

**B. Regulatory Flexibility Act**

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

**C. Paperwork Reduction Act**

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

**D. Federalism**

This action has been reviewed under Executive Order 12612 on Federalism and FTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty.

**List of Subjects in 49 CFR Part 604**

Bus, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, title 49, Code of Federal Regulations, part 604, Charter Service, is amended as follows:

**PART 604—[AMENDED]**

1. The authority citation for part 604 continues to read as follows:

**Authority:** Federal Transit Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by revising paragraph (b)(8)(iv) to read as follows:

**§ 604.9 Charter Service.**

\* \* \* \* \*

(b)(8) \* \* \*

(iv) The service described in this subsection may be provided only during the demonstration program to be conducted through October 31, 1995, in the following sites:

- (A) Monterey, California;
- (B) Oklahoma City, Oklahoma;
- (C) St. Louis, Missouri;
- (D) Yolo County, California;
- (E) Four sites within the State of Michigan.

Issued on: October 4, 1994.

**Gordon J. Linton,**  
Administrator.

[FR Doc. 94-24897 Filed 10-6-94; 8:45 am]

BILLING CODE 4910-57-P

**INTERSTATE COMMERCE COMMISSION****49 CFR Part 1039**

[Ex Parte No. 346 (Sub-No. 30)]

**Rail General Exemption Authority—Exemption of Rock Salt, Salt**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is exempting from regulation the transportation by rail of rock salt (STCC No. 14-715) and salt (STCC No. 28-991). These commodities are added to the list of exempt commodities in 49 CFR part 1039, as set forth below. This exemption does not embrace exemptions from regulation of car hire and car service.

**EFFECTIVE DATE:** November 5, 1994.

**FOR FURTHER INFORMATION CONTACT:** Tom Yates, (202) 927-5296 or Joseph H. Dettmar, (202) 927-5660. [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, 1201 Constitution Avenue, Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927-5721.]

On October 21, 1993, at 58 FR 54320, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of rock salt and salt. The comments have been received and analyzed. We are approving AAR's proposal.

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 49 CFR Part 1039**

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: September 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

**Vernon A. Williams,**  
Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

**PART 1039—EXEMPTIONS**

1. The authority citation for part 1039 continues to read as follows:

**Authority:** 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a), the following new entries are added at the end of the table to read as follows:

**§ 1039.11 Miscellaneous commodities exemptions.**

(a) \* \* \*

STCC No.	STCC tariff	Commodity
14 715	6001-V, eff. 1-1-94.	Rock salt.
28 991	.....do .....	Salt.

\* \* \* \* \*

[FR Doc. 94-24896 Filed 10-6-94; 8:45 am]

BILLING CODE 7035-01-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 672**

[Docket No. 931199-4042; I.D. 100394A]

**Groundfish of the Gulf of Alaska**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1994 total allowable catch (TAC) for pollock in Statistical Area 61.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), October 4, 1994, until 12 midnight, A.l.t., December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Sloan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the



Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the 1994 pollock TAC for Statistical Area 61 is established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 22,130 metric tons (mt). The fourth quarterly allowance of that TAC for Statistical Area 61 became available at noon, October 1, 1994, pursuant to § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 TAC for pollock in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 21,500 mt, and has set aside the remaining 630 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.L.T., October 4, 1994, until 12 midnight, A.L.T., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

#### Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: October 4, 1994.

Richard Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-24911 Filed 10-4-94; 3:38 pm]

BILLING CODE 3510-22-F

#### 50 CFR Part 676

[Docket No. 940683-4277; I.D. 060994B]

RIN 0648-AE79

#### Limited Access Management of Federal Fisheries in and off of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 31 to the

Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), Amendment 35 to the FMP for Groundfish of the Gulf of Alaska (GOA), and a regulatory amendment affecting the Pacific halibut fishery in and off of the State of Alaska (Alaska or State). This action implements the Modified Block Proposal, which is necessary to prevent excessive consolidation of the halibut and sablefish fisheries. This action also clarifies the transfer process for the Individual Fishing Quota (IFQ) program.

EFFECTIVE DATE: November 7, 1994; except the amendments to §§ 676.16, 676.20(f), and 676.22(g), which will become effective on January 1, 1995.

ADDRESSES: Copies of Amendments 31, 35, and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for the Modified Block Proposal to the IFQ Program, may be obtained from the North Pacific Fishery Management Council (Council), P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Modified Block Proposal, as well as the other alternatives for the IFQ program for fixed-gear halibut and sablefish fisheries, are described in the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (Analysis) dated December 17, 1993. Language amending the BSAI and the GOA FMPs was developed for the Modified Block Proposal, the Council's chosen alternative.

The amendments to the FMPs affect the sablefish fisheries in the exclusive economic zone off Alaska, which are managed in accordance with the BSAI and the GOA groundfish FMPs. The Council prepared both FMPs under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) and the Northern Pacific Halibut Act of 1982 (Halibut Act). The Convention and the Halibut Act authorize the Council to develop regulations that are in addition to, but not in conflict with, regulations

adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop, for approval by NMFS, limited-access policies for the Pacific halibut fishery in Convention waters in and off of Alaska.

The Council acted under these authorities in recommending changes to the IFQ program for the halibut and sablefish fisheries. The Council, through these changes, intends to promote the conservation and management of the sablefish and halibut fisheries, and to further the objectives of the Magnuson Act and the Halibut Act.

#### QS Block Proposals

Concern over the potential for excessive consolidation of fishing privileges under the IFQ program was the impetus for the Modified Block Proposal. The Modified Block Proposal provides that (1) initial allocations of QS that represent less than 20,000 lb (9 mt) of IFQ in the implementation year will be issued as a block, (2) QS that represent 20,000 lb (9 mt) or more of IFQ in the implementation year will be "unblocked" QS, and (3) QS in a block cannot be separated and will have to be transferred as a block. For each species in each IFQ regulatory area, a person who does not hold any unblocked QS can hold up to two QS blocks for that area, but the sum of the two QS blocks cannot exceed use limits in 50 CFR 676.22 (e) and (f). A person who holds unblocked QS for an IFQ regulatory area can hold only one QS block for that area, provided that the total QS held, blocked and unblocked, for that IFQ regulatory area does not exceed use limits referenced above. The Modified Block Proposal also provides that QS blocks resulting in less than 1,000 lb (0.5 mt) of IFQ for halibut, or 3,000 lb (1.4 mt) of IFQ for sablefish, in the implementation year can be combined. The QS block resulting from this combination cannot exceed 1,000 lb (0.5 mt) for halibut or 3,000 lb (1.4 mt) for sablefish. This "sweeping-up" provision will allow very small QS allocations to be combined into "fishable" amounts.

The Modified Block Proposal is intended to reduce the maximum potential consolidation relative to the current IFQ program. The Analysis indicated that, if actual consolidation is proportional to the estimates of maximum potential consolidation, more QS holders are likely to remain in the halibut and sablefish fisheries under the Modified Block Proposal than under the current IFQ program.

The Modified Block Proposal will not interfere with the opportunities currently available under the IFQ program for larger operations, because



QS allocations for an IFQ regulatory area that represent 20,000 lb (9 mt) or more of IFQ in 1994 will remain unblocked. The Council decided that the Modified Block Proposal would protect small producers, part-time participants, and entry-level participants—who may tend to disappear because of excessive consolidation under the current IFQ program—without compromising the flexibility and the economic efficiency of the IFQ program as a whole.

Whether QS is blocked or unblocked will be determined by the QS pools for each IFQ regulatory area as they exist on October 17, 1994. Using a specific date to calculate whether to block QS ensures that all persons are treated in a similar manner, regardless of when their QS is issued. October 17, 1994, was chosen as the date to calculate QS because it was long enough after the application period, which ended July 15, 1994, to allow the QS pools to achieve QS amounts reflective of their eventual range, but long enough before the 1995 fishing season to allow for transfers of QS for that fishing season.

#### Transfer of QS Blocks

Blocked and unblocked QS will be transferable subject to the approval of the Director, Alaska Region, NMFS (Regional Director), and compliance with the transfer regulations found in 50 CFR part 676. Changes are made to the transfer procedure in 50 CFR part 676 to accommodate the Modified Block Proposal, and to clarify further the transfer process. Further information on the rationale for these changes, and on the Modified Block Proposal, can be found in the proposed rule published in the *Federal Register* on June 28, 1994 (59 FR 33272).

#### Changes From the Proposed Rule in the Final Rule

1. The amendatory language to § 676.20 in the proposed rule was numbered in such a manner that existing paragraphs (a)(1) *Qualified persons* and (a)(2) *Vessel categories* would have been deleted. This was a technical oversight. Paragraphs (a)(1) and (a)(2) of § 676.20 will remain as published on November 9, 1993 (58 FR 59375), and will not be amended by this final rule. The amendatory language in paragraphs (a)(1) and (a)(2) of § 676.20, which was in the proposed rule published June 28, 1994, (59 FR 33272) will be incorporated in paragraph (a) of § 676.20 of this final rule.

2. The reference to § 676.22 in § 676.21(c)(2) was changed to § 676.22(j) to indicate the paragraph of the

regulatory text intended to be referenced by the citation.

#### Response to Comments

Twenty-two letters of comments were received regarding the Modified Block Proposal. Twelve letters provided comments that supported the Modified Block Proposal, eight letters provided comments in opposition, and two letters provided no comments. These comments, which are summarized and responded to below, were considered during the formulation of the final rule.

**Comment 1:** The Modified Block Proposal is overly restrictive, especially to the smaller vessel categories.

**Response:** Though the Modified Block Proposal will have a larger impact on the smaller vessel categories, the determining factor of whose QS will be blocked is the amount of catch landed and duration of participation during the qualifying years, not vessel size. Some owners/lessees of large and small vessels will be issued QS as a block, and some owners/lessees will be issued unblocked QS. More owners/lessees of smaller vessels will have blocked QS due to smaller harvests during the qualifying years.

**Comment 2:** Most of the QS issued in smaller vessel categories will be blocked. The QS in small blocks will have less value, making those blocks difficult to market.

**Response:** The response to Comment 1 addresses why most QS issued in smaller vessel categories will be blocked. Any determination on the value of blocked or unblocked QS, whether in large or small quantities, is purely speculative. Blocked QS may be more or less valuable than unblocked QS, depending upon market forces. Small blocks, with their lesser overall dollar value, will make the IFQ Program more accessible to new entrants. Furthermore, the Modified Block Proposal allows very small blocks to be combined into fishable amounts under the "sweep-up" provision.

**Comment 3:** All QS should be blocked or unblocked. It is inequitable and discriminatory to block some QS and not other QS.

**Response:** Blocking all QS was considered along with the Modified Block Proposal in the Analysis (see Sitka Block Alternative and Full/Partial Block Alternative). The Council selected the Modified Block Proposal from among the other block proposals because: (1) Like the other block alternatives, it prevented excessive consolidation of QS; and (2) unlike the other block alternatives, it did not interfere with the opportunities currently available to larger operations

in the fixed-gear Pacific halibut and sablefish fisheries by blocking all QS.

The guidelines for FMPs at 50 CFR 602.14 (national standard 4—Allocations) indicates that total parity in allocations is not necessary to comport with fairness and equity. Allocation decisions by the Council may be fair and equitable if those decisions are justified in terms of the objectives of the FMP amendment. The Modified Block Proposal was designed to preserve the way of life for fishermen and their families and the dependence of local communities on the fishery, which are legitimate social factors provided in the guidelines and identified by the Council. Furthermore, the Modified Block Proposal does not discriminate between residents of different states, which is the standard specified at § 602.14(b).

**Comment 4:** The Modified Block Proposal is inequitable because persons who were initially issued QS who owned/leased large vessels will receive most of their QS unblocked, allowing them to purchase more QS up to the use cap. Persons who were initially issued QS, however, who owned/leased small vessels will be issued their QS in blocks, preventing them from purchasing QS up to the use cap.

**Response:** As explained in the response to Comment 3, the Modified Block Proposal is not inequitable under the guidelines in 50 CFR part 602. Furthermore, although the Modified Block Proposal restricts the number of QS blocks that can be held by a person (up to two blocks per species and area), it does not prevent a person from purchasing QS up to the use cap. For example, if a person is initially issued QS in a block, that person, like a person who was initially issued unblocked QS, can purchase unblocked QS up to the use cap.

**Comment 5:** The Modified Block Proposal creates a monopoly that violates the anti-trust laws. The IFQ Program should be administered under a "free market" system. Gear restrictions, rather than limited access, should be used to manage the resource.

**Response:** The Modified Block Proposal does not create a monopoly, nor does it violate anti-trust laws. The Modified Block Proposal was designed to reduce consolidation by ensuring that more persons would hold QS under the Modified Block Proposal than may have held QS without it. The consolidation that may have occurred without the Modified Block Proposal could be more accurately characterized as a process that tends toward monopolistic control of the resource.



QS, whether blocked or unblocked, is a harvest privilege that may be transferred. The value of transferred QS is not limited by the program. The value of QS will be determined by market forces, and, therefore, the IFQ Program is administered under a "free market" approach.

Although gear restrictions can assist in managing a fishery, effective management requires a holistic approach. The IFQ Program is one of the many management tools used by NMFS to manage effectively the Pacific halibut and sablefish fisheries.

**Comment 6:** The Modified Block Proposal will create different classes of QS holders depending on how much QS each person is issued. The restrictions on the amount of blocks that can be held, along with the various sizes of blocks, may necessitate the use of brokerage firms to facilitate transfers.

**Response:** The Modified Block Proposal does not create different classes of QS holders. As explained in the response to Comment 1, the Modified Block Proposal establishes the criteria for determining whether QS will be blocked and unblocked. A person, if issued QS in a block, is not prohibited from obtaining unblocked QS. The transferable nature of QS will allow persons to hold blocked and/or unblocked QS, as long as the other requirements on holding QS are met.

The Modified Block Proposal may increase QS transaction costs because some persons (i.e., those who already hold the maximum blocks allowed) will be required to transfer away one block before another block can be transferred to them. This cost may be exacerbated if the person who is making this transaction has a specific QS amount as a target. The Analysis for the Modified Block Proposal contemplated and addressed this increase in transaction costs for transfers. NMFS concluded from the Analysis that the benefits of curbing excessive consolidation outweighed the increase of transaction costs for transfers.

**Comment 7:** Because blocks cannot be divided under the Modified Block Proposal, seizure of assets by the Internal Revenue Service to collect on delinquent taxes would mean that the entire block would be seized, rather than just the portion of QS necessary to satisfy the delinquency.

**Response:** This course of events (i.e., seizing the entire block to satisfy a debt) was evaluated during the formulation of the rule. NMFS decided that the administrative costs associated with dividing blocks was not justifiable, especially because any inconvenience that may occur by seizing the entire

block is due to the QS block holder's own delinquency. QS blocks can be sold to satisfy the existing debt like any other indivisible asset. After the debt has been satisfied, excess funds can be returned to the person whose block had been seized.

**Comment 8:** The Modified Block Proposal will create greater administrative and enforcement costs for NMFS.

**Response:** There will be no significant increase in administrative or enforcement costs because of the Modified Block Proposal. The Modified Block Proposal will affect the initial allocation and transfer of QS. This can be monitored by the computer at Restricted Access Management Division, NMFS, Alaska Region, which is currently programmed to perform this task. The Modified Block Proposal will not affect IFQ resource harvesting or deliveries, minimizing any impacts on enforcement.

**Comment 9:** The Modified Block Proposal will decrease consolidation of fishing operations under the IFQ program.

**Response:** The Modified Block Proposal was intended to prevent excessive consolidation that might have occurred under the IFQ program. This rationale is discussed at length in the Analysis for the Modified Block Proposal and the proposed rule published in the *Federal Register* on June 28, 1994 (59 FR 33272). In brief, the Modified Block Proposal will prevent excessive consolidation by blocking a portion of the total amount of QS issued and by restricting the number of blocks that can be held by an individual. These actions will increase the potential minimum holders of QS to an amount greater than under the status quo.

**Comment 10:** The Modified Block Proposal will create block sizes that will provide easy access to the IFQ fisheries and maintain diversity in the longline fleet.

**Response:** Under the Modified Block Proposal, all initially issued QS that would result in less than 20,000 lb (9 mt) of IFQ using the 1994 total allowable catch (TAC) would be blocked. This means that a variety of block sizes will be created, and will be available for transfer. Persons who would like to enter the fishery would be able to secure a smaller block, and then subsequently transfer the smaller block for a larger block as the fishing operation grows and the experience of the person increases. This "step" approach, made possible by the Modified Block Proposal, assists in the

growth of each operation to efficient economies of scale.

Also, the size and amount of QS blocks will remain constant, except for consolidation of the smallest blocks under the "sweep-up" provision. This means that at least the minimum number of QS block holders will hold blocks of various sizes, providing diversity in the longline fleet.

**Comment 11:** The Modified Block Proposal will benefit coastal communities dependent on the IFQ fisheries by reducing the amount of QS that can be consolidated into larger operations, ensuring a more uniform landing pattern of fishery product, and providing higher levels of harvesting employment.

**Response:** NMFS concurs with this comment. Along with reducing excessive consolidation, the Modified Block Proposal was designed to benefit local coastal communities traditionally dependent on the Pacific halibut and sablefish fixed-gear fisheries. As explained earlier, QS blocks will maintain diversity in the longline fleet by reducing the amount of QS available for consolidation by larger operations. Also, smaller, locally owned and operated vessels are more likely to deliver to local communities than larger vessels. This is because large vessels typically have the capacity to store large quantities of fishery product for extended periods of time, thus enabling these vessels to deliver to ports other than those located in local coastal communities.

By increasing the potential minimum number of QS holders, the Modified Block Proposal will provide more employment for fishermen and crew members. By increasing the potential for delivery of fishery product in coastal communities, the Modified Block Proposal will provide more employment in the fishery processing sector for those communities.

**Comment 12:** The Modified Block Proposal can be repealed or modified at a later date if it turns out to be overly restrictive.

**Response:** NMFS concurs with this comment. On the other hand, if the Modified Block Proposal is not adopted at this time, adoption at a later time will not accomplish the same goals. Transfers and consolidation of QS that could occur if the Modified Block Proposal is not in place when the IFQ program is implemented might cause irrevocable damage to coastal communities and the small vessel fleet.

#### Classification

The Council prepared a final regulatory flexibility analysis (FRFA)



that indicates the action will have a significant economic impact on a substantial number of small entities. By reducing consolidation, the Modified Block Proposal may increase the total cost of harvesting the resource, thereby decreasing the net economic benefits of the IFQ Program and increasing harvesting costs to small entities. The analysis in the FRFA also indicates that by reducing consolidation, the Modified Block Proposal may result in higher levels of harvesting employment. Higher levels of harvesting employment and maintenance of diversity in fishing operations participating in the IFQ Program are the main goals of the Modified Block Proposal. A copy of the FRFA is available from the Council (see ADDRESSES).

This final rule has been determined to be not significant for purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: October 3, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

#### PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

##### § 676.16 [Amended]

2. Section 676.16 is amended by removing and reserving paragraphs (i) and (n).

3. Section 676.20 is amended by revising paragraph (a) and the first sentence of the introductory text of paragraph (f) to read as follows:

##### § 676.20 Individual allocations.

\* \* \* \* \*

(a) Initial allocation of quota share. The Regional Director shall initially assign to qualified persons, on or after October 18, 1994, halibut and sablefish fixed gear fishery QS that are specific to IFQ regulatory areas and vessel categories. QS will be assigned as a block in the appropriate IFQ regulatory area and vessel category if that QS would have resulted in an allocation of less than 20,000 lb (9 mt) of IFQ for halibut or sablefish based on the 1994 TAC for fixed gear in those fisheries for specific IFQ regulatory areas and the QS

pools of those fisheries for specific IFQ regulatory areas as of October 17, 1994.

\* \* \* \* \*

(f) \* \* \* The Regional Director shall assign halibut or sablefish IFQs to each person holding unrestricted QS for halibut or sablefish, respectively, up to the limits prescribed at § 676.22 (e) and (f). \* \* \*

\* \* \* \* \*

4. Section 676.21 is revised to read as follows:

##### § 676.21 Transfer of QS and IFQ.

Transfer of QS or IFQ means any transaction requiring QS, or the use thereof in the form of IFQ, to pass from one person to another, permanently or for a fixed period of time, except that transactions requiring IFQ cards to be issued in the name of a vessel master employed by an individual or a corporation are not transfers of QS or IFQ.

(a) *Transfer procedure.* A person who receives QS by transfer may not use IFQ resulting from that QS for harvesting halibut or sablefish with fixed gear until an Application for Transfer of QS/IFQ (Application for Transfer) is approved by the Regional Director. The Regional Director shall provide an Application for Transfer form to any person on request. Persons who submit an Application for Transfer to the Regional Director for approval will receive notification of the Regional Director's decision to approve or disapprove the Application for Transfer, and, if applicable, the reason(s) for disapproval, by mail posted on the date of that decision, unless another communication mode is requested on the Application for Transfer. QS or IFQ accounts affected by an Application for Transfer approved by the Regional Director will change on the date of approval. Any necessary IFQ permits will be sent with the notice of the Regional Director's decision.

(b) *Application for Transfer approval criteria.* Except as provided in paragraph (e) of this section, an Application for Transfer will not be approved until the Regional Director has determined that:

(1) The person applying for transfer received the QS or IFQ to be transferred:

(i) By initial assignment by the Regional Director as provided in § 676.20(a); or

(ii) By approved transfer;

(2) The person applying to receive the QS or IFQ meets the requirements of eligibility in paragraph (c) of this section;

(3) The person applying for transfer and the person applying to receive the

QS or IFQ have their notarized signatures on the Application for Transfer;

(4) There are no fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person;

(5) The person applying to receive the QS or IFQ currently exists;

(6) The transfer would not cause the person applying to receive the QS or IFQ to exceed the use limits in § 676.22 (e) or (f);

(7) The transfer would not violate the provisions of paragraph (f) of this section; and

(8) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Director.

(c) *Eligibility to receive QS or IFQ by transfer.* All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Director. The Regional Director will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Director. The Regional Director shall provide an Application for Eligibility form to any person on request.

(1) A person must indicate on the Application for Eligibility whether the eligibility sought is as:

(i) An individual; or

(ii) A corporation, partnership, or other entity.

(2) A person may submit the Application for Eligibility with the Application for Transfer or file the Application for Eligibility prior to submitting the Application for Transfer. If a person, as described in paragraph (c)(1)(ii) of this section, files the Application for Eligibility prior to submitting the Application for Transfer, and that person's status subsequently changes, as described in § 676.22(j), that person must resubmit an Application for Eligibility before submitting, or with, the Application for Transfer.

(3) The Regional Director's approval of an Application for Eligibility will be mailed to the person by certified mail.

(4) The Regional Director will notify the applicant if an Application for Eligibility is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility; and

(ii) An explanation why the Application for Eligibility was not approved.



(5) Reasons for disapproval of an Application for Eligibility may include, but are not limited to:

(i) Fewer than 150 days of experience working as an IFQ crew member;

(ii) Lack of compliance with the U.S. citizenship or corporate ownership requirements specified by the definition of "person" at § 676.11;

(iii) An incomplete Application for Eligibility; or

(iv) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations.

(d) *Transfers of QS blocks.* (1) A QS block must be transferred as an undivided whole, unless the size of the QS block exceeds the use limits specified at § 676.22. If the QS block to be transferred exceeds the use limits specified at § 676.22, the Regional Director will divide the block into two blocks, one block containing the maximum amount of QS allowable under the QS use limits and the other block containing the residual QS.

(2) QS blocks representing less than 1,000 lb (0.5 mt) of IFQ for halibut or less than 3,000 lb (1.9 mt) for sablefish, based on the factors listed in § 676.20(a), for the same IFQ regulatory area and vessel category, may be consolidated into larger QS blocks, provided that the consolidated QS blocks do not represent greater than 1,000 lb (0.5 mt) of IFQ for halibut or greater than 3,000 lb (1.4 mt) of IFQ for sablefish based on the factors listed in § 676.20(a). A consolidated QS block cannot be divided and is considered a single block for purposes of use and transferability.

(e) *Transfer of QS or IFQ with restrictions.* If QS or IFQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS or IFQ by transfer does not meet all of the eligibility requirements of this section, the Regional Director will approve the Application for Transfer

with restrictions. The Regional Director will not assign IFQ resulting from the restricted QS to any person. IFQ with restrictions may not be used for harvesting halibut or sablefish with fixed gear. The QS or IFQ will remain restricted until:

(1) The person who received the QS or IFQ with restrictions meets the eligibility requirements of this section and the Regional Director approves an Application for Eligibility for that person; or

(2) The Regional Director approves the Application for Transfer from the person who received the QS or IFQ with restrictions to a person who meets the requirements of this section.

(f) *Transfer restrictions.* (1) Except as provided in paragraph (e) or paragraph (f)(2) of this section, only persons who are IFQ crew members, or that were initially assigned catcher vessel QS, and meet the other requirements in this section may receive catcher vessel QS.

(2) Except as provided in paragraph (f)(3) of this section, only persons who are IFQ crew members may receive catcher vessel QS in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish.

(3) Catcher vessel QS initially assigned to an individual may be transferred to a corporation that is solely owned by the same individual. Such transfers of catcher vessel QS in IFQ regulatory area 2C for halibut or in the IFQ regulatory area east of 140° W. long. for sablefish will be governed by the use provisions of § 676.22(i); the use provisions pertaining to corporations at § 676.22(j) shall not apply.

(4) The Regional Director will not approve an Application for Transfer of catcher vessel QS subject to a lease or any other condition of repossession or resale by the person transferring QS, except as provided in paragraph (g) of this section, or by court order, operation of law, or as part of a security agreement. The Regional Director may

request a copy of the sales contract or other terms and conditions of transfer between two persons as supplementary information to the transfer application.

(g) *Leasing QS (applicable until January 2, 1998).* A person may not use IFQ resulting from a QS lease for harvesting halibut or sablefish until an Application for Transfer complying with the requirements of paragraph (b) of this section and the lease agreement are approved by the Regional Director. A person may lease no more than 10 percent of that person's total catcher vessel QS for any IFQ species in any IFQ regulatory area to one or more persons for any fishing year. After approving the Application for Transfer, the Regional Director shall change any IFQ accounts affected by an approved QS lease and issue all necessary IFQ permits. QS leases must comply with all transfer requirements specified in this section. All leases will expire on December 31 of the calendar year for which they are approved.

5. Section 676.22 is amended by revising paragraph (g) to read as follows:

**§ 676.22 Limitations on the use of QS and IFQ.**

\* \* \* \* \*

(g) *Limitations on QS blocks.* No person, individually or collectively, may hold more than two blocks for each species in any IFQ regulatory area, except that if that person, individually or collectively, holds unblocked QS for a species in an IFQ regulatory area, such person may only hold one QS block for that species in that IFQ regulatory area. 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.

\* \* \* \* \*

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