

(15) As the owner of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or the Atlantic HMS Charter/Headboat category (and only when on a for-hire trip), fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (c)(3).

\* \* \* \* \*

(18) As the owner of a vessel permitted, or required to be permitted, in the Swordfish General Commercial permit category, possess North Atlantic swordfish taken from its management unit by any gear other than rod and reel, handline, bandit gear, green-stick, or harpoon gear.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 679

RIN 0648-BB94

#### Amendment 94 to the Fishery Management Plan for Groundfish of the Gulf of Alaska

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

**ACTION:** Notice of availability of a proposed fishery management plan amendment; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 94 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for review by the Secretary of Commerce (Secretary). Amendment 94 would revise the sablefish individual fishing quota program (IFQ Program) to align the annual harvest, or use caps that apply to vessels fishing IFQ leased from a community quota entity (CQE) with vessel use caps applicable to non-CQE participants in the IFQ Program. The proposed amendment would not change the sablefish vessel use cap applicable to the overall IFQ Program. Amendment 94 is necessary to increase the flexibility of the CQE and CQE community residents to participate in the IFQ Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act), the GOA FMP, and other applicable laws.

**DATES:** Written comments on Amendment 94 must be received no later than 5:00 p.m., Alaska local time (A.l.t.), on April 23, 2013.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA-NMFS-2012-0040, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/)

- **Mail:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586-7557.

- **Hand delivery to the Federal Building:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) for Amendment 94 and the RIRs for the regulatory amendments are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information

requirements contained in this rule may be submitted to NMFS at the above address or by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Peggy Murphy, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires the Secretary, upon receiving an FMP, to immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment.

Amendment 94 to the GOA FMP would revise the individual fishing quota program (IFQ Program) for sablefish fisheries. The IFQ program for the fixed-gear commercial fisheries for halibut and sablefish in waters in and off Alaska is a limited access privilege program implemented in 1995 (58 FR 59375, November 9, 1993). The IFQ Program limits access to the GOA halibut and sablefish fisheries to those persons holding quota share (QS) in specific management areas. The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ in pounds.

In 2002, the North Pacific Fishery Management Council (Council) recommended revisions to IFQ Program regulations and policy to explicitly allow a non-profit entity to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. NMFS implemented the Council's recommendations as Amendment 66 to the GOA FMP in 2004 (69 FR 23681, April 30, 2004). Amendment 66 implemented the community quota entity program (CQE Program) to allow these specific communities to form non-profit corporations called CQEs to purchase catcher vessel QS under the IFQ Program. CQEs that purchase QS on behalf of an eligible community may lease the resulting annual IFQ to fishermen who are residents of the community. The CQE Program was developed to allow a distinct set of small, remote coastal communities to benefit from CQE purchase of QS through sustained community participation in the IFQ fisheries.

The Council reviewed the IFQ Program and the CQE Program beginning in February 2010 and considered proposed changes to both programs. The Council adopted Amendment 94 on October 2, 2011.

Amendment 94 would amend the GOA FMP to make the vessel use caps applicable to vessels fishing sablefish IFQ derived from CQE-held sablefish QS similar to the use caps that apply to vessels fishing sablefish IFQ derived from individually-held QS. The current vessel use cap that applies to vessels fishing sablefish IFQ derived from CQE-held sablefish QS can be more restrictive than the vessel use caps that apply to vessels harvesting individually-held IFQ. Amendment 94 would provide community residents additional access to vessels to fish sablefish IFQ leased from CQEs and may promote more CQE participation in the IFQ Program.

The existing FMP and IFQ CQE regulations provide that a vessel may not be used to harvest more than 50,000 pounds (22.7 mt) of sablefish IFQ from any sablefish QS source if the vessel is used to harvest IFQ derived from sablefish QS held by a CQE. As a result, community residents leasing sablefish IFQ from a CQE may use the IFQ only on vessels that harvest annually no more than 50,000 pounds of IFQ in total; sablefish IFQ derived from CQE-held QS plus sablefish IFQ derived from individually-held QS count towards the cap. The Council established these limitations in the original CQE Program to prevent consolidation of IFQ harvest on a small number of vessels and to broadly distribute the benefits from fishing activities among CQE community residents.

Amendment 94 would revise the FMP to exclude sablefish IFQ derived from individually-held QS from the 50,000-pound vessel use cap. Only sablefish IFQ derived from CQE-held sablefish QS would be included in the vessel use cap. The effect of Amendment 94 would be that the following annual vessel use caps would apply to all vessels harvesting sablefish IFQ: no vessel could be used to harvest (1) more than 50,000 pounds (22.7 mt) of sablefish IFQ leased from a CQE, and (2) more sablefish IFQ than the IFQ Program's overall sablefish IFQ vessel use caps. Under Amendment 94, the existing IFQ Program vessel use caps would remain the same at 1 percent of the Southeast sablefish IFQ total allowable catch (TAC) and 1 percent of the combined

sablefish TAC in all sablefish regulatory areas off Alaska (GOA and BSAI).

Under proposed Amendment 94, if, during any fishing year, a vessel harvested sablefish IFQ derived from CQE-held QS and individually-held QS, the harvests of IFQ derived from the individually-held sablefish QS would not accrue against the 50,000-pound vessel use cap for sablefish IFQ leased from a CQE. Instead, it would accrue against the overall vessel use caps that currently apply to all vessels harvesting sablefish IFQ. In effect, a vessel could not use more than 50,000 pounds of sablefish IFQ derived from sablefish QS held by a CQE during the fishing year. However, it could use additional sablefish IFQ from individually-held QS up to the overall vessel use caps applicable in the IFQ Program, if the overall vessel use caps were greater than 50,000 pounds. If any of the vessel use caps in the IFQ Program were lower than 50,000 pounds in a given year, then the lowest vessel use cap would apply.

CQE representatives testified to the Council that the existing 50,000-pound (22.7 mt) sablefish IFQ vessel use cap is restrictive because there is less flexibility and opportunity for community residents to use IFQ leased from CQEs on larger vessels. The use of CQE-leased sablefish IFQ on larger vessels could increase the employment of community members as crew and increase safety at sea during inclement weather. As discussed in the Purpose and Need section of the analysis prepared for Amendment 94, representatives of CQEs also testified to the Council that the ability to use CQE-leased sablefish IFQ on vessels owned by non-CQE community residents is important to the success of the CQE Program because many of the eligible CQE community residents may be entry-level fishermen or fishermen with no vessels or very small vessels. Changing the vessel use cap would provide CQEs the flexibility to lease IFQ to community residents who do not own vessels and allow them to find employment as crew members and fish the sablefish IFQ derived from the CQE-held QS on other vessels. The ability of community residents to lease IFQ from CQEs in the short-term could allow them to gain revenue from the sale of fish and could

allow them to purchase QS from the CQEs over the longer term. Community residents then could work their way into the fishery. Enhancing individual resident holdings and CQE holdings is part of the purpose of the CQE Program.

Additional opportunities for a CQE to lease sablefish IFQ to community residents would likely result under Amendment 94, as the pool of potential resident applicants for IFQ would increase if there were a larger pool of potential vessels upon which the community residents could use the leased IFQ. CQEs and residents leasing IFQ from CQEs may benefit from the availability of vessels that could not use additional CQE-leased IFQ onboard under the current use cap that includes individually-held IFQ. Anticipating these opportunities for potential CQE purchases of QS are important for communities to develop shorter and longer term plans to finance and develop community-based fisheries.

An RIR was prepared for Amendment 94 that describes the CQE Program, the purpose and need for this action, the management alternatives evaluated to address this action, and the economic and socioeconomic effects of the alternatives (see **ADDRESSES**).

Amendment 94 and its proposed implementing regulations are designed to comply with the Magnuson-Stevens Act mandate that regional fishery management councils must take into account the importance of fishery resources to communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities. The IFQ Program for Pacific halibut is implemented under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The Council does not have a halibut fishery management plan. The Council and Secretary, however, consider the impacts of all the IFQ management measures on fishery-dependent communities. If Amendment 94 is approved, then sablefish and halibut components would be implemented in one rule. Amendment 94 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the GOA FMP, and other applicable laws.

Public comments are being solicited on Amendment 94 and associated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 94 will be published in the **Federal Register** for public comment following NMFS evaluation under Magnuson-Stevens Act procedures. Public comments, whether

specifically directed to the amendment or the proposed rule, must be received, not just postmarked or otherwise transmitted, by 5 p.m. A.l.t. on the last day of the comment period (see **DATES**). Comments received by the end of the comment period will be considered in the approval/disapproval decision on Amendment 94. Comments received after that date will not be considered in

the decision to approve or disapprove Amendment 94.

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

Dated: February 19, 2013.

**James P. Burgess,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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