

by closing the fishery on November 1 rather than December 1, resulting in a loss to the industry of an additional 400 mt of longspine thornyheads, 400 mt of trawl-caught sablefish, and an undetermined amount of Dover sole (since landing rates under the 3,000-lb (1,361-kg) monthly cumulative limit are not known); (3) the harvest guideline for longspine thornyheads already is lower than its ABC to protect shortspine thornyheads; (4) uncertainty in the thornyhead stock assessments also applies to the overfishing level; and (5) aggressive action to further reduce landings of shortspine thornyheads will be taken in January 1996, starting the year with a cumulative trip limit at half the level in 1995. Even with this reduction, the Council agreed that the DTS fishery is unlikely to last longer than 10 months in 1996, and may be shorter.

As stated in the annual management measures (60 FR 2331, January 9, 1995) at paragraph IV.I., a vessel operating in the open access fishery must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery or for the same gear and/or subarea in the limited entry fishery. Therefore, landings of shortspine or longspine thornyheads or trawl-caught sablefish in the open access fishery are prohibited, and the cumulative trip limit for Dover sole may not be exceeded. (The only legal trawls in the open access fishery are non-groundfish trawls used to fish for shrimp or prawns, California halibut or sea cucumbers.)

#### NMFS Action

For the reasons above, the Regional Director concurs with the Council's recommendations and hereby announces the following changes to the management measures for Dover sole, thornyheads, and trawl-caught sablefish. Paragraph IV.E(3)(b) of the annual management measures (60 FR 2331, January 9, 1995, as amended) is replaced with the following:

“(b) *Dover sole, thornyheads, and trawl-caught sablefish.* These provisions apply to Dover sole (*Microstomus pacificus*), shortspine thornyhead (*Sebastolobus alascanus*), longspine thornyhead (*S. altivelis*), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads are also called idiots, channel rockfish, or hardheads.

(i) *Closure.* It is unlawful for any person to take and retain, possess or land shortspine or longspine thornyheads or trawl-caught sablefish. This applies to limited entry and open access fisheries.

(ii) *Trip limits.* No more than 3,000 lb (1,361 kg) cumulative of Dover sole may be taken and retained, possessed, or landed per vessel per calendar month. This limit may not be exceeded by any vessel fishing in the limited entry or open access fishery.”

#### Classification

These actions are authorized by the FMP, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Regional Director (see **ADDRESSES**) during business hours. Because of the need for immediate action to reduce the harvest of shortspine thornyheads, and because the public had advance opportunity to comment on these actions at the August and October 1995 Council meetings and was notified that a fishery closure could occur before the end of the year, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 663.23(c)(1)(i)(E), (F), and (G), and are exempt from review under E.O. 12866.

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

Dated: November 21, 1995.

Richard H. Schaefer,

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

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#### 50 CFR Part 676

[Docket No. 951116269-5269-01; I.D. 110795C]

RIN 0648-AD19

#### Limited Access Management of Federal Fisheries In and Off of Alaska; Interpretation

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

**ACTION:** Interpretive rule.

**SUMMARY:** NMFS issues an interpretive rule to clarify the definitions of “qualified person” that are published in regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear

fisheries in and off of Alaska. This action is necessary to restate NMFS' consistent practice in applying the definitions to determine a person's qualification for the IFQ Program. This interpretive rule is intended to restate clearly the regulatory language defining the qualifications necessary for entry into the IFQ Program.

**EFFECTIVE DATE:** November 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

#### SUPPLEMENTARY INFORMATION:

##### Background

The IFQ Program is a regulatory regime designed to promote the conservation and management of the Pacific halibut and sablefish stocks in and off of Alaska, in accordance with the objectives of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act. The IFQ Program manages the fishing effort for these species by limiting access to halibut and sablefish fixed gear fisheries. The North Pacific Fishery Management Council (Council) developed the IFQ Program and in 1992, under authority of the Magnuson Act, recommended it to NMFS, which approved the program the following year. Further information about the origins and elements of the IFQ Program can be found in the preambles to the proposed and final implementing regulations published December 3, 1992 (57 FR 57130) and November 9, 1993 (58 FR 59375), respectively.

The IFQ Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska implements essentially two separate limited access systems, one for the fixed gear fishery of Pacific halibut (*Hypoglossus stenolepis*) and one for the fixed gear fishery of sablefish (*Anoplopoma fimbria*). The IFQ Program limits access to the fixed gear halibut fishery to persons who qualify for an initial allocation of halibut quota share (QS) or who receive an approved transfer of halibut QS. Similarly, the fixed gear sablefish fishery is limited by the IFQ Program to persons who qualify for an initial allocation of sablefish QS or who receive an approved transfer of sablefish QS.

##### Qualification for Initial Allocation of QS

To qualify for an initial allocation of halibut QS, a person had to have owned or leased a vessel that made legal landings of halibut during the qualifying years (1988, 1989, and 1990); to qualify for an initial allocation of sablefish QS, a person had to have owned or leased

a vessel that made legal landings of sablefish during the qualifying years. The amount of a qualified person's legal landings of halibut harvested with fixed gear from a vessel that person owned or leased during the halibut base years (1984-90) determined the amount of halibut QS that person received, specific to vessel category and IFQ regulatory area. The amount of a qualified person's legal landings of sablefish harvested with fixed gear from a vessel that person owned or leased during the sablefish base years (1985-90) determined the amount of that person's sablefish QS, specific to vessel category and IFQ regulatory area. The amount of QS a person holds determines the annual amount of halibut or sablefish IFQ that a person may harvest using a specified vessel category and in a specified regulatory area.

The IFQ Program regulations governing the halibut fishery pertain exclusively to Pacific halibut; IFQ Program regulations governing the sablefish fishery pertain exclusively to sablefish. As is evident from the administrative record of the IFQ Program's development, the Council intended to create two clearly distinguished limited access systems,

one for the halibut fixed gear fishery and one for the sablefish fixed gear fishery.

NMFS has been informed that this intent may not be entirely clear from the regulatory text at § 676.20(a)(1), which reads as follows:

As used in this section, a "qualified person" means a "person," as defined in § 676.11 of this part, that owned a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any regulatory area in any QS qualifying year. A person is a qualified person also if (s)he leased a vessel that made legal landings of halibut or sablefish, harvested with fixed gear, from any IFQ regulatory area in any QS qualifying year\* \* \*.

This text indicates that qualification for initial allocation of halibut or sablefish QS is limited to persons who, qualifying in all other respects, either owned or leased the fishing vessel when legal landings of halibut and sablefish were made. This text may be misinterpreted to suggest that fixed gear harvest and legal landing of either species will qualify a person for QS of both species. That interpretation would be erroneous.

The use of the phrase "legal landings of halibut or sablefish, harvested with fixed gear" delineates in brief the

additional qualifications for entry into the IFQ Program and in no instance combines the separate qualifications necessary for halibut QS and sablefish QS. This interpretive rule simply restates NMFS' consistent practice in determining eligibility for halibut QS and sablefish QS.

#### Classification

This final rule is issued under the Magnuson Act, 16 U.S.C. 1801 *et seq.*

In that this rule merely interprets an existing regulation without creating any new rights or duties, it is not subject to the requirement of notice and opportunity for public comment under 5 U.S.C. 553(b)(A). Similarly, as an interpretive rule, this rule is not subject to a 30-day delay in effective date pursuant to authority set forth at 5 U.S.C. 553(d)(2).

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

Dated: November 21, 1995.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

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