

4 Halibut QS Leases

This chapter examines the extent of formal lease transactions during 1995 through 2011. The data indicate that relatively few lease transactions occurred during this time period.

The regulations for the halibut IFQ program have allowed for leasing of QS by transfer of annual IFQ only, subject to several important restrictions. Where leasing is allowed, it provides a means for QS holders to make seasonal adjustments to their fishing activities and for new persons to enter the fishery.

QS lease transactions are in effect for an IFQ year and expire on December 31 of the year of the lease. The regulations governing leases have changed over time.

From the start of the Program, holders of freezer vessel (harvester/processor category "A") QS may lease any or all of those holdings during a year. Catcher vessel leasing has been more restricted. Holders of catcher vessel QS for an area could lease up to 10% of their QS in that area during the years 1995, 1996, and 1997. However, these regulations providing for leases of catcher vessel QS expired on January 2, 1998 and have not been renewed.²⁶

The expired IFQ program regulations which provided for limited leasing of catcher vessel QS during the first three years of the program represented a compromise designed to balance the Council's different objectives. Opponents of leasing wanted to keep QS in the hands of active fishermen rather than absentee QS holders. Some persons also thought that the ability to lease QS might dampen the volume of QS sales and make it more difficult for new persons to enter the fishery as QS owner-operators. Proponents of QS leasing wanted to maintain operational flexibility for fishermen in a dynamic environment.²⁷ The temporary 10% rule sought to balance both sets of concerns.

Several program provisions allow leasing of catcher vessel QS/IFQ in limited circumstances. First, the surviving spouse or other individual beneficiary from the QS holdings immediate family can lease catcher vessel QS for a three year period following the death of the holder.²⁸ Next, in 2004 NOAA Fisheries (NMFS) implemented a new program feature to protect economies of selected fisheries dependent GOA communities. These communities can form nonprofit organizations to acquire QS for lease to community residents. The intent is to assist a number of small coastal communities in Southeast and Southcentral Alaska, striving to remain economically viable, to increase or maintain their participation in the halibut and sablefish fisheries. As of October 2012, there are 30 Community Quota Entities (CQE) that have been established, although only two have purchased commercial halibut quota. In 2007 "emergency medical" leases²⁹ and in 2008 a provision allowing mobilized National Guard and reservist QS holders to lease out IFQ were added.³⁰

²⁶ See 50 CFR679.41(h) for catcher vessel leasing rules. There is no corresponding rule on freezer vessel QS leases.

²⁷ This discussion is adapted from FR 58(215): 59392. November 9, 1993.

²⁸ See 50 CFR679.41(k)(2)

²⁹ Emergency Medical Transfer- 72FR 44795 August 9, 2007

³⁰ Military Transfer- 73 FR 28733 May 19, 2008

This has more than doubled the number of leases in 2C 3A and 4A. It has increased leasing rate percentage from 1 and .5 percent in area 2C and 3A in 2006 to 3.3 and 3.0 percent in 2011 for the same areas.

The tables in this chapter will show that there have been relatively few catcher vessel QS lease transactions. This may be partially due to the fact that large portions of the halibut catcher vessel QS were “blocked” and at the beginning of the program, a block had to be transferred in its entirety for any kind of transfer.

At the start of the program, blocked QS could only be leased on this “all or nothing” basis. Blocks could not be broken up to allow some of the QS to be leased. This rule, coupled with the 10% leasing restriction, made the leasing of blocked catcher vessel QS difficult.

For example, a person who only held one block of QS in an area could not lease that block or any part of it. Similarly, a person who held two blocks of QS for an area would only be in a position to lease QS if one block was no more than 10% of the person's total QS holding.

During 1996 the regulations governing leasing of blocked QS were reworded into terms of IFQ. This change in wording allowed for 10% of the IFQ associated with a segment of blocked QS to be leased annually. In other words, the blocking provision no longer applied to seasonal lease transactions of IFQ. This liberalization of the leasing provision for blocked catcher vessel QS became effective on September 9, 1996. However, this small change in the leasing provisions did not have a substantial effect on catcher vessel QS leasing activities during subsequent years.

The reader should be aware that this chapter only covers formal lease transactions as reported to NMFS-RAM. While formal leases of catcher vessel QS were not extensively used during the 1995 through 2011, there was another means under the halibut IFQ program regulations whereby some QS could be fished by someone other than the QS holder.

Regulations allowing for the use of a “hired master” (skipper) by an initial QS recipient on a vessel owned by the initial QS recipient were widely used during the first 17 years of the program. This topic is explored further in Chapter 12.

Any Category A (Freezer vessel) halibut QS holder can use a hired skipper to harvest the IFQ associated with that QS. Corporations and partnerships and other business entities must employ a skipper to harvest the resource. Similarly, individuals who are initial recipients of catcher vessel QS can use a hired skipper in many cases, with appropriate levels of vessel ownership.

For example, regulations provide that: “An individual who received an initial allocation of QS assigned to (catcher) vessel categories 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 owns at least a 20% interest in the vessel and is represented on the vessel by a master employed by that individual.” This provision is not extended to individuals who were initial QS recipients in IPHC Area 2C.³¹

³¹ See 50 CFR 679.42(i)(1), 50 CFR 679.42(i)(2) and 50 CFR 679.42 (j).

The regulatory requirement that the initial QS holder own a percentage of the vessel that is being used to harvest the IFQ was meant to discourage leasing of QS. However, prior to 1997, this regulation was not specific concerning the percentage ownership interest that the QS holder needed. There apparently have been cases where an initial catcher vessel QS holder has purchased a small fractional ownership interest in a vessel, and then the skipper of that vessel fished all of the person's IFQ. Some of these arrangements may be *de facto* leases. Since the QS holder seems to be using a "hired skipper" and can avoid a formal lease transaction, the restrictions on leasing only 10% of the annual IFQ can be circumvented. In other words, more than 10% of the IFQ associated with the person's catcher vessel QS holdings for an area could be fished under such an arrangement.

The Council studied the possibility of percentage ownership requirements in 1997 and adopted the 20% minimum percentage to constrain this practice.³² NMFS-RAM, acting on the Council's intent, implemented regulations, which also authorized "indirect" vessel ceilings for QS holders and became effective June 9, 1999.

Although prohibited by regulation, persons might also be able to circumvent the restrictions on leasing of catcher vessel QS if they sell their QS with a tacit understanding that the QS would be transferred back to the original QS holder at the end of a specific time. The author has not examined the extent of returned transfers for this report.³³

4.1 Halibut QS and QS Holder Lease Rates by IFQ Area

The halibut IFQ program's rules provide for unlimited leasing of freezer vessel QS. However, during the first three years only 10% of a person's catcher vessel QS for an area could be leased in a year.³⁴

Originally, catcher vessel QS contained in blocks could not be separated for lease purposes. This meant that either the entire block had to be leased or none of the QS in the block could be leased. Under the regulation, it was impossible for a person who held only a single block of QS for an area to lease any of that QS.

As large portions of the catcher vessel QS issued in some areas were issued in blocks, leasing of some QS was not feasible for many persons. As a result, the regulation was altered in 1996 to allow leasing of up to 10% of the IFQ associated with a person's QS for an area, even if the QS was in a block. However, this liberalization did not become effective until September 9, 1996. Moreover, the change seemed to have very little effect on QS leasing during the 1996 and 1997 seasons.

³² At their September 1997 meeting in Seattle, the Council adopted a proposal requiring initial recipients of catcher vessel QS who wanted to use a designated skipper to hold a 20% ownership of interest in any vessel used by their hired skipper. Some "grandfathered" privileges are included in the new rule that will allow some initial QS holders who had used a hired skipper prior to April 17, 1997 to continue to use a hired skipper on a vessel where they have a smaller ownership interest. NMFS-RAM began implementing the Council's intent in 1998. (See page 6, The IFQ Program; 1998 Report To The Fleet published by NMFS-RAM in February 1998). These rules were incorporated into regulations as 50 CFR 679.42 9(i)(1) and 50 CFR 679.42(j), which became effective June 9, 1999.

³³ While it is possible that such arrangements have occurred, transfers with agreements for repossession by the original owner are prohibited under 50 CFR 679.41(g)(4)

³⁴ See 50 CFR 679.41(e) and (h)

Table 4-1 provides a broad overview of halibut QS leasing activity by management area and year for 1995 through 2011 for all QS types including Freezer share. The table provides year-end amounts of QS outstanding and QS leased each year. A rough “QS lease rate” is calculated by dividing the amount of QS leased by the amount of QS outstanding at the end of each year and converting the resulting fraction to a percentage.

The table also contains an “All Years” row that provides summary data over all seventeen years. The data in the rows are the sums of numbers over the seventeen year period (rather than averages or unique counts) or ratios based upon numbers summed over all seventeen years.

The percentage of QS leased over the 1995 through 2011 period was relatively small, generally 1.4% or less of available QS.³⁵ Over the entire time period, there were no QS leases in area 4E because no TAC was available to the IFQ program. QS lease rates in the other areas ranged from 0.5% in 4B to 3.5% in Area 4C. The highest QS lease rate in any area and years was 9.5% in area 4C, in 2011. Again, the low lease rates are partially due to the restrictions on the leasing of catcher vessel QS.³⁶

Table 4-1 also provides data on the number of year-end QS holders and the number of QS holders who leased out some of their QS during the year. A rough “QS holder lease (lessor) rate” is also calculated by dividing the number of QS lessors during the year by the number of year-end QS holders and converting the resulting fraction to a percentage.³⁷ Apart from Area 4E, where there were no QS leases all year, QS lessor rates ranged from 0.6% in Area 4B to 1.4% in Areas 4A with a maximum rate in Area 4D in 1998 of 5.4%.

4.2 Halibut QS and QS Holder Transfer and Lease Rates By Area and Vessel Category, 1995–2011

Tables 4-2a and 4-2b provide more detailed summaries on halibut QS and QS holder lease rates by area and vessel category for the years 1995 through 2011. For comparative purposes, QS and QS holder permanent transfer rates have also been included.

Leases and permanent transfers allow QS to move to persons who feel they can use it more profitably and allow consolidations of QS holdings and fishing operations either seasonally or permanently. These tables show high permanent QS transfer rates relative to QS lease rates in the first seventeen years of the program. Freezer category lease rates (unrestricted) were higher than for catcher vessel lease rates.

Table 4-2a provides data for each area, year, and vessel category. It also provides summary data over all seventeen years. The table includes the amount of QS at the end

³⁵ This report uses the QS amounts shown in lease transactions on NMFS-RAM computerized files. In a few instances, these amounts appear to be in contradiction with respect to the actual amount of QS leased relative to the pounds of IFQ involved. For that reason, the QS lease rates shown herein may be slight overestimates even though they accurately reflect the data.

³⁶ Portions of the TAC in CDQ areas are devoted to CDQs. In Area 4E, the entire TAC for 1995-2011 was devoted to CDQs and there was no IFQ fishery. Thus, there was no reason to lease QS in Area 4E.

³⁷ Note that different formulations of a “QS holder lease rate” could be made. The number of persons who hold QS can change during a year. Over the 1995 through 2011 time period, there was a decline in the number of QS holders due to transfer and consolidation of QS holdings. Lease rates calculated with the number of year-end QS holders in the denominator will thus be higher than lease rates calculated with the number of year-beginning QS holders in the denominator.

of each year, the amount of QS transferred within each year, and the amount of QS leased within each year. QS transfer rates and QS lease rates are calculated for each area, year, and vessel category. “All years rates” are also calculated for each area and vessel category. The methodology used to calculate these rates is the same as that described for Table 4-1.

The table indicates that freezer vessel lease and transfer rates differ sharply from catcher vessel lease and transfer rates. Leasing of halibut QS was largely confined to freezer vessels during 1995 – 2011. This is apparent from the relatively high freezer vessel QS lease rates shown in Table 4-2a. Recall that IFQ program rules place few rules on the leasing of freezer vessel QS.

For example, in the areas in which QS transactions occurred, the “All Years” non zero lease rates for freezer vessel QS ranged from 5.9% in Area 4B to 30.7% in Area 2C. In contrast, there was very little catcher vessel QS leased in any area; catcher vessel QS lease rates were less than 5.5% in all areas and vessel classes.

While catcher vessel QS lease rates were miniscule compared to freezer vessel QS lease rates, QS permanent transfer rates for catcher vessels were often higher than QS transfer rates for freezer vessels for many areas and catcher vessel classes except for a 3.6% rate in Area 4C in the 36-60 ft. category.

For example, during this seventeen year period, permanent transfer rates for freezer vessel QS were the lowest of all the vessel categories in Area 2C, 3A and 4A. In contrast, during all this time, permanent QS transfer rates for freezer vessels were the highest of all the vessel categories in Area 4C and in the middle range for 3B, 4B and 4D.

Table 4-2b provides similar data for QS holders by area and vessel category. Again, data are provided for 1995 – 2011. The table includes the number of QS holders at the end of each year, the number of QS holders with transfers each year, and the number of QS holders with leases within each year. QS holder transfer rates and QS holder (lessor) lease rates are calculated for each area, year, and vessel category.

An “All Years” grouping sums data and provides QS holder lease rates (lessor rate) over all seventeen years. Data on permanent halibut QS transfers by QS holders are provided for comparative purposes.

These data on QS holders with leases and transfers roughly parallel the data on QS leased and transferred. The number of catcher vessel QS holders who leased some QS in the first seventeen years of the program was small relative to the number of year-end QS holders. QS holder lease rates were highest among holders of freezer vessel QS in all areas in which leases occurred.

4.3 Lessors, Lessees, Leases, and Lease Rates

Table 4-3 provides additional details on lease transactions during 1995–2011. The table provides information on the number of lessors, lessees and leases. Note that these numbers may vary for a particular type of QS because a person could lease QS to more than one person. Similarly, a person could lease QS from more than one person.

The table also provides data on the average QS per lease, the total amount of QS leased, and the QS lease rate as a percentage of the year-end QS. These data are provided by area, year, and vessel category.

An “All Years” summary row is also provided for each area and vessel category. The numbers in these rows are the sums of the numbers in the seventeen years, or averages and rates, based on numbers summed over all seventeen years.

The table shows that most of the formal lease transactions over the 1995–2011 period were for freezer vessel QS. In the six areas in which QS lease transactions occurred, QS lease rates among freezer vessels over the seventeen-year period varied from 6.1% in Area 4B to 31.6% in Area 2C. The overall lease QS over this period tended to be highest in the freezer vessel category in 2C, 3A, 3B, 4A and 4D.

4.4 Halibut QS Lease Prices

This section provides information on QS lease prices. Table 4-4 provides summary data on the total number of formal lease transactions over the 1995 through 2011 time period and the number and percentage of these transactions for which applicants provided lease prices. The table indicates that there were 1,043 halibut QS lease transactions during the 1995- 2011 time period; of these, lease prices could be calculated from only 141 (14%) of the transactions.³⁸

³⁸NMFS-RAM personnel have suggested that almost all lease transactions have monetary considerations. However, in many cases the lease contract is a “share” contract or percentage contract. In such cases, persons coding the transfer document have no way to calculate the exact amount of the lease or the rental price per pound of IFQ. Thus in the computer file the fields are left blank or “unpriced” even though the lessor will receive compensation.

Since a QS lease within a year can be translated into a specific amount of IFQ for that year, the pounds of IFQ associated with the lease are reported in the table.

Table 4-5 provides information on priced halibut lease transactions only. In addition to price data the table provides information on the number of priced lease transactions, the amount of QS involved in the lease, the average QS per lease, the amount of IFQ associated with the lease, and the average IFQ per lease by area and vessel category.

Where sufficient observations are available to preserve confidentiality, average lease prices are reported. Prices are reported in dollars per leased QS unit and in dollars per pound of IFQ leased. Prices per pound of IFQ leased are comparable across areas within a year.

As can be seen, there are not enough priced observations in most categories to report an average price. Since there are so few priced lease transactions, the reader should view the data presented with caution.

The only reportable average lease prices are for freezer vessel QS in areas 2C and 3A. In 1995, the average lease price for freezer (harvester-processor) QS in area 3A in terms of dollars per pound of IFQ and per QS unit were lower than in 2C.

Prices over “all” areas are reported in the last rows of the table for each year from 1995 through 2011. Again, prices can only be reported for the freezer vessel category. Average prices for the lease of freezer vessel QS decreased from \$1.04 per pound of IFQ in 1995 to \$.99 per pound of IFQ in 1996. Freezer vessel QS lease prices then decreased to \$.67 per pound of halibut IFQ in 1997 and to \$.36 per pound of IFQ in 1998 but was at 1.58 in 2005.

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