

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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