

4 Sablefish QS Leases

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

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

QS lease transactions are made for an IFQ year and expire on December 31 of the year of the lease. The regulations governing leasing 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.²⁴ 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.²⁵ 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 still lease catcher vessel QS for a three year period following the death of the holder.²⁶ 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, 30 Community Quota Entities (CQE) that have been established, although only two have purchased commercial quota. In 2007 "emergency medical" lease²⁷ and in 2008 a provision allowing mobilized National Guard and reservist QS holders to lease out IFQ were added²⁸.

The tables in this chapter will show that there were relatively few catcher vessel QS lease transactions. This may be partially due to the fact that a significant portion of the

²⁴ See 50 CFR 679.41(h) for catcher vessel leasing rules. There is no corresponding rule on freezer vessel QS leases.

²⁵ This discussion is adapted from FR 58(215):59392. November 9, 1993.

²⁶ See 50 CFR 679.41(k)(2)

²⁷ Emergency Medical Transfer- 72FR 44795 August 9, 2007

²⁸ Military Transfer- 73 FR 28733 May 19, 2008

sablefish catcher vessel QS was “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, coupled with the 10% leasing restriction, made the leasing of blocked catcher vessel QS difficult.

Thus, a person who only held one block of QS in an area could not lease that block or any part of it. A person who held two blocks of QS for an area would only be in a position to lease some QS if one block was no more than 10% of the person's total QS holding.²⁹

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 in a year to be leased on an annual basis. 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 did not become effective until September 9, 1996. However, this small liberalization of the catcher vessel leasing provisions appeared to have little impact on catcher vessel leasing activities.

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 time period, there was another means under the sablefish IFQ program regulations whereby some IFQ 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 appear to have been widely used during the first fifteen years of the program. This topic is explored further in Chapter 12.

Any Category A (Freezer vessel) sablefish QS holder can use a hired skipper to harvest the IFQ associated with that QS. Corporations and partnerships and other business entities must also 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 receives an initial allocation of QS assigned to (catcher) vessel categories B, C, or D does not have to be on board and sign IFQ landing reports if that individual owns the vessel on which IFQ sablefish or halibut are harvested, and is represented on the vessel by a master employed by the individual who received the initial allocation of QS.” This provision is not extended to individuals who were initial QS recipients in the sablefish IFQ regulatory area east of 140° W. Longitude, the Southeast area.³⁰

²⁹ The rule change to allow catcher vessel QS holders to lease up to 10% of the current year IFQs associated with their QS occurred during 1996. The proposed rule change was published for comment in the *Federal Register* on April 24, 1996. The final rule was published in the *Federal Register* on August 9, 1996 and the rule became effective on September 9, 1996.

³⁰ See 50 CFR 679.42(i)(1), 50 CFR 679.42(i)(2), and 50 CFR 679.42(j). The regulatory area is the Eastern Regulatory Area, Southeast Outside District that is termed “Southeast” in the tables in this report.

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

While the Council wanted to allow the pre-IFQ practice of using hired skippers, it did not want to expand the leasing privilege. During 1997, the Council studied percentage ownership requirements and adopted a proposal which establishes a 20% minimum vessel ownership requirement in order to constrain this practice.³¹ NMFS-RAM, acting on the Council's intent, implemented revised regulations also authorizing "indirect" vessel ownership by QS holders, and became effective on 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 authors have not examined the extent of returned transfers for this report.³²

4.1 Sablefish QS and QS Holder Lease Rates by IFQ Area

As noted above, the sablefish IFQ program's rules provide for unlimited leasing of freezer vessel QS. However, during the first three years of the program, only 10% of a person's catcher vessel QS for an area could be leased in a year.³³ Again, the rule providing for the lease of catcher vessel QS expired on January 2, 1998.

Table 4-1 provides a broad overview of sablefish leasing activity by management area and year over the 1995 through 2011 time period for all QS types including Freezer share. The table provides the year-end amounts of QS outstanding and the amount of QS that was leased during 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 into a percentage.

The table also contains an "All Years" row for each area which provides summary data over all years. The data in the row represent the sums of numbers over the seventeen years or ratios based upon the sums over all seventeen years.

³¹ At its September 1997 meeting in Seattle, the Council adopted a proposal requiring initial recipients of catcher vessel QS who wanted to utilize a designated skipper to hold 20% ownership interest in the vessel used by their hired skipper. Some "grandfathered" privileges are included in the new rule that will allow some current QS holders who had used a hired skipper prior to April 17, 1997 to continue to use a hired skipper on a vessel in which they have a smaller percentage ownership interest. NMFS-RAM began implementing the Council's intent in 1998. (See page 6, *The IFQ Program: 1998 Report To The Fleet* published in February 1998). These rules were incorporated into regulations as 50 CFR 679.42(i)(1) and 50 CFR 679.42(j) which became effective June 9, 1999.

³² While it is possible that such arrangements may have occurred, transfers with agreements for repossession by the original owner are prohibited under 50 CFR 679.41(g)(4).

³³ See 50 CFR 679.41 (e) and (h).

As can be seen, the Aleutian Islands, Bering Sea, and Western Gulf had the highest percentages of QS leased over the 1995 through 2011 period. Over the entire time period, QS lease rates ranged from 0.9% in the West Yakutat Area to 11.4% in the Aleutian Islands Area.³⁴

Table 4-1 also provides data on the number of year-end QS holders and the number of QS holders who leased some QS during the year. A rough “QS holder lease (lessor) rate” was 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. Over the entire 1995 through 2011 time period, the QS lessor rates ranged from 2.3% in the Central Gulf area to 4.4% in the Bering Sea area with a maximum rate in the Aleutians in 2001 of 8.3%.³⁵ Bering Sea and Aleutian Islands rates tended to be higher perhaps reflecting logistics differences of operating in those areas and relatively high percentage of QS issued in the freezer category.

4.2 Sablefish 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 sablefish 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 that they can use it more profitably and allow for consolidations of QS holdings and fishing operations either seasonally or permanently. The tables show that lease rates for freezer vessel QS were higher than permanent transfer rates for freezer vessel QS over the time period. In contrast, lease rates for catcher vessel QS were extremely low in most areas and lower than permanent transfer rates for catcher vessel QS. This is likely related to the restrictions on leasing catcher vessel QS.

Table 4-2a provides data for each area, year, and vessel category. It also provides summary data over the entire seventeen year time period. The table includes the amount of QS at the end of each year, the amount of QS transferred within each year, and the amount of QS leased within each year by area and vessel category. QS transfer rates and QS lease rates are calculated for each area, year, 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 QS lease and transfer rates differ sharply from catcher vessel QS lease and transfer rates. Leasing of QS was largely confined to freezer vessels over the 1995 through 2011 time period. This can be seen by the relatively high freezer vessel QS lease rates shown in Table 4-2a.

³⁴ The Bering Sea and Aleutian Island Areas are CDQ areas for sablefish.

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

For example, over the first seventeen years of the IFQ program, average lease rates for freezer vessel QS ranged from 8.2% in the West Yakutat area to 24.1% in the Southeast.

While catcher vessel QS lease rates were very low and freezer vessel QS lease rates were substantial, permanent transfer rates show a somewhat different pattern. Over the 1995-2011 period, transfer rates for QS in the “60 feet or less” catcher vessel category were higher than permanent transfer rates for freezer vessel QS in all areas except the Bering Sea and the Central Gulf in which the two rates were very similar.

Table 4-2b provides similar data for QS holders by area and vessel category. Again, data are provided for the 1995 and 2011 time period. The table includes the number of QS holders at the end of each year, the number of QS holders with transfers within 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 a QS holder lease rate (lessor rate) by area and vessel category. 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. As can be seen the number of catcher vessel QS holders who leased some QS in the first seventeen years is quite small relative to the number of year-end QS holders. QS holder lease rates for catcher vessel QS were less than 1.5% in all areas.

4.3 Lessors, Lessees, Leases, and Lease Rates

Table 4-3 provides additional details on lease transactions over the 1995 through 2011 time period. The table provides information on the number of lessors and lessees as well as the number of leases. Note that the numbers of lessors, lessees, and leases 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 amount of sablefish QS transferred 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 provided for each area and vessel category. The numbers in these rows are the sum of the numbers over the entire period or averages and rates based upon numbers summed over all seventeen years.

The table again shows that most of the formal lease transactions over the 1995–2011 period occurred with freezer vessel QS. Although there are no restrictions on leasing of freezer vessel QS there were relatively few leases even in that category. Overall freezer vessel QS lease rates ranged from 7.8% in the Central Gulf area to 27.4% in the Southeast area over the 1995 through 2011 time period.

Very little catcher vessel QS leases occurred in the Bering Sea areas. Lease rates for catcher vessel QS were all less than 1% in all other sablefish areas.

4.4 Sablefish QS Lease Prices

This section provides information on sablefish 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 that had lease prices available from the transfer forms. The table indicates that there were 1,007 sablefish QS lease transactions over the seventeen year period, but lease prices were available for only 353 (35.1%) of the transactions.³⁶

As can be seen, QS leases occurred in all sablefish areas in each year except in the Aleutians in 2006 and 2007. Although in low numbers the leases occurred largely within the freezer vessel class. There are no QS leasing restrictions for freezer (harvester-processor) QS. As noted earlier, the regulations that allowed leasing of catcher vessel QS expired on January 2, 1998 and have not been renewed.³⁷

Table 4-5 provides information on the relatively low sablefish lease transactions for which prices were available. The table provides price information, and data 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 many categories to report an average price. Since there were relatively few priced lease transactions, the reader should view the reported average lease prices with caution.

In almost every case the only reportable average prices are for freezer vessels. In 1995, the average lease price for freezer QS in terms of dollars per pound of IFQ varied from \$.53 per pound in the Bering Sea and Aleutian Islands Areas to \$1.03 per pound in the Southeast area.

For 1996, there are fewer reportable average lease prices. Average lease prices for freezer vessel QS varied only slightly. The lease prices varied from \$.37 per pound in Bering Sea in 1997 of IFQ to 1.18 in the Southeast for 1997.

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 over all areas for the lease of sablefish freezer vessel QS ranged from

³⁶ NMFS-RAM personnel have suggested that most lease transactions have monetary considerations. However, in many case the lease contrast is a "share" contract of 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.

³⁷ See 50 CFR 679.41(h)(2)

\$.68 per pound of IFQ in 1997 to \$1.84 per pound of IFQ in 2005 than dropping in 2010 to \$1.16 per pound.³⁸

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³⁸ The reader should note that more observations can be included in the average calculated over all areas while preserving the confidentiality of the data.