

data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 3, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

**Dated:** August 6, 2007.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0612242964-7332-02; I.D. 080106C]

**RIN 0648-AS84**

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

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

**ACTION:** Final rule.

**SUMMARY:** NMFS adopts a rule that modifies the Individual Fishing Quota (IFQ) Program for the fixed-gear commercial Pacific halibut fishery and sablefish fishery by revising regulations specific to those fisheries. This action is intended to improve the effectiveness of the Halibut and Sablefish IFQ Program (IFQ Program) and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

**DATES:** Effective on September 10, 2007, except for §§ 679.42(d) and 679.42(i) which contain information collection requirements that have not been approved by OMB. NMFS will publish

a document in the **Federal Register** announcing the effective date of these paragraphs.

**ADDRESSES:** Copies of the Categorical Exclusion, Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) prepared for the proposed rule and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809, or NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://www.noaa.fakr.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, and by email to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907-586-7228 or [jay.ginter@noaa.gov](mailto:jay.ginter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Halibut Act (16 U.S.C. 773-773k). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea. The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). NMFS publishes the approved IPHC regulations as annual management measures pursuant to 50 CFR 300.62. Additional management regulations not in conflict with regulations adopted by the IPHC (such as the IFQ Program) may be recommended by the Council and implemented by the Secretary through NMFS to allocate harvesting privileges among U.S. fishermen under the authority of the Halibut Act (16 U.S.C. 773-773k).

The U.S. groundfish fisheries of the exclusive economic zone in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) are managed by NMFS under fishery management plans (FMPs). The FMPs were prepared by the Council under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. Fishing for sablefish

(*Anoplopoma fimbria*) with hook-and-line gear is governed by regulations implementing the BSAI and GOA groundfish FMPs as part of the IFQ Program.

Relevant background on the IFQ Program and each part of this action is presented in the proposed rule published November 1, 2006 (71 FR 64218). That publication proposed changes to the IFQ Program regulations in seven areas. This final rule adopts the following five changes in their entirety:

- Allow transfers of QS for medical reasons;
  - Require a vessel monitoring system for vessels harvesting sablefish in the BSAI;
  - Amend the block program 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 (9.1 mt), based on the 2004 harvest figures, into a block of 20,000 lb (9.1 mt) and the remainder unblocked, and (c) increasing the halibut sweep-up level in Areas 2C and 3A to 5,000 lb (2.3 mt);
  - Allow category D QS to be fished on vessels less than or equal to 60 ft (18.3 m) length overall (LOA) in areas 3B and 4C; and
  - 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 (18.3 m) LOA, to be fished on catcher vessels of any length.
- The sixth proposed change would have tightened the requirements for QS holders who use hired skippers by requiring specific documentation of vessel ownership and requiring ownership of the vessel used by the hired skipper for the prior 12 months. The final rule adopts the documentation requirement but not the 12-month ownership requirement. Specifically, the final rule lists the documentation a QS holder must submit to prove ownership of a documented vessel that a hired master will use. This final rule does not adopt the 12-month ownership requirement in the proposed rule, namely that QS holders must prove at least the minimum vessel ownership (20 percent ownership interest) for 12 consecutive months prior to using a hired master. NMFS is seeking clarification from the Council on whether the Council wishes to exclude from the 12-month requirement those QS holders whose vessels need temporary repairs and, for that reason, have their QS fished from vessels that the QS holders have owned less than 12 months.

This final rule does not adopt the seventh proposed change. The final rule

does not change the Product Recovery Rate (PRR) for bled sablefish from 0.98 to 1.00. The Secretary disapproves this proposed rule because it would violate National Standard 2 of the Magnuson-Stevens Act: "Conservation and management measures shall be based upon the best scientific information available."

The parts of the final rule affecting the halibut fishery are adopted under the authority of the Halibut Act. The parts of the final rule affecting the sablefish fishery are adopted under the authority of the Magnuson-Stevens Act. This final rule also implements Amendment 67 to the FMP for Groundfish for the Gulf of Alaska (Notice of Availability published October 3, 2006; 71 FR 58372), which allows category B QS to be fished on a vessel of any length in all areas (November 1, 2006; 72 FR 64218). Amendment 67 was approved by the Secretary on January 3, 2007.

The final rule also adopts two administrative changes that were in the proposed rule (November 1, 2006; 72 FR 64218). The first administrative change clarifies the existing regulation that once an IFQ permit holder has caught his or her total sablefish IFQ, the IFQ permit holder can not catch additional IFQ sablefish in State of Alaska (State) or Federal waters. The second administrative change eliminates the term "IFQ card" and replaces it with "IFQ hired master permit." The final rule extends this change to the Western Alaska Community Development Quota (CDQ) Program, changing the term "CDQ card" to "CDQ hired master permit."

The background and rationale for each part of this final rule were explained in the proposed rule, published November 1, 2006 (71 FR 64218). Changes made in the final rule from the proposed rule are explained below.

#### Changes in the Final Rule

This section explains the changes from the proposed rule in the final rule, except editorial changes, which are not discussed.

1. The final rule revises §§ 679.4, 679.5, and 679.7 and extends the administrative change in the proposed rule regarding IFQ cards to the CDQ Program. The CDQ halibut fishery and the IFQ halibut fishery are largely subject to the same fisheries management regulations. The two fisheries have comparable permitting and reporting requirements. The final rule eliminates the term "IFQ cards." To maintain consistency between the IFQ Program and the CDQ Program, the final rule also eliminates the term "CDQ

cards." Under the final rule, NMFS instead will issue "CDQ permits" and "CDQ hired master permits."

As described in the proposed rule, CDQ cards, like IFQ cards, originally served as a catch accounting tool for identification and catch reporting through a swipe card computer system. NMFS has replaced that system with an Internet-based reporting system. Hence, CDQ cards are obsolete and unnecessary. CDQ hired masters will be required to carry an original CDQ hired master permit for identification purposes while fishing for or making landings of CDQ halibut and a copy of the CDQ permit under which they are fishing. The final rule also revises associated terms, such as changing "CDQ cardholder" to "CDQ hired master permit holder."

2. The final rule clarifies who may seek a medical transfer provision of catcher vessel QS under § 679.42(d). The final rule uses the term "QS holder" as the most accurate and precise term. The proposed rule used the term "IFQ holder" and "QS holder." An "IFQ holder" could be confused with an "IFQ permit holder." Usually, an IFQ permit holder will also hold QS, but a few IFQ catcher vessel permit holders do not hold QS because they are leasing QS from the heir of a deceased QS holder under § 679.41(k) or from a Community Quota Entity under § 679.41(l). The IFQ Program generally does not allow catcher vessel QS to be leased; however, the Council and the Secretary have approved leasing in these restricted situations. The person who leases catcher vessel QS receives an IFQ permit and is therefore an IFQ permit holder, but not necessarily a QS holder.

NMFS concludes that the Council intended to allow medical transfers by QS holders, not the slightly larger class of IFQ permit holders. The IRFA, prepared by Council staff, described those eligible for the benefit of medical transfers as "individual halibut or sablefish QS holders." If IFQ permit holders who are lessees could obtain a medical transfer of the right to fish the pounds remaining on their IFQ permit, those IFQ permit holders would, in essence, be subleasing QS. Because the basic rule in the IFQ Program is that catcher vessel QS cannot be leased, and because the Council has approved leasing only in strictly limited situations, NMFS concludes that the Council did not intend to allow subleasing of QS and did not intend to grant the benefit of medical transfers to IFQ permit holders who are fishing leased QS.

A corollary of this conclusion is that a QS holder may obtain a medical

transfer only of the IFQ derived from the QS certificate issued in the name of the QS holder. Sometimes a QS holder has IFQ derived from his or her QS and IFQ leased from another QS holder on the same IFQ permit. The QS holder may obtain a medical transfer only for the IFQ derived from his or her own QS. The final rule makes explicit that NMFS may not approve a medical transfer of leased QS.

By specifying that a "QS holder" may obtain a medical transfer, the final rule also clarifies that an IFQ or CDQ hired master permit holder cannot obtain a medical transfer other than for his or her IFQ. If a hired master becomes sick and unable to participate in the fishery, the QS holder who hired the master can hire another master. Again, NMFS concludes that the Council did not intend to allow subleasing of QS, in this instance by the hired master who becomes sick.

3. The final rule clarifies who may receive an emergency waiver under § 679.42(d)(1). This provision allows NMFS to waive the requirements that the person authorized to fish IFQ sablefish or halibut be present on the vessel and sign the landing report, if that person experiences an extreme personal emergency during a fishing trip. The prior regulation stated that NMFS could waive those requirements for an IFQ card holder. Because the rule eliminates IFQ cards, the final rule states that NMFS may waive those requirements for "a person authorized to fish IFQ halibut or IFQ sablefish," which may be an IFQ permit holder or an IFQ hired master permit holder.

4. The final rule eliminates the requirement proposed at § 679.42(d)(2)(iv)(B) that NMFS disapprove an application for a second medical transfer unless a health professional attested to a reasonable likelihood of recovery of the applicant. This requirement is eliminated from the final rule because the Council motion adopting this action did not have that requirement. Further, this requirement would put an applicant's doctor or other health professional and the applicant in a difficult situation if the doctor could not attest that the applicant had a reasonable likelihood of recovery. Additionally it might be hard for a health professional to assess whether the applicant/patient has a reasonable likelihood of recovery if the patient is in the early stages of diagnosis and treatment of a disease or condition. NMFS notes that the Council's motion had other elements which prevented potential abuse of medical transfers such as a prohibition against a QS holder receiving a medical transfer more

than twice in five years and the requirement for proof of a qualifying medical condition from a health professional. These requirements were in the proposed rule and are retained in the final rule.

5. The final rule clarifies the documentation that a QS holder must submit to prove the QS holder's minimum 20 percent ownership in the vessel from which a hired master will fish the QS. The QS holder who is an owner of a documented vessel must submit an Abstract of Title issued by the U.S. Coast Guard to show that the QS holder is an owner of the vessel and, if the Abstract of Title does not prove the required percentage interest, the QS holder must submit additional written documentation. The QS holder who is the owner of an undocumented vessel must submit a State of Alaska boat registration or a commercial vessel license that shows that the QS holder is an owner of the vessel. The State of Alaska issues an "Alaska Boat Registration" through its Department of Motor Vehicles and a "Commercial Vessel License" through its Commercial Fisheries Entry Commission. If either State document does not prove the required percentage ownership, the final rule clarifies that the QS holder must submit further written documentation to prove the required percentage ownership.

This clarification was necessary because the proposed rule at § 679.42(i) and (j) required proof of ownership of a documented vessel "as supported by the U.S. Abstract of Title issued by the U.S. Coast Guard and any other documentation indicating percentage ownership" and proof of ownership of an undocumented vessel "as supported by a State of Alaska vessel registration and any other documentation indicating percentage ownership." The problem with this language is that it did not clearly state the role and purpose of "other documentation." On one hand, read literally, it required the QS holder to submit the Abstract of Title and other documentation, even if the abstract or the State document sufficiently proved percent ownership. On the other hand, it could have been read to allow a QS holder to prove the required ownership interest through other documentation only, without submitting an Abstract of Title. The latter interpretation would have been the same as the prior regulation which merely required a QS holder to submit written documentation of his or her ownership interest.

The Council concluded that the prior regulation the requirement simply for written documentation was inadequate. It was concerned that some QS holders

were abusing the hired skipper provision through vessel ownership arrangements that were informal and unverifiable. The Council also was responding to NMFS staff reports that NMFS had difficulty verifying the required ownership under the prior regulation which simply required written documentation. The final rule addresses the Council's concerns by requiring that the QS holders submit specified formal documents that are issued by the government to prove that they are an owner of the vessel that will be used to harvest their IFQ. If these formal documents do not show percentage ownership, the final rule requires QS holders to supplement those formal documents with other written documentation.

6. The final rule does not adopt the proposed requirement that a QS holder prove the minimum 20 percent vessel ownership for 12 months prior to the QS holder's use of a hired master. NMFS is seeking clarification from the Council on whether the Council wants also to exempt QS holders whose vessels need repairs from the 20 percent/12-month requirement and, if so, the criteria for the exemption. For a full explanation, see Response to Comment 4.

7. The final rule adds § 679.42(g)(2) which directs the Regional Administrator to identify all halibut blocks in Areas 3B and 4A that result in an allocation of more than 20,000 lb (9.1 mt) of halibut IFQ, based on the 2004 total allowable catch (TAC) for fixed gear halibut in those areas, and divide those halibut blocks into one block of 20,000 lb (9.1 mt) and the remainder unblocked, based on the 2004 TAC. This action was analyzed in the RIR/IRFA and specifically adopted by the Council. The proposed rule inadvertently omitted the regulatory text for this action although its description and rationale were presented in the proposed rule, and NMFS gave notice that it was considering approving it (71 FR 64222 - 64223). The final rule adopts this action as recommended by the Council and described in the proposed rule.

Because of this change, existing paragraph (g)(2) with the heading "Holding or to hold blocks of QS" is renumbered as paragraph (g)(4).

Proposed paragraph (g)(3) in this section, headed "Transfer of QS blocks," remains paragraph (g)(3) in the final rule. However, the final rule clarifies paragraph (g)(3) to provide an exception to the requirement in paragraph (g)(1)(i) for those persons who have more than one block of QS and unblocked QS as a result of the Regional Administrator's action under paragraph

(g)(2). The final rule also eliminates a specific effective date for this provision and relies instead on the overall effective date of the final rule (see DATES).

8. The final rule does not approve the proposed change in the PRR for bled sablefish from 0.98 to 1.00. NMFS finds that this proposed change is not based on the best scientific information available, and would violate National Standard 2 in the Magnuson-Stevens Act, that requires conservation and management measures to be based upon the best scientific information available (16 U.S.C. 1851 (a)(2)). Therefore, the PRR for bled sablefish remains at 0.98. See responses to comments 20, 21 and 22 below.

### Comments and Responses

NMFS received 12 letters that contained 22 comments on the proposed rule.

*Comment 1:* One individual, who identified himself as a current IFQ holder, stated that he supported all the proposed changes as beneficial to the IFQ Program.

*Response:* This support is noted.

*Comment 2:* NMFS allows too many fish to be harvested. Fish species are going extinct. NMFS should cut all quotas by 50 percent this year and 10 percent each succeeding year.

*Response:* This rule changes certain features of the IFQ Program and does not affect how many halibut or sablefish may be harvested in Federal waters off Alaska. NMFS disagrees with the commenter's perception that fish species off Alaska are going extinct. Halibut and groundfish are managed conservatively and sustainably with annual quotas based on the best scientific information available. The IPHC recommends annual catch limits for Pacific halibut, which are adopted in regulations that the United States Secretary of State approves under section 4 of the Halibut Act. NMFS annually publishes catch limits and other management measures that are recommended by the IPHC to sustain halibut stocks. For 2007, the annual management measures for halibut were published March 14, 2007 (72 FR 11792). NMFS sets the annual TAC for groundfish, including sablefish, in regulations which are adopted by the Secretary under the Magnuson-Stevens Act. NMFS annually publishes TAC specifications for groundfish, including sablefish, and the rationale for the TAC, in the **Federal Register**. The TACs for groundfish for 2007 and 2008 in the BSAI were published on March 2, 2007 (72 FR 9451). The TACs for groundfish for 2007 and 2008 in the Gulf of Alaska

were published on March 5, 2007 (72 FR 9676).

*Comment 3:* Two comments specifically supported the new provision at § 679.42(d)(1) to allow medical transfers by QS holders.

*Response:* The support is noted.

*Comment 4:* Under proposed § 649.42(i)(1), QS holders who want to use a hired master to harvest their IFQ must have owned at least a 20 percent interest in the vessel from which the QS will be fished for at least 12 months prior to their using a hired master permit. The proposed regulation at § 679.42(i)(6) exempted a QS holder from this requirement if the QS holder suffered “the actual total loss or constructive total loss” of a vessel owned by the QS holder. The final rule should define “constructive total loss” to include a vessel that is out of the fishery for 30 days or longer. Another comment said that a vessel owner should be exempt if his or her vessel would be out of the fishery for repairs for two to six months.

*Response:* NMFS acknowledges that the term “constructive total loss” was not defined in the proposed rule and agrees that it should be defined in a final rule. The terms “total loss” and “constructive total loss” are most commonly used in insurance. “Total loss” means the complete destruction of an item of property. “Constructive total loss” means a loss to insured property that is not total, but is so great that repair would cost more than the value of the property. Some definitions of “constructive total loss” include that the item has lost its total usefulness to the insured person. If NMFS were going to adopt the 12-month vessel ownership requirement in the final rule, the only QS holders that it could exempt from the 20 percent/12-month requirement would be those IFQ permit holders who had suffered a total loss or constructive total loss of their vessels, in accordance with a standard definition of those terms.

NMFS cannot adopt in this final rule a definition of “constructive total loss” that includes a vessel that is out of the IFQ fishery temporarily for repair. This definition of “constructive total loss” was not in the proposed rule. This definition is antithetical to the standard definition of “constructive total loss,” which is that the item is unable to be repaired for less than the value of the item. Thus, NMFS could not, consistent with the requirements in the Administrative Procedure Act, adopt in this final rule an exemption from the 12-month requirement for QS holders whose vessels are undergoing repair because the proposed rule did not give

notice that NMFS might adopt that provision. A vessel repair exemption is not a logical outgrowth of the proposed rule, which exempted only QS holders who suffered a total loss or constructive total loss of their vessels.

Comments on this subject, however, bring to light a consequence of the proposed rule, which NMFS concludes was unanalyzed, and probably unintended, by the Council. Currently, if a QS holder’s vessel needs repairs, the QS holder can acquire a 20 percent ownership interest in another vessel and use a hired master on that vessel to harvest his or her IFQ. Under the proposed rule, if a QS holder’s vessel suffers damages and is out of the fishery for repairs, the QS holder would not be able to hire a master to fish his or her QS until his vessel is repaired, or until 12 months have elapsed, unless the QS holder had a minimum 20 percent ownership interest in a second vessel for the 12 months prior to wanting to use a hired master and the second vessel was available to fish in the IFQ fishery. NMFS is not willing to presume that many or most QS holders could maintain at least a 20 percent ownership interest in two or more vessels.

For QS holders who may use hired masters (other than in Area 2C for halibut or Southeast Outside for sablefish), the proposed rule left them the option of personally fishing their IFQ. If an individual QS holder is personally fishing his or her IFQ, this can be done from any boat, even if the QS holder has no ownership interest in it. For QS holders that must use hired masters such as corporations or partnerships that were initial QS recipients, the proposed rule did not leave them that option because they must use a hired master.

It is not clear whether the Council wanted to exempt QS holders whose vessels need repairs from the 12-month vessel ownership requirement, from the 20 percent ownership requirement or from the combined 20 percent/12-month vessel ownership requirement. In December 2006 the Council passed a resolution asking NMFS to define “constructive loss.” The Council then submitted a comment on the proposed rule. The Council’s comment suggests that the Council wanted NMFS to define “constructive loss” to include a vessel that was out of the fishery for repairs. In that case, however, NMFS has insufficient guidance on what vessel repair situations to exempt. This uncertainty leads to the following questions: Would any repair of a vessel, or only certain types of repairs, trigger an exemption from the 12-month ownership requirement? Would a QS

holder who is scheduling a vessel upgrade or routine maintenance be exempt or only a QS holder whose vessel needs unanticipated repairs? Would the exemption be triggered by repairs over a certain dollar amount or by repairs that kept the vessel out of the fishery for a certain period of time? Would it matter whether the need for repairs occurred early or late in the IFQ season? For how long would the QS holder be exempt from the 12-month requirement? And would the QS holder whose vessel needs repairs be exempt from the 12-month ownership requirement and the 20 percent ownership requirement? After receiving Council guidance on this issue, the Administrative Procedure Act would require that NMFS publish the criteria or conditions of the “vessel repair” exemption in a new proposed rule, before NMFS could adopt it in a final rule.

Therefore, NMFS is not adopting the 12-month requirement in the final rule and is seeking clarification from the Council on whether it wants to exempt QS holders whose vessels need repair from the 20 percent ownership requirement, the 12-month ownership requirement, or the combined 20 percent/12-month requirement and, if it does, the terms of the exemption.

*Comment 5:* The only QS holders who have the right to use a hired skipper are QS holders who were initial recipients of QS for catcher vessels and who meet other requirements. Some of these “old timers” will not be able to afford to buy or build a new boat and then leave it tied to the dock for 12 months before it goes fishing.

*Response:* The proposed regulation would not have required a QS holder to leave a boat tied to the dock before the vessel goes fishing, as it could have been used in non-IFQ fisheries. If NMFS had adopted this part of the proposed rule, NMFS would have had to determine whether to make this requirement effective immediately or whether to delay the effective date for 12 months. See Comment 9.

As noted in response to Comment 4, NMFS has concluded that the proposed regulation affected whether these “old timers” could use hired masters to fish their IFQ when their vessels were out of the fishery temporarily for repairs. NMFS is seeking clarification from the Council on whether it wants to exempt from the 20 percent/12-month vessel ownership requirement only those QS holders who suffer a total loss or total constructive loss of their vessels or whether it also wants to exempt QS holders whose vessels are temporarily

out of the fishery for repairs and, if so, the terms of the exemption.

*Comment 6:* The proposed requirement for a QS holder to own a 20 percent interest in a vessel for 12 months prior to using a hired master will make entry into the halibut and longline fishery more difficult. Under the current system, it is easier for a person who owns a vessel, and does not own IFQ, to find IFQ permit holders to be partners.

*Response:* The imposition of a 12-month vessel ownership requirement would still allow those seeking entry into the IFQ fishery to prove themselves by forming ownership agreements with IFQ permit holders, but they would have to be longer-term agreements, i.e., a year or longer. If the imposition of the 12-month ownership requirement causes QS holders who have been entering into short-term ownership agreements to sell their QS, more QS will be available for purchase by those seeking entry into an IFQ fishery.

As noted in response to Comment 4, however, NMFS needs the Council to clarify whether it wishes to exempt QS holders whose vessels are temporarily out of the IFQ fishery for repairs from the 20 percent/12-month ownership requirement and if so, the terms of the exemption.

*Comment 7:* The problem of QS holders forming short-term vessel ownership agreements has never been quantified and is a personal issue only.

*Response:* NMFS disagrees that the proposed 12-month vessel ownership rule was merely responding to "personal issues." The Council was responding to genuine policy concerns. From the inception of the IFQ Program, the Council's goal has been to have an owner-operated fleet in the IFQ fisheries. Based on the Council's recommendation, NMFS adopted the minimum 20 percent vessel ownership requirement in 1999 (May 10, 1999; 89 FR 24960). Before that, an IFQ permit holder wishing to use a hired master had to prove only "an ownership interest" and IFQ permit holders could acquire as little as 0.1 percent ownership interest in a vessel expressly for the purpose of hiring a skipper (December 16, 1998; 63 FR 69256). The Council required a minimum 20 percent ownership interest to prevent that practice, which had circumvented the Council's goal of an owner-operated fleet in the IFQ fisheries. But the minimum 20-percent-ownership requirement still allowed an IFQ permit holder to "own" a 20 percent interest in a vessel for a short period of time, e.g., the duration of a two- or three-week fishing trip. Such short-term ownership

agreements undermined the development of an owner-operated fishery. Therefore, in addition to a substantial percentage ownership, defined as 20 percent or more, the Council recommended an additional requirement of owning the vessel for a substantial period of time, defined as twelve months or longer.

The proposed 12-month ownership requirement resulted from recommendations of Council committees established to assist the Council in its conservation and management duties under the Magnuson-Stevens Act. In October 2003 the IFQ Implementation and Cost Recovery Committee (Committee) recommended a number of changes in the IFQ Program. The Committee recommended that NMFS implement criteria to tighten compliance with the minimum 20 percent vessel ownership requirement that the Council adopted in 1999, including a one-year limitation on ownership changes. In December 2003, the Advisory Panel for the Council reviewed the Committee's recommendations and recommended that the Council analyze them. In December 2003, the Council approved the Committee's recommendations for analysis. In October 2004, the Council approved publication of the analysis for public review and comment. In December 2004, the Council approved tightening the 20 percent vessel ownership requirement by requiring specified documentation of ownership and by requiring that the QS holder have the requisite minimum ownership interest for twelve months prior to using the hired skipper exception. All meetings of the Council and its committees are open to the public.

As noted in response to Comment 4, however, the proposed rule would have prevented all QS holders from entering into short-term ownership agreements, including those who do so because their vessels need repairs. NMFS is seeking clarification from the Council on whether the Council wishes to exempt from the 20 percent/12-month ownership requirement those QS holders whose vessels are temporarily out of the IFQ fishery due to repairs and, if so, the terms of the exemption.

*Comment 8:* The proposed requirement that a QS holder own a 20 percent interest in a vessel for twelve months prior to applying to use a hired master is unnecessary because the only QS holders who can hire masters are original recipients. Eventually, no original recipients will exist and all QS holders will have to be onboard the vessel when their IFQ is fished.

*Response:* NMFS agrees that in the long run this problem will be resolved as original recipients pass from the fishery. However, a considerable amount of catcher vessel QS is still held by QS holders who may use hired masters and QS holders who must use hired masters. As of 2002, QS holders who may use hired masters held 42 percent of the halibut catcher vessel QS and 33 percent of sablefish catcher vessel QS. As of 2002, QS holders who must use hired masters held 25 percent of halibut catcher vessel QS and 30 percent of sablefish catcher vessel QS (see Table 3.1 of the FRFA). Because many QS holders are still using hired masters, the Council and NMFS can impose restrictions to prevent these QS holders from, in effect, leasing their QS. Hence, the Council's recommendation and the proposed rule that these original QS holders must have a substantial, long term interest in the vessel from which their QS is fished.

As noted in response to Comment 4, however, the proposed rule would have prevented all QS holders from entering into short-term ownership agreements, including those who do so because their vessels need repairs. NMFS is seeking clarification from the Council on whether the Council wishes to exempt from the 20 percent/12 month ownership requirement those QS holders whose vessels are temporarily out of IFQ fishery due to repairs and, if so, the terms of the exemption.

*Comment 9:* If NMFS adopts the proposed 12-month ownership provision in § 679.42(i) and (j), the effective date of this provision should be 12 months after the regulation is adopted. This would provide lead time for compliance by QS holders before the regulation becomes law.

*Response:* NMFS is not adopting the 12-month ownership requirement in this final rule. If NMFS adopts this requirement in a future rule, NMFS will consider this comment when it sets an effective date for the rule.

*Comment 10:* The proposed 12-month ownership requirement in § 649.42(i) and § 679.42 (j)(1) imposes an unfair burden on QS holders that are required to hire a master to harvest their QS. Maintaining and insuring a vessel for 12 months prior to using the vessel is an inequitable requirement. QS holders who may, or who must, use a hired master could be required to maintain their ownership for a period of 12 months without such an economic burden. An alternative suggested in the comment is to accept only one change annually in a vessel's documentation.

*Response:* NMFS does not see this comment as a reason not to adopt the

12-month ownership requirement. If by "economic burden," the commenter means that the rule may result in QS holders making a more substantial investment in the vessels from which their QS is fished, NMFS sees that as consistent with the Council's reasons for adopting the 12-month ownership requirement. See Response to Comment 7. The alternative suggested by the commenter only one change in vessel ownership a year does not require that the QS holder maintain an ownership interest for 12 months. This alternative still allows a QS holder to use a hired master on a vessel in which the QS holder had an ownership interest only for the duration of a fishing trip.

However, the minimum 12-month requirement would affect all QS holders, including those QS holders who resort to short-term vessel ownership agreements because their regular vessels need repairs. NMFS is seeking clarification from the Council on whether it wishes to exempt QS holders whose vessels are temporarily out of the IFQ fishery for repairs from the 20 percent/12-month ownership requirement and, if it does, the terms of the exemption.

*Comment 11:* The proposed regulation is good because it tightens up the requirement for a QS holder to use a hired skipper. The current regulation is too vague.

*Response:* NMFS agrees that the previous regulation for documentation of a QS holder's 20 percent ownership interest in the vessel was vague in that it required an individual to submit only non-specified "written documentation." The final rule requires specific documentation an Abstract of Title for documented vessels and a State of Alaska boat registration or commercial vessel license for undocumented vessels. See the discussion of change number 5 under "Changes in the Final Rule."

The proposed rule also sought to restrict the use of hired masters by requiring a QS holder to own the required interest in a vessel for at least 12 months before receiving a hired master permit. As noted, NMFS is seeking clarification from the Council on whether it wants to exempt QS holders whose vessels need repairs from the minimum 12-month vessel ownership requirement and, if so, the terms of the exemption.

*Comment 12:* The final rule should define what documentation is necessary to prove a "constructive total loss" for the exemption from the 12-month ownership vessel requirement in § 679.42(i)(6).

*Response:* This final rule does not specify what documentation is necessary to prove a "constructive total loss" because it does not adopt any provision that contains the term "constructive total loss." As previously noted, NMFS is seeking clarification from the Council on whether it wants to exempt from the 12-month ownership requirement only those QS holders who have suffered a total loss or total constructive loss of their vessel or whether it also wants to exempt those QS holders whose vessels are out of the IFQ fishery temporarily for repair. If in the future the Council proposes a rule that requires a QS holder to prove a "constructive total loss" of a vessel, the Council will evaluate whether to specify the documentation required to prove the loss.

*Comment 13:* The proposed regulation specifying the documentation that a QS holder must submit to prove 20 percent ownership interest in a vessel is unnecessary because an owner already has to produce documentation to prove 20 percent ownership of a vessel.

*Response:* NMFS disagrees. The prior regulation required only that NMFS determine 20 percent ownership of a vessel "on the basis of written documentation" (50 CFR 679.42(i)(1)). The Council was concerned that, under the prior regulation, some vessel owners were abusing the hired skipper provision through the use of informal, unverifiable transactions. The Council also was responding to NMFS staff reports that, under the prior regulation, it had been difficult to verify the minimum 20 percent vessel ownership. The final rule meets the Council's concerns by requiring the QS holder to submit a formal document of ownership issued by a government agency. An owner of a documented vessel must submit an Abstract of Title issued by the U.S. Coast Guard that shows the QS holder is an owner of the vessel. An owner of an undocumented vessel must submit a State of Alaska boat registration or commercial vessel license that shows the QS holder is an owner of the vessel. If these documents prove the required percentage ownership, the QS holder need not submit any other documentation. If these formal documents do not prove percentage ownership, the QS holder must prove the required percentage ownership through additional written documentation.

*Comment 14:* Vessel operators who harvest sablefish in the BSAI should not be exempt from the Vessel Monitoring System (VMS) based on vessel size. If an exemption is desired, it should be based

on the value of the sablefish that the vessel harvests in a year.

*Response:* This rule does not exempt any vessel operator who harvests sablefish in the BSAI from the requirement to have a VMS. The requirement applies to all vessels. The preamble to the proposed rule invited comment on whether small vessels should be exempt from the VMS requirement. No comments were received in favor of exempting vessels based on size. This comment merely stated that an exemption based on the amount of a vessel's harvest would be better than an exemption based on an overall length of a vessel. For reasons described in the preamble to the proposed rule, NMFS concludes that no exemption is warranted.

*Comment 15:* Our vessel is already required to have a VMS, because we fish in critical habitat in the Aleutian Islands and in area 4B. Using the VMS for clearance in the BSAI has turned out to have some actual time and fuel saving benefits.

*Response:* NMFS notes this information.

*Comment 16:* The number of QS blocks that a person can hold should not be increased from two blocks to three blocks. The proposed regulation allows further fleet consolidation, will result in less blocks available for purchase, will likely increase the cost of QS and will make entry into the halibut fishery more difficult.

*Response:* When the IFQ Program was started, all initially issued QS that resulted in less than 20,000 lb of IFQ was "blocked," that is, issued as an inseparable unit. Also, no person was allowed to own more than two QS blocks per species in any regulatory area, or one QS block, if unblocked QS also was held by that individual for that area. The block approach was meant to prevent excessive consolidation in the IFQ fisheries, and maintain the diversity of the IFQ longline fleet, without compromising the flexibility and economic efficiency of the program as a whole. As noted in the FRFA for this action, the proportion of QS that is unblocked QS ranges from 29 percent in Area 2C to 65 percent in Area 3A. NMFS is aware of the concerns raised in the comment; they were discussed by the Council and discussed in the FRFA for this action. The FRFA notes that an increase from two to three blocks would lead to consolidation of QS, and would be likely to increase the value of blocked QS, but may consequently decrease the value of unblocked QS. The FRFA notes that the action might reduce the availability of entry-level opportunities in the fishery. The

Council weighed these considerations against the potential benefits of easing restrictions on the transfer of large blocks, and on helping small vessel owners constrained by ownership of two small blocks to make more economically viable trips.

*Comment 17:* The sweep up limit for QS blocks in regulatory Areas 2C and 3A should not be increased to 5,000 pounds, particularly in light of the proposal to increase the QS blocks a person can hold from two to three blocks. The proposed sweep up regulation will make entry into the halibut fishery more difficult. If the halibut sweep up limit is increased to 5,000 pounds, at current quota prices, an "entry level" block of halibut would cost approximately \$100,000.

*Response:* The block provisions of the IFQ Program created many blocks that were quite small. The halibut IFQ regulations allow a "sweep-up" of small blocks that would be economically unfishable (i.e., the value of the harvest would not exceed the costs of the fishing trip). This allowed small QS blocks to be permanently consolidated as long as the resulting block did not exceed a specified limit. This limit has been 3,000 lb for halibut, based on 1996 TACs. This final rule implements the Council's recommendation that, for Areas 2C and 3A, the sweep-up limit be increased to 5,000 lb, based on 1996 QS units.

The FRFA for this rule recognizes that the block program was implemented in part to provide entry level opportunity in the IFQ fisheries, and that the increase in the "sweep-up" limit would reduce the numbers of small blocks available in the fishery. In this event, blocks containing more QS units than were previously allowed likely will cost more to purchase. Note that not all blocks would be consolidated to the maximum size, and the amount of unblocked QS would not be affected. The FRFA also indicates that the 3,000-lb sweep-up limit imposed costs on some fishing operations by constraining their growth and efficiency. The FRFA indicates large declines in the numbers of operations in areas 2C and 3A with QS holdings less than 3,000 lb, suggesting that holdings in this size range are not economically viable. Moreover, the block system creates significant transaction costs for operations with two blocks. An operation with two blocks must sell one of its existing blocks before buying a new block. The FRFA notes that the complexity involved in this dual transaction may provide a substantial obstacle to growth for active fishery participants. This final rule allows some

QS holders who currently are at the threshold limit and the block limit to incrementally increase their QS holding without first selling one of their blocks. The Council balanced these considerations before choosing the 5,000 lb limit as its preferred alternative.

*Comment 18:* The "fish down" exception for category B QS in Area 2C and Southeast Outside should not be repealed. The current regulation prevents category B QS in Area 2C and Southeast Outside from being fished on vessels less than 60 feet length overall (LOA). The proposed regulation will have a severe adverse financial effect on IFQ permit holders who purchased vessels larger than 60 feet (18.3 m) LOA because the proposed rule will make QS less available for vessels that size.

*Response:* This final rule makes the category B restrictions for Area 2C halibut QS and Southeast Outside sablefish QS consistent with restrictions in all other halibut and sablefish management areas off of Alaska. The FRFA noted that this action would increase the marketability and potentially the value of unblocked and large blocks of category B QS. In this event, existing holders of category B QS in these areas would see an increase in the value of their holdings. The FRFA further noted that this might reduce the value of category C halibut and sablefish QS, relatively, as the supply of QS was expanded for operators of vessels less than or equal to 60 ft (18.3 m) LOA. While the FRFA points to potential increased costs for large vessels, the costs are not expected to be prohibitive. Large vessel operations may still enter the market to purchase category B shares, and may be in a better financial position to do so. Small vessel owners would be unlikely to drive category B prices above category C and D QS prices because that would increase their cost of usable QS.

*Comment 19:* The exception to the "fish down" regulation for category B QS in Area 2C and Southeast Outside should not be repealed. The proposed rule allows category B QS that currently must be fished on vessels greater than 60 feet (18.3 m) LOA to be fished on smaller vessels. The proposed regulation will decrease scientific data available on the halibut and sablefish fisheries since vessels greater than 60 feet must have observers onboard but vessels smaller than 60 feet do not have to have observers onboard.

*Response:* This rule likely will result in some QS that currently is fished from vessels greater than 60 ft (18.3 m) LOA being fished from vessels less than or equal to 60 ft (18.3 m) LOA and,

therefore, likely will result in somewhat less observer data. NMFS concludes, however, that this is not a reason to disapprove this action for several reasons. First, this rule makes the category B QS restrictions for Area 2C halibut QS and Southeast Outside sablefish QS consistent with the category B QS restrictions in the rest of the State. Second, vessels over 60 ft (18.3 m) LOA that harvest IFQ sablefish and halibut generally must have observer coverage for 30 percent of their fishing days. Therefore, these vessels do not currently generate observer data every time they are fishing. These vessels still will harvest some IFQ halibut and sablefish and will supply observer data from 30 percent of their fishing days. The extent of the decrease in observer data is uncertain but is expected to be marginal. Finally, if the Council and NMFS perceive a harmful decline in observer data, they can propose rules to change the requirements of observer coverage.

*Comment 20:* The Product Recovery Rate (PRR) for bled sablefish should be changed from 0.98 to 1.00, based on the study, "Product Recovery Rates for Bled Sablefish," by NOAA Fisheries and Alaska Longline Fishermen's Association (ALFA) members in Sitka. The study supports the conclusion that the PRR for bled sablefish of 0.98 does not reflect the difference between the weight of bled sablefish and unbled sablefish.

*Response:* NMFS disagrees based on its determination that the study does not support the proposed change in the PRR for bled sablefish from 0.98 to 1.00. NMFS concludes that the proposed change is not based upon the best scientific information available and that adoption of the proposed change would violate National Standard 2 of the Magnuson-Stevens Act. Therefore, NMFS disapproves the proposed change of the PRR for bled sablefish from 0.98 to 1.00. This means that the PRR for bled sablefish remains at 0.98, which is the current PRR in Table 3 to Part 679.

In the preamble to the proposed rule, NMFS noted "serious concerns that the proposal may not be based on sufficient scientific evidence" (71 FR 64222). NMFS specifically requested public comment on the appropriate PRR for this product type. Public comment did not demonstrate to NMFS that the proposed rule was based on the best scientific information available. Therefore, NMFS cannot approve the proposed change in the sablefish PRR.

A brief description of the study cited in the comment follows (the full study is in Appendix 2 of the FRFA). In 2002 and 2003, NMFS staff and ALFA



members conducted field experiments to determine the change in individual sablefish weight due to blood loss from different types of harvest methods. Fish weights were compared before and after bleeding. Sablefish lost 2 percent of their weight when bled on deck without flowing seawater. Sablefish lost 1.6 percent of their weight when bled and immersed in flowing seawater. Sablefish lost 2 percent of their weight when carefully brought aboard and bled. Sablefish lost 1.7 percent of their weight when they were gaffed aboard and bled without flowing seawater. Sablefish lost 1 percent of their weight when gaffed aboard, and not intentionally bled, because of blood loss at the gaff wound. The study concluded the following statement:

The Product Recovery Rate currently applied by fishery managers to estimate catch weight for bled sablefish (2.0 %) slightly overestimates "blood loss" for fish gaffed aboard (1.7 %). The PRR applied by fishery managers for unbled sablefish (0.0 %) underestimates "blood loss" for fish gaffed aboard (1.0 %). Estimating the actual change in weight due to blood loss for a commercial fishing trip is difficult because it requires accounting for storage methods and handling practices.

The question is whether this study supports the proposed change in the PRR for bled sablefish from 0.98 to 1.00. The study does not support that change. The study concludes that the 2.0 percent PRR for bled sablefish "slightly overestimates" blood loss for bled sablefish. The blood loss for bled sablefish was 1.7 percent. The slight overestimation is 0.03 percent. All the percentages in the PRR table are whole percentages (Table 3 to Part 679). Therefore, under conventional rounding rules, 2 percent is the closest whole percentage to the actual blood loss of 1.7 percent and is the proper PRR for bled sablefish.

A change in the PRR for bled sablefish to 1.00 would imply that NMFS concluded that sablefish, when bled, lose no weight. The PRR for all other groundfish species, when bled, is 0.98 (Table 3 to Part 679). The conclusion that a species, when bled, loses no weight is counterintuitive and the study does not support that conclusion.

The commenters are correct that the study results do question the accuracy of the PRR of 1.00 for unbled sablefish. The PRR for unbled sablefish is 1.00, which means NMFS adds nothing to the weight of unbled sablefish when debiting the IFQ account of the IFQ permit holder that harvests sablefish that are categorized as unbled. The study stated that gaffing was the normal method for bringing sablefish aboard during longline fishing. Gaffed sablefish

are treated as unbled. The study found a blood loss of 1 percent for gaffed sablefish because gaffing itself even with no intentional bleeding causes blood loss. Hence, the study suggests that the PRR for bled sablefish is inaccurate, relative to the PRR for unbled sablefish, because fishermen who catch and bleed their sablefish are charged 2 percent more than fishermen who catch and gaff their sablefish. The study does not suggest, however, that even this "relative inaccuracy" is 2 percent, because it concludes that bled sablefish weigh 1 percent less, not 2 percent less, than gaffed sablefish. Thus, even if "relative inaccuracy" were a valid basis to change the PRR for bled sablefish, it would support a change in the PRR for bled sablefish only from 0.98 to 0.99, an alternative that was rejected by the Council and not proposed.

If the current PRRs do not accurately reflect the difference between bled and unbled sablefish, it may be because the PRR for unbled sablefish is inaccurate, not because the PRR for bled sablefish is inaccurate. The problem may be that gaffed sablefish are treated as unbled but they are, in fact, bled, albeit unintentionally. To solve this problem, the Council could consider recommending a PRR for unbled sablefish of 0.99 or recommending a new category for gaffed sablefish with a PRR of 0.99. This problem cannot be solved by changing the PRR for bled sablefish from 0.98 to 1.00, because the conclusion that a sablefish loses no weight when bled is not based on the best available scientific data.

*Comment 21:* The PRR for bled sablefish should be changed from 0.98 to 1.00 because the study, "Product Recovery Rates for Bled Sablefish," concluded that different storage methods and handling practices could affect blood loss.

*Response:* NMFS agrees that the study concluded that different storage methods and handling practices could affect blood loss. The study concluded, "Measuring an accurate PRR requires further studies of the effects of storage methods (ice or refrigerated seawater) and handling practices (gaffing, hook removal devices, and soak time), which would be time-consuming to complete." The only practice that the study analyzed and stated was normal was gaffing. The study concluded that gaffing led to a 1 percent weight loss. Gaffed fish are treated as unbled. As noted in response to Comment 20, this conclusion about gaffed fish does not support changing the PRR for bled sablefish from 0.98 to 1.00. The study did not state that any other storage or

handling method was standard. The study did not analyze the effect of any other storage or handling methods. Therefore, the caveat in the study about different storage and handling practices does not support changing the PRR for bled sablefish from 0.98 to 1.00.

*Comment 22:* A PRR of 0.98 for bled sablefish discourages bleeding sablefish, which is bad because bleeding improves the quality of product.

*Response:* The FRFA noted that in the fall of 2005, Council staff interviewed representatives of the major sablefish processors and the unanimous response was that they paid fishermen no price premium for bled versus unbled sablefish. If quality is measured by the market by what processors are willing to pay bleeding does not increase quality.

A more basic problem exists with this argument. Any PRR less than 1.00 for any fish product "discourages" that product because a fisherman's IFQ account is debited more for that product than for a whole fish product. For example, the PRR for sablefish headed and gutted without tail is 0.50 (Table 3 to Part 679). This means that if an IFQ permit holder reports a sablefish headed and gutted without a tail that weighs 10 pounds, the permit holder will be counted as having caught a sablefish that weighed 20 pounds. Although this arguably discourages heading and gutting and removing the tail of the sablefish, the discouragement is compensated to the extent that buyers want that sablefish product enough to pay fishermen for the time, labor, and expense to produce it.

The purpose of the PRR is not to encourage or discourage particular processing activities. The purpose of the PRR is to accurately measure the biomass of fish that is removed from the ocean. NMFS concludes that the current PRR for bled sablefish accurately measures the biomass of sablefish that is removed from the ocean and is based on the best scientific information available. Because NMFS concludes that the proposed 1.00 PRR for bled sablefish is not based on the best scientific information available, the proposed change is not approved.

### Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 67 is necessary for the conservation and management of the sablefish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The FRFA prepared for each action assesses potential impacts on small entities for purposes of the Regulatory



Flexibility Act (RFA). NMFS reviewed multiple alternatives for each individual action, including a "no action" alternative and a preferred alternative, in separate FRFAs. Each FRFA describes the potential adverse impacts on small entities, attributable to the proposed alternatives for each action.

The objective of each action in this final rule and its legal basis is explained in the preamble of the proposed rule (71 FR 64218) and in this final rule. Changes in the final rule from the proposed rule are described under "Changes in Final Rule" above.

NMFS defines all halibut and sablefish vessels as small businesses, for the purpose of this analysis. In 2003, 1,338 unique vessels made IFQ halibut landings, and 409 unique vessels made sablefish landings.

The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from certain restrictions placed on those vessels. The IFQ Program restricts the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to 0.5 percent of all halibut IFQ TAC, or up to 1 percent of all sablefish TAC. In 2003, 295,050 lb (133.8 mt) of halibut constituted 0.5 percent of all the halibut IFQ TAC and 348,635 lb (158.1 mt) of sablefish constituted 1 percent of all the sablefish IFQ TAC. NMFS annually publishes standard prices for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating IFQ holder cost recovery fee liabilities. In 2003 price data suggested that the prevailing prices were approximately \$2.92 per pound for halibut and \$2.36 per pound for sablefish (68 FR 71036; December 22, 2003). In combination, the harvest limits and prices imply maximum ex-vessel revenues of about \$1.68 million for halibut and sablefish together. Although some halibut and sablefish IFQ operations participate in other revenue generating activities, the halibut and sablefish IFQ fisheries probably represent the largest single source of annual gross receipts.

Based on available data, and more general vessel economic activity information of vessels in these IFQ fisheries, no vessel subject to these restrictions is believed to have been used to land more than \$4.0 million in combined gross receipts in 2003. Therefore, all halibut and sablefish vessels have been assumed to be "small entities," for purposes of the FRFA. However, this simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations. No reliable

data exist on vessel affiliation. The conclusions of the FRFA for each action are summarized separately below.

#### *Emergency Medical Transfers*

Since the initial implementation of the halibut and sablefish IFQ Program in 1995, individuals have submitted numerous petitions to NMFS and the Council requesting the temporary transfer of IFQs for medical reasons. These individuals sought medical transfers due to the inability of IFQ holders to physically be onboard the vessel as IFQs were fished. NMFS was previously unable to implement a medical transfer program recommended by the Council due to legal and administrative constraints. The approach proposed in this action would resolve the issues arising from previous approaches.

This action could directly affect 3,349 halibut QS holders and 874 sablefish QS holders. NMFS currently does not have sufficient ownership and affiliation information to determine the precise number of small entities in the IFQ Program or the number that would be impacted by the proposed action. Approximately 12 QS holders contact NMFS or the Council each year for information about medical transfers in the IFQ Program. However, it is not possible to estimate how many QS holders did not contact NMFS or the Council, but would have requested a medical transfer if it were available. This analysis assumes that all halibut and sablefish QS operations are small for RFA purposes.

Alternative 1 was the no action or status quo alternative and would not have any associated adverse economic impacts on directly regulated small entities. However, the status quo would not have advanced the objectives of this action to relieve a burden on certain types of fishing operations. Alternative 2 would allow medical transfers, but would require an applicant to document his/her medical emergency with NMFS. The transfer would also require an affidavit from a licensed medical doctor, an advanced nurse practitioner, or a primary community health aide, that describes the medical condition affecting the applicant and attests to the inability of the applicant to participate in the IFQ fishery(ies) for which she or he holds IFQ permit(s), during the IFQ season. In the case of a family member's medical emergency, the affidavit would describe the necessity for the IFQ permit holder to tend to an immediate family member who suffers from the medical condition. An emergency transfer would not be granted if the individual had been granted an emergency medical

transfer in any two of the previous five years.

Options were considered which would have been less specific about the types of medical professionals from whom affidavits would have been accepted, and which would have allowed transfers for persons who had received medical transfers in three of the last six years. These options might have provided more flexibility to small entities, however the Council and NMFS are also concerned about the potential for abuse of this program, and adopted more conservative measures to better control use of the exemption. These more conservative measures advance the Council's objective of limiting IFQ leasing and encouraging an owner-operator fishery.

An individual must submit an Application for Emergency Medical Transfer of IFQ to receive a medical transfer. Public reporting time per response is estimated to average 2 hours per application. To support the application, the QS holder must submit a written declaration from a medical professional.

#### *Owner Onboard Exception*

The proposed rule, and the Council's preferred alternative for Action 2, had two elements for tightening the requirements for a QS holder to use a hired skipper rather than being onboard the vessel. First, the proposed rule specified the documentation a QS holder had to submit to prove the minimum 20 percent ownership interest in the vessel that the hired skipper would use. Second, the proposed rule required the QS holder to have the minimum ownership interest for 12 months prior to using a hired master. As explained below, the final rule adopts the documentation requirement but does not adopt the 12-month provision.

#### **Specified Documentation**

The requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of IFQ species constitutes a key element of the halibut and sablefish IFQ Program. The Council remains concerned about alleged abuses of the regulatory provision allowing vessel owners who received QS as initial allocation to hire masters to harvest their IFQs without being onboard the vessel. Specifically, the final rule specifies the documentation that a QS holder must submit to prove the required ownership of the vessel that the hired master will use. For documented vessels, the QS holder must submit an Abstract of Title. For undocumented vessels, the QS holder must submit a State of Alaska

registration or license. In both cases, other written documentation may be required if necessary to prove the required percentage ownership interest. The Council adopted the documentation requirement out of concern that some vessel owners were abusing the hired skipper provision through the use of informal, unverifiable transactions. The Council was also responding to NMFS staff reports that, under the prior regulation, it had been difficult to verify the minimum 20 percent vessel ownership.

Two comments on the proposed rule addressed the documentation issue. Comment 11 favored the provision. Comment 13 said the requirement was unnecessary because the current regulation required written documentation. NMFS responded to those comments under "Comments and Responses" and made no change in this provision as a result of public comment.

The final rule could directly regulate a maximum of 4,200 halibut and sablefish QS holders who hold category B, C, or D QS. NMFS currently does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by the present action. The FRFA assumes that all entities affected by the hired master provision are small for RFA purposes.

The FRFA for the documentation provision reviews the status quo (Alternative 1) and the Council's preferred alternative (Alternative 2) which was contained in the proposed rule and is adopted in the final rule. Alternative 1 would maintain the current 20 percent vessel ownership requirement for catcher vessel QS holders eligible to hire a master to harvest IFQs. Current regulations do not specify the documents needed to demonstrate percentage of vessel ownership and, therefore, the requirement is difficult to monitor, verify, or enforce. Alternative 2 amends the regulations to require specific, formal documentation of ownership of the catcher vessel before use of the hired master exception: (1) an Abstract of Title for a documented vessel showing the required 20 percent minimum ownership interest (or other percentage, if applicable), and (2) a State of Alaska vessel registration or license for undocumented vessels. In both cases, other written documentation may be required if necessary to prove the required percentage ownership interest. While the status quo would place a smaller burden on directly regulated small entities, it would not accomplish the objective of tightening the

documentation procedures so as to successfully enforce the regulations. This regulation supports the Council's objective of encouraging an owner-operator fishery.

The projected reporting, recordkeeping, and other compliance requirements of this provision are expected to take one hour per document to prove vessel ownership.

#### **12-month Ownership Requirement**

The final rule did not adopt the 12-month requirement in the Council's preferred alternative for reasons explained in Comments and Responses. NMFS received comments from the public and from the Council on the proposed rule. These comments raised the question of the effect of the proposed rule on QS holders whose vessels need repair and who, for that reason, use a hired master to fish their IFQ from a vessel which they have not owned for 12 months. NMFS concluded that it could not exempt those QS holders whose vessels need repairs from the 12-month requirement because the proposed rule only excluded QS holders whose vessels suffered "constructive total loss." That term is commonly used in insurance and a key element of a standard definition of "constructive total loss" is that the insured item cannot be economically repaired, i.e., the cost of repairing the item is worth more than the item itself. Further, if the Council wishes to adopt a vessel repair exemption, the Council must specify the elements of the exemption. NMFS therefore is not adopting the 12-month requirement in the final rule but is seeking clarification from the Council on a possible exemption to the 12-month vessel ownership for QS holders who resort to short-term ownership vessel agreements because their vessels need repairs.

#### *Sablefish Vessel Clearance Requirements*

This rule adds a VMS-based vessel clearance requirement to the BSAI sablefish fisheries. The BS and AI sablefish fixed gear sectors have not fully harvested their TACs since the beginning of the IFQ Program. Reasons for harvest shortfalls include predation by killer whales, increased costs of traveling to the BSAI, and relatively low catch rates in the BSAI that may result in harvesters fishing in the western GOA and possible misreporting that the harvest was from the BS or AI. The industry has expressed concern that a lack of enforcement may have resulted in misreporting of harvests taken in the GOA as having come from the BSAI.

There are 163 unique persons holding QS in the AI or BS and GOA. Of these unique persons, 42 hold QS in all three areas, 34 hold QS in the AI and GOA, and 43 hold QS in both the BS and GOA for a total of 119 directly affected small entities under Alternative 2. This analysis assumes that all operations are small.

The analysis of vessel clearance alternatives reviews the status quo and the preferred alternative to add either visual clearance or VMS requirements. Alternative 1 would result in no change to the regulations. Alternative 2 imposes a check-in/check-out requirement and/or a VMS requirement. The preferred alternative would implement the VMS requirement option of Alternative 2, without the check-in/check-out option, as a disincentive to misreporting of catch areas.

The status quo alternative would not have created a clearance requirement. An option for Alternative 2 that would have created a visual clearance requirement for vessels that did not carry VMS was not adopted. The status quo alternative would have created smaller costs for operating vessels, but would not have met the monitoring and enforcement objectives of this action, and the objective of increasing public confidence in sablefish management. The visual clearance alternative was not adopted because the lack of personnel, and legal constraints on delegation of enforcement authority to private entities, made it impracticable for enforcement purposes.

This action will create new recordkeeping requirements for fishing operations. The operator of any vessel who fishes for sablefish in the BSAI management area must carry a transmitting VMS while fishing until all sablefish caught in any of these areas is landed. The operator of the vessel also must notify NOAA Fisheries Office of Law Enforcement of the presence of a functioning VMS unit on the vessel at least 72 hours before fishing, and receive a VMS confirmation number.

#### *Bled Sablefish Product Recovery Rate*

Under current regulations, NMFS applies a PRR of 0.98 to all sablefish intentionally bled upon landing. NMFS uses this rate to calculate the equivalent round weight to be attributed to a harvest allocation.

This action could directly affect a maximum of 874 sablefish QS holders (this estimate is probably high because of some double-counting of QS holders), although not all of these IFQ holders land their catch as bled fish. At present, NMFS does not have sufficient ownership and affiliation information to

determine precisely the number of small entities in the IFQ Program or the number that would be adversely impacted by this action. This analysis assumes that all operations are small.

The FRFA reviewed the status quo and two alternatives to change the PRR for bled sablefish. Alternative 1 would not revise the PRR for bled sablefish, and it would remain at 0.98. Alternative 2 would change the PRR to 1.0 for bled sablefish, which would effectively eliminate the PRR. Alternative 3 would change the PRR to 0.99. Alternatives 2 and 3 might have allowed some small fishing entities to increase the revenues from their QS. The Council's preferred alternative was Alternative 2, which was contained in the proposed rule. However, NMFS concluded that the proposed rule, which would have changed the PRR for bled sablefish from 0.98 to 1.00, was not based on the best scientific information available and therefore violated National Standard 2 of the Magnuson-Stevens Act. NMFS explains this conclusion in responses to comments 20, 21, and 22 on the proposed rule. The FRFA incorporates NMFS' responses to these public comments and also concludes that Alternative 2 violates National Standard 2.

No additional recordkeeping or reporting requirements are associated with this action.

#### *Halibut Block Program Amendments*

Since implementation of the IFQ Program, the halibut fleet has experienced large quota increases, consolidation, and changing use patterns. Halibut QS holders have indicated that the existing block and sweep-up restrictions are cumbersome, and changing the restrictions could improve flexibility and efficiency in fishing operations.

This action would directly regulate holders of halibut QS blocks in all IFQ areas. There are 3,205 persons, both individual and collective entities, who hold at least one block of halibut QS. Eighty to ninety percent of QS holders hold at least one block in each regulatory area except for Area 4A. At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of small entities in the IFQ Program, nor the number of directly regulated small entities that would be adversely impacted by the present actions. This analysis assumes that all operations are small for RFA purposes.

The FRFA reviews the status quo and four alternatives to the existing halibut IFQ Program requirements. One alternative would increase block

holding limits, two alternatives would allow the break-up of blocks yielding more than 20,000 lb of halibut, based on the 2004 TACs, and a fourth would increase sweep-up limits for halibut in Areas 2C and 3A.

Alternative 1 is the no action alternative and would not have any associated adverse economic impacts on directly regulated small entities, but would not accomplish the objectives of the action.

Alternative 2 would increase the block limits for persons holding only blocks, and/or persons holding blocks and unblocked QS. Four options were available. The Council chose the option that relaxed the limits the least; under its preferred option a QS holder without unblocked QS would be able to hold three blocks (as opposed to two under the status quo), while a QS holder with unblocked QS would continue to be restricted to holding one block (as under the status quo). Other alternatives would have allowed persons without unblocked QS to hold up to four blocks, or allowed persons with unblocked QS to hold up to 2 or 3 blocks. QS block holders that are currently constrained would benefit from increased operational flexibility under an increased block size limit. This may decrease the market value of unblocked QS in relation to blocked QS, because by relaxing the ownership constraint on blocked QS, it would become relatively more marketable. This would hurt small entities that currently hold it, but benefit small entities that would like to acquire it. There are no data available to determine whether and by how much the alternative would change QS market value.

Alternative 3 would unblock all QS blocks yielding more than 20,000 lb of halibut based on 2004 TACs, in all regulatory areas. The Council modified Alternative 3 by (a) limiting the preferred alternative to only Areas 3B and 4A, because these areas contain the most large QS blocks, and by (b) permitting the division of large blocks into new blocks yielding 20,000 lb, plus unblocked QS. Additional flexibility in managing QS holdings would yield greater asset liquidity to owners of large QS blocks, allowing them to be more responsive to operational needs and economic opportunities. The preferred alternative also may impact the value of unblocked shares in Areas 3B and 4A by increasing the proportion of unblocked QS available in those IFQ areas. Benefits could accrue to holders of large QS blocks, and fishermen wishing to make adjustments to their QS asset holdings to reflect changes in their personal circumstances, or the broader economic

environment (e.g., market demand, input costs). At present, the capital demands associated with transferring very large restricted blocks is reportedly prohibitive. The preferred alternative would contribute to alleviating this potential barrier to the transfer of the large, restricted blocks. The action may increase the amount of unblocked QS and decrease its value. This would hurt small entities currently holding unblocked QS, but may help small entities that had an interest in acquiring more. Differential impacts on the basis of size of the regulated entity attributable to this preferred alternative are difficult to identify, because all are "small" based on criteria in the RFA.

Alternative 4 would allow large QS block holders to divide their holding into smaller blocks, potentially increasing efficient use of the QS holding. Data are unavailable to determine the extent to which QS holders would be likely to take advantage of this option. Should all large holdings be divided, the alternative may impact the market price of block holdings.

Alternative 5 was selected as a part of the preferred alternative. Alternative 5 would increase the halibut sweep-up levels in Areas 2C and 3A from 3,000 lb equivalents to 5,000 lb equivalents in QS units, based on the 1996 halibut TAC. This preferred alternative would allow small QS block holders to incrementally increase their holdings. There are no apparent adverse impacts on small entities.

The Council sought to provide more flexibility for fishing operations to change and grow, and to structure themselves into viable operations, while maintaining a balance with constraints that prevented undue consolidation. The Council relaxed consolidation restrictions somewhat in order to permit operations to restructure more easily, but it did not adopt other alternatives that would have relaxed restrictions by a greater amount because it sought to limit the extent to which consolidation would occur. Alternative 1 was rejected because it would not address the problem. The less restrictive options for Alternatives 2 and 3 were rejected because of the increased scope for consolidation. Alternative 4 was somewhat more restrictive than the preferred version of Alternative 3 in the areas where increased flexibility was considered to be appropriate (3B and 4A), and was thus rejected. Alternative 5 was adopted.

No additional recordkeeping and reporting requirements are associated with this action.

### *Halibut QS Vessel Category Amendments*

Halibut fishermen in western Alaska have identified safety concerns in Areas 3B and 4C, and problems in fully harvesting Area 4C QS, associated with fishing in those areas on small vessels. These problems can be alleviated, in large part, by relaxing the current restrictions on vessel length associated with category D quota share.

The action could potentially directly regulate 243 category D halibut QS holders in Areas 3B, 4A, 4B, and 4C. Currently, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are "small," based on the Small Business Administration guidelines, nor the number that would be adversely impacted by the present action. This analysis assumes that all directly regulated operations are small for RFA purposes.

Four alternatives were considered: (1) the status quo, (2) an alternative permitting category D QS to be fished from category C vessels, (3) an alternative permitting D QS to be fished from category C and B vessels, and (4) an alternative to combine C and D QS. The preferred alternative is Alternative 2 in Areas 3B and 4C, and the status quo in other western Alaska areas.

Alternative 1 is a no action alternative and would not have associated adverse economic impacts on directly regulated small entities. Alternative 1 is the preferred alternative in Areas 4A, 4B, and 4D, because no safety or IFQ harvest concerns were raised by industry in those areas.

Alternatives 2, 3, and 4 would allow category D QS to be fished on larger vessels, which includes vessels less than or equal to 60 ft (18.3 m) LOA for Alternatives 2 and 4, and vessels of any size for Alternative 3. The proposed alternatives could address safety concerns for small vessel operators and concerns over the ability of category D QS holders in Area 4C to completely harvest their IFQs. Because the proposed alternatives are likely to increase the value of category D QS, there may be some corollary decrease in the value of category C QS, and also category B QS in the case of Alternative 3. However, category D QS constitutes such a small share of the aggregate halibut TAC in Area 3B, that such a change in relative value would not be expected to substantially influence the market for QS. There may be a somewhat greater impact in Area 4C.

The objective of this action is to address industry concerns about small

vessel safety in the Western Alaska halibut fisheries in Areas 3B and 4C, and concerns over low harvests of category D QS in Area 4C. Since concerns are specific to Areas 3B and 4C, the status quo action is appropriate for Western Alaska Areas 4A, 4B, and 4D. The status quo alternative does not address the safety objectives in Areas 3B and 4C, and the low harvest concerns in Area 4C, so it was not chosen.

Alternatives 2, 3, and 4 can meet these objectives. A qualitative analysis suggests that these alternatives appear to impose similar costs on directly regulated small entities. Alternative 2, which would allow category D QS to be fished off of category C vessels is the preferred alternative. Both Alternatives 2 and 3 may reduce entry level opportunities by increasing the cost of acquiring category D QS. Alternative 3 would allow category D QS to be fished off of vessels of any size, while Alternative 2 maintains the less than or equal to 60 ft (18.3 m) LOA restriction; thus Alternative 2 would preserve more of the existing fleet structure. Alternative 4 would eliminate category D QS, and may limit the Council's future ability to use this class of QS to meet its programmatic objections. NMFS is not aware of any alternatives, in addition to the alternatives considered therein, that would more effectively meet these RFA criteria.

No additional recordkeeping and reporting requirements are associated with this action.

### *Southeast Alaska QS Restriction Amendment*

In the original IFQ Program for halibut and sablefish, category B QS was permitted to be fished only on a vessel greater than 60 ft (18.3 m) LOA. In 1996 the Council adopted a regulatory change that allowed category B QS to be fished on vessels less than or equal to 60 ft (18.3 m) LOA. At the time, certain category B QS holdings in the Southeast Outside District sablefish and Area 2C halibut fisheries were identified as ineligible for "fish down," and IFQ derived from these quota shares must be fished on a vessel greater than 60 ft (18.3 m) LOA. This was intended to ensure that category B quota share would be available to vessels 60 ft (18.3 m) LOA or greater. However, some fishermen have recently identified this prohibition as unnecessary, inefficient, and burdensome.

This proposed action could potentially affect 72 holders of category B halibut QS in Area 2C, and 87 persons who hold category B sablefish QS in the Southeast Outside District. Indirectly, the action may affect 22 owners of

vessels greater than 60 ft (18.3 m) LOA who made landings in 2003 in the halibut fisheries in Area 2C, 40 large vessel owners who landed sablefish in the Southeast Outside District in 2003, 825 persons who are category B, C, or D halibut QS holders in Area 2C, and 436 persons who are category B or C sablefish QS holders in the Southeast Outside District. Currently, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of RFA small entities in the IFQ Program nor the number that would be adversely impacted by the preferred alternative. For the purposes of this RFA, this analysis assumes that all operations are small.

The preferred alternative would allow all category B QS, in either Area 2C for halibut or the Southeast Outside District for sablefish to be fished on any size catcher vessel. It may have the potential to disadvantage large (greater than 60 ft (18.3 m) LOA) vessel operations that can only harvest category B QS, as competition for access to these QS could be substantially broadened. It may also lead to decreases in the prices of category C and D QS. While the status quo alternative may have smaller adverse impacts on owners of larger vessels and of category C and D QS, the status quo would not accomplish the objective of the action, which is to eliminate a discriminatory provision, align halibut and sablefish program rules in Southeast Alaska with rules elsewhere in the state, and relieve a burden on holders of halibut and sablefish B QS in Southeast Alaska.

No additional recordkeeping and reporting requirements are associated with this action.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0445. Public reporting burden per response is estimated to average 12 minutes for a VMS check-in report, 6 hours for VMS installation, and 4 hours for VMS maintenance.

This rule also contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden per response is estimated to average 2 hours for Application for Emergency Medical Transfer of IFQ and 4 hours for each letter of appeal. NMFS will publish a final rule upon notification of OMB approval and assignment of an OMB control number for this new collection.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Estimated time includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David\_Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 1, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

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

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108 199, 118 Stat. 110.

■ 2. In § 679.1, paragraph (d)(1)(i)(B) is revised to read as follows:

##### **§ 679.1 Purpose and scope.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold sablefish quota shares, sablefish IFQ permits, or sablefish IFQ hired master permits.

\* \* \* \* \*

■ 3. In § 679.2 add definitions in alphabetical order for “Advanced nurse practitioner”, “Licensed medical doctor”, and “Primary community health aide” to read as follows:

##### **§ 679.2 Definitions.**

\* \* \* \* \*

*Advanced nurse practitioner* means a registered nurse authorized to practice

in any state who, because of specialized education and experience, is certified to perform acts of medical diagnosis and the prescription and dispensing of medical, therapeutic, or corrective measures under regulations adopted by the state Board of Nursing.

\* \* \* \* \*

*Licensed medical doctor* means a person who is licensed, certified, and/or registered in accordance with applicable Federal, state, or local laws and regulations, and is authorized to conduct the practice of medicine as defined by the state in which the person resides.

\* \* \* \* \*

*Primary community health aide* means a person who has completed the first of three levels of community health aide training offered by the Norton Sound Health Corporation at the Nome Hospital, the Kuskokwim Community College in Bethel, the Alaska Area Native Health Service in Anchorage, or another accredited training center.

\* \* \* \* \*

■ 4. In § 679.4, paragraphs (a) introductory text, (a)(1)(i), (a)(1)(ii), (d) introductory text, (d)(2), (d)(3)(i), (d)(4), (d)(5), (d)(6)(i), (e) introductory heading, (e)(3), (e)(4), and (e)(5) are revised to read as follows:

##### **§ 679.4 Permits.**

(a) Requirements. Only persons who are U.S. citizens are authorized to receive or hold permits under this section, with the exception that an IFQ hired master permit or a CDQ hired master permit need not be held by a U.S. citizen.

(1) \* \* \*

If program permit type is:	Permit is in effect from issue date through the end of:	For more information, see...
(i) IFQ:		
(A) Registered Buyer	Until next renewal cycle	Paragraph (d)(3) of this section
(B) Halibut & sablefish permits	Specified fishing year	Paragraph (d)(1) of this section
(C) Halibut & sablefish hired master permits	Specified fishing year	Paragraph (d)(2) of this section
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	Paragraph (e) of this section
(B) Halibut hired master permit	Specified fishing year	Paragraph (e) of this section
* * *	* * *	* * *

(d) *IFQ permits, IFQ hired master permits, and Registered Buyer permits.* The permits described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and in the permit requirements of this section.

\* \* \* \* \*

(2) *IFQ hired master permit.* (i) An IFQ hired master permit authorizes the individual identified on the IFQ hired master permit to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the IFQ hired master permit expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) An original IFQ hired master permit issued to an eligible individual in accordance with § 679.42(i) and (j) by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board by a hired master. Except as specified in § 679.42(d), an individual that is issued an IFQ hired master permit must remain on board the vessel used to harvest IFQ

halibut or IFQ sablefish with that IFQ hired master permit during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ hired master permit issued by the Regional Administrator will display an IFQ permit number and the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the IFQ permit holder's IFQ. In addition, IFQ hired master permits will also display the ADF&G vessel identification number of the authorized vessel.

(3) \* \* \*

(i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit holder or IFQ hired master permit holder or to receive and make a CDQ halibut landing by a CDQ permit holder or CDQ hired master permit holder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

\* \* \* \* \*

(4) *Issuance.* The Regional Administrator will issue IFQ permits and IFQ hired master permits annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

(5) *Transfer.* The quota shares and IFQ issued under this section are not transferable, except as provided under § 679.41. IFQ hired master permits and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) \* \* \*

(i) *IFQ permit and IFQ hired master permit.* (A) The IFQ permit holder must present a copy of the IFQ permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(B) The IFQ hired master permit holder must present a copy of the IFQ permit and the original IFQ hired master permit for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

\* \* \* \* \*

(e) *Halibut CDQ permits and CDQ hired master permits.* \* \* \*

\* \* \* \* \*

(3) *Halibut CDQ hired master permits.* An individual must have onboard the vessel a valid halibut CDQ hired master permit issued by the Regional Administrator before landing any CDQ halibut. Each halibut CDQ hired master permit will identify a CDQ permit number and the individual authorized

by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(4) *Alteration.* No person may alter, erase, mutilate, or forge a halibut CDQ permit, hired master permit, Registered Buyer permit, or any valid or current permit or document issued under this part. Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(5) *Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ hired master permit. The person(s) holding the halibut CDQ hired master permit and the Registered buyer must comply with the requirements of § 679.5(g) and (l)(1) through (6).

\* \* \* \* \*

■ 5. In § 679.5, paragraphs (a)(1)(i)(B) and (C); (g)(2)(iv)(A) and (B); (l)(2)(i)(D) and (E); (l)(2)(iii)(C), (l)(2)(iii)(H), (l) and (M); (l)(2)(iv)(B)(2); (l)(2)(iv)(D); (l)(4)(i)(E)(1) and (2); (l)(4)(ii)(D); and (l)(5)(ii) introductory text are revised to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) *IFQ halibut and sablefish.* The IFQ permit holder, IFQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), and (l) of this section.

(C) *CDQ halibut.* The CDQ permit holder, CDQ hired master permit holder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), (l)(1) through (6), (n)(1), and (n)(2) of this section.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(A) A person holding a valid IFQ permit, or IFQ hired master permit, and a Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ sablefish have been landed and reported in accordance with paragraph (l) of this section.

(B) A person holding a valid halibut CDQ hired master permit and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with paragraph (l) of this section.

\* \* \* \* \*

(l) \* \* \*

(2) \* \* \*

(i) \* \* \*

(D) *Remain at landing site.* Once the landing has commenced, the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish or CDQ halibut account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(E) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish.* The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK, and the IFQ permit holder's or CDQ permit holder's account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

\* \* \* \* \*

(iii) \* \* \*

(C) Name and permit number of the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder;

\* \* \* \* \*

(H) ADF&G statistical area of harvest reported by the IFQ permit holder or IFQ hired master permit holder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ permit holder or IFQ hired master permit holder;

\* \* \* \* \*

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

(iv) \* \* \*

(B) \* \* \*

(2) The IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must initiate a Landing Report by logging into the IFQ landing report system using his or her own password and must provide identification information requested by the system.

\* \* \* \* \*

(D) *Properly debited landing.* A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by the Registered Buyer and IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder constitutes confirmation that OLE received the landing report and that the IFQ permit

holder's or CDQ permit holder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in paragraph (l) of this section.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(E) \* \* \*

(1) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must have one or more IFQ permit holders or IFQ hired master permit holders on board with a combined IFQ balance equal to or greater than all IFQ halibut and IFQ sablefish on board the vessel.

(2) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ hired master permit holders are onboard with enough remaining halibut CDQ balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut onboard.

\* \* \* \* \*

(ii) \* \* \*

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ permit holders on board;

\* \* \* \* \*

(5) \* \* \*

(ii) *Record retention.* The IFQ permit holder, IFQ hired master permit holder, or CDQ hired master permit holder must retain a legible copy of all Landing Report receipts, and the Registered Buyer must retain a copy of all reports and receipts required by this section. All retained records must be available for inspection by an authorized officer:

\* \* \* \* \*

■ 6. In § 679.7, paragraphs (a)(10)(ii), (f)(3)(i), (f)(3)(ii), (f)(4), (f)(6)(i), (f)(6)(ii), and (f)(11) introductory text are revised to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

(10) \* \* \*

(ii) Alter, erase, or mutilate any permit or document issued under §§ 679.4 or 679.5.

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(i) *Halibut.* (A) Retain halibut caught with fixed gear without a valid IFQ permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard.

(B) Retain halibut caught with fixed gear without a valid CDQ permit and without a CDQ hired master permit in the name of an individual aboard.

(ii) *Sablefish.* Retain sablefish caught with fixed gear without a valid IFQ

permit, and if using a hired master, without an IFQ hired master permit in the name of an individual aboard, unless fishing on behalf of a CDQ group and authorized under § 679.32(c).

(4) Except as provided in § 679.40(d), retain IFQ or CDQ halibut or IFQ or CDQ sablefish on a vessel in excess of the total amount of unharvested IFQ or CDQ, applicable to the vessel category and IFQ or CDQ regulatory area(s) in which the vessel is deploying fixed gear, and that is currently held by all IFQ or CDQ permit holders aboard the vessel, unless the vessel has an observer aboard under subpart E of this part and maintains the applicable daily fishing log prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title and § 679.5.

\* \* \* \* \*

(6) *Landing*—(i) IFQ permit or IFQ hired master permit. Make an IFQ landing without an IFQ permit or IFQ hired master permit, as appropriate, in the name of the individual making the landing.

(ii) Hired master, CDQ. Make a CDQ halibut landing without a CDQ hired master permit listing the name of the hired master.

\* \* \* \* \*

(11) Discard halibut or sablefish caught with fixed gear from any catcher vessel when any IFQ permit holder aboard holds unused halibut or sablefish IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating, unless:

\* \* \* \* \*

■ 7. In § 679.23, paragraph (g)(2) is revised to read as follows:

#### § 679.23 Seasons.

\* \* \* \* \*

(g) \* \* \*

(2) Catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ permit and unused IFQ in the account on which the permit was issued.

\* \* \* \* \*

■ 8. In § 679.40, paragraphs (a)(5)(ii)(A) through (D) are revised to read as follows:

#### § 679.40 Sablefish and halibut QS.

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(ii) \* \* \*

(A) Category A QS and associated IFQ, which authorizes an IFQ permit

holder to harvest and process IFQ species on a vessel of any length;

(B) Category B QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel of any length;

(C) Category C QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ species on a vessel less than or equal to 60 ft (18.3 m) LOA;

(D) Category D QS and associated IFQ, which authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 35 ft (10.7 m) LOA, except as provided in § 679.42(a).

\* \* \* \* \*

■ 9. In § 679.41, paragraphs (a)(2), (e)(3) introductory text, (e)(3)(i), and (e)(3)(ii) are revised to read as follows:

#### § 679.41 Transfer of quota shares and IFQ.

(a) \* \* \*

(2) Transactions requiring IFQ permits to be issued in the name of a hired master employed by an individual or a corporation are not transfers of QS or IFQ.

\* \* \* \* \*

(e) \* \* \*

(3) *Halibut.* QS blocks for the same IFQ regulatory area and vessel category that represent less than 3,000 lb (1.4 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 3,000 lb (1.4 mt) of halibut IFQ based on the preceding criteria. In Areas 2C and 3A, QS blocks for the same IFQ regulatory area and vessel category that represent less than 5,000 lb (2.3 mt) of halibut IFQ, based on the 1996 catch limit for halibut in a specific IFQ regulatory area and the QS pool for that IFQ regulatory area on January 31, 1996, may be consolidated into larger QS blocks provided that the consolidated blocks do not represent greater than 5,000 lb (2.3 mt) of halibut IFQ based on the preceding criteria. A consolidated block cannot be divided and is considered a single block for purposes of use and transferability. The maximum number of QS units that may be consolidated into a single block in each IFQ regulatory area is as follows:

(i) Area 2C: 33,320 QS.

(ii) Area 3A: 46,520 QS.

\* \* \* \* \*

■ 10. In § 679.42, paragraph (a)(3) is removed; paragraphs (a)(2)(iv), and (l) are added; and paragraphs (a)(1) introductory text, (c)(1)(i), (d), (g), (i), and (j) are revised to read as follows:



**§ 679.42 Limitations on use of QS and IFQ.**

(a) \* \* \*

(1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area, except all or part of the QS and IFQ specified for regulatory area 4C may be harvested in either Area 4C or Area 4D.

\* \* \* \* \*

(2) \* \* \*

(iv) In Areas 3B and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Have a valid IFQ permit or a valid IFQ hired master permit.

\* \* \* \* \*

(d) *Emergency waivers and medical transfers.* The person authorized to fish IFQ halibut or sablefish must be aboard the vessel during fishing operations and must sign the IFQ landing report except as provided in § 679.41 and under the following circumstances:

(1) *Emergency waiver.* In the event of extreme personal emergency during a fishing trip involving a person authorized to fish IFQ halibut or sablefish, the requirements or paragraph (c)(1) of this section may be waived. The waiving of these requirements under this provision shall apply to IFQ halibut or IFQ sablefish retained on the fishing trip during which the emergency occurred.

(2) *Medical transfers.* In the event of a medical condition affecting a QS holder or an immediate family member of a QS holder that prevents the QS holder from being able to participate in the halibut or sablefish IFQ fisheries, a medical transfer may be approved for the IFQ derived from the QS held by the person affected by the medical condition.

(i) *General.* A medical transfer will be approved if the QS holder demonstrates that:

(A) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition that precludes participation by the QS holder; or

(B) He or she is unable to participate in the IFQ fishery for which he or she holds QS because of a medical condition involving an immediate family member that requires the QS holder's full time attendance.

(ii) *Eligibility.* To be eligible to receive a medical transfer, a QS holder must:

(A) Possess one or more catcher vessel IFQ permits; and

(B) Not qualify for a hired master exception under paragraph (i)(1) of this section.

(iii) *Application.* A QS holder may apply for a medical transfer by submitting a medical transfer application to the Alaska Region, NMFS. A QS holder who has received an approved medical transfer from RAM may transfer the IFQ derived from his or her own QS to an individual eligible to receive IFQ. A medical transfer application is available at <http://www.fakr.noaa.gov> or by calling 1-800-304-4846. Completed applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668. A complete application must include:

(A) The applicant's (transferor's) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(B) The recipient's (transferee's) identity including his or her full name, NMFS person ID, date of birth, Social Security Number or Tax ID, permanent business mailing address, business telephone and fax numbers, and e-mail address (if any). A temporary mailing address may be provided, if appropriate;

(C) The identification characteristics of the IFQ including whether the transfer is for halibut or sablefish IFQ, IFQ regulatory area, number of units, range of serial numbers for IFQ to be transferred, actual number of IFQ pounds, transferor (seller) IFQ permit number, and fishing year;

(D) The price per pound (including leases) and total amount paid for the IFQ in the requested transaction, including all fees;

(E) The primary source of financing for the transfer, how the IFQ was located, and the transferee's (buyer's) relationship to the transferor (seller);

(F) A written declaration from a licensed medical doctor, advanced nurse practitioner, or primary community health aide as those persons are defined in § 679.2. The declaration must include:

(1) The identity of the licensed medical doctor, advanced nurse practitioner, or primary community health aide including his or her full name, business telephone, permanent business mailing address (number and street, city and state, zip code), and whether the individual is a licensed medical doctor, advanced nurse practitioner, or primary community health aide;

(2) A concise description of the medical condition affecting the applicant or applicant's family member including verification that the applicant is unable to participate in the IFQ fishery for which he or she holds IFQ permits during the IFQ season because of the medical condition and, for an affected family member, a description of the care required; and

(3) The dated signature of the licensed medical doctor, advanced nurse practitioner, or primary community health aide who conducted the medical examination;

(G) The signatures and printed names of the transferor and transferee, and date; and

(H) The signature, seal, and commission expiration of a notary public.

(iv) *Restrictions.* (A) A medical transfer shall be valid only during the calendar year for which the permit is issued;

(B) A medical transfer will be issued only for the IFQ derived from the QS held by the applicant;

(C) NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 2 of the previous 5 years for the same medical condition.

(v) *Medical transfer evaluations and appeals*—(A) *Initial evaluation.* The Regional Administrator will evaluate an application for a medical transfer submitted in accordance with paragraphs (d)(2)(iii) and (d)(2)(iv) of this section. An applicant who fails to submit the information specified in the application for a medical transfer will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant if the Regional Administrator determines that the application provided by the applicant is deficient or if the applicant fails to submit the specified information or a revised application. The IAD will indicate the deficiencies in the application, including any deficiencies with the information on the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

\* \* \* \* \*

(g) *Limitations on QS blocks*—(1) *Number of blocks per species.* No person, individually or collectively, may hold more than two blocks of sablefish or three blocks of halibut in any IFQ regulatory area, except:

(i) A person, individually or collectively, who holds unblocked QS

for a species in an IFQ regulatory area, may hold only one QS block for that species in that regulatory area; and

(ii) A CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area and no more than five blocks of sablefish QS in any IFQ regulatory area on behalf of any eligible community.

(2) *Action by the Regional Administrator in Areas 3B and 4A.* In Areas 3B and 4A, the Regional Administrator shall:

(i) Identify any halibut blocks that result in an allocation of more than 20,000 lb (9.1) mt of halibut IFQ, based on the 2004 TAC for fixed gear halibut in those areas and the QS pools for those areas as of January 31, 2004; and

(ii) Divide those halibut blocks into one block of 20,000 lb (9.1 mt) and the remainder unblocked, based on the 2004 TAC for fixed gear halibut in those areas and the QS pools for those areas as of January 31, 2004.

(3) *Transfer of QS blocks.*

Notwithstanding paragraph (g)(1)(i) of this section, a person who holds more than one block of halibut QS and unblocked halibut QS as a result of the Regional Administrator's action under paragraph (g)(2) of this section may transfer unblocked QS until such time as that person transfers a halibut QS block to another person.

(4) Holding or to hold blocks of QS. For purposes of this section, "holding" or "to hold" blocks of QS means being registered by NMFS as the person who received QS by initial assignment or approved transfer.

\* \* \* \* \*

(i) *Use of IFQ resulting from QS assigned to vessel category B, C, or D by individuals.* In addition to the requirements of paragraph (c) of this section, IFQ permits issued for IFQ resulting from QS assigned to vessel category B, C, or D must be used only by the individual who holds the QS from which the associated IFQ is derived, except as provided in paragraph (i)(1) of this section.

(1) An individual who received an initial allocation of QS assigned to category B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual:

(i) For a documented vessel, owns a minimum 20-percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that lists the individual as an owner and, if necessary to prove the required percentage ownership, other written documentation;

(ii) For an undocumented vessel, owns a minimum 20-percent interest in

the vessel as shown by a State of Alaska vessel license or registration that lists the individual as an owner and, if necessary to show the required percentage ownership interest, other written documentation; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with § 679.4(d)(2).

(2) Paragraph (i)(1) of this section does not apply to any individual who received an initial allocation of QS assigned to category B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

(3) Paragraph (i)(1) of this section does not apply to individuals who received an initial allocation of QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish QS in the IFQ regulatory area east of 140° W. long., and this exemption is not transferable.

(4) The exemption provided in paragraph (i)(1) of this section may be exercised by an individual on a vessel owned by a corporation, partnership, or other entity in which the individual is a shareholder, partner, or member, provided that the individual maintains a minimum 20-percent interest in the vessel owned by the corporation, partnership, or other entity. For purposes of this paragraph, interest in a vessel is determined as the percentage ownership of a corporation, partnership, or other entity by that individual multiplied by the percentage of ownership of the vessel by the corporation, partnership, or other entity.

(5) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

(j) *Use of IFQ resulting from QS assigned to vessel category B, C, or D by corporations and partnerships.* (1) Except as provided in paragraph (j)(7) of this section, a corporation, partnership or other entity that received an initial allocation of QS assigned to category B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section from a vessel if that corporation, partnership or other entity:

(i) For a documented vessel, owns a minimum 20-percent interest in the vessel as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard that

lists the corporation, partnership or other entity as an owner and, if necessary to prove the required percentage ownership, other written documentation;

(ii) For an undocumented vessel, owns a minimum 20-percent interest in the vessel as shown by a State of Alaska vessel license or registration that lists the corporation, partnership or other entity as an owner and, if necessary to show the required percentage ownership interest, other written documentation; and

(iii) Is represented on the vessel by a hired master employed by that individual and permitted in accordance with § 679.4(d)(2).

(2) The provision of paragraph (j)(1) of this section is not transferable and does not apply to QS assigned to vessel category B, C, or D for halibut in IFQ regulatory Area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. that is transferred to a corporation or partnership. Such transfers of additional QS within these areas must be to an individual pursuant to § 679.41(c) and be used pursuant to paragraphs (c) and (i) of this section.

(3) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to vessel category B, C, or D loses the exemption provided under this paragraph (j) on the effective date of a change in the corporation or partnership from that which existed at the time of initial allocation.

(4) For purposes of this paragraph (j), "a change" means:

(i) For corporations and partnerships, the addition of any new shareholder(s) or partner(s), except that a court appointed trustee to act on behalf of a shareholder or partner who becomes incapacitated is not a change in the corporation or partnership; or

(ii) For estates, the final or summary distribution of the estate.

(5) The Regional Administrator must be notified of a change in the corporation, partnership, or other entity as defined in this paragraph (j) within 15 days of the effective date of the change. The effective date of change, for purposes of this paragraph (j), is the date on which the new shareholder(s) or partner(s) may realize any corporate liabilities or benefits of the corporation or partnership or, for estates, the date of the determination of a legal heir to the estate, or the date of the order for distribution of the estate.

(6) QS assigned to vessel category B, C, or D and IFQ resulting from that QS held in the name of a corporation, partnership, or other entity that changes, as defined in this paragraph (j),

must be transferred to an individual, as prescribed in § 679.41, before it may be used at any time after the effective date of the change.

(7) A corporation or a partnership that received an initial allocation of QS assigned to category B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

(8) A corporation, partnership, or other entity, except for a publicly held corporation, that receives an initial

allocation of QS assigned to category B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

(9) The exemption provided in this paragraph (j) may be exercised by a corporation, partnership, or other entity on a vessel owned by a person who is a shareholder in the corporation, partnership, or other entity, provided that the corporation, partnership, or other entity maintains a minimum of 20-percent interest in the vessel. For purposes of this paragraph (j), interest in a vessel is determined as the percentage of ownership in the corporation, partnership, or other entity by that person who is a shareholder in the corporation, partnership, or other entity, multiplied by the percentage of

ownership in the vessel by that person who is a shareholder in the corporation, partnership, or other entity.

\* \* \* \* \*

(1) *Sablefish vessel clearance requirements*—(1) *General*. Any vessel operator who fishes for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas must possess a transmitting VMS transmitter while fishing for sablefish.

(2) *VMS requirements*. (i) The operator of the vessel must comply with § 679.28(f)(3), (f)(4), and (f)(5); and

(ii) The operator of the vessel must contact NMFS at 800-304-4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for sablefish in the Bering Sea or Aleutian Islands IFQ regulatory areas.

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