Need

During the development of the IFQ program, the Council built in several provisions to address concerns regarding transferability and the goal of preserving an owner-operated fleet. Among other things, the Council was concerned about consolidation of ownership and divestiture of coastal Alaskans from the fisheries. Ultimately, the Council included a requirement for catcher vessel quota share (QS) to only be purchased by individual fishermen, with proven sea time, who would also be required to be on the vessel and fish the resulting IFQs. The primary intent of this provision was to maintain a diverse, owner-operated fleet and prevent 'corporate', absentee ownership of the fisheries.

Consideration of including communities in the commercial IFQ Program was motivated by several provisions in the MSA and National Research Council reports, as well as a specific community proposal. The proposal cited disproportionate amounts of QS transfers out of smaller, rural communities as a symptom of the continuing erosion of their participation in the commercial IFQ fisheries. A number of small coastal communities were struggling to remain economically viable, and the IFQ Program, as with other limited entry programs, increased the cost of entry or expansion in the commercial halibut/sablefish fisheries.

The Council decided to analyze a proposal to allow a defined set of

small, rural, coastal, Gulf of Alaska communities to purchase catcher vessel QS in IPHC management areas 2C, 3A, and 3B. Several factors contributed to the initiation of this analysis: (1) the rate of decline of the amount of QS in the smaller communities was higher than that of larger communities; (2) the bulk of the QS consolidation had taken place in the smaller QS holdings, and (3) very few initial large quota share recipients resided in smaller, coastal communities. The Council was concerned that declining QS ownership in remote coastal communities would exacerbate unemployment and other adverse social/economic outcomes in fishery-dependent areas with few alternative economic opportunities.

Analysis

A 144-page EA/RIR/IRFA (public review draft dated April 10, 2002) was prepared for this amendment. The eight major elements of the program that were analyzed and included are:

- Element 1. Eligible communities
- Element 2. Ownership entity
- Element 3. Use caps for individual communities
- Element 4. Cumulative use caps for all communities
- Element 5. Purchase, use, and sale restrictions
- Element 6. Performance standards
- Element 7. Administrative oversight

Element 8. Program Review

Regulation Summary

The Council's preferred alternative for this regulatory amendment included provisions for each of the eight elements listed above. Under this amendment, the Council defined the criteria that would allow eligible coastal communities to form non-profit corporations called Community Quota Entities (CQEs) to purchase catcher vessel QS, and the IFQ resulting from the QS must be leased to community residents annually. The criteria for community eligibility is as follows: less than 1,500 people, no road access to larger communities, direct access to saltwater, and a documented historic participation in the halibut and/or sablefish fisheries. Communities not listed in the final regulations must apply to the Council to be approved for participation in the program and will be evaluated using the same criteria. The CQE Program includes provisions on QS holdings and use that are both more and less strict than provisions for other IFQ Program participants.

Results

Activity in the CQE Program has been limited. At the program's five-year review (NPFMC 2010), 21 of the 42 eligible communities had completed the process to form a CQE, but only one had purchased QS. Barriers to purchasing QS and program-related restrictions were the primary reasons cited for low participation in the Program. Since then, amendments to the

program have relaxed some restrictions in order to provide additional opportunities for coastal communities in Alaska (78 FR 33243, 79 FR 66324, and 85 FR 44021). The program has been expanded to allow for more eligible communities (i.e., three communities in the GOA and one community in Aleutian Islands/ Area 4B region) through 78 FR 33243 and 79 FR 8870.

The CQE Program was also expanded to allow CQEs to access rights to fisheries other than halibut and sablefish IFQ. In 2010, the CQE Program was expanded to allow CQEs to receive a certain number of community charter halibut permits at no cost (75 FR 553). CQEs may also purchase a specified number of charter halibut permits from private entities in the charter fishery.

As of November 2020, 25 of the 45 eligible communities had formed CQEs, but only nine CQEs held halibut QS and two of those nine held sablefish QS. Barriers to purchasing QS, for instance access to funding and availability of QS on the market, are likely still valid reasons for the limited amount of participation by CQEs in the IFQ Program. Lower halibut catch limits during the past decade have likely exacerbated these challenges for CQEs as there are fewer pounds of halibut available to be commercially harvested compared to when the program was first implemented.



Cost Recovery Program

Council Action
NA, Secretarial
Program

Proposed Rule
December 27, 1999
64 FR 72302

Final Rule
March 15, 2000
65 FR 14919

Effective
March 15, 2000

Purpose and Need

The costs associated with the management and enforcement of the IFQ Program are not nominal. Between 2000 and 2015, average program implementation cost was over \$4.6 million. Section 304(d) of the Magnuson-Stevens Act requires that NMFS recovers the actual cost directly related to the management, data collection, and enforcement of any Limited Access Privilege (LAP) program and the Western Alaska Community Development Quota (CDQ) Program. The MSA also specifies that fees must not exceed 3 percent of the ex-vessel value of fish harvested, the timeframe when fees are to be collected, and the location where fees must be deposited. The purpose of this action was to implement a cost recovery program for the Halibut and Sablefish Fixed Gear IFQ Program, through secretarial action, to comply by regulations required by the MSA.

Analysis

In April 1998, the Council established an Industry IFQ/CDQ Fee Collection Committee comprised of stakeholder representatives to provide input on the development of a cost recovery program for the Halibut and Sablefish IFQ Program. Two of the most significant issues that arose during development of the cost recovery program were (1) whether to assess the fee on IFQ permit holders, or on registered buyers (processors), and (2) whether to base the fee on actual or standardized ex-vessel prices. The IFQ/CDQ Fee Collection Committee was equally divided on who fees should be collected from, but eventually came to the consensus that actual prices should be used whenever possible.

The initial preferred alternative identified by NMFS (1) imposed the responsibility of collecting and submitting IFQ fees on IFQ permit holders, (2) required registered buyers to provide NMFS with additional reports for developing standard prices, and (3) based cost recovery fees on ex-vessel value. The Advisory Panel expressed concerns similar to those of the IFQ/CDQ Fee Collection Committee that standard prices may be greater than actual prices. A compromise was reached and the final rule maintained that payment be based on standard ex-vessel value but included an exception if IFQ permit holders can demonstrate a different ex-vessel value with written documentation such as fish tickets and receipts.

Regulation Summary

The cost recovery program implemented by this regulation directed IFQ fishermen to pay an annual fee based on direct program cost and the ex-vessel value of fish landed under the IFQ Program. IFQ permit holders are responsible for fees owed for all landings on their permit(s), regardless of whether their IFQ pounds are from their own QS or leased from another QS holder and regardless of whether a permit holder or a hired skipper made the landings.

Permit holders must pay their fee no later than January 31 of the year after the calendar year of the landings. Failure to pay on time results in NMFS action against the permit holder's QS and may result in additional monetary charges, fines, and/or permit sanctions. Permit holders may pay the amount calculated by NMFS that is based on standard ex-vessel prices and values or in part on actual ex-vessel value from their sale of IFQ halibut or sablefish.

The MSA limits the fee to 3 percent of the annual ex-vessel value of the IFQ fisheries and the actual amount calculated on an annual basis by dividing direct program cost by the total ex-vessel value of the IFQ fisheries, and then multiples by 100 and rounds the result to the nearest 0.1 percent. The funds collected from the cost recovery are deposited into the Limited Access System Administrative Fund (LASAF). Funds in this account must be spent on IFQ program management, data collection, and enforcement.

Results

Following the fluctuations in direct program costs and fishery ex-vessel values, the fee percentage has ranged from 1.00 to 3.00 percent from 2000 – 2020. The cost recovery fee percentage is capped at 3.00 percent. Despite decreased management costs, the drop in value of halibut and sablefish harvests have resulted in the cost recovery fee being set at the highest percentage allowed by regulations in 2019 and 2020. The number of permit holders who paid a cost recovery fee has steadily declined since 2000, reflecting the overall reduction in the number of IFQ permit holders.

Only a small portion of IFQ permit holders have chosen to pay their fees based on their individual actual ex-vessel value instead of standard prices – ranging between 2.5 percent – 10.6 percent of the IFQ holders. Generally, permit holders pay less in fees when using actual price compared to using standard prices, however the overall savings in total amount and percentage is small.

In 2006, 71 FR 44231 simplified the formula used to calculate IFQ cost recovery fees and changed how NMFS provides public notice of cost recovery fee percentages to be more streamlined and transparent.



Reporting Requirement

Catch Sharing Plan: Revise Illegal Halibut Definition, Allow Halibut Parts in Crab Pots, Recognize Traditional Halibut Use

Council Action
NA

Proposed Rule
February 11, 2002;
67 FR 6220

Final Rule
March 20, 2002;
67 FR 12885

Effective
March 18, 2002

Purpose and Need

The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (NMFS) manage fishing for Pacific halibut through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC also sets catch limits for regulatory areas in Area 4. In 1996, the NPFMC developed a Catch Sharing Plan (CSP) to allocate harvest privileges of the catch limits across the IPHC regulatory areas.

At the IPHC annual meetings, the IPHC adopts new regulations intended to enhance the conservation of the Pacific halibut population to help rebuild and sustain it at an adequate level in the northern Pacific Ocean and Bering Sea. Regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrences from the Secretary of Commerce. After acceptance by the Secretary of State and Secretary of Commerce, NMFS publishes the IPHC regulations in the Federal Register.

Analysis

The modifications to the IPHC regulations codified by this action were discussed at the IPHC annual meeting on January 22-25, 2002. NMFS adopted these regulations for 2002 and published them in the Federal Register to provide notice of their effectiveness and to inform the public of the changes in restrictions and requirements.

Regulation Summary

The IPHC implemented – and NMFS adopted – four changes that had substantive impact on the halibut fishery off of Alaska. These were:

- (1) Revision of the definition of illegal possession of halibut so that a person is not required to know they are in contravention of the IPHC regulation to be in illegal possession of halibut by removing the word “knowingly.”
- (2) Allowance of fishing vessels carrying crab pots and operating off Alaska to have halibut body parts to use as bait on board provided they have documentation of legally acquiring the parts.
- (3) Recognition of the subsistence use of halibut in Alaska.
- (4) Extending the provision allowing fishermen using CDQ in Area 4E to retain undersized halibut for personal use to Area 4D CDQ fishermen.

Results

The management measures implemented by the IPHC and adopted by NMFS enabled better enforcement of punitive measures against individuals illegally harvesting halibut and lifted unnecessary restrictions on crab fishermen.

Allowing the retention of sublegal sized halibut has benefited CDQ communities. From 2008-2018, the amount of undersized halibut retained by CDQ fisherman in Area 4E and 4D ranged from 5,500 in 2016 to 22,000 in 2012. On average, undersized halibut provided an additional 12,600 pounds of halibut to these communities each year during this time frame.



Halibut being gaffed and pulled on deck.
Photo courtesy of Julianne Curry.



Community Development Quota Policy and Administrative Changes

Council Action
June, 2002

Proposed Rule
*November 26, 2004;
69 FR 68865*

Final Rule
*March 24, 2005
70 FR 15010
BSAI Amend. 71*

Effective
April 25, 2005

Purpose and Need

In 1992, the Council approved the Community Development Quota (CDQ) Program to provide communities in western Alaska a fair and reasonable opportunity to participate in the BSAI groundfish fisheries and to help alleviate the growing social and economic crises within these communities. Under Federal regulations, the eligible communities have formed six non-profit corporations (CDQ groups). The program is allocated a specific percentage of the total allowable catch for each Bering Sea fishery, which is further allocated among the CDQ groups. The CDQ groups manage and administer the CDQ allocations, investments, and economic development projects for the benefit of their member communities.

At the time the Council approved the CDQ Program, it established that the program was to provide the means for starting or supporting commercial fisheries business activities to support fisheries-related economies in these communities. Since implementation in 1992, the groups have matured significantly and gained valuable experience in managing their fisheries and related investments. This level of experience and the subsequent desire for increased autonomy by the groups spurred concerns with the general administration and government oversight of the program. In addition, recommendations from the National Research Council and proposed Congressional legislation introduced similar issues to be addressed by the Council, including that of relaxing the requirement that all CDQ

revenues must be spent on fisheries-related projects. As the Council recognized the program's rapid growth and evolving nature, it determined that an evaluation of some of the general policy issues related to the program was warranted. The Council formed a CDQ Policy Committee to identify issues of concern and propose alternatives for analysis. Based on the committee's recommendations, the following issues were analyzed:

Issue 1: Determine the process through which CDQ allocations are made

Issue 2: Periodic or long-term CDQ allocations

Issue 3: Define the role of government in oversight of the CDQ Program

Issue 4: CDQ allocation process - Type of quotas

Issue 5: CDQ allocation process - The evaluation criteria

Issue 6: Extent of government oversight (definition of a CDQ project)

Issue 7: Allowable investments by CDQ groups (fisheries-related restriction)

Issue 8: Other administrative issues

Analysis

A 217-page RIR/IRFA and appendices (May 15, 2002) were prepared for this amendment. The analysis outlined several alternatives, options, and suboptions for each of the eight issues. The analysis of alternatives was guided by the problem statement, which stated that some of the

policy and administrative aspects of the program may need to be restructured to adapt to changes, or may need to be clarified in Federal regulations, so that they will best suit the long-term goal of the program. Among the alternatives analyzed were options to modify the original statement of purpose of the CDQ Program, which is "to allocate CDQ to eligible western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally-based fisheries-related economy," to include a secondary purpose of strengthening the non-fisheries related economy in the region.

Regulation Summary

The Council's preferred alternative on included the following:

(1) further define the allocation process in Federal regulations, including an expanded State hearing and public comment process;

(2) establish a fixed allocation cycle of 3 years, with a provision allowing the State to reallocate mid-cycle under extraordinary circumstances;

(3) amend the BSAI FMP to limit the government's responsibility in the program to six specific elements;

(4) revise and condense the evaluation criteria used to make the allocations and publish them in Federal regulations;

(5) clarify that government oversight extends to subsidiaries controlled by the CDQ groups, as defined by >50% interest and effective management control;

(6) allow each CDQ group to annually invest up to 20% of its previous year's pollock royalties in non-fisheries related economic development projects within the CDQ region;

(7) amend the overall purpose of the program to include a secondary purpose of strengthening the nonfisheries related economies in the region; and

(8) simplify the quota transfer and alternative fishing plan process. In addition, NMFS added provisions to formally identify in Federal regulations the process for appealing a Federal administrative determination (i.e., a CDQ group's appeal of an allocation decision).

Results

In addition to the 8 components identified in the Regulation Summary, NMFS added provisions to formally identify in Federal regulations the process for appealing a Federal administrative determination (i.e., a CDQ group's appeal of an allocation decision).

Between 2001 and 2003, the CDP process was used to transfer CDQ 72 times, requiring 144 CDP modifications (two for each transfer). After implementation of this rule, that process was streamlined to create an easier transfer process for CDQ members, lift administrative burdens required by State agencies and NMFS.



Reporting Requirements

Retain and Land All Demersal Shelf Rockfish

Council Action
January, 2003

Proposed Rule
January 24, 2004
69 FR 2875

Final Rule
November 23, 2004
69 FR 68095

Effective
December 23, 2004

Purpose and Need

The groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed under the groundfish fishery management plan (FMP). The State of Alaska manages all fisheries occurring within State waters (within 3 miles of shore). The FMP defers to the State some management responsibilities of a group of seven rockfish species known as demersal shelf rockfish (DSR) in the Southeast Outside District (SEO). DSR are extremely long-lived and have a very low natural mortality rate, making them highly susceptible to overexploitation and slow to recover once driven below the level of sustainable yield.

In 1996, NMFS and State stock assessment scientists identified unreported mortality of DSR as a problem in preparing the annual DSR stock assessment. Original regulations limited fishermen to 10 percent by weight of demersal shelf rockfish (DSR) caught in Federal waters, as measured against the catch of their target species. Any poundage in excess of that 10 percent was required to be discarded at sea. Strong anecdotal evidence pointed to a high level of unreported DSR discard mortality in the Pacific halibut hook-and-line fishery, which is the primary fishery that encounters incidental catch of DSR in the SEO.

The purpose of this regulation was four-part:

- (1) improve data collection on the incidental catch of DSR in the halibut and

groundfish hook-and-line fisheries in the SEO,

- (2) minimize waste to the extent practicable,

- (3) avoid either increasing incentives to target DSR or increasing incentives to discard DSR that is caught in excess of the amount that can be legally sold, and

- (4) maintain a consistent approach within State and Federal regulations that govern the retention and disposition of DSR.

Analysis

An 85-page EA/RIR/IRFA (September 2004) was prepared for this amendment. It compared four options for management of demersal shelf rockfish bycatch: (1) a no-action option, (2) requiring full retention of DSR in the hook-and-line and jig gear fisheries in the SEO, (3) the preferred alternative of requiring full retention of DSR in the hook-and-line and jig fisheries in the SEO and a prohibition of allowing DSR over 10 percent sales limit to enter the stream of commerce, and (4) implementing an observer program on halibut longline and other hook-and-line vessels in the SEO to estimate mortality of DSR in non-target fisheries. The stipulation that sales must be limited in the preferred alternative was determined necessary by NMFS as it does not have authority under the MSA to regulate the proceeds from sales, as would be the case under Alternative 2.

Regulation Summary

This rule implemented the requirement that the operator of a federally permitted catcher vessel using hook-and-line or jig gear is required to retain and land all DSR caught in the SEO and that landed fish must be reported under Federal and State regulations.

A second provision limited the selling of retained DSR to no more than 10 percent of the aggregate round weight of IFQ halibut and groundfish retained onboard the vessel. For IFQ sablefish, the limit is set at no more than 1 percent of the aggregate round weight. The rule does allow for the use of DSR in excess of these limits for personal consumption or donation.

Results

Requiring that all DSR in the SEO is landed presumably eliminated or drastically reduced unreported discards and has increased the ability for stock assessment scientists to gather accurate data for developing annual stock assessments for the SEO DSR. Biomass estimates for DSR from 2015-2020 have remained relatively steady between 10,500-11,500t with a peak in 2019 at 12,032t. Estimates for yelloweye rockfish have been on the continual decline since 1998. Incidental catch has continued to exceed directed catch every year since implementation of this rule except for in 2012 and 2013.



Yelloweye rockfish caught on a halibut longline trip.
Photo courtesy of Julianne Curry.



Reporting Requirement

Calculation of Program Costs under IFQ Cost Recovery Program

Council Action
October, 2004

Proposed Rule
May 8, 2006;
71 FR 26728

Final Rule
August 4, 2006;
71 FR 44231

Effective
September 5, 2006

Purpose and Need

The Magnuson-Stevens Act requires that the Secretary of Commerce collect fees to recover the actual costs directly related to the management and enforcement of any LAP program and the CDQ Program. In 2000, NMFS published 65 FR 14919 implementing the IFQ Cost Recovery Program for IFQ landings of halibut and sablefish. Under the regulation, an IFQ permit holder incurs a cost recovery fee for every pound of IFQ halibut and IFQ sablefish landed under his or her IFQ permit(s) and is responsible for self-collecting and submitting fee liability payments. For each permit, the dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing.

Prior to this action, NMFS adopted a new time and attendance management system that more efficiently and accurately tracked individual management responsibilities and removed all NMFS discretion in calculating direct program costs (DPC) for any IFQ program. DPC became an automated process that received time allocation information from all personnel who engage in management or enforcement associated with any IFQ program. This enabled the development of a more streamlined formula utilizing DPC and other variables used to calculate IFQ cost recovery fee percentages to determine the annual rate.

Analysis

A 9-page RIR (Secretarial Review draft January 2006) was prepared to assess all costs and benefits of available regulatory alternatives. The Council considered all quantitative and qualitative measures and chose as their preferred alternative the alternative represented by this rulemaking. The EA prepared for the original Halibut and Sablefish IFQ Cost Recovery Program and EIS prepared for the Crab Rationalization Program analyzed all potential and cumulative environmental impact of the cost recovery system, so no additional environmental assessment was required for this rulemaking.

Regulation Summary

This rule simplified the methodology used to determine annual fee percentages and informed the public of all factors used to calculate the fee percentage, thereby allowing the public to comment on the methodology used to conduct the standard calculation of fee percentage.

A new formula was developed that eliminated and consolidated some variables used in the previous equation to calculate the cost recovery fee percentage:

$$[100 (DPC-AB) / V] / (1-NPR)$$

where DPC = direct program costs, AB = account balance at the end of the fiscal year, V= estimated ex-vessel value of catch, and NPR = nonpayment rate.

The new method automatically incorporated AB into DPC and eliminated NPR. It also

removed NMFS' discretion in determining DPC and instead calculates DPC using a formula. This change was enabled by a new time and attendance management system that more efficiently and accurately tracked individual management responsibilities.

The rulemaking also changes how NMFS will provide public notice of the annual IFQ cost recovery fee percentages. It changed the requirement to a notice in the Federal Register, rather than by a proposed and final rulemaking. The above changes modify the calculation from a more complicated

process to a simple calculation and ministerial duty and therefore the requirements for publishing a proposed and final rulemaking were no longer necessary.

Results

The changes made to the IFQ Cost Recovery Program improved administrative efficiency and made the cost recovery calculation process more compliant with the APA.



Halibut sorting. Photo courtesy of IPHC.



Allow Area 4C Halibut to be Fished in Area 4D

Council Action
December, 2004

Proposed Rule
May 5, 2005
70 FR 23829

Final Rule
July 27, 2005
70 FR 73328

Effective
July 22, 2005

Purpose and Need

Halibut IFQ and CDQ fishermen in Area 4C experienced a steady drop in halibut catch rates since 1985 due to localized depletion. In 2003, Area 4C fishermen landed just 42 percent of the total Area 4C IFQ halibut allocation and only 45 percent of the Area 4C CDQ halibut allocation. The declines in catch rates and poor harvests generated considerable concern among Area 4C community residents who depend heavily on halibut for their local economies.

68 FR 9902 was implemented that same year to allow CDQ halibut for Area 4C to be harvested in Area 4E to alleviate the financial losses that had been resulting from low catch rates. Apart from this exception, the original regulations prohibited the harvesting of halibut IFQ or CDQ in a regulatory area other than the area for which the quota is allocated. The CSP allocates 46.43 percent of the combined 4C -E catch to Area 4D and Area 4C, however Area 4D has approximately ten times more fishing grounds and halibut were caught with significantly less effort between 1995-2005. The purpose of this regulatory amendment was to (1) reduce fishing effort in Area 4C, (2) increase safety by reduce competition between small boats and larger vessels, and (3) increase the geographic area available for harvesting Area 4C quota.

Analysis

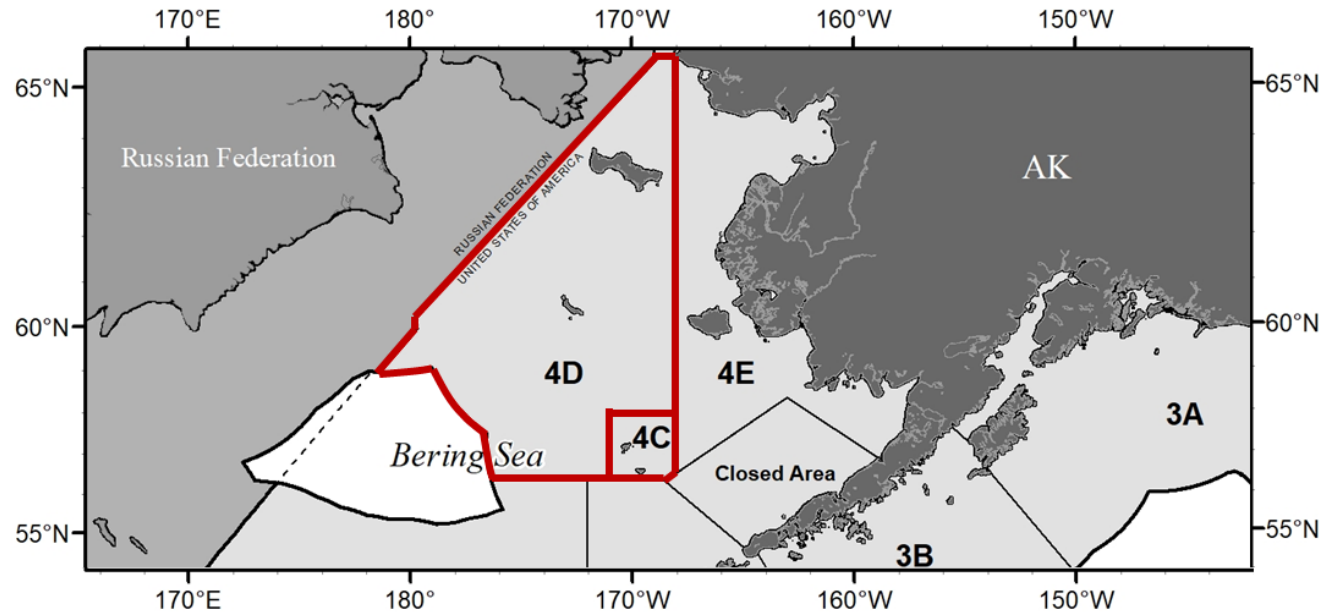
A 76-page EA (published February 10, 2005) was prepared for this regulatory amendment. It compared a no-action alternative to the preferred alternative of allowing area 4C IFQ or CDQ holders to harvest IFQ or CDQ in Area 4D. The preferred alternative was selected as it was determined to take into account the most recent information regarding the Pacific halibut stock, respond to economic concerns brought forward in public testimony, and allow for additional harvest opportunities for small boat halibut IFQ and CDQ fisheries.

Regulation Summary

This regulatory amendment changed the CSP to allow Area 4C QS holders to harvest IFQ and CDQ in either Area 4C or Area 4D. It states that if any group exceeds their initial allocation for Area 4D, that additional catch will be subtracted from the group's Area 4C allocation in addition to catch occurring in Area 4C. The ratio of halibut harvest to available fishing grounds was predicted to remain much lower in Area 4D than in Area 4C so the likelihood that localized depletion in Area 4C would be transposed to Area 4D as a result of this action would remain low.

Results

The IPHC manages and evaluates the halibut stock in Areas 4C, 4D, and 4E as one stock so evaluating the impacts that this management measure has had on the localized depletion in Area 4C alone is difficult to determine. The IPHC setline surveys conducted for Areas 4CDE from 2005-2017 indicated relative stability in legal-sized halibut abundance. Fishing effort in Areas 4CDE had also been relatively stable from 2005-2015, but in 2017 there was a large increase in Area 4D attributed to higher catch-rates around St. Matthew Island where whale depredation was low.



IPHC Regulatory Areas. Photo courtesy of IPHC.



Fish Down/Fish Up, Hired Skipper, Leasing/Transfer, QS Block Limits

Omnibus Amendment 4: Medical Transfers, Modify Block Program, Prohibit Additional Harvest in State Waters

Council Action
December, 2004

Proposed Rule
November 1, 2006
71 FR 64218

Final Rule
August 9, 2007
72 FR 44795

Effective
September 10, 2007

Purpose and Need

The IFQ Program is continually assessed for its responsiveness to conservation and management goals, and three previous omnibus packages had been adopted since the original enactment of the Program. NMFS published this fourth omnibus package of amendments to address a suite of additional issues that were identified.

The purpose for this amendment was to address changing needs of fishermen with the evolution of the halibut and sablefish IFQ fisheries. Many of these needs were addressed in the seven actions described below, recommended by the Council in 2004. Specifically, numerous appeals for medical hardship relief have been raised with the Council and NOAA Fisheries since the IFQ Program was implemented in 1995. At the time, QS holders who experienced a legitimate medical emergency that prevented them from fishing their quota were left without the ability to temporarily transfer quota shares.

The Council also had concerns about alleged abuses of the hired skipper provision, and concerns of misreported BSAI sablefish catch. Additionally, the Council believed that product recovery rate provisions for sablefish were inaccurate, which would be a disincentive for fishermen to bleed fish thereby reducing the quality of fish delivered. Accurate catch reporting was thought to be compromised under the current application of the product recovery rate for bled sablefish. Furthermore, QS holders identified safety concerns when fishing in certain areas on

small vessels. Increased flexibility in existing block and vessel size class restrictions was desired.

Analysis

A 93-page RIR (November 2004) was prepared, which included alternatives for each of the following seven proposed actions:

- (1) allow for the temporary transfer of IFQ for verified medical reasons;
- (2) tighten the criteria allowing the use of hired skippers;
- (3) add vessel clearance requirements to the sablefish IFQ fisheries in the BSAI regulatory areas;
- (4) change the sablefish product recovery rate for bled sablefish to 1.0 (not implemented);
- (5) amend the halibut quota share (QS) block provision;
- (6) allow IFQ derived from category D QS to be fished on category C vessels in Areas 3B and 4C; and
- (7) eliminate the exception that prohibits IFQ derived from category B QS from being used on vessels greater than 60 ft for halibut in Area 2C and sablefish in the Southeast Outside District.

Regarding Action 7, the no action alternative would have continued the requirement that, in Area 2C for halibut and Southeast Outside District for sablefish, category B QS must be used on a vessel greater than 60ft LOA, with the exception

that category B QS blocks of less than 5,000 lbs based on 1996 TACs may be fished on vessels of any size. Alternative 2, the chosen alternative, eliminated the exception that prohibits IFQ derived from category B QS to be used on vessels greater than 60 ft for halibut in Area 2C and sablefish in the Southeast Outside District.

Regulation Summary

The regulations implemented by this omnibus amendment were:

- (1) allow IFQ holders to transfer their IFQ, avoiding owner-on-board requirements, in the event of a medical condition which precludes their participation;
- (2) narrow restrictions for using hired skippers to fish IFQ to require specific documentation of proving 20 percent vessel ownership by filing a U.S. Abstract of Title issues by the U.S. Coast Guard or State of Alaska vessel registration with NMFS;
- (3) add vessel clearance requirements to the sablefish IFQ fisheries that correspond to the existing halibut IFQ fishery vessel clearance requirements in the BSAI regulatory areas;
- (4) amend the block provision for halibut by (a) allowing a QS holder to hold 3 blocks rather than 2, (b) dividing halibut blocks in Areas 3B and 4A that yield more than 20,000 lb, based on the 2004 harvest figures, into a block of 20,000 lb and the remainder unblocked, and (c) increasing the halibut sweep-up level in Areas 2C and 3A to 5,000 lb; and
- (5) amend the definitions of halibut QS

vessel categories by allowing category D QS to be fished on vessels less than or equal to 60 ft length overall (LOA) in areas 3B and 4C; and

(6) allow category B catcher vessel QS for Area 2C halibut and Southeast Outside District sablefish, which currently must be fished on vessels greater than 60 ft LOA, to be fished on catcher vessels of any length.

(The Secretary disapproved the proposed rule to change the Product Recovery Rate (PRR) for bled sablefish because the PRR of 0.98 was accurate.)

Results

The medical transfer provision (Action 1) was amended in 2020 (85 FR 8477) to better address the needs of IFQ QS holders experiencing medical hardship by changing the definition of a qualified medical professional and extending the number of years the transfer could be used for.

The implementation of the "fish down" provision (Action 6) may have contributed to the drop in QS transfer rates that occurred for vessels greater than 60 feet after this rule was implemented. For halibut, transfer rates for QS in Area 2C dropped from an average 19.8% of QS transferred per year from 1995-2007 to 10.3% from 2008-2014. For sablefish, the transfer rate of QS in the Southeast Area dropped from 7% in 1995-2007 and 3.4% in 2008-2014.



Vessel Classes/Caps

Use of Commercial Halibut QS and the Processing of Non-IFQ Species

Council Action
June, 2006

Proposed Rule
November 14, 2007;
72 FR 64034

Final Rule
February 15, 2008;
73 FR 8822

Effective
March 17, 2008

Purpose and Need

One of the original objectives of the IFQ Program was to maintain the social and economic character of the halibut and sablefish fixed gear fishery. QS was allocated based on vessel classification (catcher-processors as category A and catcher vessels as category B, C, and D) to prevent excessive consolidation and regulate total harvest. A prohibition on the processing of non-IFQ species caught alongside IFQ species with category A IFQ was included as long as any unharvested CV (B, C, or D) IFQ was held by any harvester onboard the vessel. The original intent of the prohibition on mixed-processing was to maintain the small boat, owner-operator nature of the fleet, but it resulted in the unanticipated waste of species caught incidentally to halibut and sablefish, especially rockfish and Pacific cod. Some non-IFQ species degrade at a quicker rate than IFQ species. Fishermen focused their effort on valuable IFQ species and chose not to offload species of lesser value in a condition that wouldn't allow the product to be graded as high a quality. In some severe situations, non-IFQ species were offloaded in such poor conditions that they had to be discarded immediately after landing.

In 1996, NMFS implemented 61 FR 33382 to relieve the prohibition on processing non-IFQ species on vessels fishing for IFQ sablefish. Halibut was not originally included due to the fact that halibut is characteristically prosecuted by

local vessels that do not have onboard processing capabilities. In October 2004, the Council reviewed two proposals requesting that similar regulations relieving processing restrictions in the IFQ sablefish fishery be applied to the IFQ halibut fishery. The purpose of this regulation was to allow halibut QS holders greater flexibility in using their QS, encourage employment of crew who hold unused category B, C, or D halibut QS on a category A halibut QS vessel, and increase the product quality of non-IFQ species harvested incidentally to IFQ halibut.

Analysis

A 34-page RIR/IRFA (May 2006) was prepared for this amendment. For this action, the status quo (Alternative 1) was compared to Alternative 2, removing the prohibition on processing non-IFQ species incidentally harvested alongside IFQ halibut. This alternative combined the two proposals submitted to the Council in October 2004. The proposals alleviated different operational restrictions but were thought to be functionally the same.



Pacific halibut (*Hippoglossus stenolepis*). Photo courtesy of A. Hitschfeld.

Regulation Summary

This action removed processing restrictions and allowed CP vessels to process non-IFQ species when any amount of IFQ halibut resulting from quota share assigned to CV categories B, C, or D are held by fishermen on board a vessel. This regulation allowed a person holding category A halibut IFQ to harvest halibut and process all incidentally caught fish species even if a person onboard the vessel held unused category B, C, or D QS.

Results

This action has resulted in the increased value of groundfish species such as Pacific cod and rockfish landed alongside IFQ halibut. Allowing these vessels to process non-IFQ species onboard enables them to land higher quality fish. The previous restriction resulted in such high levels of quality degradation it resulted in fish that could only be utilized for processing into fishmeal.



Leasing/Transfer, Spatial Management

Allow Longline Pots in June and Temporary Military Transfers

Council Action
June, 2006

Proposed Rule
March 5, 2008;
73 FR 11851

Final Rule
May 19, 2008;
73 FR 28733

Effective
June 18, 2008

Purpose and Need

This amendment to the IFQ Program implemented two regulatory changes. The first concerned the use of longline pots in the BSAI in June and the second concerned the inability of mobilized reservists and guardsmen to temporarily transfer QS.

The IFQ Program extended the fixed gear sablefish fisheries in the Federal waters off Alaska to eight months, which greatly reduced instances of congestion. Previous to the IFQ Program, longline pots had been prohibited in the Bering Sea to reduce instances of grounds pre-emption during the shorter season. Longline pots were reintroduced to the fishery in 1996 (61 FR 49076) as a method to reduce killer whale depredation on sablefish. A one-month closure to longline pot gear in June was put into place to decrease the likelihood that fishermen using larger boats and longline pot gear would displace fishermen using traditional hook-and—line gear in relatively smaller boats. The potential gear conflicts that were thought to occur at the time of implementation were undocumented and the one month stand down in June was determined by the Council to be disruptive to the sablefish fishery and create economic inefficiencies. The Council recommended removing the June longline pot prohibition to increase efficiency of fishermen operating longline pot vessels in the BSAI.

Federal fishery regulations did not provide for the temporary transfer of IFQs held by mobilized reservists and guardsmen. Emergency waivers

only applied to a very narrow set of emergency medical situations and only allowed permits to be temporarily fished. They did not allow reservists and guards to hire a skipper to harvest their QS. An individual representing the National Guardsmen brought this issue to the attention of Senator Murkowski, who forwarded the comment to NOAA. The Council developed and recommended a Temporary Military Transfer (TMT) provision to alleviate economic hardship resulting from the inability to harvest one's IFQ when mobilized.

Analysis

A 34-page RIR/RFA (May 2006) was prepared for these amendments, along with two additional proposed regulatory actions. (The first action was published by 73 FR 8822 to allow the processing of non-IFQ species on trips when IFQ halibut is harvested). These changes were collectively analyzed as Omnibus Amendment V to the IFQ Program.

Both actions were compared to a no-action alternative. The preferred alternative for allowing longline pot use in the BSAI in June addressed the economic inefficiencies created by the mid-season gear closure. The original impetus for the June closure was determined to have been superseded by the ongoing changes in the characteristic of the sablefish IFQ and CDQ fisheries. The preferred alternative to allow the temporary transfer of IFQ by mobilized military reservists and National Guardsmen addressed the economic hardship caused

by the status quo on these individuals and their families. The analysis also identified that the preferred alternative would minimize adverse impacts to processors, fishery dependent communities, and other business that may be attributable to idled IFQ.

Regulation Summary

The regulatory amendment removed the prohibition against the use of longline pot gear in the Bering Sea sablefish fishery during the month of June and therefore also removed the necessity of having enforcement personnel monitor whether vessels fishing with longline pot gear in June were targeting sablefish. This action did not change the catch monitoring and accounting practices in place for the sablefish IFQ and sablefish CDQ fisheries.

The action also amended IFQ Program regulations to allow military reservists and members of the National Guard to temporarily transfer their halibut of sablefish IFQ to other eligible IFQ recipients if they are mobilized to active-duty. The rule established conditions and criteria for allowing the temporary transfer in a new paragraph added to 50 CFR 679.41. An application and appeals process was also added. The eligibility criteria established included evidence of active duty military service. The transfer was defined to be temporary and qualified applicants must apply annually, even if their deployment or mobilization exceeded one year.

Results

In 2000, the pot fishery accounted for less than five percent of Bering Sea sablefish catch. Effort increased substantially in response to killer whale depredation. By 2005, pot gear had accounted for over 50% of the BSAI fixed gear IFQ catch. However, catches in pots have declined significantly in recent years. In 2016 and 2017 in the Bering Sea the percent of sablefish catch in pot gear was the lowest since 2001, with the majority being caught in trawl gear. In 2017, the use longline pot gear in the sablefish fishery was also authorized for the GOA (81 FR 95435) in response to concerns over whale interactions.

The Temporary Military Transfer provision has had little to no impact apart from creating the opportunity for military reservists and National Guardsmen to lease their QS if mobilized. As of 2020, there have been no military leases in the IFQ Program since the implementation of the provision in 2008.



Revoke Inactive QS

Council Action
June, 2006

Proposed Rule
August 23, 2010;
75 FR 51741

Final Rule
May 18, 2012;
77 FR 29556

Effective
June 18, 2012

Purpose and Need

Halibut and sablefish QS were initially assigned to persons that owned vessels or held a vessel lease and met minimum landing requirements in the years 1988, 1989, or 1990, and the amount of QS was based on historical catch (5 out of 6 years from 1985-1990 for sablefish and 5 out of 7 years from 1984-1990 for halibut). The original intent was to assign initial shares only to those fishermen currently active in the halibut and sablefish fixed-gear fisheries at the time of implementation of the IFQ Program. Halibut and sablefish harvesting privileges are derived annually from QS holdings based on IPHC regulatory area authorized on an IFQ permit.

Regulations specified no minimum pounds of halibut or sablefish to be harvested during the base periods, and the calculation of initial QS for some qualified persons resulted in their receiving very small QS allocations – sometimes summing to fewer pounds than a whole fish. These recipients often elected not to actively participate in the IFQ fisheries, resulting in the existences of several hundred accounts with very small amounts of inactive QS in the IFQ Program database. Inactive QS still required routine administrative tasks. Additionally, inactive QS resulted in some IFQ – and therefore a portion of the TAC – remaining unharvested. This reduced economic and social benefits from QS harvest realized by fishery dependent business and the public. The purpose of this amendment was to increase yield from QS to help

achieve optimum yield and eliminate the data collection, recordkeeping, and reporting of inactive QS and the associated administrative tasks.

Analysis

A 34-page RIR/IRFA (May 12, 2006) was prepared for this action, along with three other actions (collectively Omnibus Amendment V to the Halibut and Sablefish IFQ Program). The Council's original preferred alternative, Alternative 3, was to redistribute the amount of withdrawn QS through a lottery if that number is more than QS units equivalent to 50,000 pounds of halibut for all IPHC regulatory areas. At the time of completion of the RIR/IRFA, inactive QS for halibut and sablefish yielded roughly 280,000 and 16,000 pounds, respectively. By December 2008, the number of inactive halibut QS fell below the 50,000-pound threshold – a decline in 49 percent of inactive QS holders - for implementing a redistribution lottery. In February 2009, the Council reaffirmed its preferred alternative to remove inactive halibut and sablefish QS with the exclusion of the lottery recommendation. By December 2009, the number of inactive QS holders declined an additional 13 percent with inactive halibut and sablefish QS representing 24,299 and 731 pounds, respectively.

Regulation Summary

This regulatory action authorized NMFS to send a *Notice of Determination of Quota Share Inactivity* to individuals with QS considered inactive based on records maintained by NMFS. Recipients of *Inactive QS Notices* were given a 60-day response period. During this period, individuals could either (1) do nothing, thereby resulting in revocation of the inactive QS, (2) request in writing that inactive QS be considered active and not revoked, or (3) transfer some or all of the inactive QS.

Results

Previously inactive QS holders actively responded to the initial recommendation made by the Council by either fishing or transferring QS before it was revoked. From the time of the publication of the RIR/IRFA to when the proposed rule for this amendment was posted, the amount of inactive halibut QS pounds declined to only 8 percent of what it had been when the original recommendation was made. This action resulted in the revocation of about 2,000 pounds of IFQ, mostly of which was Class D halibut QS.



Longline ropes on a halibut boat. Photo courtesy of NPFMC.



Reporting Requirement

Exclude Tagged Halibut and Tagged Sablefish Catches

Council Action
NA

Proposed Rule
March 29, 2006;
71 FR 15687

Final Rule
June 27, 2006;
71 FR 36489

Effective
July 27, 2006

Purpose and Need

The International Pacific Halibut Commission (IPHC) tags Pacific halibut to obtain general information on their life history and to improve the estimates of halibut incidental catch mortality rates. The IPHC uses several types of external research tags and, in 2003, began using internal tags called Passive Integrated Transponder (PIT) tags that cannot be identified by any external markings and cannot be recovered by fishermen.

NMFS tags and releases sablefish under the Sablefish Tag Program to gather important biological information such as

fishing and natural mortality, growth, and migration among management areas. The common types of external tags used for sablefish include plastic T-bar tags and external tags alerting fishermen to the presence of surgically implanted tags.

In 1996, NMFS implemented regulations exempting tagged halibut and sablefish landed in Federal IFQ fisheries from counting against a person's IFQ. The exemption is intended to give fishermen an incentive to take the time to report tagging information. The wording in the original regulation was inconsistent with the IPHC regulations because it did not specifically identify "externally" tagged halibut are exempt. Additionally, regulations did not extend the exemption to the CDQ halibut and CDQ sablefish fisheries. The purpose of this regulation was to align NMFS and IPHC regulations stipulating exemptions only apply to externally tagged halibut and extend the exemption to CDQ fisheries to encourage recovery of scientific information used to evaluate and manage the halibut and sablefish fisheries.

Analysis

A 19 page RIR/IRFA (February 2006) was prepared for this regulatory change. An alternative was included that would leave CDQ program fisheries out of the proposed action. This alternative was rejected as it would not encourage all fishermen that harvest halibut and sablefish in quota fisheries to return tagged fish and would provide less benefit to CDQ groups.

Regulation Summary

This regulatory change altered the language of the current regulations to align the IPHC and NMFS management and to include the halibut CDQ and sablefish CDQ fisheries. It did so by:

- (1) changing "tagged" to "external research tag" in § 679.40, paragraph (g) and revising "a research tag" to "an external research tag" in § 679.40 paragraph (g)(1),
- (2) requiring fishermen to turn in tagged sablefish, and
- (3) breaking recordkeeping and reporting requirements into two paragraphs in § 679.40 paragraph (g)(2), the first addressing halibut IFQ and sablefish IFQ and the second addressing halibut CDQ and sablefish CDQ.

Results

The IPHC has been able to obtain extensive migration data through the halibut tagging program. The longest recorded migration was from a fish released near Atka Island and recovered 2,500 miles south, near Coos Bay, Oregon. Estimated tag reporting rates or sablefish have fluctuated over time, with a slight increase in reporting rates after implementation of the IFQ program and again in 2001-2007. However, reporting rates declined again from 2008-2010. It has also been discussed that it may have potentially resulted in very slight economic benefits to CDQ groups, but due to the overall low numbers of halibut and sablefish external tags returned by CDQ groups, quantifying this benefit is difficult.



Tagged halibut. Photo courtesy of IPHC.



Modification to Seabird Avoidance Requirements

Council Action
February, 2007

Proposed Rule
September 19, 2007
72 FR 35316

Final Rule
December 18, 2007
72 FR 71601

Effective
January 17, 2008

Purpose and Need

In 1996, several industry groups representing hook-and-line vessels in the Gulf of Alaska and Bering Sea/Aleutian Islands petitioned the NPFMC and NMFS to impose regulatory measures intended to reduce the incidental mortality of seabirds in their fisheries, which resulted in the implementation of avoidance device requirements in 1998 (63 FR 11161).

From 1998-2000, the Washington Sea Grant Program (WSGP) conducted a 2-year study on the effectiveness of the seabird avoidance requirements. In 2004 (69 FR 1930), seabird avoidance requirements were increased as a result of these findings. The new regulation implemented requirements that vessels greater than 26 feet LOA and less than 55 feet LOA use a minimum of one buoy bag and one streamer line on and vessels greater than 55 feet LOA use a minimum of paired streamer lines.

At the June 2006 Council meeting, the WSGP gave a second report on ongoing research regarding seabird distribution in the inside waters of southeast Alaska and Prince William Sound that indicated pelagic seabirds are extremely rare in the southeast inside waters. The research also identified specific seabird avoidance gear construction

and deployment requirements that would improve efficacy. The purpose of this regulatory change was to relieve an unnecessary regulatory burden on fisheries in areas where seabird avoidance measures are not needed and improve their effectiveness in areas where they are.

Analysis

A 95-page EA/RIR (October 2007) was prepared for this amendment. Including the status quo, three alternatives and three options were identified. Alternative 2 eliminated seabird avoidance measures in the inside waters of Prince William Sound, Cook Inlet, and Southeast Alaska. Alternative 3 reduced seabird avoidance measures in the same locations except for three areas of the Southeast Alaska inside waters. Options 1 and 2 to Alternatives 2 and 3 removed the Seabird Avoidance Plan requirement and provided discretion for using seabird avoidance gear in high winds, respectively. Alternative 2 was rejected because it did not provide for seabird avoidance measures in State waters of

Southeast Alaska where ESA-listed seabirds and other seabird species of concerns had been observed. Option 3 was rejected because available information was insufficient to support reducing or eliminating seabird avoidance measures in IPHC Area 4E.

Regulation Summary

This regulatory change modified the requirements for vessels with masts, poles, or riggings using snap-on hook-and-line gear to state streamer lines must be a minimum of 147.6 feet, must be deployed before the first hook is set and must be in the air a minimum of 65.6 feet aft of the stern. Vessels with masts, poles, or rigging using conventional hook-and-line gear must use a streamer line at least 300 feet in length and it must be in the air for a minimum of 131.2 feet in front of the stern. Vessels without masts, poles, or riggings must tow a buoy bag line.

The ruling also eliminated seabird avoidance gear requirements for all hook-and-line vessels fishing in Prince William

Sound (NMFS Area 649), the State waters of Cook Inlet, and Southeast Alaska (NMFS Area 659) with three exceptions: (1) Lower Chatham Strait south of a straight line between Point Harris and Port Armstrong, (2) Dixon Entrance defined as State groundfish statistical areas 325431 and 325401, and (3) Cross Sound west of a straight line from Point Wimbledon extending south through the Inian Islands to Point Lavinia.

Results

Further analysis on seabird bycatch indicated that interactions between halibut and sablefish fisheries and seabird species of concern were also not likely to occur in Area 4E. In 2009 (74 FR 13355) seabird avoidance requirements were also eliminated for all hook-and-line vessels less than or equal to 55 feet LOA fishing in Area 4E (except for one designated area in the southern portion).



Seabirds. Photo courtesy of Emily Buckner.



Hired Skipper

Establish Minimum Ownership Requirement to be Eligible to Hire a Master

Council Action
December, 2007

Proposed Rule
October 31, 2012;
77 FR 65843

Final Rule
February 24, 2014;
79 FR 9995

Effective
March 23, 2015

Purpose and Need

The implementing regulations of the IFQ Program included a provision that allowed initial recipients, including individual and non-individual entities, of QS to hire masters to fish the IFQ derived from their QS if the initial recipient maintained a minimum ownership interest in the vessel. By limiting the 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. Therefore, it was thought that QS would eventually be transferred to other qualified individuals and the IFQ fishery would become almost entirely owner-operated.

Public accounts suggested that some individual initial recipients who used to own and operate their fishing vessels had retired from the fishery and were using hired skippers to harvest their IFQs instead of transferring their QS as was initially intended by the Council. Others went on board the vessel as if they were crew but did not actively participate in fishing. The use of hired skippers had actually significantly increased since the time the IFQ Program was implemented.

The hired skipper provision had previously been amended to account for regulatory loopholes. In 1999 (64 FR 24960), new regulations specified shareholders must have at least a 20 percent ownership interest in the vessel upon which their IFQ is being fished. In 2002,

67 FR 20915 allowed shareholders to substitute indirect ownership of a vessel through corporate or other non-individual entity interests for all or part of direct vessel ownership. In 2014, 79 FR 43679 established that any IFQ derived from catcher vessel QS received after February 12, 2010 could not be harvested by a hired skipper.

In 2007, 72 FR 44795 implemented the Council's 2004 recommendation that all QS holders submit specified formal documentation to prove the minimum required percent ownership of a vessel to hire a skipper to harvest their IFQ. Two other components recommended by the Council in 2004 were not included in the final rule, as NMFS required clarification on these actions. The Council provided clarification on these points in December 2007, and this rulemaking implemented the remaining amendments necessary to fulfill the Council's intended 2004 action.

Analysis

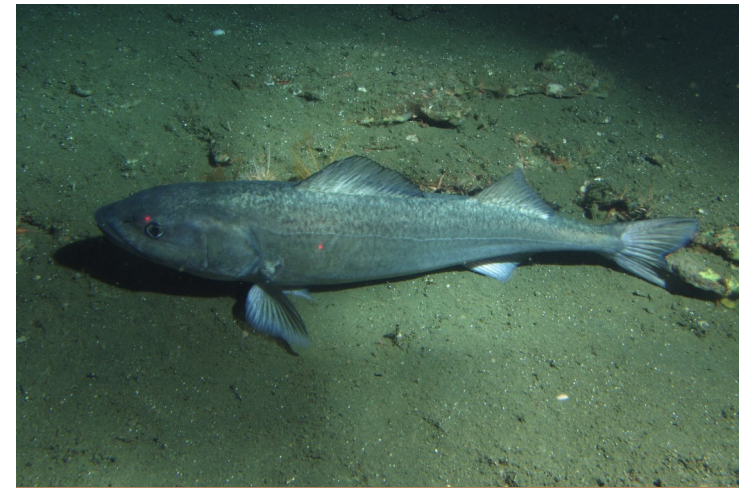
A 34-page RIR/RFA (January 2012) was prepared for this amendment. It considered two alternatives. Alternative 1 was the No Action Alternative. Alternative 2, the preferred alternative, would require that (1) QS holders file an abstract of Title with NOAA Fisheries to document 12 months of ownership and (2) allow an exception from the consecutive 12 month ownership in the event of actual, constructive, or temporary loss of a vessel.

Regulation Summary

This amendment specified the duration of vessel ownership interest that an individual QS holder must have if the QS holder wishes an exemption from the owner-on-board requirement. An initial individual recipient of QS must own a minimum of 20 percent ownership interest in the vessel that the hired skipper will use to fish the IFQ for 12 months before applying to use a hired skipper. The amendment included an exception that if an individual QS holder experiences a vessel loss, the 12-month vessel ownership requirement is suspended until December 31 of the year following the vessel loss. Vessel loss includes a total, physical loss of a vessel, a vessel that has been irreparably damaged, and a temporary loss or temporary disablement of a vessel.

Results

This rule – along with previous amendments that narrowed the scope of the hired skipper provision - was intended to promote the transition of the IFQ Program to an owner-operated fishery. The Council's initial intent in including the hired skipper provision was that the number of QS holders who may hire a master would decline through attrition, but this had not occurred. From 2016-2020, around 70% of the halibut IFQ and 85% of the sablefish IFQ was fished by hired masters each year. (Note that these percentages also include corporations, and corporations *must* have a hired master fish their IFQ.)



Sablefish (*Anoplopoma fimbria*).
Photo courtesy of NMFS.



Seabird/Habitat Conservation

Elimination of Seabird Avoidance Requirements for HAL \leq 55 ft LOA in Part of Area 4E

Council Action
June, 2008

Proposed Rule
January 16, 2009;
74 FR 2984

Final Rule
March 27, 2009;
74 FR 13355

Effective
April 27, 2009

Purpose and Need

In response to industry concern dating back to 1996, the NPFMC and NMFS imposed a number of regulations that implemented and refined seabird avoidance requirements for the hook-and-line fisheries (63 FR 11161; 69 FR 1930; 72 FR 71601).

An analysis of compiled data on seabird sightings presented to the Council by the Washington Sea Grant Program (WSGP) in 2006 showed that seabird species of concern were not likely to occur in portions of Area 4E where fishing vessels using hook-and-line gear may operate. The Council recommended eliminating requirements for vessels of certain size classes in these areas. The purpose of this amendment was to remove the associated economic burden of deploying seabird avoidance devices on these vessels.

Analysis

A 108-page EA/RIR/IRFA (January 2009) was prepared for this amendment. The analysis compared (Alternative 1) a no-action alternative, (Alternative 2) an exemption for vessels 26 – 32 feet LOA, (Alternative 3) an exemption for vessels 26 – 55 feet LOA, and (Alternative 4) an exemption for all vessels over 26 feet LOA. Alternatives 2-4 also included two options - (Option 1) required full compliance with seabird avoidance measures in identified portions of Area 4E and (Option 2) required only the use of buoy bags in identified portions of Area 4E. The preferred alternative for the action (Alternative 3, Option 1) was identified to provide more economic relief than Alternatives 1 and 2, and since a very small number of vessels larger than 55 feet LOA operate in Area 4E, Alternative 2 was not identified to provide any substantial greater benefit than Alternative 3. Option 1 was selected over Option 2 as it was more compliant with applicable laws protecting short-tailed albatross.

Regulation Summary

This regulatory amendment eliminated seabird avoidance gear requirements for all hook-and-line vessels less than or equal to 55 feet LOA fishing in Area 4E, except in the southern portion of Area 4E (south of 66°N latitude and west of 160°W longitude). Scientific information regarding seabird observations in Area 4E indicated that ESA-listed seabirds and other seabird species of concern are not likely to occur in 4E, except for the southern portion.

Results

Estimated seabird bycatch of Northern fulmar, shearwaters, and gulls in Alaska demersal longline groundfish and halibut fisheries from 2010 through 2019 (halibut fisheries 2013 through 2019 only) have fluctuated from year to year. Sablefish has higher estimated albatross bycatch relative to other fisheries; however, takes of short-tailed albatross have not been observed in the sablefish fishery since the mid-1990s. The average annual seabird bycatch for 2010-2018 for the sablefish and halibut longline fisheries was 719 and 316 birds per year, respectively. In 2019, estimated seabird bycatch was similar in the sablefish longline fishery at 441 birds, but decreased to 34 birds in the halibut longline fishery.



Observer Program Restructuring

Council Action
October, 2010

Proposed Rule
April 18, 2012;
77 FR 23325

Final Rule
November 21, 2012;
77 FR 70062
BSAI Amend. 86
GOA Amend. 76

Effective
January 1, 2013

Purpose and Need

The North Pacific Groundfish Observer Program was largely successful during the early years of its implementation, but there were a number of inherently restrictive components within the Observer Program's structure. Vessel coverage had not changed since the early 1990s, largely because cost and statutory constraints prevented the Council from restructuring the program. Observer deployment was also a longstanding issue. Lack of funding and resources restricted coverage levels and deployment, and the structure did not allow for the flexibility to respond to future management needs. Furthermore, the existing structure did not allow for managers to control when or where observers were deployed resulting in potential sources of bias that could jeopardize the statistical integrity of the data. The cost structure of the program also meant that the cost of observer coverage on smaller vessels was disproportionately higher relative to gross earnings. The funding of the Observer Program did not provide the flexibility or resources to solve the inherent problems of the existing program and was too rigid to allow for adaptation to shifting management objectives. This action was necessary to resolve data quality and cost equity concerns with the Observer Program's funding and deployment structure.

Analysis

A 379-page EA/RIR/IRFA (dated March 2011) was prepared for these changes. Four alternatives were considered that analyzed various fee structures, within the 2% maximum as mandated by the Magnuson-Stevens Act. Additionally, two options were considered that addressed NMFS' reporting expectations for the Council. The preferred alternative by the Council was Alternative 3, a coverage-based restructuring alternative that would implement a 1.25% ex-vessel value fee for vessels participating in the groundfish fishery. The second option, which called for an annual financial report by NMFS laying out the Observer Program budget, was also supported by the Council.

In 2015, NMFS prepared a 140-page Supplemental EA for this action. NMFS prepared the supplement in response to a Court Order to consider whether the restructured Observer Program would yield reliable, high quality data given likely variations in costs and revenues. The agency collected and analyzed observer data, costs, and fee revenue from two complete years (2013 and 2014) under the new program.

Regulation Summary

This regulatory change implemented an ex-vessel value-based fee structure for all vessels (including vessels under 60 feet length overall) fishing for halibut and sablefish IFQ in federal or state waters or fishing for groundfish with a federal fishing

permit in federal waters. It also established two observer coverage categories: <100% observer coverage and ≥100% observer coverage. Vessels in the <100% category are subject to an ex-vessel value-based fee not to exceed 2%. Vessels with ≥100% observer coverage obtain coverage by contracting directly with observer providers to meet coverage requirements.

Results

The restructured Observer Program was implemented at the start of the 2013 fishing year. Each year, an annual deployment plan is prepared by the agency and reviewed by the Council, which governs how and at what selection rate vessels in the partial coverage category will be randomly selected for observer coverage. The Annual Deployment Plan provides an annual evaluation of the risks associated with different allocations of deployment rates. An annual report on the previous year's observer program is also prepared and published each June, which reports on the overall program budget, whether the deployment plan's sampling goals were met, enforcement issues, and other issues that may be requested by the Council or highlighted by the agency.

Under the restructured Observer Program, observer coverage categories based on vessel length or processing volume were removed and

replaced with requirements based on the data needs for specific management programs. The number of participants in the full coverage category increased, although there were no other structural changes to the deployment or funding of observers in this category. In the partial coverage category, the number of vessels subject to coverage greatly increased to include all vessels in the halibut fishery and groundfish vessels less than 60 feet length overall that had never carried an observer under the previous program. NMFS' ability to estimate total catch in all Federal fisheries in the North Pacific is considerably improved, both by expanding observer coverage to previously unobserved vessels and adopting a representative sampling plan that resolves spatial and temporal coverage issues resulting from the previous ad hoc deployment method.



Observers monitoring and measuring catch.
Photo courtesy of NMFS.



Establish a CQE Program in Area 4B

Council Action
December, 2010

Proposed Rule
*November 14, 2013;
78 FR 68390*

Final Rule
*February 14, 2014;
79 FR 8870
BSAI Amend. 102*

Effective
March 17, 2014

Purpose and Need

The GOA Community Quota Entity (CQE) Program was implemented in 2004 to provide commercial harvest opportunities to small, remote, coastal communities that lacked access to the halibut and sablefish fisheries. While many small, fishery dependent, coastal communities in the BSAI were already associated with fishing opportunity through the Community Development Quota (CDQ) Program, a similar need for residents in the community of Adak was identified. Based on a proposal submitted by the Adak Community Development Corporation (ACDC), the Council developed a CQE program for halibut in IPHC regulatory Area 4B and for sablefish in the Aleutian Islands. Similar to the GOA CQE Program, this program was created to allow eligible communities to establish a non-profit entity to purchase catcher vessel quota shares and lease them to community members. The Council sought to develop a program modeled after the GOA CQE program that would provide sustained participation for rural residents and allow for entry-level opportunities for fishermen residing in fishery dependent communities while maintaining the goals of the halibut and sablefish IFQ program.

Analysis

An 83-page RIR (January 2014) was prepared for the amendment to analyze the economic impacts of developing a CQE in the BSAI halibut and sablefish IFQ program.

Two alternatives were considered:

a status quo alternative and the preferred alternative of establishing a CQE program in Area 4B. Additionally, four options for use caps for individual communities and four options for cumulative community use caps were considered. For both, the four options represented two halibut and two sablefish options. The preferred option would allow for the CQE to utilize 15% of the Area 4B halibut and AI sablefish QS pools as a cap for individual communities, and the same for cumulative community use caps. The RIR analysis determined that the development of a CQE would not only directly benefit fishermen participating in the program but would also have positive externalities on the communities and secondary service providers. Community participation in the halibut and sablefish fisheries increases the potential for participants to utilize Adak processors, which in turn would benefit local businesses and reinvigorate the local economy.

A second RIR was prepared to allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B. This separate analysis was joined with the establishment of a CDQ Program in 4B in the proposed rule.

Regulation Summary

This regulatory change amended the regulations for the halibut and sablefish IFQ Program and the CQE Program. It granted the Aleutian Island communities the ability to establish a non-profit organization as a CQE to purchase halibut catcher vessel

quota share in Area 4B and sablefish quota share in the Aleutian Islands. Eligibility is determined by seven factors. The community must: (1) be located within the Aleutian Islands; (2) be ineligible for the western Alaska Community Development Quota Program; (3) have a population greater than 20 and less than 1,500 people; (4) have direct access to saltwater; (5) lack direct road access to communities of 1,500 people or more; (6) have historic documentation of participation in the halibut and sablefish fisheries; and (7) be specifically designated on a list in Federal regulation. The rule established that a CQE representing a qualified community or communities can hold no more than 15% of the AI sablefish quota share, and all CQEs collectively can hold no more than 15% of the AI sablefish quota share pool.

Results

This action provided additional fishing opportunities for residents of fishery dependent communities and the ability to sustain participation in halibut and sablefish IFQ fisheries. Given the prevalence of fishery dependent communities in the Aleutian Islands already associated with the CDQ Program, Adak has been the only eligible non-CDQ community located in Area 4B. Since ACDC was the recipient of exclusive access to a percent of the Western Aleutian Islands golden king crab TAC, it has been successful in financing the acquisition of some Area 4B halibut QS and some AI sablefish QS.



The fishing community of Adak. Photo courtesy of NMFS.



Narrow Hired skipper Qualification Requirements

Council Action
April, 2011

Proposed Rule
April 26, 2013;
78 FR 24707

Final Rule
July 28, 2014;
79 FR 43679

Effective
December 14, 2014

Purpose and Need

The hired skipper provision had previously been amended to account for regulatory loopholes, such as the requirement that a QS holder must have at least a 20 percent ownership interest in the vessel that their IFQ is being fished on (64 FR 24960) and that they provide formal documentation of ownership (71 FR 64218). Public accounts suggested that some individual initial recipients who used to own and operate their fishing vessels had retired from the fishery and were using hired skippers to harvest their IFQs instead of transferring their QS as was initially intended by the Council. Others went on board the vessel as if they were crew but did not actively participate in fishing.

The use of hired skippers had significantly increased since the time the IFQ Program was implemented, contrary to the Council's intent. As a result, the Council recommended the prohibition of the use of a hired skipper to fish IFQ halibut or sablefish derived from vessel category B, C, or D QS received after February 12, 2010. This action was necessary to promote and maintain a predominantly owner-operated fishery.

Analysis

A 44-page RIR/IRFA (October 2012) was prepared for this regulatory amendment. The RIR compared the no-action/status quo alternative to Alternative 2 – prohibit the use of hired skippers after a selected control date. Two options for Alternative 2 were considered, Option 1 would allow the hired skipper provision to be retained for those QS swept up into blocks after the control date and before the effective date of the amendment and Option 2 would allow initial QS holders to sweep up additional QS units after the effective date. The Council adopted both options along with Alternative 2.

Regulation Summary

The amendments made by this action specified that a hired skipper cannot be used to fish IFQ halibut or sablefish derived from catcher vessel QS that was received by transfer after February 12, 2010. It also stated that NMFS will not approve a transfer of catcher vessel QS to corporations, partnerships, associations, or other non-individual entities at any time. Under this rule, IFQ derived from catcher vessel QS received by transfer after the specified date cannot be harvested by a hired skipper. Because non-individual entities must hire a master to harvest its IFQ, the changes prevented non-individual entities from receiving additional catcher vessel QS.

Catcher vessel QS was redefined as “eligible to be fished by a hired skipper” if the QS was (1) held by an initial recipient on or before February 12, 2010, or (2) received by transfer and consolidation into a QS block held by an initial recipient prior to this amendment.

Results

Based on a lawsuit filed by initial recipients whose acquisition of quota did not meet the control date set by the Council, federal courts overturned this decisions and NMFS rewrote the regulations to expand opportunity to use a hired master to these individuals. Current regulations allow for the use of a hired master either if (1) QS was acquired by an initial recipient on or before February 12, 2010 or (2) if QS was consolidated into blocks from February 12, 2010 to December 1, 2014.



Pacific halibut (*Hippoglossus stenolepis*).
Photo courtesy of NMFS.



Revise Vessel Use Caps Held by CQEs

Council Action
October, 2011

Proposed Rule
March 6, 2013;
78 FR 14490

Final Rule
June 4, 2013;
78 FR 33243
GOA Amend. 94

Effective
July 5, 2013

Purpose and Need

The CQE Program allows a distinct set of remote coastal communities in the GOA that meet historic participation criteria in the halibut and sablefish fisheries to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. The CQE is the holder of the QS and is issued IFQ annually by NMFS. Once the CQE holds QS, the CQE can lease the annual IFQ resulting from the CQE-held QS to individual community residents.

Prior to this amendment, the CQE Program limited fishing CQE-held quota to vessels that fish less than 50,000 lbs. of halibut IFQ or 50,000 lbs. of sablefish IFQ – both CQE-held quota and non-CQE quota. This consequentially eliminated the opportunity for community residents awarded CQE quota from fishing on a vessel that has or will fish more than 50,000 lbs. of quota, even if it is the only vessel available in a community. In addition, this restricted the option for several residents awarded CQE quota from combining their quota on a vessel if the cumulative quota, both CQE and non-CQE, exceeded 50,000 lbs. These restrictions limited CQE use opportunities and some CQE purchases. Because CQE communities were meant to provide communities in the GOA with opportunities to mitigate the emigration of halibut and sablefish quota shares from those communities, easing vessel use restrictions were necessary to carry out the intent of the program.

Analysis

A 59-page RIR (Secretarial review draft dated November 2011) was prepared for this amendment. Three alternatives, including the status quo alternative, were analyzed. Alternative 2, the Council's preferred alternative, stated that no vessel may be used, during any fishing year, to harvest more than 50,000 lbs. of sablefish or 50,000 lbs. of halibut IFQ derived from quota share held by a CQE. The vessel would also be subject to the same vessel use caps applicable in the overall IFQ Program. The third alternative would have eliminated the 50,000 lb. vessel use caps for CQE-held quota, and vessels using IFQ derived from CQE quota would continue to be subject to the same vessel use caps for halibut and sablefish that are applicable in the general IFQ Program.



Halibut fishing. Photo courtesy of Rhonda Hubbard.

Regulation Summary

This regulatory change removed IFQ derived from non-CQE-held QS from the 50,000 lb. vessel use cap. Only IFQ derived from CQE-held QS will count towards the CDQ vessel use cap. The new regulation applied the following annual vessel use caps to all vessels harvesting IFQ: No vessel can be used to harvest (1) more than 50,000 pounds of halibut or sablefish IFQ leased from a CQE, and (2) more halibut or sablefish IFQ than the IFQ Program overall vessel use caps.

Three additional actions that amended IFQ Program and CQE Program regulations were also made by this action: (1) three communities (Game Creek and Naukati Bay in Area 2C, and Cold Bay in Area 3B) were added to the list of communities that are eligible to participate in the GOA CQE; (2) CQEs in Area 3A were allowed to purchase halibut vessel category D QS; and (3) annual recordkeeping and recording requirements were added and updated for CQEs participating in limited access programs for charter halibut fisheries and the GOA Pacific cod endorsed non-trawl groundfish fisheries.

Results

This amendment has allowed the opportunity for increased flexibility for CQEs in the IFQ program. The CQE program was amended again with the implementation of 79 FR 66342, which specified that IFQ derived from CQE held QS assigned to category D in Area A could also be harvested on category C vessels after August 15. However, as of 2021 CQEs are struggling with funding to move forward and take advantage of this increased flexibility. Only one CQE in Area 3A has purchased the equivalent of ~8,000 (in 2021 equivalent) pounds of D-class halibut QS as of 2021.



Charter and Commercial Halibut Catch Sharing Plan

Council Action
October, 2012

Proposed Rule
June 28, 2013;
78 FR 39122

Final Rule
December 12, 2013;
78 FR 75843

Effective
January 13, 2013

Purpose and Need

Prior to this regulatory amendment, the charter halibut sector in Areas 2C and 3A were managed under a Guideline Harvest Level (GHL) Program. Although the Council had a policy that charter halibut fisheries should not exceed the GHL, the regulations did not actually limit charter halibut fishery harvest, and the Area 2C halibut harvest exceeded its GHL every year from 2004-2010. Individual harvest shares in the commercial halibut fishery rise and fall with halibut abundance, but the charter halibut fishery was not subject to limitations tied to fishery abundance. This meant an open-ended reallocation from the commercial IFQ sector to the charter industry was in place when the charter harvest exceeded the GHL, and the reallocation was predicted to increase with a growing charter sector, which would have negative economic and social impacts on the commercial IFQ fleet.

Conflicts between user groups were brought forth to the Council, and it was identified that community stability may be affected in some areas as traditional sport, subsistence, and commercial IFQ fishermen were being displaced by charter Limited Entry Permit (LEP) holders. A system of hard allocations and mechanisms for transfer between longline and the charter halibut sector was identified as necessary to reduce conflicts and instability.

Analysis

An EA/RIR was developed for this regulatory action. It identified five alternatives, including a no-action alternative. In 2008, Alternative 2 was chosen as the Preliminary Preferred Alternative, which would (1) replace the GHL program, (2) set initial allocations for each sector, (3) establish a fixed matrix of management measures to control harvest, (4) authorize annual transfers, and (5) create a prohibition on retention of charter halibut by skippers and crew under all allocations. However, in 2012 Alternative 3 was selected as the Preferred Alternative which was similar to Alternative 2 but replace the fixed management measures with a requirement that the Council annually recommended measures to maintain halibut harvest within the respective allocations.

Alternative 4 differed from Alternative 3 in one way – it would have increased the allocation to the charter sector by 3.5% of the combined charter and commercial catch limit (CCL) at the two lower CCL levels. Alternative 5 also included the same elements as Alternative 3 except that it would increase the CCL by the same 3.5% of the CCL at lower levels.

Regulation Summary

This regulatory action implemented a CSP for the charter and commercial halibut fisheries in Areas 2C and 3A. It established stair-step percentage allocations to the charter halibut fishery, calculated from the annual combined catch limit for the commercial and charter sectors based on halibut abundance. It also created a public process by which the Council develops recommendations to the IPHC for charter angler harvest restrictions that are intended to limit harvest in the annual charter halibut fishery in each area.

The CSP also authorized limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF). The GAF Program was intended to provide flexibility for individual commercial and charter halibut fishery participants. It offered charter halibut permit holders in Areas 2C and 3A an opportunity to catch one (or one additional) fish of any size.

Results

Since implementation of the CSP, the charter halibut catch sector has exceeded their allocation in 2014 and 2017 in Area 2C and in every year except for 2020 in Area 3A. GAF was not widely used when the program was first implemented due to the cost and difficulty of transfer. It has become more often used, particularly in Area 2C where a GAF means the opportunity to catch an additional fish. In 2018, NMFS approved a Recreational Quota Entity (RQE) program (83 FR 47819) which would

allow a non-profit entity to be formed. The RQE would acquire commercial halibut QS only through compensating willing commercial shareholders for the transfer of their QS.



Halibut caught on a charter trip.
Photo courtesy of Andy Mezirow.



CQE, Leasing/Transfer, QS Block

Allow CQEs to Hold and Transfer Small Blocks of Sablefish Quota Share

Council Action
December, 2012

Proposed Rule
August 7, 2014;
79 FR 46237

Final Rule
November 7, 2014;
79 FR 66324
GOA Amend. 96

Effective
December 8, 2014

Purpose and Need

In 2004, 69 FR 23681 established the Community Quota Entity (CQE) Program to encourage sustained participation in the halibut and sablefish IFQ Program by residents of smaller GOA fishery-dependent communities. Initially, a portion of QS in the fishery was issued in blocks. Each block is a consolidation of a small amount of initially issued QS units that cannot be subdivided upon transfer. One of the primary purposes of QS blocks and the subsequent amendments to the block regulatory

provisions was to conserve small blocks of QS that could be transferred at a relatively low cost by crew members and new entrants to the IFQ fisheries. The IFQ Program incorporates a “sweep-up” provision to allow very small blocks of QS to be permanently consolidated, up to specified limits, so as to be practical to fish.

During development of the CQE Program, the Council and NMFS determined that if no limit on the acquisition of blocked QS was established, then gains in CQE holdings could represent losses of QS holdings among individual residents of those same

CQE communities. Therefore, CQEs were restricted from transferring or holding blocked QS of less than a minimum size to preserve purchase opportunities for new entrants in certain regulatory areas.

CQEs were originally prohibited from transferring and holding a QS block that is less than the “sweep up” limit, or the number of QS units initially issued as blocks that could be combined to form a single block. Quota share blocks that are less than or equal to the “sweep up” limit are known as “small blocks.” This prohibition was due to concerns that CQE quota purchases could negatively impact quota share price and availability for purchase by individual participants with limited resources. However, participation by CQEs in the marketplace was limited and these concerns were not realized. The purpose of lifting the block restriction for “B” and “C” class quota was to incrementally increase the ease of CQE access to QS and thereby facilitate for the sustained participation by CQE community residents in the halibut and sablefish IFQ Program.

Analysis

A 72-page RIR/IRFA (dated February 2014) was prepared for this amendment. In addition to the status quo Alternative 1, the document analyzed Alternative 2 (the preferred alternative) which would allow CQE communities to purchase any size block of halibut and sablefish quota share. Three options were proposed under Alternative 2: (1) allow CQE communities to purchase any size block of halibut and

sablefish quota share (2) allow CQE communities to purchase the QS *only* from residents of any CQE community, or (3) allow CQE communities to purchase the QS *only* from residents their own CQE community. The Council selected Option 1 as their preferred alternative, as it would provide the maximum benefit to CQE.

Regulation Summary

This amendment removed a regulation that prohibited CQEs from transferring and receiving small blocks of sablefish and halibut QS. CQEs are now able to transfer similar sized blocks of QS in the marketplace as individual non-CQE QS holders.

Results

With this action, CQEs have an opportunity to acquire additional QS and facilitate CQE community resident participation in the IFQ Program. The number of QS units held by CQEs increased from 1,128,144 in 2014 to 2,863,464 in 2021. However, it is important to note that other regulatory changes took place that also enabled increased QS purchases by CQEs, such as those provided by 78 FR 33243. The majority of eligible CQE communities still have not purchased halibut or sablefish QS.



Sablefish pot gear on survey vessel. Photo courtesy of ADF&G.



Reporting Requirement

Loosen Gear Identification Requirements

Council Action
NA

Proposed Rule
January 3, 2014;
79 FR 381

Final Rule
April 3, 2014;
79 FR 18655

Effective
May 5, 2014

Purpose and Need

Buoys are used to indicate the position of hook-and-line, longline pot, and pot-and-line gear in the groundfish and halibut fisheries. The NMFS Office of Law Enforcement and the US Coast Guard use identification markings from buoys when issuing violations, prosecutions, and other enforcement actions. Cooperating fishermen use identification markings to report the placement or occurrence of gear in unauthorized areas. Identification markings are also necessary to return lost or stolen gear. Originally, both IPHC and federal regulations were in place with slightly differing requirements on what information must be included on vessels IFQ halibut fishing. The IPHC required that buoys must be marked with the vessel's state license number or the vessel's registration number. Federal regulations also required that the buoys be marked with the vessel's name. The purpose of this action was to remove the federal requirements to include the vessel name on buoys, as it was determined to be unnecessary for proper monitoring and compliance.

Analysis

A 14-page RIR/IRFA (December 2013) was prepared for this amendment. The RIR determined that the amendment would have a positive net economic benefit on the commercial fishing industry since it reduced the cost of compliance with identification marking requirements.

Regulation Summary

This action eliminated the requirement that buoys carried onboard marking the location of hook-and-line, longline pot, and pot-and-line gear deployed by vessels with FFPs be marked with the vessel's name. While multiple vessels may share the same name, vessel identification numbers are unique to the vessel recipient.

Results

The proposed action reduced the cost to vessel owners by reducing the labor and materials needed to mark buoys and eliminated the confusion pertaining to buoy labeling requirements.



Pacific halibut/sablefish IFQ fishing vessel with buoys attached. Photo courtesy of IPHC.



Authorize GOA Sablefish Longline Pots

Council Action
April, 2015

Proposed Rule
*August 19, 2016;
81 FR 55408*

Final Rule
*December 28, 2016;
81 FR 95435
GOA Amend. 101*

Effective
January 27, 2017

Purpose and Need

In 2006, the Council received a proposal to allow the use of pots in the sablefish fishery in southeast Alaska. Over the following years, the Council heard increasing observations of sperm whale and killer whale interactions with the sablefish hook-and-line fleet in the GOA. These interactions often resulted in depredation, the technical term for whales stealing or damaging fish caught on fishing gear, which affects the ability of sablefish quota shareholders to harvest their sablefish IFQs by reducing catch per unit of effort and increasing fishing costs. Research into developing technological solutions to deter whales and changes in fishing strategies had not resolved the problem.

Depredation also has negative consequences for the whales through increased risk of vessel strike, gear entanglement, fisherman aggression, and altered foraging strategies. An additional management concern stems from the impact that whale depredation may have on the accuracy of sablefish stock abundance indices. The Council, noting the increased frequency and severity of whale depredation in the GOA, initiated action with the understanding that pot gear for sablefish could reduce sperm whale and killer whale interactions with fishing gear in the Gulf of Alaska.

Analysis

A 210-page EA/RIR/IRFA (final draft dated October 2016) was prepared for this regulatory change. The analysis included potential impacts of the no action alternative (status quo) as well as one action alternative. Under the status quo, hook-and-line gear would continue to be the only legal gear type for sablefish IFQ in the GOA. The action alternative would allow, but not require, harvesters to use pot longline gear in the sablefish IFQ fishery in the GOA, and it included the following elements which were adopted as management measures: (1) area-specific pot limits, (2) pot tag requirements and pot gear marking requirements, (3) area-specific pot gear removal and redeployment requirements, (4) required retention of incidentally caught halibut (provided the sablefish IFQ holder also holds sufficient halibut IFQ). Additionally, all vessels using longline pot gear would be required to use logbooks and VMS. Through the elements adopted as part of the preferred alternative, the Council attempted to minimize potential gear conflicts that could result from allowing pot and hook-and-line gear to fish in the same regulatory areas.

Regulation Summary

This amendment redefined legal gear for sablefish in the GOA to include pot longline gear, subject to a pot limit enforced by pot identification tags. The measures adopted under this amendment also required:

(1) pot longline gear to be moved or tended within a certain amount of time after being set, or removed from the fishing grounds when making a sablefish delivery,

(2) specific marking of pot longline gear, and

(3) retention of Pacific halibut if sufficient IFQ is held by fishermen to cover the halibut IFQ caught using pot longline gear.

Results

Pot gear effort in the GOA increased from the opening of the fishery in 2017 to the publication of the 3-year review of the fishery in April 2021. Pots represented an increase portion of the harvested TAC over this time period. Incidental catch in the GOA sablefish pot fishery has been minimal and mainly comprised of Pacific halibut, arrowtooth flounder, and grenadiers. The 3-year review notes that the decline in overall tons of sablefish mortality due to whale depredation may be attributable to the shift to pot gear, but that this has not been fully investigated by stock assessment authors. The 3-year review also highlighted

a number of other regulatory changes that could improve the efficiency of the program.



Sablefish pot gear on vessel.
Photo courtesy of David Whitherell.



Revise Authorized Payment for Cost Recovery Fees

Council Action
October, 2015

Proposed Rule
December 31, 2015;
80 FR 81794

Final Rule
April 22, 2016;
81 FR 23645

Effective
May 23, 2016

Purpose and Need

The MSA authorizes and requires the collection of cost recovery fees for fishery management programs that issue a permit allocating exclusive harvest privileges. Cost recovery fees recover the actual costs directly related to the management, data collection, and enforcement of the programs. Permit holders are required to submit cost recovery fee payments to NMFS annually.

The original regulations for the cost recovery program for the Halibut and Sablefish IFQ Program and the Crab Rationalization Program allowed permit holders to submit credit card information for manual processing by NMFS staff (in-house credit card processing). This resulted in the possession and electronic transmission of sensitive financial information on the NMFS Alaska Region's information network, which is a significant security vulnerability and administrative cost to both the permit holder and to NMFS. The purpose of this action was to reduce administrative costs and increase security by eliminating payment methods that required in-house processing.

Analysis

A 39-page RIR (November 2015) was developed for this regulatory change. The analysis compared three alternatives: a status quo/no-action alternative and two action alternatives. Both action alternatives would have eliminated the option for permit holders to submit credit card payment information by mail or facsimile, but in Alternative 2, permit holders would still be allowed to submit payments by paper check, money order, or bank certificate. These options were eliminated in Alternative 3. Alternative 3 also included a sub-option to require all fees must be made online, starting with the 2020 payment cycle. Alternative 3 with the sub-option was selected as the preferred alternative.

Regulation Summary

This regulatory change eliminated methods that were previously acceptable for submitting cost recovery fees for the IFQ Program and Crab Rationalization Program. As a result of this change, IFQ permit holders can no longer submit credit card payment by mail or facsimile but can continue to submit payment using a credit card through the pay.gov website. Non-electronic submissions of payment information to NMFS via mail or facsimile was not as secure as payments made online and resulted in high administrative time and costs to process payments. The rule also eliminated paper checks, money orders, and bank-certified checks as authorized payment methods starting with the 2020 cost recovery fee payment billing cycle, as these methods resulted in higher administrative costs for NMFS. Starting with the payments due January 31, 2020, all cost recovery fee payments for the IFQ Program and Crab Rationalization Program are required to be made through pay.gov or Fedwire.

Results

The elimination of previously acceptable forms of payment for cost recovery fees and requirement to pay online resulted in over 1,000 IFQ permit holders and about 10 CR Program permit holders to change their previous method of submitting fees.



Gaffing a halibut.
Photo courtesy of Julianne Curry.



Charter, Leasing/Transfer, QS Block Limits

Allow RQE to Hold Commercial Halibut QS

Council Action
December, 2016

Proposed Rule
October 3, 2017
82 FR 46016

Final Rule
September 21, 2018
83 FR 47819

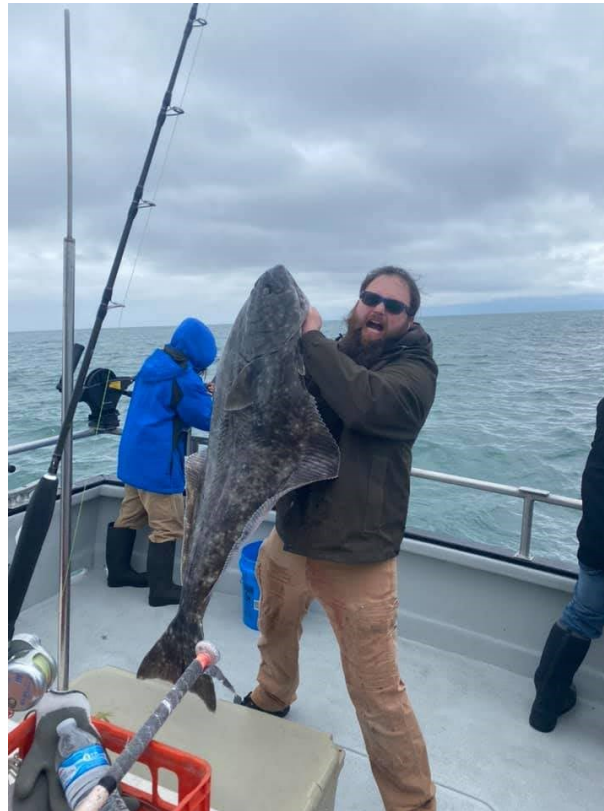
Effective
October 22, 2018

Purpose and Need

In 2014, NMFS replaced the GHL management of Areas 2C and 3A charter halibut fisheries with a Catch Share Plan (CSP). The CSP divides the combined catch limit for Area 2C and 3A between the commercial IFQ and charter halibut fisheries. Under the CSP, the charter halibut catch limits in Areas 2C and 3A increase or decrease as total halibut abundance increases or decreases. Each year, the catch limits for Area 2C and 3A are allocated through a formula prescribed in the CSP between the commercial IFQ and charter halibut fisheries. For the charter sectors, the catch limits are annually translated into management measures (e.g. bag limits, size restrictions, and day of the week closures) that are predicted to keep the sector under its allocation limit.

Prior to this amendment, the only way charter operators could provide more opportunity to charter clients was through participation in the Guided Angler Fish (GAF) Program. The GAF Program allows the temporary transfer of commercial halibut IFQ as GAF to qualified charter halibut permit holders. Permit holders can then offer charter vessel anglers the opportunity to retain halibut up to the limit for unguided anglers (two fish of any size).

In February 2014, the charter fishery participants expressed a desire to find a market-based mechanism to increase its overall allocation of halibut. The



Successful halibut catch by R. Dobberpuhl on a charter trip in Whittier, AK. Photo courtesy of R. Dobberpuhl.

purpose of developing the recreational quota entity (RQE) program was to provide additional harvest opportunity and less restrictive annual harvest measures for all charter anglers in a regulatory area, while still complying with total halibut removals established under the CSP.

Analysis

A 221-page EA/RIR was prepared for this regulation. The analysis considered a no-action alternative to maintain the status quo (no RQE Program) and an alternative to authorize a RQE Program. The Council and NMFS also considered a broad range of elements and options to determine: (1) the number of RQEs that could form; (2) restrictions on the transfer; (3) the process for setting annual management measures; (4) how the RQE Program should interact with GAF and CQE Programs; (5) how the RQE could use funds; and (6) the appropriate reporting requirements for the RQE.

Regulation Summary

This regulation allowed a single RQE to be established as an eligible entity to purchase halibut QS in Area 2C and Area 3A. Any halibut QS purchased by the RQE is held by that entity for the common use of the charter halibut anglers in the corresponding regulatory area. The rule specified that the RQE must be established as a non-profit and that the entity that applies to become the RQE is required to demonstrate its non-profit and tax-exempt status. The final rule also established area-specific annual limits on the amount of halibut QS that can transfer to a RQE – up to one and 1.2 percent of the commercial QS units in Area 2C and Area 3A based on the 2015 pool of all QS categories, respectively. These limits

included the RQE's QS holdings as well as any GAF transferred for that year. Restrictions were also specified for the amounts of QS the RQE could hold by vessel category and size of QS blocks. In the event that the RQE has QS holdings that exceed the amount needed to provide charter anglers with harvest opportunities equal to those for unguided recreational anglers, the excess QS is temporarily redistributed to the commercial IFQ fishery. The regulation also included reporting and cost-recovery requirements.

Results

As of February 2021, NMFS approved the application of a non-profit entity and a RQE has been established. This final rule did not dictate the RQE's method of funding itself or any halibut quota share purchases. The Council determined it was the responsibility of the RQE to develop a way to fund the program. The RQE is in the process of exploring methods of obtaining funds to cover the administrative costs of the program and purchase halibut IFQ.



Allow CDQ Groups to Lease Halibut IFQ

Council Action
June, 2017

Proposed Rule
February 23, 2018;
83 FR 8028

Final Rule
October 18, 2018;
83 FR 52760

Effective
November 18, 2018

Purpose and Need

The Community Development Quota (CDQ) program was proposed in conjunction with the IFQ program for sablefish and halibut management. The CDQ program apportioned designated percentages of the annual fixed gear total allowable catch (TAC) of sablefish and halibut to eligible Western Alaska communities, and aimed to provide near-shore communities with long-term, stable employment and access to the fishery resource.

Low halibut abundance and resulting low catch limits in IPHC regulatory Area 4 were causing difficulty for most CDQ groups to create viable halibut fishing opportunities for their residents. The purpose of this action was to provide an opportunity for CDQ groups to alleviate the adverse impacts of the decreasing availability of halibut on Western Alaskan communities.

Analysis

A 77-page RIR (Secretarial Review Draft April 2018) was prepared for this regulatory change. The analysis compared Alternative 1, a no action alternative, to Alternative 2, which would allow CDQ groups to lease halibut IFQ in times of low halibut abundance. Alternative 2 included five options: (1) defining 'low catch limits' with three sub-options of what the definition would be; (2) allowing leased area 4D IFQ to be fished in Area 4E; (3) inclusion of a 'cooling-off' period for IFQ before it can be leased with three sub-options for different lengths of time; (4) inclusion of a restriction on how many consecutive years IFQ can be leased with three sub-options; and (5) a limit on the amount of Area 4B CV halibut IFQ that can be leased with four sub-options.

Regulation Summary

The primary action of this rule was the creation of a voluntary option for IFQ holders in Areas 4B, 4C, or 4D to temporarily transfer their halibut IFQ to a CDQ group in years of low halibut abundance. It allowed CDQ groups to receive transfers of halibut CV IFQ (categories B, C, and D IFQ):

- in Areas 4C and 4D when the halibut annual commercial catch is less than 1.5 million pounds in Area 4CDE and
- in Area 4B when the halibut annual commercial catch is less than 1 million pounds in Area 4B.

Several limits on the CV IFQ eligible for transfer were included. These were:

- (1) a CDQ group will be able to receive CV IFQ only for an area in which it also holds halibut CDQ;
- (2) no vessels greater than 51 feet LOA may be used to harvest transferred IFQ;
- (3) CV IFQ may not be transferred to a CDQ group until three years after it was acquired;
- (4) an IFQ holder cannot transfer CV halibut IFQ to a CDQ group for more than two consecutive years; and
- (5) in Area 4B, only QS holders who hold less than 76,355 QS units for Area 4B are allowed to transfer CV IFQ to CDQ groups. The rule stipulated that CDQ groups must report IFQ received by transfer and are responsible for the cost recovery fees

based on the amount of IFQ pounds held on the IFQ permit.

This rule implemented two additional, less substantive actions. Action 2 removed obsolete references to IFQ program regulations and Action 3 clarified IFQ vessel use cap regulations.

Results

At the time of this review, this rule has only been in effect for two years and the thresholds to allow leasing of IFQ to CDQ groups were not met during that time. However, if the halibut resource should drop to a lower abundance level resulting in lower catch limits in Area 4B and 4CDE, the anticipated effects of this action include expanding fishing opportunities for the small boat fleets operating out of the CDQ group's communities. Additionally, this action would be expected to provide IFQ holders with the opportunity to receive value for their IFQ when extremely low halibut commercial catch limits may not be large enough to provide an economically viable fishery for IFQ holders. Future analysis at the rate of IFQ transfers to CDQ groups in Area 4 will help determine if these effects are realized.



Administrative, CDQ, Reporting Requirement, Spatial Management

Authorize BSAI Halibut Pots

Council Action
October, 2018

Proposed Rule
October 3, 2019
84 FR 52852

Final Rule
January 8, 2020
85 FR 840

BSAI Amend. 118

Effective
February 7, 2020

Purpose and Need

Interactions with whales throughout the Bering Sea and Aleutian Islands affect the ability of sablefish and halibut QS holders to harvest their IFQ by reducing catch per unit of effort and increasing fishing costs. Prior to this action, whale depredation was increasing for vessels fishing halibut IFQ with longline gear, and for halibut discarded when using pot gear to fish sablefish IFQ in the BSAI. The purpose of this action was to address whale depredation on discarded halibut and to allow for more efficient harvest of halibut in areas with whale depredation.

Research into developing technological solutions to deter whales and changes in fishing strategies had not resolved this problem. Therefore, the Council decided the problem should be addressed by revising regulations that authorize pot gear as legal gear to retain halibut in the BSAI. The action was implemented in the attempt to reduce the problems associated with whale depredation, including unobserved halibut mortality, while minimizing gear conflicts.

Analysis

This action authorized the retention of legal-sized halibut in pot-and-line or longline put gear used to fish for IFQ or CDQ halibut or sablefish in the BSAI and required the retention of legal-sized halibut provided the IFQ or CDQ permit holder holds sufficient halibut IFQ or CDQ. It also closed the Pribilof Islands Habitat Conservation Zone (PIHCZ) to all groundfish and halibut fishing with pot gear in order to protect Pribilof Island blue king crab stocks and removed the requirement for a 9-inch maximum width tunnel opening when an IFQ or CDQ permit holder fishes for halibut or sablefish IFQ in the BSAI with pot gear and is required to retain halibut.

This action also included two administrative and reporting requirement changes: (1) clarified the inseason management measures and required determinations that NMFS will use to limit or close IFQ or CDQ fishing for halibut in an OFL is approached for a groundfish or shellfish species and (2) requires logbooks and VMS for all vessels using pot gear to retain halibut and sablefish and adds requirements for reporting on the Prior Notice Of Landing (PNOL).

Regulation Summary

A 195-page EA/RIR (October 2019) was prepared for this action. It compared the no-action alternative to the preferred alternative, allow the retention of legal-sized halibut in single or longline pot gear used to fish for halibut or sablefish IFQ/CDQ in the BSAI and close the PIHCZ to all fishing with pot gear. The preferred alternative included 5 elements. They were (1) gear retrieval, option 1, no gear retrieval requirement, (2) limit of a 9-inch maximum width of tunnel opening does not apply when vessel has unfished halibut IFQ/CDQ onboard, (3) all vessels using pot gear to fish IFQ/CDQ are required to use logbooks and VMS, (4) maintain status quo for no escape mechanism requirement for crab, and (5) establish regulations that would allow NMFS to close IFQ fishing for halibut if an OFL is approached for groundfish or shellfish species.

During deliberation, the Council noted that scientific information specifically on killer whale depredation in the BSAI is lacking, and that the frequency and intensity of whale depredation in the Bering Sea was explained in more detail through public testimony and input from stakeholders. The Council recognized the importance of allowing gear switching as management adapts to changes in the ecosystem and fishery conditions.

Results

At the time of the publication of this document, this regulatory change was only one year old and determining any impacts it has had on gear selection or whale depredation could not be accurately analyzed. However, both the analysis and information from fishery participants indicated a limited number of vessels will begin fishing for halibut using pots at least over the several years following the implementation of the action. The Council also noted that they plan to review the levels of bycatch and possible need for gear modifications in three years after implementation (in 2023) to determine if crab PSC or other bycatch issues resulting from this action need to be addressed within regulations.



Modification to the Medical and Beneficiary Transfer Provision

Council Action
April, 2019

Proposed Rule
October 24, 2019;
84 FR 56998

Final Rule
February 14, 2020;
85 FR 8477

Effective
March 16, 2020

Purpose and Need

The IFQ Program limited access to halibut and sablefish fisheries to provide economic stability to the commercial fleet. It was also designed to retain the character and distribution of the fishing fleets as much as possible. Leasing of CV IFQ is generally prohibited except under a few specific conditions. Transfers of CV IFQ is only allowed under six special circumstances. This regulatory change pertained to two of the transfer exceptions.

In 2007, a medical transfer provision (72 FR 44795) was implemented to allow QS holders to retain their QS during a temporary medical hardship. Previously, a QS holder with a medical condition was required to divest his or her QS or allow IFQ to go unfished during years when he or she could not be on board the vessel. To be eligible to utilize the medical transfer provision, IFQ QS holders were required to provide certification by specific types of medical providers who must describe the condition and were only allowed to use the provision for two years in a five-year period. A beneficiary transfer provision implemented in 1996 (61 FR 41523) allowed the temporary transfer of QS to the surviving spouse of a deceased QS holder. It was expanded in 2000 (66 FR 27908) to allow an immediate family member designated as a beneficiary to be an eligible recipient.

Four issues with administering these provisions were identified during the 20-Year Review of the IFQ

Program: (1) the definition of a certified medical professional was narrow, (2) it was difficult to enforce the limitation on the use of the medical transfer provision to two years of the previous five, (3) estate representatives could not receive IFQ from a deceased IFQ QS holder, and (4) the definition of *immediate family member* was too narrow. The purpose of this regulatory amendment was to clarify the Council's intent for the medical and beneficiary transfer provisions and address and fix implementation issues.

Analysis

A 90-page RIR (Secretarial Review draft dated September 2019) was prepared for this regulatory amendment. The analysis compared the status quo to a second alternative to modify the medical transfer provision and a third alternative to modify the beneficiary transfer provision. The second alternative included two elements. The first element defined *certified medical professional* and included three options and the second element revised the number of years a medical transfer could be used with two options. The third alternative also included two elements. The first element modified references to surviving spouse and immediate family members by adding *estate* and the second element defined *immediate family member* with two different options. Both alternatives two and three and both elements were selected as part of the preferred alternative, and reflect the regulation implemented by this rule.

Regulation Summary

This regulatory action made two changes to the medical transfer provision and two changes to the beneficiary transfer provision. For the medical transfer provision, the first change broadened the definition of a *health care provider*. This allowed QS holders greater flexibility in selecting a health care provider for treatment and for verifying the condition on the medical transfer application. The second change extended the number of years a medical transfer could be used from two of the five most recent years to three of the seven most recent years, with the seven-year period beginning the first calendar year the medical transfer of IFQ is approved. For the beneficiary transfer provision, the first change defined *immediate family member* using the definition established by the U.S. Office of Personnel Management. This definition includes family members connect to the QS holder by birth, adoption, marriage, civil partnership, or cohabitation. The second change modified all references to surviving spouse and immediate family member by adding the term *estate*, to allow the QS holder's estate to be eligible to hold QS under the transfer provision while an estate is being settled.

Results

At the time of this summary, this regulation has only been in place for one year and there is limited data on the benefits that have been derived from these changes. This action is expected to provide increased flexibility for IFQ QS holders experiencing medical hardship and to expand the benefits intended by the beneficiary transfer provision to immediate family members not previously included in the definition. It is also anticipated to improve implementation of these provisions.



CQE, Fish Down/Fish Up, Vessel Classes/Caps

“Fish Up” Provision for CQE Area 3A Category D Halibut QS

Council Action
June, 2019

Proposed Rule
*April 14, 2020;
85 FR 20657*

Final Rule
*July 21, 2020;
85 FR 44021*

Effective
August 20, 2020

Purpose and Need

The GOA Community Quota Entity (CQE) Program was implemented in 2004 (69 FR 23681), to provide commercial harvest opportunities for small, remote, coastal communities that lacked access to the halibut and sablefish fishery resource. The original CQE program contained provisions to limit excessive consolidation of IFQ harvest into CQE communities, but subsequent reviews of the CQE Program found no evidence of conflict between CQE and non-CQE IFQ Program participants. NMFS took action to improve the effectiveness of the CQE program in 2013 (78 FR 33243) by revising vessel use caps and allowing CQEs in Area 3A to purchase vessel category D halibut QS.

Public testimony indicated that in one of the remote communities that participate in the CQE Program, fishermen leasing CQE-held D class halibut IFQ do not always have D class vessels that are available to harvest the IFQ, and that the smaller skiffs often used in this community as D class vessels are not ideal for harsher weather and ocean conditions later in the season when halibut tend to move further offshore. Program regulations in Area 3A that restricted the CQE ability to fish D class quota on C class vessels limited the CQE community's ability to access CQE halibut in Area 3A. The purpose of this regulatory change was to provide more flexibility to CQE community participants and further the Council's intent

of encouraging CQE communities to secure long-term opportunities to harvest halibut.

Analysis

A 39-page RIR (Secretarial Review draft dated June 2019) was prepared for this regulatory change. The analysis compared Alternative 1, the no action (status quo) alternative, to two action alternatives. Action 2, Option 1 was the selected as the preferred alternative. This would allow eligible CQE residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A starting on August 15 and for the duration of the IFQ season. Options 2 and 3 for Action 2 would have set the date that D class QS could be fished on C or D class vessels to be either September 1 or for the duration of the annual IFQ season. Alternative 3 would have only allowed CQE residents in Area 3A to fish halibut IFQ derived from CQE-held D class QS on C or D class vessels in Area 3A for only a limited number of years per year-range, with three options. Alternative 3 was not selected due to the increased complexity it would create for management and enforcement.

Regulation Summary

This regulatory change specified that IFQ derived from CQE held QS assigned to category D in Area 3A could be harvested on a vessel less than or equal to 60 feet LOA (category D or category C) from August 15 to the end of the IFQ season. This allowed eligible community residents

leasing category D IFQ from a CQE to fish it on larger vessels before the end of the IFQ season, which is typically mid-November. This rule did not change regulations in any other areas. A “fish-up” provision was already in place for Areas 2B and 4B, and CQEs in Area 2C cannot hold category D halibut. Areas 4A, 4C, 4D, and 4E do not have communities eligible to participate in the CQE Program.

A minor change to consolidate the Application for Temporary Military Transfer of IFQ form into the Application for Temporary Transfer of Halibut/Sablefish IFQ form was also included in this regulatory change. This change centralized all non-medical temporary IFQ transfers onto one single form.


Results

At the time of implementation, only one CQE in Area 3A owned Area 3A category D halibut. CQE participation has been limited, mainly because most CQEs have had difficulty financing the purchase of QS. However, potentially up to 14 CQE communities that are eligible and in Area 3A could be impacted by this action if these communities purchased category D QS.



Birdseye view of a halibut fishing boat. Photo courtesy of IPHC.





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